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286

#2

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465 3800

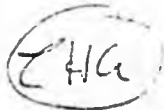
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

June 9, 1983

SUBJECT: Sectional analysis of proposed CSSB 286 (L&C)

TO: Senator Richard I. Eliason
Chair, Senate Labor and Commerce Committee

FROM:  Linn H. Asper
Legislative Counsel

You have requested a sectional analysis of the proposed Labor and Commerce committee substitute for SB 286.

Section 1 adds a new section to AS 45.45 relating to motor vehicle warranties.

AS 45.45.300(a) places a duty on a manufacturer or distributor of motor vehicles, or their agents or dealers, to make repairs under the terms of express warranties that apply to new vehicles, during the term of the warranty or one year, whichever period ends first.

AS 45.45.300(b) provides that if a motor vehicle cannot be repaired under the terms of the warranty after a reasonable number of attempts, and the defect that cannot be repaired substantially impairs the use and value of the vehicle, the owner may return the vehicle and receive a replacement or a refund of the purchase price, at the option of the owner.

AS 45.45.300(c) gives the manufacturer, distributor, agent or dealer two affirmative defenses to the owner's claim for replacement or refund:

- (1) that the defect complained of does not substantially impair the use and value of the vehicle; and
- (2) that the defect is the fault of the owner.

AS 45.45.300(d) establishes a presumption that a reasonable number of attempts to repair the vehicle have occurred if the defect has been repaired four or more times during a

year, but continues to exist, or if the vehicle is out of service for more than 30 days during the warranty term or the one-year period. The one-year time period during which the owner may seek repair is extended by periods during which repairs are not available for reasons that are not the responsibility of the owner. The 30 day time period does not include periods of time when repairs are not made for reasons that are beyond the control of the manufacturer, distributor, agent, or dealer.

AS 45.45.300(e) makes violation of the section an unfair trade practice under AS 45.50.471.

AS 45.45.300(f) prohibits the resale of a vehicle returned under the section, without full disclosure of the reason for the return to the prospective buyer.

AS 45.45.300(g) makes the remedy provided by the section non-exclusive and allows owners to seek remedies that they may have under other provisions of law.

AS 45.45.300(h) requires manufacturers or distributors to maintain warranty service facilities near population centers of the state to service vehicles sold in the state. Manufacturers or distributors may contract with independent facilities to provide warranty service if the contract requires full payment for such service. Payment for shipping motor vehicles to and from service facilities is allowed in lieu of establishing additional facilities.

AS 45.45.300(i) requires owners to resort to informal dispute settlement procedures established under federal law, if such procedures exist in the state, before exercising the rights provided in (b) of the section.

AS 45.45.300(j) defines terms used in the section, including "distributor", "motor vehicle", "owner", "population center", and "substantial impairment of use and value".

LHA:ljb
24/002

MEMORANDUM

State of Alaska

TO: Senator Dick Eliason
Chair, Senate Labor and
Commerce Committee
Alaska State Senate

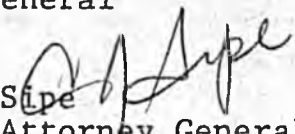
DATE: January 30, 1984

FILE NO:

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Committee Substitute
for SB 286

By: Connie J. Sipe 
Assistant Attorney General
Consumer Protection Section

After reviewing the latest suggested amendments to Committee Substitute for SB 296, known as the "lemon law," I would urge your adoption of the amendments before you and one additional, but minor, amendment.

Amendment 1, at page 2, line 12, clarifies that the provisions of this bill allowing a consumer to recover for a seriously defective car are triggered when either the use of the vehicle or the market value of the vehicle is substantially impaired. This is an important amendment in that there are times when a problem such as a seriously defective paint job does not affect the safe use of the vehicle, but totally destroys its market value for resale by the owner. For example, a \$12,000 cadillac which within its first year has lost its original paint job and been repainted and patched several times, will lose a substantial amount of its market value.

Amendment 2, at page 2, line 14, returns the bill to a neutral position on the question of whether or not the consumer who has a right to a new vehicle or a refund under this bill can dictate to the manufacturer which of the options will occur. As originally drafted the bill gave the choice to the consumer, later amendments gave the choice to the manufacturer. By deleting the "at its option" (which refers to the manufacturer), we are merely allowing the private parties to fight out, in court if necessary, whether a new vehicle or the refund of the full purchase price is more acceptable.

Amendment 3, at page 2, line 23, again concerns the market value and use of the vehicle distinction. In this section the bill is dealing with the manufacturer's right to an affirmative defense against a consumer's claim if the manufacturer can show that the nonconformity or defect complained of by the customer does not in fact cause substantial impairment to either the car's use or to the car's market value. Rather than the amendment suggested in the Committee's working draft, I would urge the following substitution for lines 23 and 24:

Delete "does not"; change impair to impairs, after "impairs" insert "neither"; and before "market value" delete "and" and insert "nor."

Lines 23 and 24 would now read:

"(1) substantially impairs neither the use nor the market value of the motor vehicle; or"

This amendment will avoid any possible confusion that the manufacturer may prevail against a consumer's claim for by showing that although the consumer's market value of the vehicle has been substantially impaired, the use has not been substantially impaired.

Amendment 4, at page 4, line 12, inserts a requirement that the attorney general approve the informal dispute settlement procedures as substantially complying with the federal regulations under the Magnuson-Moss Warranty Act. This section may be crucial, since the manufacturer's establishment of an informal dispute settlement process creates an absolute bar to the consumer proceeding to court until the consumer has exhausted his or her remedies through the dispute process. Within the last year, the attorney general of the state of Connecticut made an intensive study of the informal dispute settlement procedure being used by the Better Business Bureau (BBB) on behalf of several automobile manufacturers under the Connecticut lemon law. The Connecticut attorney general found several serious deviations from the federal requirements and has recommended to the BBB and the manufacturers that these procedural defects must be cured before consumers can be bound to go through the dispute settlement process before proceeding to file their claims under the lemon law in court.

The Alaska Attorney General's own experience recently with a consumer's "buy-back" request on an alleged lemon car, in a hearing conducted by the BBB out of Seattle for General Motors, raised serious questions as to whether the BBB and GM's process was procedurally fair and whether or not it meets the requirements of the federal Magnuson-Moss Warranty Act Regulations.

It is important that the attorney general have the authority to review and require revisions as necessary in the procedures of these dispute settlement mechanisms. Since it is probable that most manufacturers will choose to use the same dispute settlement procedure within the state of Alaska, such as the BBB or one other program, it should not constitute a significant burden on the Office of the Attorney General to

initially review these plans, and upon notice from the manufacturer, to review any future modifications to these plans.

Amendment 5, at page 4, lines 17 and 18, clarifies this section so that it is clear that a consumer may file a "claim" to the informal dispute settlement process, but will have at least 18 months from the expiration of the warranty or six months after the decision by the dispute settlement process to file a "cause of action" under this bill. "Cause of action" is merely the legal term of art which differentiates a court "cause of action" from a demand letter "claim" or a "claim" made to the dispute settlement panel.

Amendment 6, at page 5, line 9, sets guidelines for determining what type of "reasonable allowance for use" can be offset against a consumer's claim for a new vehicle or refund. This amendment is necessary and proper, so that the manufacturer cannot assert that the consumer should pay, for example, rental car rates and mileage for every day which they were capable of using their car before the buy-back request. Since the manufacturer may be able to take back the car, fix it and resell it, a reasonable allowance for use based on normal depreciation on a normal vehicle's life span of about seven years is a fair presumption.

