

83-69

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1.	Stubbings ^{SS}	Martin SM	1. Com.	_____
2.	_____	_____	2. ECCA	_____
3.	_____	_____	3. _____	_____

SUBJECT:

Automobile Warranties

BILL NO. AND SPONSOR:

SB 0462 by
Senator Gordon

I. SUMMARY:

A. Present Situation:

New car warranties usually guarantee against certain defects for a specified period of time or a specified number of miles, whichever occurs first. According to the Department of Agriculture, Division of Consumer Services, approximately 4,000 complaints regarding first time titled cars were made in Florida in 1982. Of these complaints, 649 were in written form. For the first three months of 1983, complaints have numbered approximately 50 per month. While some of the complaints relate to cars which are still under warranty, some relate to problems which consumers feel arose during the warranty period and still exist during the post-warranty period. According to the division, the latter are not classified as new car complaints. If the consumer complains to the division, he is asked to complete a complaint form, provide the bill of sale for the motor vehicle and any repair documents. The division then contacts the dealer and the manufacturer's regional office. If no repair is done or no price adjustment made, the consumer then usually proceeds to small claims court.

The Magnusson-Moss Warranty Act, a federal law, provides certain remedies for consumers of goods under warranty, including refund or replacement if certain criteria are met. Title 16 of the Code of Federal Regulations, s. 703, provides for informal dispute settlement procedures under the Magnusson-Moss Warranty Act. Currently, Chrysler Corporation has a dispute-resolving organization in every state. These were set up under the act and the Florida organization has met once a month in Clearwater for the past year.

In recognition of consumer dissatisfactions, some states have enacted legislation to allow a person who has experienced a problem which exists in spite of repeated attempts at repair, and which substantially impairs the use and value of the new car to obtain a full refund of the purchase price or a new car to replace the defective one.

B. Effect of Proposed Changes:

The bill provides a definition of consumer to mean a purchaser, other than for purposes of resale, of an automobile for private use (i.e., not classified as a for-hire vehicle), any person to whom the vehicle is transferred during the express warranty period, or any person entitled by the warranty to enforce the warranty.

The bill provides that if a new car does not conform to all express warranties and the consumer reports this to the

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 Tallahassee, FL 32399-0250
 Series 18 Carton 1281

manufacturer, its agent, or its authorized dealer during the express warranty period or within 1 year following the date of original delivery, whichever is earlier, the manufacturer, its agent or dealer must make the repairs to conform the automobile to the express warranties, in spite of the fact that repairs are made after the expiration of the warranty term or the 1-year period.

The bill requires the manufacturer, agent, or dealer to provide a new automobile, or to refund the full purchase price including all collateral charges, less a reasonable allowance for use, if the automobile's use and value is substantially impaired after a reasonable number of attempts have been made to conform it to the warranty. Refunds must be made to the consumer and the lienholder, if any.

The bill provides that a reasonable allowance for use is the amount of use prior to the first report of nonconformity and any subsequent period that the car is not under repair.

Affirmative defenses are abuse, neglect or alterations to the new car by the consumer, and that nonconformity does not result in substantial impairment of use and value. The bill provides that a reasonable number of attempts to conform have been undertaken if the same nonconformity has been subject to repair four or more times by the manufacturer, its agent or dealer within the express warranty term or within 1 year from the date of original delivery to a consumer, whichever is earlier, and the nonconformity still exists, or if the car is out of service for repair for a total of 30 or more calendar days during the express warranty term or the 1 year period, whichever is earlier. The warranty period, 1 year period and 30 day period must be extended if repair services are not available because of war, strike or natural disasters.

The bill provides that if a manufacturer has established an informal dispute procedure which completely complies with 16 CFR, part 703, as subsequently amended, the consumer must resort to this procedure before he can qualify for refunds or for replacement of the vehicle.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

This bill will be of benefit to consumers who can show that their new cars have a nonconformity which has survived four or more repair attempts or which has deprived them of use of the car for 30 or more cumulative calendar days during the express warranty period or 1 year term and which has substantially impaired the car's use and value. It is not known how many consumers might qualify for refund or replacement.

