



HOUSE BILL No. 5235

October 11, 1995, Introduced by Reps. Bennane, Baird, Gubow, Anthony, DeMars, Stallworth, Hanley, Cherry, Martinez, DeHart and Pitoniak and referred to the Committee on Commerce.

A bill to amend sections 1, 3, 6, and 9 of Act No. 87 of the Public Acts of 1986, entitled

"An act regarding warranties on new motor vehicles; to require certain repairs thereto; and to provide remedies for the failure to repair such vehicles,"

being sections 257.1401, 257.1403, 257.1406, and 257.1409 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1, 3, 6, and 9 of Act No. 87 of the
2 Public Acts of 1986, being sections 257.1401, 257.1403, 257.1406,
3 and 257.1409 of the Michigan Compiled Laws, are amended to read
4 as follows:

5 Sec. 1. As used in this act:

6 (a) "Consumer" means any of the following: ~~—, but does not~~
7 ~~include a lessee of a new motor vehicle.~~

1 (i) A person who purchases OR LEASES a new motor vehicle for
2 personal, family, or household use and not for the purpose of
3 selling or leasing the new motor vehicle to another person.

4 (ii) A person who purchases OR LEASES less than 10 new motor
5 vehicles a year.

6 (iii) A person who purchases OR LEASES 10 or more new motor
7 vehicles a year only if the vehicles are purchased OR LEASED for
8 personal, family, or household use.

9 (iv) Any other person entitled to enforce the provisions of
10 an express warranty pursuant to the terms of that warranty.

11 (b) "Manufacturer" means any person who manufactures, assem-
12 bles, or is a distributor of new motor vehicles and includes an
13 agent of a manufacturer but does not include a new motor vehicle
14 dealer.

15 (c) "Manufacturer's express warranty" means an express war-
16 ranty as determined under the uniform commercial code, Act
17 No. 174 of the Public Acts of 1962, being sections 440.1101 to
18 440.11102 of the Michigan Compiled Laws, offered by the manufac-
19 turer on a new motor vehicle.

20 (d) "Motor vehicle" means a motor vehicle as defined in
21 section 33 of the Michigan vehicle code, Act No. 300 of the
22 Public Acts of 1949, being section 257.33 of the Michigan
23 Compiled Laws, that is designed as a passenger vehicle, but does
24 not include a motor home, bus, truck other than a pickup truck or
25 van, or any vehicle designed to travel on less than 4 wheels.

26 (e) "New motor vehicle" means a motor vehicle that is
27 purchased OR LEASED in this state or purchased OR LEASED by a

1 resident of this state and is covered by a manufacturer's express
2 warranty at the time of purchase OR LEASE.

3 (f) "New motor vehicle dealer" means a person who holds a
4 dealer agreement for the sale OR LEASE of new motor vehicles, who
5 is engaged in the business of purchasing, LEASING, selling,
6 exchanging, or dealing in new motor vehicles, and who has an
7 established place of business in this state; and INCLUDES an
8 agent ~~thereof~~ OF SUCH A PERSON.

9 (g) "Person" means a natural person, or a sole proprietor-
10 ship, partnership, corporation, association, unit or agency of
11 government, trust, estate, or other legal entity.

12 (h) "Resident of this state" means as follows:

13 (i) For an individual, that the individual is a legal resi-
14 dent of this state.

15 (ii) For a sole proprietorship or partnership, that the sole
16 proprietorship or partnership was created pursuant to the laws of
17 this state and its main office is located in this state.

18 (iii) For a corporation, that the corporation is considered
19 to be a domestic corporation and was created under the laws of
20 this state.

21 (iv) For an association, that the association was created
22 pursuant to the laws of this state and its main office is located
23 in this state.

24 (v) For a unit or agency of government, that the unit or
25 agency is located in this state.

1 (vi) For a trust, estate, or other legal entity, that the
2 trust, estate, or other legal entity was created pursuant to the
3 laws of this state and is located in this state.

4 Sec. 3. (1) If a defect or condition which was reported to
5 the manufacturer or new motor vehicle dealer pursuant to
6 section 2 continues to exist and the new motor vehicle has been
7 subject to a reasonable number of repairs as determined under
8 subsection (3), the manufacturer shall within 30 days have the
9 option to either replace the new motor vehicle with a comparable
10 replacement motor vehicle currently in production and acceptable
11 to the consumer or accept return of the vehicle and refund to the
12 consumer the full purchase OR LEASE price including the cost of
13 any options or other modifications installed or made by or for
14 the manufacturer, and the amount of all other charges made by or
15 for the manufacturer, less a reasonable allowance for the
16 consumer's use of the vehicle not exceeding 10 cents per mile
17 driven at the time of the initial report of the same defect or
18 conditions or 10% of the purchase OR LEASE price of the vehicle,
19 whichever is less, and less an amount equal to any appraised
20 damage that is not attributable to normal use or to the defect or
21 condition. A reasonable allowance for use is that amount
22 directly attributable to use by the consumer and any previous
23 consumer prior to his or her first report of a defect or condi-
24 tion that impairs the use or value of the new motor vehicle to
25 the manufacturer, its agents, or the new motor vehicle dealer.
26 Whenever a vehicle is replaced or refunded under the provisions
27 of this section, in those instances in which towing services and