(The Attorney General's office would prefer that there not be any deduction for use of the vehicle, or that if there is to be a use deduction, that the consumer should be allowed to add to his claim any consequential damages that the consumer suffered due to the defective vehicle, such as time missed from work, cab fares or rental car fees. However, the bill does not at this time clearly allow consequential damages and therefore the attorney general is very adamant that the deduction for use provision should be interpreted quite narrowly.)

Amendment 7, at page 5, line 10, is merely one more repetition of the replacement of the word "or" for the word "and" between "use" and "market value."

The Attorney General's office urges the Committee to remember that this bill merely clarifies and defines the way in which the manufacturer will carry out its legal warranty rights and responsibilities, which rights and responsibilities arise out of the express warranty written by the manufacturer. This bill does not write the warranty for the manufacturer, but it does require the manufacturer to honor the warranty already given and paid for when the consumer purchased a new vehicle.

This legislation has no or minimal fiscal impact.

CJS:vrh

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 3, 1984

The Honorable Richard Eliason
Chair, Senate Labor and
Commerce Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: Committee Substitute for
SB 286, revisions sug-
gested at 1/31 hearing

Dear Senator Eliason:

You have asked the Attorney General's office Consumer Protection staff to comment on the suggested changes to the lemon law bill made by various parties at the hearing before your Committee on January 31, 1984.

Page 1, lines 13 through 15. The National Manufacturers' representative, Jim Austin, suggested a deletion of the requirement for the owner to report the nonconformity to anyone except the manufacturer. However, the Committee's response, and that of the Attorney General was that both the manufacturer and the dealer have a strong interest in knowing whether or not the consumer is claiming a nonconformity. Further, a consumer should be able to notify the local dealer without formal requirement of writing to the manufacturer. The Committee was willing to change the word "or" in the middle of line 14 to "and", so that the owner would be required to report a nonconformity in writing to the manufacturer (or distributor if out-of-country manufacturer) and to the dealer.

Page 1, line 19. A suggestion was made by Austin, and the Attorney General's office concurs, that the bill should define how often the consumer has to report a nonconformity in writing. It was suggested that this be put at line 19. However, I now recommend that it become a definition and be put on page 5 of the bill. On page 1, line 12, after "vehicle", add "makes a reasonable report of" and delete the word "reports". Then, in

the definition section, insert a new paragraph (4), as follows:

(4) "reasonable notice of the nonconformity" shall mean that the owner has made a written report of a nonconformity of a vehicle to both the manufacturer or national distributor and to the selling dealer, in writing, at least once before making a demand for relief under this chapter.

Page 1, line 26. Austin suggested either deleting the word "new" in front of "comparable" motor vehicle or making "new" an alternative to "comparable" by the insertion of "or." The Committee did not accept this suggestion, and the Attorney General concurs with the Committee's decision. The Committee did not want to dilute the strength of the bill by allowing the manufacturer to offer a consumer a "comparable" used car instead of a new car.

Page 1, line 28. Austin suggested inserting the words "less interest" after the words "collateral charges." Testimony by both Austin and Ridgeway was that if a consumer chooses to finance a car purchase that the manufacturer should not be required to repay interest in addition to the purchase price in a buy-back. However, Committee members felt, and the Attorney General's office concurs, that there should not be a change in this line, and that interest should not be removed from the collateral charges which the consumer may assert as part of his or her claim.

Page 2, lines 6 and 7. The Attorney General's office suggested and the Committee concurred that there should be a change so that lines 6 and 7 now read:

(1) substantially impairs neither the use nor the market value of the motor vehicle; or

This change was made merely for the sake of clarity of language.

Page 3, lines 3 to 5. Austin suggested the deletion of §(f) on lines 3 to 5 of this page, the section which requires that before a returned "lemon" car is resold, disclosure must be made to the next prospective customer. Although the Attorney General's office testified to Committee that failure to disclose such a material fact could also be covered under the state's General Consumer Protection Laws, neither the Attorney General nor the Committee saw any reason to delete this disclosure requirement from the lemon law bill.

Honorable Richard Eliason
Chair, Senate Labor and
Commerce Committee

February 3, 1984
Page 3

Page 3, line 11. After the word "facility", add the words "within the state." This suggestion was made by Senator Pettyjohn. The Committee and all testifying parties agreed that it was a good addition to clarify that the manufacturer must maintain at least one adequate repair facility within this state to service the cars sold here.

Page 3, line 26. Austin suggested that the word "Title" be inserted before "16 C.F.R. Part 703". This is a more appropriate citation to the Federal Rules and the Committee as well as the Attorney General's office concur in its modification.

Page 4, lines 25 to 29. Austin and Ridgeway suggested that the definition of "reasonable allowance" be amended by deleting the second sentence, lines 25 through 29. This sentence states that a reasonable allowance may not exceed a proportionate amount of straight-line depreciation based on seven year depreciable life of a vehicle. Austin and Ridgeway urged the Committee that what is a reasonable allowance for use should be set by each informal dispute resolution panel hearing a buy-back case, or by the courts if the case reaches that far. However, the Attorney General's office urged and the members of the Committee seemed to be in favor of the idea that it is preferable to have a guideline in the bill as to what a reasonable allowance is and how it shall be calculated. Therefore this section was not changed.

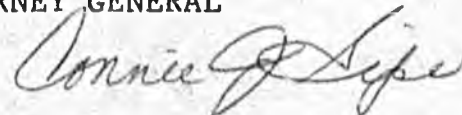
Page 5, line 5. Austin and Ridgeway suggested the deletion of the words "its economic life" and replacement with the words "the dollar value to the owner" so that (C) would now talk about decreasing the dollar value of the vehicle to the consumer. The Attorney General's office concurred, as did the Committee, that this change makes the definition of decreased market value more meaningful and so this amended change should go in the next draft.

I hope this analysis is of assistance to the Committee.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:



Connie J. Sipe
Assistant Attorney General
Consumer Protection Section

CJS:vrh

COMMITTEE SUBSTITUTE FOR SENATE BILL 286
VERSION #3 (2/23/84)

Section (a), lines 10 - 16:

The time limitation has been removed from this section, since the intent of the section is merely to require manufacturers to honor their own express warranty for whatever term they give it (1 to 5 years, or by mileage limits).

Page 1, subsection (b), lines 23 - 27:

Major change in this subsection is deletion of any reference to "replacement" of a nonconforming vehicle. Instead, the manufacturer would be required to refund the full purchase price to an owner. (Obviously, if a consumer is willing to bargain for a replacement, the consumer/manufacturer would still be free to work out such a deal.)

Starting page 1, subsection (c):

This section clarifies exactly how and when a consumer must give notice to the manufacturer that the consumer believes he or she has a lemon car for which they want a refund.

Page 2, subsection (d):

This section, following the lemon laws in the states of Massachusetts and California, requires the manufacturer to deliver some type of explanation to all new owners of vehicles about their rights under the lemon law. This section is especially appropriate, indeed necessary, due to the fairly formal notice requirements of subsection (c), which are more formal than the notice requirements of almost any other state's lemon law.

Page 3, subsection (h), line 22:

Has been amended by the addition of the words "is presumed to have committed" as a replacement for the word "commits." This merely sets out a legal presumption which the manufacturer can then rebut by showing the courts that the manufacturer had some valid reason (when applicable).