Manufacturers, their agents, and dealers will be required to make refunds or provide new cars if the appropriate criteria are met. It is believed that manufacturers will be thus encouraged to set up dispute-resolving mechanisms. It is not possible to project the financial impact.

B. Government:

None.

III. COMMENTS:

This bill is substantively identical to a law recently passed in Connecticut. In that state 30 cases are now pending under this legislation. California, Wyoming and New Hampshire have passed similar laws, and lemon bills are now pending in about 50 states.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Stubbings</u>	<u>Martin</u>	1. <u>Com.</u>	<u> </u>
2. <u> </u>	<u> </u>	2. <u>Tr.</u>	<u> </u>
3. <u> </u>	<u> </u>	3. <u> </u>	<u> </u>

SUBJECT:

Motor Vehicle Warranties

BILL NO. AND SPONSOR:

SB 0794 by
Senator Langley

I. SUMMARY:

A. Present Situation:

New car warranties usually guarantee against certain defects for a specified period of time or a specified number of miles, whichever occurs first. According to the Department of Agriculture, Division of Consumer Services, approximately 4,000 complaints regarding first time titled cars were made in Florida in 1982. Of these complaints, 649 were in written form. For the first three months of 1983, complaints have numbered approximately 50 per month. While some of the complaints relate to cars which are still under warranty, some relate to problems which consumers feel arose during the warranty period and still exist during the post-warranty period. According to the division, the latter are not classified as new car complaints. If a consumer complains to the division, he is asked to complete a complaint form, provide the bill of sale for the motor vehicle and any repair documents. The division then contacts the dealer and the manufacturer's regional office. If no repair is done or no price adjustment made, the consumer then usually proceeds to small claims court.

The Magnusson-Moss Warranty Act, a federal law, provides certain remedies for consumers of goods under warranty, including refund or replacement if certain criteria are met. Title 16 of the Code of Federal Regulations, s. 703, provides for informal dispute settlement procedures under the Magnusson-Moss Act. Currently, Chrysler Corporation has a dispute-resolving organization in every state. These were set up under the act and the Florida organization has met once a month in Clearwater for the past year.

In recognition of consumer dissatisfactions, some states have enacted legislation to allow a person who has experienced a problem which exists in spite of repeated attempts at repair, and which substantially impairs the use and value of the new car to obtain a full refund of the purchase price of a new car to replace the defective one.

B. Effect of Proposed Changes:

The bill provides a number of definitions. It specifies that "motor vehicle" includes passenger and commercial vehicles used for certain purposes, and demonstrators and lease-purchase vehicles if a warranty is issued.

The bill provides that if a new car does not conform to all express warranties and the consumer reports this to the manufacturer or its agent, during the express warranty period or within 1 year following the date of original delivery, whichever is earlier, the manufacturer, or its agent must make

the repairs to conform the automobile to the express warranties, in spite of the fact that repairs are made after the expiration of the warranty term or the 1- year period.

The bill requires the manufacturer or its agent, to provide a new automobile, or to refund the full purchase price including all collateral charges, less a reasonable allowance for use, if the automobile's use, market value or safety is impaired after a reasonable number of attempts have been made to conform it to the warranty. Refunds must be made to the consumer and the lienholder, if any. The bill provides a formula for determining a reasonable allowance for use.

since delivery to the consumer.

Affirmative defenses are abuse, neglect or alterations to the new car by the consumer, and that nonconformity does not result in impairment of use, market value or safety. The bill provides that a reasonable number of attempts to conform have been undertaken if the same nonconformity has been subject to repair three or more times by the manufacturer, or its agent within the express warranty term or within 1 year from the date of original delivery to a consumer, whichever is earlier, and the nonconformity still exists, or if the car is out of service for repair for a total of 15 or more calendar days ~~during the express warranty term or the 1-year period, whichever is earlier.~~ The 15 day period must be extended if repair services are not available because of events beyond the manufacturer's control.

