

Act No. 486
Public Acts of 1998
Approved by the Governor
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**STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998**

Introduced by Reps. Wallace, Baird, Gubow, Schauer, Basham, Martinez, Dobronski, DeHart, Hale, Anthony, Brater, Lowe, Whyman, Griffin, Leland, Gire, Callahan, Ciaramitaro, Willard, Hammerstrom and Cassis

ENROLLED HOUSE BILL No. 5000

AN ACT 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:

TITLE

An act regarding warranties on new motor vehicles; to require certain repairs to new motor vehicles; to provide remedies for the failure to repair such vehicles; and to prescribe duties for certain state agencies.

Sec. 1. As used in this act:

(a) "Consumer" means 1 or more of the following:

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

(ii) A person who purchases or leases less than 10 new motor vehicles a year.

(iii) A person who purchases or leases 10 or more new motor vehicles a year only if the vehicles are purchased or leased for personal, family, or household use.

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

(b) "Lessee" means a person who, under a lease, acquires the right to possession and use of a new motor vehicle.

(c) "Lessor" means a person who, under a lease, transfers the right to possession and use of a new motor vehicle.

(d) "Manufacturer" means a person who manufactures, assembles, or is a distributor of new motor vehicles and includes an agent of a manufacturer but does not include a new motor vehicle dealer.

(e) "Manufacturer's express warranty" means an express warranty as determined under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, offered by the manufacturer on a new motor vehicle.

(f) "Motor vehicle" means a motor vehicle as defined in section 33 of the Michigan vehicle code, 1949 PA 300, MCL 257.33, that is designed as a passenger vehicle, or sport utility vehicle, but does not include a motor home, bus, truck other than a pickup truck or van, or a vehicle designed to travel on less than 4 wheels.

(g) "New motor vehicle" means a motor vehicle that is purchased or leased in this state or purchased or leased by a resident of this state and is covered by a manufacturer's express warranty at the time of purchase or lease.

(h) "New motor vehicle dealer" means a person or that person's agent who holds a dealer agreement for the sale of new motor vehicles, who is engaged in the business of purchasing, leasing, selling, exchanging, or dealing in new motor vehicles, and who has an established place of business in this state.

(i) "Person" means a natural person, a sole proprietorship, partnership, corporation, association, unit or agency of government, trust, estate, or other legal entity.

(j) "Resident of this state" means as follows:

(i) For an individual, an individual who is a legal resident of this state.

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

(iii) For a corporation, a corporation that is a domestic corporation and was created under the laws of this state.

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

(v) For a unit or agency of government, a unit or agency of government located in this state.

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

(k) "Lease price" means the actual vehicle sales price paid by the lessor including any cash payment by the consumer and the sum equal to any allowance for any trade-in but excludes debt from any other transaction as well as any manufacturer to consumer discount, rebate, or incentive appearing in the agreement or contract that the consumer received or that was applied to reduce the purchase or lease cost. Additionally, any sales tax, license and registration fees, and similar government charges not included elsewhere paid by the lessor on behalf of the lessee are included as a part of lease price.

(l) "Purchase price" means the actual vehicle sales price listed on the buyer's order including any cash payment by the consumer and the sum equal to any allowance for any trade-in but excludes debt from any other transaction as well as any manufacturer to consumer discount, rebate, or incentive appearing in the agreement or contract that the consumer received or that was applied to reduce the purchase cost. Additionally, any sales tax, license and registration fees, and similar government charges not included elsewhere paid by the consumer are included as a part of purchase price.

Sec. 3. (1) If a defect or condition that was reported to the manufacturer or new motor vehicle dealer pursuant to section 2 continues to exist and the new motor vehicle has been subjected to a reasonable number of repairs as determined under subsection (5), the manufacturer shall within 30 days, do either of the following as applicable:

(a) If the new motor vehicle was purchased, either replace the new motor vehicle with a comparable replacement motor vehicle currently in production and acceptable to the consumer or accept return of the vehicle and refund to the consumer the purchase price. A consumer shall have the right to demand a refund.

(b) If the new motor vehicle was leased, the consumer has the right to a refund of the lease price paid by the consumer. The consumer may agree to accept a comparable replacement vehicle in lieu of a refund for the lease price paid. If the consumer agrees to accept a replacement vehicle, the lease agreement shall not be altered except with respect to the identification of the vehicle.