Page 4, subsections (k) and (l):

These two paragraphs were originally part of the same subsection, but have been separated due to the different nature of their focus. Subsection (k) requires manufacturers to retain repair facilities within this state, able to service the vehicles they sell. Subsection (l) states that once a "lemon" car has been returned to the manufacturer for a refund, the manufacturer must compensate the owner for all reasonable costs which the owner incurred in shipping the vehicle back and forth from the nearest authorized repair facility for warranty service.

Page 4, subsection (m)

Has included a new flexible provision which allows the manufacturer to use any arbitration or mediation process, even if the manufacturer has not set up in advance a Magnuson-Moss type (16 C.F.R. 703) informal dispute settlement procedure. In all cases, the attorney general must approve the process and the arbitration decision must be binding on the manufacturer but not on the owner. This section insures that as many of these lemon law disputes as possible will stay out of the court system, and that both consumer and manufacturer will be encouraged to use informal settlement processes.

Page 5, subsection (n)(4)

The definition of "full purchase price" includes all fees paid at the time of the sale, including finance charges.

Subsection (n)(6)

Definition of "motor vehicle" includes land vehicles with four wheels "normally" used for personal, family or household purposes. The word "normally" replaced "primarily" so that manufacturers wouldn't argue about whether consumers used their cars for work-related purposes more than for personal purposes. Also, as now defined, motor vehicle does include motor homes, which is appropriate since each motor home chassis and cab has a major manufacturer's express warranty, which is the only warranty covered by this statute. The secondary manufacturer, or converter, who puts the cabin on a motor home, gives a warranty on those components.

Pages 5 to 6, subsection (n)(9)

The definition of "reasonable allowance" is still set at a sum which will include no more than straight-line depreciation figured over seven years, plus, when applicable, an amount for depreciation in value of the vehicle caused by neglect or abuse of the owner. This neglect or abuse provision is new in this draft, and is meant to take care of the situation where a consumer is returning a car that has a mechanical or other nonconformity which causes it to be a "lemon," but, in addition, the consumer has abused the car, such as using it for racing, or painting it with psychedelic colors.

COMMITTEE SUBSTITUTE FOR SENATE BILL, 286
VERSION #3 (2/23/84)

I. REFUND (not replacement)

The choice was made in the latest committee substitute draft to require manufacturers to give a refund, and did not allow the manufacturer the option of requiring the consumer to accept a replacement vehicle. (Of course, the manufacturer could still replace a vehicle for a consumer who desires that instead.)

The "refund only" option has been passed in only one other state, Washington. The Alaska Auto Dealers Association strongly urged this provision, so as to eliminate what they view as a significant hassle factor in trying to find a consumer another vehicle "comparable" to the one the consumer has returned. In addition, it is my understanding that the dealer is allowed to keep the profit on the returned "lemon" car, but on the replacement vehicle which comes out of the dealer's inventory, the manufacturer will only allow the dealer a small profit, approximately 6%. (Normally, Alaskan dealers realize a profit or "gain" above their dealer invoice price of from 18% to 30%.) Obviously, the dealer would rather sell the second vehicle to someone else than to use it as a replacement vehicle for an already irate consumer.)

However, the refund option does not harm consumers, and in fact most consumers who ask for buy-backs would seem to prefer getting their cash back and being able to go to some other dealership or manufacturer for a second vehicle.

The refund provision certainly eliminates other problems like getting the liens reinstated on a replacement vehicle in accordance with the loan made on the first vehicle.

II. SEVEN-YEAR DEPRECIATION

A seven-year depreciation schedule was chosen as an outer limit on the amount of reasonable allowance for consumer's use that could be deducted from the refund. This was based on statistics that show that the average life of vehicles on the road in the U.S. in 1980 was 6.6 years. Approximately the same is true for Alaska in 1983, where the average age of a passenger car was 6.5 years. Since these are averages, obviously there are many vehicles on the Alaskan roads which are much older than 6.5 years, and it would seem that it is a reasonable expectation that a car has been engineered so that its major components, frame, and body will last at least seven years. (See attachments.)

III. REPAIRING AGENT

The definition and frequent reference to "repairing agent" was necessary for two reasons. First, it was necessary to insert some sort of reference to a shop which is authorized by the manufacturer to do warranty repairs, but which is not otherwise an authorized dealer. This reference encourages the manufacturers to use such facilities and, secondly, ensures that once the manufacturer has authorized an independent repair agent to work on the vehicle, that the manufacturer is responsible for the work done on that vehicle. In this way, if the manufacturer tells a Bethel consumer to have the car fixed at the local Chevron station, the manufacturer cannot disclaim the car as not being a lemon due to the station's work in trying to fulfill the consumer's warranty.

IV. NOTICE BY OWNER

Most of the 19 states that passed lemon laws did not specify very clearly how or when consumers had to give notice to the manufacturer about claiming a refund for their lemon. Many of the states only require consumers to complain to an authorized dealer and not necessarily in writing.

Because of Alaska's remote location, both dealers and manufacturers were concerned that somehow information about a potential "lemon" might not reach the manufacturers and give them adequate time to attempt to cure before the consumer claimed a refund. On the other hand, concern was expressed whether the consumers had to send in a written report every time they took their car down to the dealer's shop for warranty work. It's probably not unfair for the consumers to have to take an affirmative step of notifying the dealer and the manufacturer that the consumer wants to get out of the deal. Therefore, we set up a fairly formal notice requirement which, in effect, gives the manufacturer and dealer yet another 30 days (if the consumer is still willing to work with them), to come in and try to cure the car. It also gives the manufacturer a time period within which to offer to go to arbitration with the consumer; otherwise, the consumer is free to proceed to file a claim for the refund, which if not timely made, will entitle the consumer to file a lawsuit for the refund.

V. BROCHURE ON CONSUMER RIGHTS

It was in light of the more formal notice requirement if (c) that subsection (d) of the committee substitute was inserted, requiring the manufacturer (not the dealer) to deliver to every new vehicle owner an easily understood statement of how the consumers can assert their rights under the state lemon law. Such provisions are already in the lemon laws of California and Massachusetts. Although the manufacturers' representative expressed some concern about the small number of vehicles coming into Alaska, I think that we are still talking about no more cost than what was incurred by GM in California, which was the printing up of a 2 x 4 card which was inserted in the glove box of every car to be sold in California.

It is important that if the formal type of notice requirement (c) is left in the bill, that there be some notice to the consumer as set out in subsection (d).

The dealers' concern that somehow handing the consumer a card that talks about their rights under the lemon law at the same time that the sale is being made, would be psychologically destructive to their customer relations, is not a serious concern. First, the law does not require that the dealer give the card, but that the manufacturer deliver some sort of notice, which could be by mail. Additionally, even if the notice is handed to the consumer at the time of the completion of the sale, it would be handed over with the entire packet containing the warranty, the financing documents, title registration documents, etc. Very few consumers ever know what is in those packets of documents, not even in their loan agreement, until sometime later when they have a problem and go looking through their documents, or through their owner's manual, to see what rights they have. That's what is necessary in the case of the lemon law notice, that the consumer have it available and in their possession, so that they can consult it without having to hire an attorney.