The bill provides for extension of the warranty period on certain conditions, requires the consumer to give written notice to the manufacturer of the need for repair if the manufacturer has met disclosure provisions, gives the manufacturer 7 days to conform the vehicle to the express warranty, and then requires the manufacturer, after such notification, to inform the consumer of the informal dispute procedure authorized by 16 CFR s. 703. If the manufacturer fails to inform of this, the consumer may proceed directly against the manufacturer for refund or repair.

The bill requires that actions be brought within specified periods of time, and that a prevailing consumer may be allowed to recover costs and expenses, including attorneys fees. If a claim is brought in bad faith, or there is a complete absence of a justiciable issue of law or fact, the consumer shall be liable for the manufacturer's costs and attorneys fees.

The bill provides that if a manufacturer has established an informal dispute procedure which completely complies with 16 CFR, part 703, as subsequently amended, the consumer must resort to this procedure before he can qualify for refunds or for replacement of the vehicle. At least one member of the panel shall be appointed by the Florida Division of Agriculture and Consumer Services.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

This bill will be of benefit to consumers who can show that their new cars have a nonconformity which has survived four or more repair attempts or which has deprived them of use of the car for 15 or more cumulative calendar days during the express warranty period or 1 year term and which has impaired the car's use, market or safety value. It is not known how many consumers might qualify for refund or replacement.

Manufacturers and their agents will be required to make refunds or provide new cars if the appropriate criteria are met. It is believed that manufacturer's will be thus encouraged to set up

dispute-resolving mechanisms. It is not possible to project the financial impact.

B. Government:

None.

III. COMMENTS:

This bill is substantively identical to a law recently passed in Connecticut. In that state, 30 cases are now pending under this legislation. California, Wyoming and New Hampshire have passed similar laws, and lemon laws are now pending in about 30 states.

IV. AMENDMENTS:

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Stubbings</u> <i>SS</i>	<u>Martin</u> <i>SM</i>	1. <u>Com.</u>	<u>Fav.</u>
2. _____	_____	2. <u>ECCA</u>	_____
3. _____	_____	3. <u>Tr.</u>	_____

SUBJECT:

Motor Vehicle Warranties

BILL NO. AND SPONSOR:

CS/SB 462 & 794 by
Commerce Committee and
Senators Gordon & Langley

I. SUMMARY:

A. Present Situation:

New car warranties usually guarantee against certain defects for a specified period of time or a specified number of miles, whichever occurs first. According to the Department of Agriculture, Division of Consumer Services, approximately 4,000 complaints regarding first time titled cars were made in Florida in 1982. Of these complaints, 649 were in written form. For the first three months of 1983, complaints have numbered approximately 50 per month. While some of the complaints relate to cars which are still under warranty, some relate to problems which consumers feel arose during the warranty period and still exist during the post-warranty period. According to the division, the latter are not classified as new car complaints. If a consumer complains to the division, he is asked to complete a complaint form, provide the bill of sale for the motor vehicle and any repair documents. The division then contacts the dealer and the manufacturer's regional office. If no repair is done or no price adjustment made, the consumer then usually proceeds to small claims court.

The Magnuson-Moss Warranty Act, a federal law, provides certain remedies for consumers of goods under warranty, including refund or replacement if certain criteria are met. Title 16 of the Code of Federal Regulations, s. 703, provides for informal dispute settlement procedures under the Magnuson-Moss Act. Currently, Chrysler Corporation has a dispute-resolving organization in every state. These were set up under the act and the Florida organization has met once a month in Clearwater for the past year.

In recognition of consumer dissatisfactions, some states have enacted legislation to allow a person who has experienced a problem which exists in spite of repeated attempts at repair, and which substantially impairs the use or value of the new car to obtain a full refund of the purchase price or a new car to replace the defective one.

B. Effect of Proposed Changes:

The bill provides a number of definitions. It specifies that "motor vehicle" includes passenger and commercial vehicles used for certain purposes, and demonstrators and lease-purchase vehicles if a warranty is issued as a condition of sale.

