

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5000**

A bill to amend 1986 PA 87, 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,"
by amending the title and sections 1 and 3 (MCL 257.1401 and
257.1403).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act regarding warranties on new motor vehicles; to
3 require certain repairs ~~thereto~~ TO NEW MOTOR VEHICLES; ~~and~~ to
4 provide remedies for the failure to repair such vehicles; AND TO
5 PRESCRIBE DUTIES FOR CERTAIN STATE AGENCIES.

6 Sec. 1. As used in this act:

7 (a) "Consumer" means ~~any~~ 1 OR MORE of the following: ~~,~~
8 ~~but does not 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) "LESSEE" MEANS A PERSON WHO, UNDER A LEASE, ACQUIRES THE
12 RIGHT TO POSSESSION AND USE OF A NEW MOTOR VEHICLE.

13 (C) "LESSOR" MEANS A PERSON WHO, UNDER A LEASE, TRANSFERS
14 THE RIGHT TO POSSESSION AND USE OF A NEW MOTOR VEHICLE.

15 (D) ~~-(b)-~~ "Manufacturer" means ~~any~~ A person who manufac-
16 tures, assembles, or is a distributor of new motor vehicles and
17 includes an agent of a manufacturer but does not include a new
18 motor vehicle dealer.

19 (E) ~~-(e)-~~ "Manufacturer's express warranty" means an express
20 warranty as determined under the uniform commercial code, ~~Act~~
21 ~~No. 174 of the Public Acts of 1962, being sections 440.1101 to~~
22 ~~440.11102 of the Michigan Compiled Laws~~ 1962 PA 174,
23 MCL 440.1101 TO 440.11102, offered by the manufacturer on a new
24 motor vehicle.

25 (F) ~~-(d)-~~ "Motor vehicle" means a motor vehicle as defined
26 in section 33 of the Michigan vehicle code, ~~Act No. 300 of the~~
27 ~~Public Acts of 1949, being section 257.33 of the Michigan~~

1 ~~Compiled Laws,~~ 1949 PA 300, MCL 257.33, that is designed as a
2 passenger vehicle, OR SPORT UTILITY VEHICLE, but does not include
3 a motor home, bus, truck other than a pickup truck or van, or
4 ~~any~~ A vehicle designed to travel on less than 4 wheels.

5 (G) ~~(e)~~ "New motor vehicle" means a motor vehicle that is
6 purchased OR LEASED in this state or purchased OR LEASED by a
7 resident of this state and is covered by a manufacturer's express
8 warranty at the time of purchase OR LEASE.

9 (H) ~~(f)~~ "New motor vehicle dealer" means a person OR THAT
10 PERSON'S AGENT who holds a dealer agreement for the sale of new
11 motor vehicles, who is engaged in the business of purchasing,
12 LEASING, selling, exchanging, or dealing in new motor vehicles,
13 and who has an established place of business in this state. ~~→~~
14 ~~and an agent thereof.~~

15 (I) ~~(g)~~ "Person" means a natural person, ~~or~~ a sole pro-
16 prietorship, partnership, corporation, association, unit or
17 agency of government, trust, estate, or other legal entity.

18 (J) ~~(h)~~ "Resident of this state" means as follows:

19 (i) For an individual, ~~that the~~ AN individual WHO is a
20 legal resident of this state.

21 (ii) For a sole proprietorship or partnership, ~~that the~~ A
22 sole proprietorship or partnership ~~was~~ created pursuant to the
23 laws of this state and its main office is located in this state.

24 (iii) For a corporation, ~~that the~~ A corporation THAT is
25 ~~considered to be~~ a domestic corporation and was created under
26 the laws of this state.

1 (iv) For an association, ~~that the~~ AN association ~~was~~
2 created pursuant to the laws of this state and its main office is
3 located in this state.

4 (v) For a unit or agency of government, ~~that the~~ A unit or
5 agency ~~is~~ OF GOVERNMENT located in this state.

6 (vi) For a trust, estate, or other legal entity, ~~that the~~
7 A trust, estate, or other legal entity ~~was~~ created pursuant to
8 the laws of this state and THAT is located in this state.