REPLY TO
XX1031 W. 4th SUITE 110
ANCHORAGE ALASKA 99501
PHONE (907) 279-0-281st NATIONAL CENTER
100 CUSHMAN, SUITE 400
FAIRBANKS ALASKA 99701
PHONE (907) 456-8588S S FULLER BLDG
4th & HARRIS, SUITE 214
POUCH K
JUNEAU, ALASKA 99811
PHONE (907) 465-3692STATE COURTHOUSE, ROOM 26
P O BOX 671
VALDEZ, ALASKA 99686
PHONE (907) 835-2462DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

February 20, 1984

Senator Richard I. Eliason
Chairman, Senate Labor & Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

Re: C.S. for Senate Bill 286,
incorporating suggestions
of Alaska Automobile
Dealers Association

The new draft of a proposed committee substitute presently before you is the result of the efforts of my staff and the representative of the Alaska Automobile Dealers Association to refine the bill so as to better accommodate the needs of the Alaskan automobile dealers who will, of necessity, be affected by this bill's passage.

Also, with apologies to the committee, and recognizing all of the prior hard labor that has gone into this bill, as these new amendments were added to the bill, in order to maintain clarity, we took the liberty of streamlining the language somewhat, most of which was done by removing some clauses which were repeated throughout the bill, and incorporating them instead into the definitions section. Therefore, I would urge that anyone looking at this new committee substitute first read the definitions.

I.
DEFINITIONS

I would also start my analysis of this draft with a discussion of the definitions. There are now twelve.

First of all, we have included a definition of "dealer" to include only those persons or legal entities holding franchises or retail sale authorization from the manufacturers.

"Distributor" and "manufacturer" have been carefully defined to make it clear that the manufacturer runs the factory producing the cars, and the distributor is someone in the distribution

chain who has the manufacturer's authorization to make wholesale sales of the vehicles.

"Express warranty" has been defined to mean the express written warranty, so that this term did not have to be included throughout the bill.

"Full purchase price" has been defined to include most of the collateral charges taking place at the time of the sale, including any already accrued finance charges. (The committee members should note: both the Automobile Dealers Association and the manufacturers' representatives oppose the inclusion of finance charges, but it was my understanding that the committee wanted finance charges included.)

"Motor vehicle" has been limited to land vehicles, that are purchased primarily for personal-type use. Also, the definition excludes several categories of vehicles normally thought of as off-road or farm vehicles.

An important new definition is of "nonconformity."

"Nonconformity" is a defect or condition which substantially impairs the use or market value of a vehicle and we moved this language from page 1, (b), into the definition section, so as to streamline the many places in the bill where this term occurs. The intent of nonconformity has not changed from prior bill drafts, although the definition more clearly states that the type of nonconformity covered by the bill is only one caused by a manufacturer, distributor, authorized dealer, or repairing agent, and not any nonconformity caused either by the consumer or some third party or circumstance. This was an important change in the mind of the dealers' association which I thought could be accommodated without any harm to the consumer interests.

The definitions of "owner," "substantially impairs the market value," and "substantially impairs the use" have not been changed since previous drafts.

However, debate is still going on over "reasonable allowance."

"Reasonable allowance" is to be the amount deducted from a return or replacement of a vehicle for the owner's use. The dealers felt quite strongly that we should delete the language saying that there would be no deduction for the owner's use after the very first report of any nonconformity to the manufacturer or dealer. I agreed to this, but wish the committee to be aware of it, and to alter this decision if it is your desire. Also, the committee should make a final policy choice on how "reasonable allowance" would be calculated. The Automobile Dealers

Association very strongly wishes it to be tied to the IRS method of depreciation, which at this time is a 3-year depreciation. Their less-favored alternative is a 5-year straight line depreciation. On the other hand, our office's auto investigator, Scotty Dawkins, tells me that the average age of vehicles on the road in America today is 6.9 years, from which he and I both derived the idea that from a practical use standpoint, perhaps as opposed to a market value concept, the life expectancy of a vehicle should be around seven years, and that should be the time period for the depreciation deduction. (If a consumer drives a vehicle for 11 months out of the first 12 of the warranty, but at the end of that time still has unrepaired nonconformities, the consumer should not lose more than approximately 1/7th of the purchase price of the vehicle when trading it in, certainly not as much as 20% [1/5th] or even 33 1/3% [1/3rd]). However, the manufacturers' and dealers' representatives disagree strongly with the seven year method.

A new definition the committee has not previously seen is that of "repairing agent." A repairing agent is either an authorized franchise dealer or some other person who has been specifically authorized to do warranty repair by a manufacturer or distributor. The attorney for the dealers' association and myself felt that this definition was necessary to bring within the act those independent repair facilities who are sometimes authorized by a manufacturer to do warranty repairs, and who could cause problems in the chain of events causing a "lemon" vehicle. In addition, if the sections of the bill requiring the manufacturers to expeditiously ship warranty parts to Alaskan dealers passes, a repairing agent authorized by the manufacturer should also be able to get the parts quickly without extra cost to the repairing shop or the consumer. "Repairing agent" is definition 10 on page 6 of this draft.

II. SUBSTANTIVE PROVISIONS OF THE BILL

The analysis returns to the beginning of the bill. While working on the bill, it seemed that the first two sections of the bill, (a) and (b), contained some fairly confusing language.

Basically, paragraph (a) merely requires manufacturers to live up to their warranties by attempting to repair vehicles. Therefore, at page 1, line 12, it was important that we clarify that in order to receive warranty repair service, the consumer needs merely to "report" the nonconformity either to the manufacturer or to an authorized dealer. This is not the section where a

procedure for written formal notice is necessary, but oral notice or taking the car to the dealer's shop should be sufficient notice. Also, at line 15, the word "original" has been inserted to make it clear that the one-year period covered by this bill starts with delivery to the first owner, even though a subsequent owner might file a claim under the bill.

Subsection (b), starting at page 1, line 18, is the section of the bill which requires a refund or replacement for nonconforming vehicles. You will note that wherever the word "defective" appeared, it has been replaced with "nonconforming." This was considered important by the dealers' association and, I believe, is to the benefit of consumers. (In product liability law, it is very difficult to prove that a vehicle is "defective," and therefore it is better to stay within the language of the statute and just talk about "nonconforming" vehicles.)

Also, you will notice in subsection (b) at line 21, that instead of setting out the substantive definition of nonconformity, the definition is incorporated by reference. This greatly helped the flow of the language of the rest of subsection (b).

At page 1, line 24, you will note that the words "full purchase price" are no longer followed by "including all collateral charges." This is because the term "full purchase price" has been defined in (m) so as to include most collateral charges incident to the purchase. In line 26 again, the word "original" is inserted before "owner" to make it clear that the allowance for use runs from and covers all use from when the vehicle was delivered.

The rest of the changes on page 1, lines 26 through 29, and the top of page 2, lines 1 and 2, were made at the suggestion of the dealers' association to properly cover the interests of lienholders on vehicles. Lines 26 to 28 are not new, but page 1, line 29, through page 2, line 2, now mandate that in the case of a refund, the manufacturer would first extinguish the interests of all lienholders of record, and only then pay the remaining amount to the owner. A consumer could of course go out and arrange for a new loan to finance the purchase of a new car, so that the consumer is not hurt by this language.

Page 2, lines 3 through 20. This is a new subsection (c) which significantly modifies the bill's operation, and deserves the committee's close attention. Many debates have gone on in committee, also between various persons discussing the bill with me, as to exactly how, when, and where consumers should have to give written notice to the manufacturer about a "lemon" car.