The bill provides that if a new car does not conform to all express warranties and the consumer reports this to the manufacturer or its agent, during the express warranty period

or within 1 year following the date of original delivery, whichever is earlier, the manufacturer, or its agent must make the repairs to conform the automobile to the express warranties, in spite of the fact that repairs are made after the expiration of the warranty term or the 1-year period.

The bill requires the manufacturer or its agent, to provide a comparable automobile, or to refund the full purchase price including all collateral charges, less a reasonable allowance for use, if the automobile's use, market value or safety is impaired after a reasonable number of attempts have been made to conform it to the warranty. Refunds must be made to the consumer and the lienholder, if any. The bill provides a formula for determining a reasonable allowance for use.

Affirmative defenses include abuse, neglect or alterations to the new car by the consumer, and that nonconformity does not result in impairment of use, market value or safety. The bill provides that a reasonable number of attempts to conform have been undertaken if substantially the same nonconformity has been subject to repair three or more times by the manufacturer, or its agent within the express warranty term or within 1 year from the date of original delivery to a consumer, whichever is earlier, and the nonconformity still exists, or if the car is out of service for repair for a total of 15 or more working days, excluding down time for routine maintenance as prescribed by the owner's manual, since delivery to the consumer. The 15 day period must be extended if repair services are not available because of events beyond the manufacturer's control.

The bill provides for extension of the warranty period on certain conditions, requires the consumer to give written notice to the manufacturer of the need for repair if the manufacturer has met disclosure provisions, gives the manufacturer 10 days to conform the vehicle to the express warranty, and then requires the manufacturer, after such notification, to inform the consumer of the informal dispute settlement procedure authorized by 16 CFR s. 703, and provide the consumer with a copy of the provisions of the act. If the prior notice has been given, no further notice is required. If the manufacturer fails to inform of this, the consumer may proceed directly against the manufacturer for either refund or for replacement of the vehicle.

The bill requires that actions be brought within specified periods of time, and that a prevailing consumer may be allowed to recover costs and expenses, including attorneys fees. If a claim is brought in bad faith, or there is a complete absence of a justiciable issue of law or fact, the consumer shall be liable for the manufacturer's costs and attorneys fees.

The bill provides that if a manufacturer has established an informal dispute settlement procedure which completely complies with 16 CFR, part 703, as subsequently amended, the consumer must resort to this procedure before he can qualify for refunds or for replacement of the vehicle. At least one member of the panel shall be appointed by the Florida Division of Agriculture and Consumer Services.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

This bill will be of benefit to consumers who can show that their new cars have a nonconformity which impairs the use, market value, or safety and which has survived three or more repair attempts or which has deprived them of use of the car for 15 or more cumulative working days, excluding routine

maintenance time, during the express warranty period or 1 year term. It is not known how many consumers might qualify for refund or replacement.

Manufacturers and their agents will be required to make refunds or provide new cars if the appropriate criteria are met. It is believed that manufacturer's will be thus encouraged to set up dispute-resolving mechanisms. It is not possible to project the financial impact.

B. Government:

None.

III. COMMENTS:

Connecticut, California, Wyoming and New Hampshire have passed laws which are similar to this bill, and lemon bills are now pending in about 30 states.

IV. AMENDMENTS:

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Stubbings</u> <i>SS</i>	<u>Martin</u> <i>8/1</i>	1.	<u>Com.</u> <u>Fav.</u>
2. _____	_____	2.	<u>ECCA</u> <u>Withdrawn</u>
3. _____	_____	3.	<u>Tr.</u> <u>Withdrawn</u>

SUBJECT:

Motor Vehicle Warranties

BILL NO. AND SPONSOR:

CS/SB 462 & 794 by
Commerce Committee and
Senators Gordon & Langley
See CS/HB 885 as passed by the
Legislature

I. SUMMARY:

A. Present Situation:

New car warranties usually guarantee against certain defects for a specified period of time or a specified number of miles, whichever occurs first. According to the Department of Agriculture, Division of Consumer Services, approximately 4,000 complaints regarding first time titled cars were made in Florida in 1982. Of these complaints, 649 were in written form. For the first three months of 1983, complaints have numbered approximately 50 per month. While some of the complaints relate to cars which are still under warranty, some relate to problems which consumers feel arose during the warranty period and still exist during the post-warranty period. According to the division, the latter are not classified as new car complaints. If a consumer complains to the division, he is asked to complete a complaint form, provide the bill of sale for the motor vehicle and any repair documents. The division then contacts the dealer and the manufacturer's regional office. If no repair is done or no price adjustment made, the consumer then usually proceeds to small claims court.