9 (K) "LEASE PRICE" MEANS THE ACTUAL VEHICLE SALES PRICE PAID
10 BY THE LESSOR INCLUDING ANY CASH PAYMENT BY THE CONSUMER AND THE
11 SUM EQUAL TO ANY ALLOWANCE FOR ANY TRADE-IN BUT EXCLUDES DEBT
12 FROM ANY OTHER TRANSACTION AS WELL AS ANY MANUFACTURER TO CON-
13 SUMER DISCOUNT, REBATE, OR INCENTIVE APPEARING IN THE AGREEMENT
14 OR CONTRACT THAT THE CONSUMER RECEIVED OR THAT WAS APPLIED TO
15 REDUCE THE PURCHASE OR LEASE COST. ADDITIONALLY, ANY SALES TAX,
16 LICENSE AND REGISTRATION FEES, AND SIMILAR GOVERNMENT CHARGES NOT
17 INCLUDED ELSEWHERE PAID BY THE LESSOR ON BEHALF OF THE LESSEE ARE
18 INCLUDED AS A PART OF LEASE PRICE.

19 (l) "PURCHASE PRICE" MEANS THE ACTUAL VEHICLE SALES PRICE
20 LISTED ON THE BUYER'S ORDER INCLUDING ANY CASH PAYMENT BY THE
21 CONSUMER AND THE SUM EQUAL TO ANY ALLOWANCE FOR ANY TRADE-IN BUT
22 EXCLUDES DEBT FROM ANY OTHER TRANSACTION AS WELL AS ANY MANUFAC-
23 TURER TO CONSUMER DISCOUNT, REBATE, OR INCENTIVE APPEARING IN THE
24 AGREEMENT OR CONTRACT THAT THE CONSUMER RECEIVED OR THAT WAS
25 APPLIED TO REDUCE THE PURCHASE COST. ADDITIONALLY, ANY SALES
26 TAX, LICENSE AND REGISTRATION FEES, AND SIMILAR GOVERNMENT

1 CHARGES NOT INCLUDED ELSEWHERE PAID BY THE CONSUMER ARE INCLUDED
2 AS A PART OF PURCHASE PRICE.

3 Sec. 3. (1) If a defect or condition ~~which~~ THAT was
4 reported to the manufacturer or new motor vehicle dealer pursuant
5 to section 2 continues to exist and the new motor vehicle has
6 been ~~subject~~ SUBJECTED to a reasonable number of repairs as
7 determined under subsection ~~(3)~~ (5), the manufacturer shall
8 within 30 days, ~~have the option to~~ DO EITHER OF THE FOLLOWING
9 AS APPLICABLE:

10 (A) IF THE NEW MOTOR VEHICLE WAS PURCHASED, either replace
11 the new motor vehicle with a comparable replacement motor vehicle
12 currently in production and acceptable to the consumer or accept
13 return of the vehicle and refund to the consumer the ~~full~~ pur-
14 chase price. ~~including~~ A CONSUMER SHALL HAVE THE RIGHT TO
15 DEMAND A REFUND.

16 (B) IF THE NEW MOTOR VEHICLE WAS LEASED, THE CONSUMER HAS
17 THE RIGHT TO A REFUND OF THE LEASE PRICE PAID BY THE CONSUMER.
18 THE CONSUMER MAY AGREE TO ACCEPT A COMPARABLE REPLACEMENT VEHICLE
19 IN LIEU OF A REFUND FOR THE LEASE PRICE PAID. IF THE CONSUMER
20 AGREES TO ACCEPT A REPLACEMENT VEHICLE, THE LEASE AGREEMENT SHALL
21 NOT BE ALTERED EXCEPT WITH RESPECT TO THE IDENTIFICATION OF THE
22 VEHICLE.