Finally, I wrote this new subsection (c), which the dealers' association representative approved, to set out exactly how the consumer has to give notice. This may seem more formalistic than the general reference to "report" made in the previous bill drafts, but in fact it would probably create less work for lawyers and courts to have the notice provisions clearly spelled out. (Also remember that should a consumer somehow fail to make the notice required by this bill, they still have other legal causes of action against the manufacturer for a lemon car, just not the provisions of this bill.)

New subsection (c) states that before consumers can claim a refund or replacement, they must mail to both the manufacturer and to the repairing dealer, within 60 days from when their express warranty or the one-year period from delivery terminates, a written notice. The notice must contain three pieces of information: (1) the fact that the vehicle has nonconformities which are reasonably described, (2) the fact that either the manufacturer, distributor, dealer or repairing agent have made a reasonable number of attempts to conform the vehicle, as those terms are used already in the bill, and (3) that the owner will, on the 30th day after the mailing of the written notice, demand a refund or replacement of the vehicle.

(This new section could be inferred to give the manufacturer and dealer yet another 30 days to satisfy the consumer by making one last attempt to fix the vehicle. If the consumer is still willing to work with the manufacturer and dealer, this is good. If, however, the relationship has become so strained that the consumer sends this notice and does not wish to allow any more repair, this is another outcome that the manufacturers will have to work to avoid in how they run their warranty system. Under this section, the manufacturer has still had the 30 business days during the first year to make repairs, or the four attempts to cure nonconformities per subsection (f).)

Subsection (d) is also a new section which goes along with the formalistic notice requirements of subsection (c). Basically (d) requires the manufacturer to deliver to every original owner a brochure explaining the Alaska lemon law, and how a consumer can use it.

Subsection (e) is the old subsection (c) from the previous draft. The language has been changed slightly at page 2, line 21 so that instead of saying that the manufacturer has a "affirmative defense" to a consumer's claim, it now reads that the consumer will not be entitled to a claim for refund or replacement if, as

set out at line 23, the manufacturer or the distributor "shows" that the nonconformity complained of does not impair use nor market value or is the result of a consumer's abuse or neglect. The dealers' representative and I agree that this new revision better sets out for all parties involved, including arbitrators and the courts, the fact that it is the manufacturer's duty to counteract a consumer's claim for refund by bringing up these two defenses.

Starting at page 2, line 30, subsection (f) is the old subsection (d), which sets out what is going to be the legal presumption about a reasonable number of attempts to repair a vehicle under a warranty. This language has stayed basically the same, with some clarifying amendments and the addition of words such as "original" owner. On page 3, starting at lines 2 through lines 13, we broke the two conditions for a lemon into subparagraphs for clarity of reading.

The committee should note in subparagraph (f)(2), page 3, lines 7 to 13, that we deleted the language previously at page 3, lines 7 through 9, which excluded from the one year period any time during which repair services were not available to the owner for reasons not the responsibility of the owner. (The dealers' representative and I discussed this at great length, and decided that if the intent of the deleted lines was to extend the consumer's warranty by every day that the car was in the shop, that there was really no need to do this in the case of a lemon car, because the consumer was going to be demanding a refund or replacement. I agreed that this term did not really seem necessary in light of the other consumer remedies in this bill.)

Page 3, line 14, subsection (g), is a new section, inserted specifically to meet the concerns of Alaskan dealers. This new subsection requires manufacturers to ship needed warranty repair parts in as quick a manner as reasonably possible at no additional freight charge, if the Alaskan dealer does not have a part in inventory. (This section only covers serious nonconformities as defined in the statute, so it would not require a manufacturer to air freight every brake light or windshield wiper, but only parts necessary to cure substantial nonconformities.) I believe that this would be a great benefit to Alaska consumers and dealers, and I urge the committee to adopt this language. However, I am sure that the manufacturers' representatives may have some disagreement with this stance.

Page 3, lines 21 through 24, subsection (h), has stayed basically the same, and basically makes it an unfair trade practice to refuse to replace or refund the motor vehicle when the manufacturer is required to do so. An addition is to make it also an unfair trade practice for a manufacturer to refuse to reimburse a "lemon" owner's costs for shipping a vehicle for repair or to ship warranty parts quickly to the dealer at no cost.

Page 3, lines 25 through 29, subsection (i), has not been significantly changed except for renumbering, and as the committee desired, requires full disclosure before a returned "lemon" vehicle is resold. However, the subsection now incorporates the dealers' association suggestion that this disclosure requirement only be imposed upon the manufacturer, distributor, or actual repairing dealer so that a innocent used car dealer or private consumer not be required to make this disclosure.

Page 3, line 29, through page 4, lines 1-5. The first part of this subsection (j) was already in the bill, and basically says that the provisions of the lemon law do not limit other rights or remedies available to the consumer. However, at the top of page 4, three new lines have been added to state that the lemon law does not create a new type of legal cause of action against a dealer or repairing agent, who either sells or attempts to repair a nonconforming vehicle. (This was a concern brought up by the dealer's association, and it is one which I believe can be accommodated without significant harm to the consumer. It never appeared to be the intent of the original sponsors of this bill, nor of this committee, to make the lemon law penalties directly apply to dealers. Although we all acknowledge that the dealers will be affected by the bill and their manner of doing warranty work may be altered, this bill was not meant to give consumers new legal rights against the dealer. The dealer is, of course, subject to being sued or complained about under any other existing statutes or common law theories, but just not under the lemon law.)

Page 4, lines 6 through 19, subsection (k), is a reworking of the section regarding repair facility requirements within the state. The committee should note at lines 9 through 13 that the concept of "population centers" has been reinserted in the bill. This section is meant to strongly encourage manufacturers to set up additional repair facilities or to select, train and compensate authorized repair facilities. I believe that the manufacturers' association will have a great deal of concern about this section, and the committee must make the choice.

In the same subsection (k), page 4, lines 13 through 19, we added a section which the committee saw at its last hearing, requiring the manufacturer who actually buys back a "lemon" vehicle to also pay for any shipping costs which the consumer had already incurred for getting the vehicle back and forth to a dealer for warranty work. I urge the committee to adopt this language, since this really makes a fair offset against the reasonable deduction for the consumer's use. It allows consumers who live in Sitka or Bethel, if they initially bear the cost of shipping their motor vehicle back to a dealer for repair, to recover those costs if and when the vehicle is found to be a "lemon." This section would not give all consumers back their shipping costs when, for example, they shipped a vehicle back to the dealership and it was repaired and the vehicle did not become a "lemon." Only when the car is a "lemon" and it is going to be bought back or replaced do these shipping charges get mandatorily added in.

Page 4, line 20, subsection (l) is about the informal dispute settlement procedures. You will note the addition of some new language at lines 23 through 30. The thrust of this amendment was suggested by the dealer's association, so as to allow maximum flexibility. In case the manufacturer does not set-up, in advance, a strict arbitration program under the federal Magnuson-Moss Act (16 C.F.R. 703), but is willing to participate in some other arbitration or mediation process, such as with a local conflict resolution center, or a local better business bureau, as long as that arbitration/mediation process is procedurally fair, and has been approved by the attorney general, there is no reason to limit the manufacturer to only using 16 C.F.R. 703 type of procedures. It is good policy to encourage settlement outside the courts and I believe this is a good change.