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In recognition of consumer dissatisfactions, some states have enacted legislation to allow a person who has experienced a problem which exists in spite of repeated attempts at repair, and which substantially impairs the use or value of the new car to obtain a full refund of the purchase price or a new car to replace the defective one.

B. Effect of Proposed Changes:

The bill provides a number of definitions. It specifies that "motor vehicle" includes passenger and commercial vehicles used for certain purposes, and demonstrators and lease-purchase vehicles if a warranty is issued as a condition of sale.

The bill provides that if a new car does not conform to all express warranties and the consumer reports this to the manufacturer or its agent, during the express warranty period or within 1 year following the date of original delivery, whichever is earlier, the manufacturer, or its agent must make the repairs to conform the automobile to the express warranties, in spite of the fact that repairs are made after the expiration of the warranty term or the 1-year period.

The bill requires the manufacturer or its agent, to provide a comparable automobile, or to refund the full purchase price including all collateral charges, less a reasonable allowance for use, if the automobile's use, market value or safety is impaired after a reasonable number of attempts have been made to conform it to the warranty. Refunds must be made to the consumer and the lienholder, if any. The bill provides a formula for determining a reasonable allowance for use.

Affirmative defenses include abuse, neglect or alterations to the new car by the consumer, and that nonconformity does not result in impairment of use, market value or safety. The bill provides that a reasonable number of attempts to conform have been undertaken if substantially the same nonconformity has been subject to repair three or more times by the manufacturer, or its agent within the express warranty term or within 1 year from the date of original delivery to a consumer, whichever is earlier, and the nonconformity still exists, or if the car is out of service for repair for a total of 15 or more working days, excluding down time for routine maintenance as prescribed by the owner's manual, since delivery to the consumer. The 15 day period must be extended if repair services are not available because of events beyond the manufacturer's control.

The bill provides for extension of the warranty period on certain conditions, requires the consumer to give written notice to the manufacturer of the need for repair if the manufacturer has met disclosure provisions, gives the manufacturer 10 days to conform the vehicle to the express warranty, and then requires the manufacturer, after such notification, to inform the consumer of the informal dispute settlement procedure authorized by 16 CFR s. 703, and provide the consumer with a copy of the provisions of the act. If the prior notice has been given, no further notice is required. If the manufacturer fails to inform of this, the consumer may proceed directly against the manufacturer for either refund or for replacement of the vehicle.

The bill requires that actions be brought within specified periods of time, and that a prevailing consumer may be allowed to recover costs and expenses, including attorneys fees. If a claim is brought in bad faith, or there is a complete absence of a justiciable issue of law or fact, the consumer shall be liable for the manufacturer's costs and attorneys fees.

The bill provides that if a manufacturer has established an informal dispute settlement procedure which completely complies with 16 CFR, part 703, as subsequently amended, the consumer must resort to this procedure before he can qualify for refunds or for replacement of the vehicle. At least one member of the panel shall be appointed by the Florida Division of Agriculture and Consumer Services.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

This bill will be of benefit to consumers who can show that their new cars have a nonconformity which impairs the use,

market value, or safety and which has survived three or more repair attempts or which has deprived them of use of the car for 15 or more cumulative working days, excluding routine maintenance time, during the express warranty period or 1 year term. It is not known how many consumers might qualify for refund or replacement.

Manufacturers and their agents will be required to make refunds or provide new cars if the appropriate criteria are met. It is believed that manufacturer's will be thus encouraged to set up dispute-resolving mechanisms. It is not possible to project the financial impact.

B. Government:

None.

III. COMMENTS:

Connecticut, California, Wyoming and New Hampshire have passed laws which are similar to this bill, and lemon bills are now pending in about 30 states.