23 (2) THE PURCHASE PRICE OR LEASE PRICE INCLUDES the cost of
24 any options or other modifications installed or made by or for
25 the manufacturer, and the amount of all other charges made by or
26 for the manufacturer, less a reasonable allowance for the
27 consumer's use of the vehicle, ~~not exceeding 10 cents per mile~~

1 ~~driven at the time of the initial report of the same defect or~~
2 ~~conditions or 10% of the purchase price of the vehicle, whichever~~
3 ~~is less,~~ and less an amount equal to any appraised damage that
4 is not attributable to normal use or to the defect or condition.
5 ~~A reasonable allowance for use is that amount directly attribut-~~
6 ~~able to use by the consumer and any previous consumer prior to~~
7 ~~his or her first report of a defect or condition that impairs the~~
8 ~~use or value of the new motor vehicle to the manufacturer, its~~
9 ~~agents, or the new motor vehicle dealer. Whenever~~ A REASONABLE
10 ALLOWANCE FOR USE IS THE PURCHASE OR LEASE PRICE OF THE NEW MOTOR
11 VEHICLE MULTIPLIED BY A FRACTION HAVING AS THE DENOMINATOR
12 100,000 MILES AND HAVING AS THE NUMERATOR THE MILES DIRECTLY
13 ATTRIBUTABLE TO USE BY THE CONSUMER AND ANY PREVIOUS CONSUMER
14 PRIOR TO HIS OR HER FIRST REPORT OF A DEFECT OR CONDITION THAT
15 IMPAIRS THE USE OR VALUE OF THE NEW MOTOR VEHICLE PLUS ALL MILE-
16 AGE DIRECTLY ATTRIBUTABLE TO USE BY A CONSUMER BEYOND 25,000
17 MILES. IF a vehicle is replaced or refunded under the provisions
18 of this section, ~~in those instances in which~~ IF towing services
19 and rental vehicles were not made available without cost to the
20 consumer, the manufacturer shall also reimburse the consumer for
21 those towing costs and reasonable costs for a comparable rental
22 vehicle that were incurred as a direct result of the defect or
23 condition.

24 (3) IF A COURT OR AN ALTERNATIVE DISPUTE SETTLEMENT PROCE-
25 DURE DESCRIBED IN SECTION 5 DETERMINES THAT A CONSUMER HAS PRO-
26 VIDED SUFFICIENT EVIDENCE THAT THE VEHICLE DID NOT PROVIDE
27 RELIABLE TRANSPORTATION FOR ORDINARY PERSONAL OR HOUSEHOLD USE

1 FOR ANY PERIOD BEYOND THE FIRST 25,000 MILEAGE USAGE PERIOD OF
2 THE VEHICLE, THE COURT OR THE ALTERNATIVE DISPUTE SETTLEMENT PRO-
3 CEDURE MAY REDUCE THE VEHICLE USAGE DEDUCTION FOR MILEAGE BEYOND
4 THE FIRST 25,000 MILEAGE USAGE PERIOD ONLY FOR THE PERIOD BEYOND
5 THE 25,000 MILEAGE USAGE PERIOD THAT THE COURT OR ALTERNATIVE
6 DISPUTE SETTLEMENT PROCEDURE DETERMINES THAT THE VEHICLE DID NOT
7 PROVIDE USEFUL TRANSPORTATION FOR ORDINARY PERSONAL OR HOUSEHOLD
8 USE. TO DETERMINE IF THE VEHICLE DID OR DID NOT PROVIDE USEFUL
9 TRANSPORTATION FOR ORDINARY PERSONAL AND HOUSEHOLD USE, THE COURT
10 OR THE ALTERNATIVE DISPUTE SETTLEMENT PROCEDURE SHALL CONSIDER
11 ALL OF THE FOLLOWING:

12 (A) THE NUMBER OF REPAIRS.

13 (B) THE COST OF THE REPAIRS.

14 (C) THE NUMBER OF DAYS THE VEHICLE WAS OUT OF SERVICE.

15 (D) WHETHER THE VEHICLE'S NEED FOR REPAIR SIGNIFICANTLY
16 AFFECTED THE CONSUMER'S ABILITY TO USE THE VEHICLE FOR PERSONAL
17 OR HOUSEHOLD FUNCTIONS.