(2) The purchase price or lease price includes the cost of any options or other modifications installed or made by or for the manufacturer, and the amount of all other charges made by or for the manufacturer, less a reasonable allowance for the consumer's use of the vehicle, and less an amount equal to any appraised damage that is not attributable to normal use or to the defect or condition. A reasonable allowance for use is the purchase or lease price of the new motor vehicle multiplied by a fraction having as the denominator 100,000 miles and having as the numerator the miles directly attributable to use by the consumer and any previous consumer prior to his or her first report of a defect or condition that impairs the use or value of the new motor vehicle plus all mileage directly attributable to use by a consumer beyond 25,000 miles. If a vehicle is replaced or refunded under the provisions of this section, if towing services and rental vehicles were not made available without cost to the consumer, the manufacturer shall also reimburse the consumer for those towing costs and reasonable costs for a comparable rental vehicle that were incurred as a direct result of the defect or condition.

(3) If a court or an alternative dispute settlement procedure described in section 5 determines that a consumer has provided sufficient evidence that the vehicle did not provide reliable transportation for ordinary personal or household use for any period beyond the first 25,000 mileage usage period of the vehicle, the court or the alternative dispute settlement procedure may reduce the vehicle usage deduction for mileage beyond the first 25,000 mileage usage period only for the period beyond the 25,000 mileage usage period that the court or alternative dispute settlement procedure determines that the vehicle did not provide useful transportation for ordinary personal or household use. To determine if the vehicle did or did not provide useful transportation for ordinary personal and household use, the court or the alternative dispute settlement procedure shall consider all of the following:

(a) The number of repairs.

(b) The cost of the repairs.

(c) The number of days the vehicle was out of service.

(d) Whether the vehicle's need for repair significantly affected the consumer's ability to use the vehicle for personal or household functions.

(4) The provisions of this act do not affect the obligations of a consumer under a loan, sales, or lease contract or the secured interest of a secured party. The secured party shall consent to the replacement of the security interest with a corresponding security interest on a replacement motor vehicle that is accepted by the consumer in exchange for the motor vehicle having a defect or condition pursuant to subsection (1), if the replacement motor vehicle is comparable in value to the original motor vehicle. If for any reason the security interest in the new motor vehicle having a defect or condition pursuant to subsection (1) is not able to be replaced with a corresponding security interest on a new motor vehicle accepted by the consumer, the consumer shall accept a refund. A refund required under this subsection or subsection (1) shall be made to the consumer and the secured party, if any, as their interests exist at the time the refund is to be made. The lessor, if any, shall be notified if a refund is made to a lessee under this act. A lessor shall not assess a fee for early termination of a lease under this act.

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

(a) The same defect or condition that substantially impairs the use or value of the new motor vehicle to the consumer has been subject to repair a total of 4 or more times by the manufacturer or new motor vehicle dealer within 2 years of the date of the first attempt to repair the defect or condition, and the defect or condition continues to exist. Any repair performed on the same defect made pursuant to subsection (6) shall be included in calculating the number of repairs under this section. The consumer or his or her representative, before availing himself or herself of a remedy provided under subsection (1), and any time after the third attempt to repair the same defect or condition, shall give written notification, by return receipt service, to the manufacturer of the need for repair of the defect or condition in order to allow the manufacturer an opportunity to cure the defect or condition. The manufacturer shall notify the consumer as soon as reasonably possible of a reasonably accessible repair facility. After delivery of the vehicle to the designated repair facility, the manufacturer has 5 business days to repair the defect or condition.

(b) The new motor vehicle is out of service because of repairs for a total of 30 or more days or parts of days during the term of the manufacturer's express warranty, or within 1 year from the date of delivery to the original consumer, whichever is earlier. The consumer, or his or her representative, before availing himself or herself of a remedy provided under subsection (1), and after the vehicle has been out of service for at least 25 days in a repair facility, shall give written notification by return receipt service to the manufacturer of the need for repair of the defect or condition in order to allow the manufacturer an opportunity to cure the defect or condition. The manufacturer shall notify the consumer as soon as reasonably possible of a reasonably accessible repair facility. After delivery of the vehicle to the designated repair facility, the manufacturer has 5 business days to repair the defect or condition.

(6) Any repairs required to be made under this act shall be made even if the repairs need to be performed after the expiration of the manufacturer's express warranty. The defect needing repair must be a continuation of the original attempt to repair the defect.

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

Enacting section 1. This amendatory act applies to all new motor vehicles that are purchased or leased by the original consumer on or after the effective date of this amendatory act.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved -----

Governor.