However, since subsection (l) requires consumers to go through this arbitration/mediation process before litigating, I wanted to make sure that manufacturers could not stall the consumer by negotiating for months and then suddenly offering to go to arbitration, delaying the consumer's right to go on to court. Therefore, I have inserted a requirement that once the owner sends the 30-day notice that they are going to claim a refund or replacement, if the manufacturer then offers to the consumer in writing to participate in an arbitration/mediation process which has been approved by the attorney general, then the consumer is bound to try this method of informal settlement before getting a refund or replacement or getting their shipping costs replaced as paid in subsection (k).

One more major change to the bill, which is significant by its absence is the deletion of the former subsection (j), which had set out the time limits of when consumers could file a court cause of action for a failure to refund or replace by a manufacturer. The dealers' representative and I had significant discussion over this point, and decided that since subsection (h) of this present draft makes the failure to refund or replace an unfair trade practice, that the statute of limitations in that other statute is sufficient. As the draft stands before the committee today, consumers have up to the length of their express warranty or one year from delivery, whichever comes first, plus 60 days, to give written notice to the manufacturer that they intend to file a claim within 30 days. Then at 30 days (this is now up to as much as one year and three months), the consumer can demand the refund or replacement. If the manufacturer offers to go to an approved mediation or arbitration process, the consumer has to go through that process. If the arbitrators award a refund or replacement, and then the manufacturer refuses to follow the award, the manufacturer would at that time be committing an unfair trade practice, and a consumer would have two years to file a lawsuit under the private cause of action section of the Unfair Trade Practices Act, AS 45.50.531(f). Similarly, if the manufacturer does not offer to go to arbitration, they would be "refusing" the consumer's claim and the unfair trade practice two-year filing limit of .531(f) would start to run.

III.

MATTERS OF CONTINUING DEBATE BETWEEN THE ATTORNEY GENERAL'S CONSUMER PROTECTION SECTION AND THE DEALERS' ASSOCIATION

I believe that the committee draft before you reflects a substantial agreement between the Attorney General's Consumer Protection Section and the dealers' representatives. However, there remain several areas of major disagreement, including specifically:

1. The length of time or depreciation method for calculating the "reasonable allowance" deduction for a consumer's use of a nonconforming vehicle. The dealers would prefer the IRS method, which is now three years, or at the longest, five years. Consumer Protection urges that seven years more accurately reflects the amount of time consumers can expect the vehicle to be useable.

2. The dealers' association, like the manufacturers' representatives, strongly disagree with subsection (b) at page 1, line 23, where the "lemon" vehicle is to be replaced by a "new, comparable" vehicle. They wish the word "new" to be deleted. This committee rejected such a proposal at its 1/31/84 hearing on the bill. The dealers and manufacturers feel that if a consumer-owner of a "lemon" drove the vehicle for nearly a year, or drove very hard, or damaged, or maintained it poorly, the replacement car should only be "comparable," but not necessarily "new." I understand their concern, but giving the "lemon" owner a comparable used car and also deducting a "reasonable allowance" for the owner's use of the "lemon" would be an unjust "double-whammy" against the consumer. (Further, if the owner of a "lemon" were thus penalized, the owner ought to be able to collect consequential damages such as lost wages, taxi or rental car fees, from the manufacturer.)

If the committee feels inclined to compromise further on this point, I would suggest a moderate amendment to the definition of "reasonable allowance," to read:

(m)(9) "reasonable allowance" means an amount attributable to all owners use of a motor vehicle since its delivery to the original owner. A "reasonable allowance" on a vehicle which has been the subject of only normal wear and tear by the owner may not exceed an amount equal to the depreciation in value of the vehicle for the period during which the vehicle is available for use by the owner, calculated by a straight line depreciation method over seven years.

3. The Dealers' Association would prefer that this bill only cover vehicles sold by authorized franchise dealers within the State of Alaska. This would mean that a car sold by a franchise dealer in Texas and then moved to Alaska within the warranty or one-year period would not be covered by the statute. This would also mean that cars sold by dealers in the Pacific Northwest and shipped directly to Alaskans would not be covered by the bill. I do not support this proposed limitation of the bill.

The committee should note that under this draft in front of you, the bill has already become somewhat limited in that when a new vehicle is sold to an Alaskan by a dealer who does not have franchise authorization, then the consumer will not be covered by this bill if that non-franchise dealer causes the nonconformity defect to the vehicle. If the consumer buys from a non-franchise dealer, but then takes the vehicle to a properly authorized dealership for repair, the consumer should be covered for repairs

and for any lemon condition caused by the original manufacturer or by the authorized repairing dealer. However, I can contemplate some conditions where both manufacturer and repairing dealer would agree that a defect or nonconformity condition was caused by the improper setup or preparation of the vehicle by the non-franchise seller.

IV.
REMAINING AREA OF POSSIBLE AMBIGUITY

When I agreed to delete the words "including collateral charges" from subsection (b) at page 1, line 25, I did so because I believed the committee meant "collateral charges" to be only those additional costs incidental to the original purchase of the vehicle (which costs are in this draft included in the definition of "full purchase price.")

However, the committee members may wish to compensate "lemon" owners for a different type of "collateral charges," somewhat like consequential damages. These "collateral charges" could include costs incurred by the consumer directly due to the nonconformities of a "lemon," such as: taxi fares, rental car fees, towing charges, telephone calls. If this is the desire of the committee, I propose the addition of a definition to read:

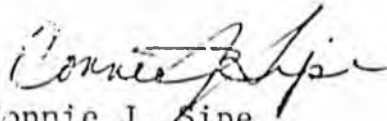
(m)(3) "collateral charges" means those additional charges or expenses incurred by the owner of a non-conforming vehicle, not part of the purchase price of the vehicle, which may include, but are not limited to, expenses for replacement transportation, towing, and long-distance telephone calls to the manufacturer, distributor, dealer or repairing agent.

I believe the manufacturers' representatives and the dealers' association would not support this additional amendment, but I wanted to be sure we all understood the intent of the committee.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

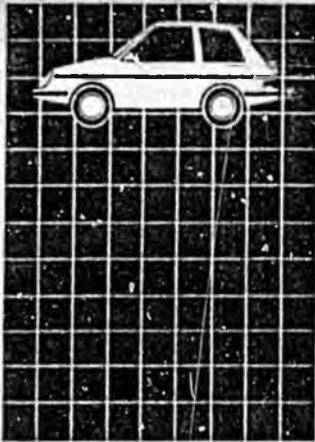
By:


Connie J. Sipe
Assistant Attorney General
Chief, Consumer Protection
Section

/aw

Attachment

cc Senator Bill Ray
Representative Mike Miller (Juneau)
Art Peterson, Department of Law
Norman Gorsuch



Average Age of Cars Continues 10-Year Rise

The total number of passenger cars in use in the United States leveled off in 1980, but the average age increased to more than 6 1/2 years for the first time since 1952.

The hike in the average age of the passenger cars in service continued a 10-year rise. In 1970 the average age was 5 1/2 years.

The number of cars on the road 16 years old or older increased nearly 20 percent from 2.9 million in 1979 to more than 3.5 million.