18 (4) ~~-(2)-~~ The provisions of this act ~~shall~~ DO not affect
19 the obligations of a consumer under a loan, ~~or~~ sales, OR LEASE
20 contract or the secured interest of ~~any~~ A secured party. The
21 secured party shall consent to the replacement of the security
22 interest with a corresponding security interest on a replacement
23 motor vehicle ~~which~~ THAT is accepted by the consumer in
24 exchange for the motor vehicle having a defect or condition pur-
25 suant to subsection (1), if the replacement motor vehicle is com-
26 parable in value to the original motor vehicle. If for any
27 reason the security interest in the new motor vehicle having a

1 defect or condition pursuant to subsection (1) is not able to be
2 replaced with a corresponding security interest on a new motor
3 vehicle accepted by the consumer, the consumer shall accept a
4 refund. ~~—Refunds—~~ A REFUND required under this subsection or
5 subsection (1) shall be made to the consumer and the secured
6 party, if any, as their interests exist at the time the refund is
7 to be made. THE LESSOR, IF ANY, SHALL BE NOTIFIED IF A REFUND IS
8 MADE TO A LESSEE UNDER THIS ACT. A LESSOR SHALL NOT ASSESS A FEE
9 FOR EARLY TERMINATION OF A LEASE UNDER THIS ACT.

10 (5) ~~—(3)—~~ It shall be presumed that a reasonable number of
11 attempts have been undertaken to repair ~~—any—~~ A defect or condi-
12 tion if 1 of the following occurs:

13 (a) The same defect or condition that substantially impairs
14 the use or value of the new motor vehicle to the consumer has
15 been subject to repair a total of 4 or more times by the manufac-
16 turer or new motor vehicle dealer WITHIN 2 YEARS OF THE DATE OF
17 THE FIRST ATTEMPT TO REPAIR THE DEFECT OR CONDITION, and the
18 defect or condition continues to exist. Any repair performed on
19 the same defect made pursuant to subsection ~~—(4)—~~ (6) shall be
20 included in calculating the number of repairs under this
21 section. The consumer or his or her representative, ~~—prior to—~~
22 BEFORE availing himself or herself of a remedy provided under
23 subsection (1), and any time after the third attempt to repair
24 the same defect or condition, shall give written notification, by
25 return receipt service, to the manufacturer of the need for
26 repair of the defect or condition in order to allow the
27 manufacturer an opportunity to cure the defect or condition. The

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

6 (b) The new motor vehicle is out of service because of
7 repairs for a total of 30 or more days or parts of days during
8 the term of the manufacturer's express warranty, or within 1 year
9 from the date of delivery to the original consumer, whichever is
10 earlier. ~~It shall be the responsibility of the~~ THE consumer,
11 or his or her representative, ~~prior to~~ BEFORE availing himself
12 or herself of a remedy provided under subsection (1), and after
13 the vehicle has been out of service for at least 25 days in a
14 repair facility, ~~to~~ SHALL give written notification by return
15 receipt service to the manufacturer of the need for repair of the
16 defect or condition in order to allow the manufacturer an oppor-
17 tunity to cure the defect or condition. The manufacturer shall
18 notify the consumer as soon as reasonably possible of a reason-
19 ably accessible repair facility. After delivery of the vehicle
20 to the designated repair facility, the manufacturer ~~shall have~~
21 HAS 5 business days to repair the defect or condition.

22 (6) ~~(4)~~ Any repairs required to be made under this act
23 shall be made even if the ~~repairs cannot be performed until~~
24 ~~after the expiration of~~ REPAIRS NEED TO BE PERFORMED AFTER THE
25 EXPIRATION OF the manufacturer's express warranty. THE DEFECT
26 NEEDING REPAIR MUST BE A CONTINUATION OF THE ORIGINAL ATTEMPT TO
27 REPAIR THE DEFECT.

HB 5000, As Passed Senate, December 1, 1998

House Bill No. 5000

10

1 (7) ~~—(5)—~~ The term of an express warranty, and the 1-year,
2 30-day, and 5-day periods of time provided for in this section
3 shall be extended because repair services were not available to
4 the consumer because of war, ~~—~~ invasion, ~~—~~ strike, ~~—~~ ~~or~~
5 fire, flood, or other natural disaster.

6 Enacting section 1. This amendatory act applies to all new
7 motor vehicles that are purchased or leased by the original con-
8 sumer on or after the effective date of this amendatory act.

9 Enacting section 2. This amendatory act does not take
10 effect unless Senate Bill No. 774 of the 89th Legislature is
11 enacted into law.