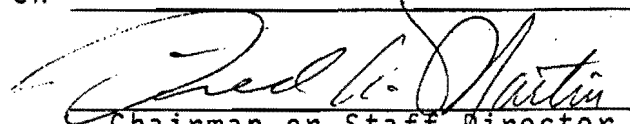
IV. AMENDMENTS:

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR SENATE BILL 462 & 794.

Requires a manufacturer or its agent to provide a comparable automobile or to refund the full purchase price less a reasonable allowance for use if the automobile's use, market value or safety is impaired after a reasonable number of attempts have been made to conform it to the warranty.

Provides that a reasonable number of attempts at conformity have been undertaken if substantially the same nonconformity has been subject to repair three or more times and still exists, or if the car is out of service for repairs, exclusive of routine maintenance, for a total of 15 or more working days since delivery to the consumer.

Committee on Commerce


Chairman or Staff Director

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FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING
Tallahassee, FL 32399-0250

House Bill 885

MOTOR VEHICLE WARRANTY ENFORCEMENT ACT

Series 19 Carton 113

This legislation provides procedures for a consumer to follow if the motor vehicle the consumer purchased has express warranty nonconformity problems which impair the use, market value or safety of the motor vehicle.

Not included in this legislation is any defect caused by the consumer's abuse, neglect or unauthorized modifications of the motor vehicle.

Motor vehicles, for the purposes of this legislation include motor vehicles sold in this state and used as a means of transporting persons or property. Motor vehicle includes all vehicles propelled by power other than muscular power with the exception of vehicles run only on tracks, off-road vehicles or mopeds. Even demonstrators and lease-purchase vehicles are included as long as a manufacturer's warranty was issued as a condition of sale.

Other terms defined in this act include "Consumer", "Manufacturer", "Purchase Price", "Express Warranty", "Collateral Charges", and "Comparable Motor Vehicle."

The motor vehicle nonconformity problem must occur during the terms, conditions or limitations of the express warranty OR during the period of one-year following the date of the original delivery of the motor vehicle to the consumer WHICHEVER IS THE EARLIER DATE. The applicable period can be extended, however, if the nonconformity problem has been reported but has not been repaired by the manufacturer or its agent.

The legislation provides that a motor vehicle nonconformity exists if either:

1. Substantially the same nonconformity has been subject to repair 3 or more times, or
2. The motor vehicle is out of service by reason of repair by the manufacturer or its agent for a cumulative total of 15 or more working days since delivery of the motor vehicle to the consumer. This 15 day period, however, may be extended because of conditions beyond the control of the manufacturer or its agent.

The legislation provides that the manufacturer shall provide a list of the manufacturer's zone or regional service office address in the owner's manual provided with the motor vehicle. Further, it is the responsibility of the consumer to notify the manufacturer of the nonconformity which exists because of either (1) or (2) above. Notification must be in writing.

After notification by the consumer to the manufacturer, the manufacturer shall notify the consumer of a reasonably accessible repair facility. After delivery of the motor vehicle to that facility, the manufacturer shall have 10 days to conform the motor vehicle to the express warranty.

If the consumer notifies the manufacturer that the nonconformity has not been repaired, the manufacturer shall inform the consumer if an informal dispute settlement procedure has been established, and provide the consumer with a copy of the provisions of this act. However, if prior notice of the informal dispute settlement procedure has been given by the manufacturer, additional notice is not required. If the manufacturer fails to do these two things, then the requirements of section 7 (mandatory review by the informal dispute settlement procedure) shall NOT apply.

When a nonconformity is not repaired by the manufacturer or its agents, the manufacturer shall either replace the motor vehicle with a comparable motor vehicle, acceptable to the consumer, or take title of the vehicle from the consumer and refund the full purchase price including all reasonably incurred collateral charges. It shall be the consumer who decides if the motor vehicle is replaced or if a refund is given. The legislation does provide for the subtraction of a reasonable allowance for use of the motor vehicle by the consumer if a refund or replacement occurs.