PASSENGER CARS IN USE BY AGE

Age in Years (1)	Number (000)	1970		Number (000)	1975		Number (000)	1979		Number (000)	1980	
		Percent Simple	Percent Cum.		Percent Simple	Percent Cum.		Percent Simple	Percent Cum.		Percent Simple	Percent Cum.
Under 1.....	6,288	7.8%	100.0%	4,684	4.9%	100.0%	7,288	7.0%	100.0%	5,868	5.6%	100.0%
1-2.....	9,299	11.6	92.2	9,763	10.3	95.1	10,699	10.2	93.0	10,402	9.9	94.4
2-3.....	8,816	11.0	80.6	11,332	11.9	84.8	10,219	9.8	82.8	10,483	10.0	84.4
3-4.....	7,878	9.8	69.6	10,098	10.6	72.9	9,203	8.8	73.1	9,931	9.5	74.4
4-5.....	8,538	10.6	59.8	8,549	9.0	62.3	6,990	6.7	64.3	8,900	8.5	64.9
5-6.....	8,506	10.6	49.2	8,341	8.8	53.3	9,004	8.6	57.6	6,682	6.4	56.4
6-7.....	7,116	8.8	38.6	8,339	8.8	44.5	9,965	9.5	49.0	8,499	8.1	50.0
7-8.....	6,268	7.8	29.8	7,556	7.9	35.7	8,431	8.1	39.5	9,151	8.8	41.9
8-9.....	5,058	6.3	22.0	6,113	6.4	27.8	6,573	6.3	31.4	7,544	7.2	33.1
9-10.....	3,267	4.1	15.7	5,796	6.1	21.4	5,909	5.6	25.1	5,653	5.4	25.9
10-11.....	2,776	3.5	11.6	4,825	5.1	15.3	5,034	4.8	19.5	4,939	4.7	20.5
11-12.....	1,692	2.1	8.1	3,234	3.4	10.2	3,999	3.8	14.7	4,049	3.9	15.8
12-13.....	799	1.0	6.0	2,229	2.3	6.8	2,862	2.7	10.8	3,172	3.0	11.9
13-14.....	996	1.2	5.0	1,407	1.5	4.5	2,460	2.3	8.1	2,280	2.3	8.9
14-15.....	794	1.0	3.8	689	.7	3.0	1,874	1.8	5.8	1,969	1.9	6.7
15-16.....	753	.9	2.8	523	.5	2.3	1,223	1.2	4.0	1,516	1.4	4.8
16 & Older.....	1,583	1.9	1.9	1,742	1.8	1.8	2,930	2.8	2.8	3,514	3.4	3.4
Subtotal.....	80,427	100.0%	—	95,220	100.0%	—	104,663	100.0%	—	104,552	100.0%	—
Year Not Given.....	22	—	—	21	—	—	14	—	—	12	—	—
Total.....	80,449	—	—	95,241	—	—	104,677	—	—	104,564°	—	—
Average Age.....	5.55 Years			5.99 Years			6.41 Years			6.59 Years		

°In 1980, 1,310,918 passenger vans were reclassified from passenger cars to trucks.

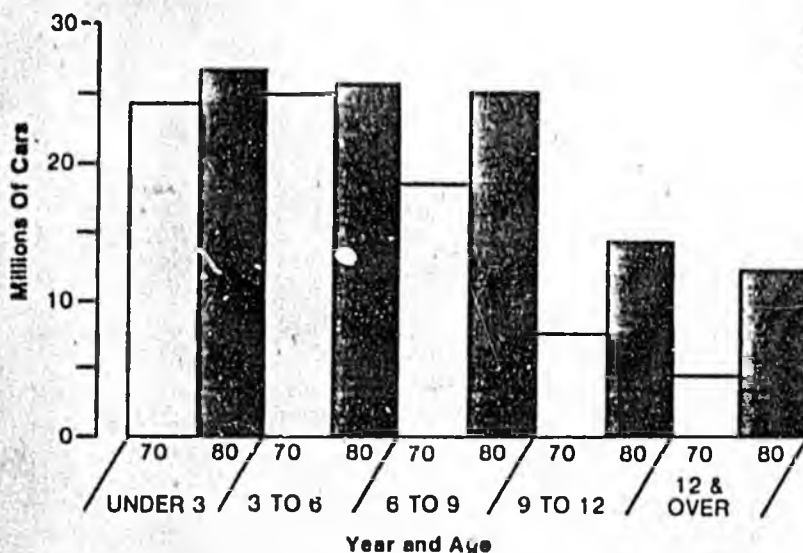
(1) Each class interval includes lower but not higher age.

NOTE: Data as of July 1 of each year.

SOURCE: Compiled by the Motor Vehicle Manufacturers Association from R. L. Polk & Co. data. Permission for further use must be obtained from R. L. Polk & Co.

AVERAGE AGE OF PASSENGER CARS IN USE IN U.S.

PASSENGER CARS BY AGE GROUPS



Year	Years Old	Year	Years Old
1980.....	6.6	1963.....	6.0
1979.....	6.4	1962.....	6.0
1978.....	6.3	1961.....	6.0
1977.....	6.2	1960.....	5.9
1976.....	6.2	1959.....	5.8
1975.....	6.0	1958.....	5.6
1974.....	5.7	1957.....	5.5
1973.....	5.7	1956.....	5.6
1972.....	5.7	1955.....	5.9
1971.....	5.7	1954.....	6.2
1970.....	5.5	1953.....	6.5
1969.....	5.5	1952.....	6.8
1968.....	5.6	1950.....	7.8
1967.....	5.6	1948.....	8.2
1966.....	5.7	1946.....	9.0
1965.....	5.9	1944.....	7.3
1964.....	6.0	1941.....	5.5

SOURCE: Estimated by the Motor Vehicle Manufacturers Association of the U.S. Inc.

Age of Car

FROM 3/1/84 FLORENCE, ANC LIO MSG 19584

TO: ALL LEGISLATORS

FROM: PAT SHEPPARD
2560 KANTISHNA DR.
EAGLE RIVER, AK 99577
(H) 694-5141 (W) 786-1635

I AM VERY UPSET OVER YOUR ATTACHMENT OF SB 467 TO SB 78. MY UNION HAD PLANNED TO TESTIFY ON BEHALF OF SB 467 AND IT WAS WITHOUT PRIOR NOTICE CHANGED TO BE ATTACHED TO SB 78 AND I FEEL THAT IS UNFAIR. I WOULD THEREFORE LIKE THE HEARING TO PROCEED AS SCHEDULED.

FROM 3/1/84 FLORENCE, ANC LIO MSG 19584

TO: ALL LEGISLATORS

FROM: MRS. PATRICIA NICHOLS
8324 DUBEN
ANCHORAGE, AK 99504
(H) 337-8502

WE BOUGHT A NEW CAR TWO MONTHS AGO AND IT'S BEEN IN THE GARAGE TWELVE TIMES. I HAS SEVEN NEW PARTS. WE HAVE HAD IT HOME LESS THAN ONE WEEK. WE ARE IN AN OBLIGATION TO THE COMPANY TO GET IT FIXED. THERE'S NOTHING WE CAN DO ABOUT IT.

EOM

MSG 04-00015693 PRY 1 03/01/94 14:33:45 ORIG: LA94 IN= 0004 OUT= 0138
FROM: DAVE/AND LIO TC: PCM - JNO LIO
TARGET: LJHK SUBJ: PCM

TO: ALL LEGISLATORS.

FROM: MONTE PARISH
POB 773528
EAGLE RIVER, AK 99577
698-9700

MESSAGE: IN REFERENCE TO CSSB 286, I RESIGNED IN MAY 1983, FROM THE POSITION
OF WARRANTYADMINISTRATOR FOR A LARGE GENERAL MOTORS DEALERSHIP
IN ALASKA. HAVING NO PRESENT INTEREST OF ANIMOSITY TOWARDS SAME
I WOULD VOLUNTEER TO YOU ANY INFORMATION OR ANSWERS TO QUESTIONS
RELATING TO THIS ISSUE.

