

84-55

COMMITTEE ON JUDICIARY
STAFF SUMMARY

HB: 528

OTHER COMM. REFERENCE: _____

SPONSOR: Reps. Drage, Friedman, Grindle

PREPARED BY: Debby Kaveney *dk*

SUBJECT: Motor Vehicle Warranties

STAFF DIRECTOR: Richard Hixson *RH*

C O P Y

DATE: February 29, 1984

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FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING
Tallahassee, FL 32399-0250
Series 19 Carton 1242

I. SUMMARY

A. Present Situation

The Motor Vehicle Warranty Enforcement Act (commonly referred to as the "Lemon Law") was initially enacted in 1983. The act creates a duty in the manufacturers of motor vehicles to conform the vehicles to all applicable express warranties. If the manufacturer does not do so after a reasonable number of attempts, it must either replace the vehicle or refund the purchase price, at the option of the consumer. Unlike its federal counterpart (Magnuson-Moss), the Lemon Law provides a presumption that a reasonable number of attempts to conform the motor vehicle have been undertaken if, within the warranty period or one year, whichever is less, substantially the same nonconformity has been subject to repair three or more times or the vehicle has been out of service for repairs for 15 or more working days.

B. Effect of Proposed Changes

Section 1 amends the legislative intent language to provide that nothing in the act is intended to expand rights or remedies of a consumer under any other law. For example, if an action is brought under some other remedy, such as the UCC or Magnuson-Moss, the presumption of what a reasonable number of attempts to repair is, would not apply.

Section 2 amends the definitions of "collateral charges", "comparable motor vehicle" and "purchase price". Definitions for "incidental charges" and "replacement motor vehicle" are created.

Section 3 amends s. 681.104(2) to provide that the replacement vehicle offered to the consumer may be an identical or reasonably similar vehicle, or a comparable vehicle, i.e., one of the same model, year, and equivalent condition as the nonconforming vehicle. Where a comparable vehicle is provided, no allowance shall be subtracted for the consumer's use of his vehicle.

A substantial change is made as to the establishment of the allowance for use where a replacement vehicle is provided or refund made. Rather than an allowance of 20¢ per mile driven, the allowance is limited to 20¢ per mile driven up until the first nonconformity is reported.

Subsection (3) of s. 681.104 is amended to provide that the "three repair attempts" fork of the presumption (s. 681.104(3)(a)1.), is not meant to include the initial attempt to repair. This subsection is further amended to clarify that under the "15-day" fork of the presumption (s. 681.104(5)(a)2.), the nonconformity need not be the same each time the vehicle is out of service.

Subsection (5) of s. 681.104 is amended to provide that the decision of the dispute settlement panel is admissible in any subsequent action.

Section 4 amends s. 681.108 to require dispute settlement panels to provide the Division of Consumer Services with a copy of their decisions.

II. FISCAL IMPACT

None.

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>DM</i>	1. <u>COM</u>	_____
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT:

Motor Vehicle Sales
Warranties

BILL NO. AND SPONSOR:

SB 743 by
Senator Gordon

I. SUMMARY:

A. Present Situation:

In 1983, the Legislature passed the Motor Vehicle Warranty Enforcement Act, popularly known as the "Lemon Law" (ch. 83-69, Laws of Florida). Among other things, the law provides that if a new motor vehicle does not conform to all express warranties within a specified period, the manufacturer must provide the consumer with a comparable vehicle or with a refund of the purchase price. Before resorting to these remedies the manufacturer or dealer is afforded a reasonable number of attempts, as defined, to repair the vehicle. Before a consumer is permitted to seek redress under the act, he is required to participate in an informal dispute settlement procedure if the manufacturer has one established. According to a spokesman for the Division of Consumer Services of the Department of Agriculture, two of the major automobile manufacturers have established these themselves and a number of others use the services of Better Business Bureaus for this purpose.

Since passage of this law, a number of questions have arisen. The bill is an attempt to clarify and refine the law.

B. Effect of Proposed Changes:

The bill amends the act's legislative intent to provide that in addition to the provision in current law stating that nothing under the act shall limit the remedies available to a consumer under any other law, neither shall the act expand those remedies. If, for instance, a consumer seeks redress under another law such as the federal Magnuson-Moss Act, the presumption in the lemon law as to what constitutes a reasonable number of attempts to repair is inapplicable.

The bill amends the definition of "collateral charges" to mean additional charges wholly incurred as a result of the purchase of the motor vehicle. The definition of "comparable motor vehicle" is amended to mean a vehicle of the same model, year and equivalent condition at the time of replacement. "Incidental charges", which are not defined in current law, are defined to mean "unavoidable costs to the consumer directly caused by nonconformity of the motor vehicle." The bill prohibits consequential damages. (Under contract law, these are damages which are recoverable if they were reasonably foreseeable as being probable when the contract was entered into).

The bill provides a definition of "replacement motor vehicle," to mean a motor vehicle which is identical or reasonably equivalent to the motor vehicle to be replaced as it existed when purchased.

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The bill amends the provision relating to refunds which requires that a reasonable use allowance of 20 cents per mile be deducted for each mile the motor vehicle is driven, to provide that this applies only when either a refund or a replacement vehicle is furnished, and that the 20 cents per mile deduction for use only applies to the number of miles driven at the time of the first reported nonconformity. No allowance must be subtracted for a comparable vehicle.

The bill amends the law to provide that the three repair attempts authorized to correct a nonconformity are exclusive of the manufacturer's initial 10-day repair period, authorized under current law. It amends the law providing that the vehicle be out of service for 15 working days before a consumer can qualify for redress, to clarify that one or more nonconformities, rather than simply one nonconformity qualify as a reasonable number of attempts to repair the vehicle. Again, the manufacturer's initial 10-day repair period, authorized under current law, is excluded from these 15 working days.

The bill also provides that in a consumer initiated action, the decision of the informal dispute settlement panel is admissible in evidence. Further, the panel is required to submit a copy of each decision within 30 days after it is rendered to the Division of Consumer Services of the Department of Agriculture.

The act is effective upon becoming a law.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Clarifying that the existence of one or more nonconformities during the cumulative total of 15 or more working days a motor vehicle is out of service qualify as a reasonable number of attempts at repair may make it easier for a consumer to seek redress under the act. Clarifying that the 20 cents per mile deduction is to be calculated from the time of the first reported nonconformity also may result in a benefit to the consumer. Precise impact is not determinable.

B. Government:

None.

III. COMMENTS:

IV. AMENDMENTS:

None.

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