A reasonable allowance for use shall be that sum of money arrived at by multiplying the number of miles the motor vehicle has been driven by the consumer by 20 cents per mile.

Before a refund or replacement motor vehicle can apply, however, the consumer MUST resort to a manufacturer's informal dispute settlement procedure as long as:

1. The manufacturer has notified the consumer of the existence of such a procedure, and the provisions of this act, and
2. The informal dispute settlement procedure complies in ALL respects with the provisions of Title 16 Code of Federal Regulation Part 703, and
3. At least one member of the informal dispute settlement panel is designated by the Florida Division of Consumer Services of the Department of Agriculture.

Under this legislation action must be commenced:

1. Within 6 months following the expiration of the terms, conditions and limitations of the express warranty term, OR
2. Within 18 months following the date of original delivery of the motor vehicle to the consumer.

WHICHEVER OF (1) or (2) ABOVE IS THE EARLIER DATE, OR

3. Within 90 days following the final action of an informal settlement dispute panel.

The legislation provides that the court may award costs and attorney's fees as part of the judgment if the consumer prevails in the action.

On the other hand, however, the consumer shall be liable for costs and reasonable attorney's fees incurred by the manufacturer or its agent if the court finds that the claim:

1. Is filed in bad faith, or
2. Is filed solely for the purpose of harassment, or
3. There is a complete absence of a justiciable issue of either law or fact raised by the consumer.

The effective date of this legislation is October 1, 1980

COMMITTEE ON JUDICIARY

HB 885

OTHER COMM. REFERENCE: _____

SPONSOR(S) Drage, Friedman,
Grindle, Liberti & others

PREPARED BY: Debby Kaveney

SUBJECT: Motor Vehicle Warranties

STAFF DIRECTOR Richard Hixson

April 19, 1983

I. SUMMARY

A. Present Situation:

The Magnuson-Moss Warranty Act provides that a warrantor of consumer goods must, at a minimum, remedy defects, malfunctions or failures to conform with the warranty within a reasonable time and without charge. After a reasonable number of attempts by the warrantor to remedy, the warrantor must permit the consumer to elect either a refund or replacement of the product without charge. The act specifies that the Federal Trade Commission may specify what constitutes a reasonable number of attempts to remedy. To date the Commission has not promulgated such a rule; therefore it is a matter of interpretation by the courts or other dispute settlement mechanisms that are employed.

B. Probable Effect of Proposed Changes:

HB 885 relates specifically to motor vehicle warranties for which a manufacturer's warranty was issued as a condition of sale. It requires that:

1. The manufacturer shall make repairs that are necessary to conform the vehicle to the express warranties if the consumer reports a nonconformity during the term of the warranty or 1 year after original delivery, whichever period expires earlier.

2. The manufacturer, at its option, shall either replace the motor vehicle or refund the purchase price. A formula is provided to determine the amount of refund [(full purchase price)+(reasonably incurred collateral charges)-(no. of months the vehicle was used x 1%) or (no. of 1,000 miles driven x 1%), whichever is less].

Collateral charges are defined to include dealer preparation charges, undercoating charges, transportation charges, towing charges, replacement car rental costs, and title charges.

Section 5 of HB 885 creates a presumption that a reasonable number of attempts to remedy a defect have transpired if, within the terms of the express warranty or during 1 year from original delivery, whichever expires first, either the same nonconformity has been subject to repair at least 3 times and the nonconformity continues to exist, or the vehicle is out of service for 15 or more days since original delivery.

The consumer shall be responsible for notifying the manufacturer prior to availing himself of the right to have the vehicle replaced or his money refunded.

Costs and attorneys fees may be awarded to a consumer who prevails in an action brought under this act. Costs and attorney's fees may be awarded to the manufacturer where a claim is brought in bad faith or where there is an absence of a justiciable issue of law or fact raised by the consumer.

HB 885 provides that where a manufacturer has established an informal dispute settlement procedure pursuant to 16 C.F.R. part 703, the consumer is required to use this mechanism and the Florida Division of Consumer Services shall be permitted to designate at least one member of the panel.

II. FISCAL IMPACT: None