1 rental vehicles were not made available without cost to the
2 consumer, the manufacturer shall also reimburse the consumer for
3 those towing costs and reasonable costs for a comparable rental
4 vehicle that were incurred as a direct result of the defect or
5 condition.

6 (2) The provisions of this act shall not affect the obliga-
7 tions of a consumer under a loan, LEASE, or sales contract or the
8 secured interest of any secured party. The secured party shall
9 consent to the replacement of the security interest with a corre-
10 sponding security interest on a replacement motor vehicle which
11 is accepted by the consumer in exchange for the motor vehicle
12 having a defect or condition pursuant to subsection (1), if the
13 replacement motor vehicle is comparable in value to the original
14 motor vehicle. If for any reason the security interest in the
15 new motor vehicle having a defect or condition pursuant to sub-
16 section (1) is not able to be replaced with a corresponding
17 security interest on a new motor vehicle accepted by the consum-
18 er, the consumer shall accept a refund. Refunds required under
19 this subsection or subsection (1) shall be made to the consumer
20 and the secured party, if any, as their interests exist at the
21 time the refund is to be made.

22 (3) It shall be presumed that a reasonable number of
23 attempts have been undertaken to repair any defect or condition
24 if 1 of the following occurs:

25 (a) The same defect or condition that substantially impairs
26 the use or value of the new motor vehicle to the consumer has
27 been subject to repair a total of 4 or more times by the

1 manufacturer or new motor vehicle dealer and the defect or
2 condition continues to exist. Any repair performed on the same
3 defect made pursuant to subsection (4) shall be included in cal-
4 culating the number of repairs under this section. The consumer
5 or his or her representative, prior to availing himself or her-
6 self of a remedy provided under subsection (1), and any time
7 after the third attempt to repair the same defect or condition,
8 shall give written notification, by return receipt service, to
9 the manufacturer of the need for repair of the defect or condi-
10 tion in order to allow the manufacturer an opportunity to cure
11 the defect or condition. The manufacturer shall notify the con-
12 sumer as soon as reasonably possible of a reasonably accessible
13 repair facility. After delivery of the vehicle to the designated
14 repair facility, the manufacturer shall have 5 business days to
15 repair the defect or condition.

16 (b) The new motor vehicle is out of service because of
17 repairs for a total of 30 or more days or parts of days during
18 the term of the manufacturer's express warranty, or within 1 year
19 from the date of delivery to the original consumer, whichever is
20 earlier. It shall be the responsibility of the consumer, or his
21 or her representative, prior to availing himself or herself of a
22 remedy provided under subsection (1), and after the vehicle has
23 been out of service for at least 25 days in a repair facility, to
24 give written notification by return receipt service to the manu-
25 facturer of the need for repair of the defect or condition in
26 order to allow the manufacturer an opportunity to cure the defect
27 or condition. The manufacturer shall notify the consumer as soon

1 as reasonably possible of a reasonably accessible repair
2 facility. After delivery of the vehicle to the designated repair
3 facility, the manufacturer shall have 5 business days to repair
4 the defect or condition.

5 (4) Any repairs required to be made under this act shall be
6 made even if the repairs cannot be performed until after the
7 expiration of the manufacturer's express warranty.

8 (5) The term of an express warranty, and the 1-year, 30-day,
9 and 5-day periods of time provided for in this section shall be
10 extended because repair services were not available to the con-
11 sumer because of war; invasion; strike; or fire, flood, or other
12 natural disaster.

13 Sec. 6. This act does not apply to any defect or condition
14 that is the result of either of the following:

15 (a) Any modification or modifications not installed or made
16 by or for the manufacturer.

17 (b) Abuse or neglect of the new motor vehicle or damage due
18 to an accident which occurred after the new motor vehicle was
19 purchased OR LEASED by the consumer.

20 Sec. 9. (1) This act shall apply to all new motor vehicles
21 that are sold to the original consumer on or after ~~the effective~~
22 ~~date of this act~~ JUNE 25, 1986.

23 (2) THIS ACT SHALL APPLY TO ALL NEW MOTOR VEHICLES THAT ARE
24 LEASED BY THE ORIGINAL CONSUMER ON OR AFTER THE EFFECTIVE DATE OF
25 THE AMENDATORY ACT THAT ADDED THIS SUBSECTION.