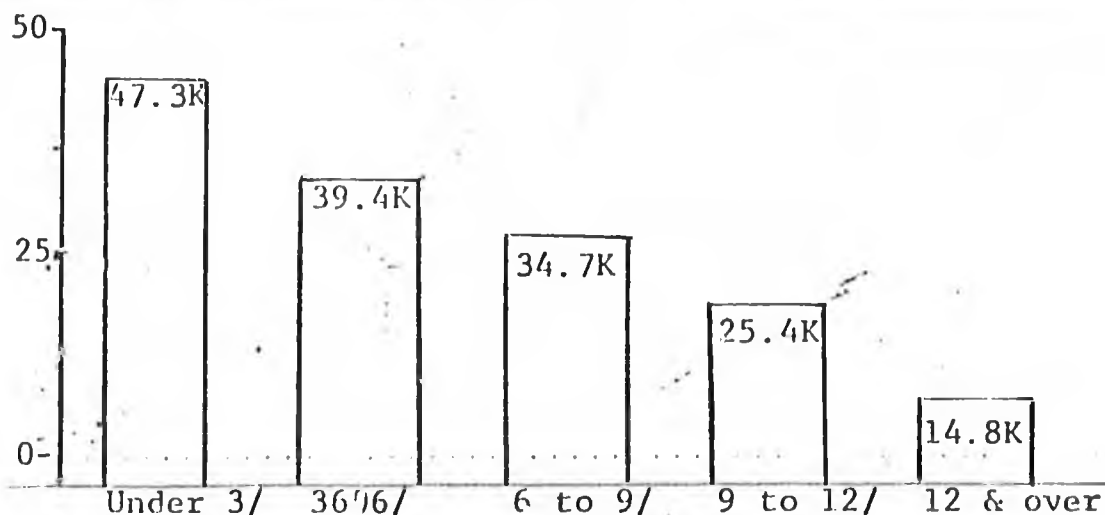
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AGE OF ALASKA'S PASSENGER CAR FLEET
AS OF JULY 1, 1983

Model Year	Age in Years	No. of Vehicles	% of Fleet
1983	Under 1	9,788	5.9
1982	1 - 2	16,859	10.1
1981	2 - 3	17,125	10.3
1980	3 - 4	14,004	7.4
1979	4 - 5	11,956	7.2
1978	5 - 6	13,425	8.1
1977	6 - 7	12,425	7.5
1976	7 - 8	12,252	7.4
1975	8 - 9	10,024	6.0
1974	9 - 10	10,548	6.0
1973	10 - 11	8,091	4.9
1972	11 - 12	6,790	4.1
1971	12 - 13	4,935	3.0
1970	13 - 14	4,037	2.4
1969	14 - 15	3,313	2.0
1968	15 - 16	2,609	1.6
Prior	16 or older	8,435	5.2
		166,606	*100.0

Average age of Alaskan Passenger Car is 6.5 years.

* Due to rounding



Average age of Alaskan Passenger Car is 6.5 years.

Source: Compiled from figures supplied by Motor Vehicle Manufacturers Association and R. L. Polk & Co. Data.

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

REPLY TO
XX 1031 W 4th SUITE 110
ANCHORAGE ALASKA 99501
PHONE (907) 273-0428

151 NATIONAL CENTER
100 CUSHMAN SUITE 400
FAIRBANKS ALASKA 99701
PHONE (907) 456-8588

S.S. FULLER BLDG
4th & HARRIS SUITE 214
POUCHK
JUNEAU ALASKA 99811
PHONE (907) 465-3692

STATE COURTHOUSE ROOM 26
P.O. BOX 671
VALDEZ ALASKA 99686
PHONE (907) 835-2462

February 20, 1984

Senator Richard I. Eliason
Chairman, Senate Labor & Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

Re: C.S. for Senate Bill 286,
incorporating suggestions
of Alaska Automobile
Dealers Association

The new draft of a proposed committee substitute presently before you is the result of the efforts of my staff and the representative of the Alaska Automobile Dealers Association to refine the bill so as to better accommodate the needs of the Alaskan automobile dealers who will, of necessity, be affected by this bill's passage.

Also, with apologies to the committee, and recognizing all of the prior hard labor that has gone into this bill, as these new amendments were added to the bill, in order to maintain clarity, we took the liberty of streamlining the language somewhat, most of which was done by removing some clauses which were repeated throughout the bill, and incorporating them instead into the definitions section. Therefore, I would urge that anyone looking at this new committee substitute first read the definitions.

I.
DEFINITIONS

I would also start my analysis of this draft with a discussion of the definitions. There are now twelve.

First of all, we have included a definition of "dealer" to include only those persons or legal entities holding franchises or retail sale authorization from the manufacturers.

"Distributor" and "manufacturer" have been carefully defined to make it clear that the manufacturer runs the factory producing the cars, and the distributor is someone in the distribution

chain who has the manufacturer's authorization to make wholesale sales of the vehicles.

"Express warranty" has been defined to mean the express written warranty, so that this term did not have to be included throughout the bill.

"Full purchase price" has been defined to include most of the collateral charges taking place at the time of the sale, including any already accrued finance charges. (The committee members should note: both the Automobile Dealers Association and the manufacturers' representatives oppose the inclusion of finance charges, but it was my understanding that the committee wanted finance charges included.)

"Motor vehicle" has been limited to land vehicles, that are purchased primarily for personal-type use. Also, the definition excludes several categories of vehicles normally thought of as off-road or farm vehicles.

An important new definition is of "nonconformity."

"Nonconformity" is a defect or condition which substantially impairs the use or market value of a vehicle and we moved this language from page 1, (b), into the definition section, so as to streamline the many places in the bill where this term occurs. The intent of nonconformity has not changed from prior bill drafts, although the definition more clearly states that the type of nonconformity covered by the bill is only one caused by a manufacturer, distributor, authorized dealer, or repairing agent, and not any nonconformity caused either by the consumer or some third party or circumstance. This was an important change in the mind of the dealers' association which I thought could be accommodated without any harm to the consumer interests.

The definitions of "owner," "substantially impairs the market value," and "substantially impairs the use" have not been changed since previous drafts.

However, debate is still going on over "reasonable allowance." "Reasonable allowance" is to be the amount deducted from a return or replacement of a vehicle for the owner's use. The dealers felt quite strongly that we should delete the language saying that there would be no deduction for the owner's use after the very first report of any nonconformity to the manufacturer or dealer. I agreed to this, but wish the committee to be aware of it, and to alter this decision if it is your desire. Also, the committee should make a final policy choice on how "reasonable allowance" would be calculated. The Automobile Dealers

Association very strongly wishes it to be tied to the IRS method of depreciation, which at this time is a 3-year depreciation. Their less-favored alternative is a 5-year straight line depreciation. On the other hand, our office's auto investigator, Scotty Dawkins, tells me that the average age of vehicles on the road in America today is 6.9 years, from which he and I both derived the idea that from a practical use standpoint, perhaps as opposed to a market value concept, the life expectancy of a vehicle should be around seven years, and that should be the time period for the depreciation deduction. (If a consumer drives a vehicle for 11 months out of the first 12 of the warranty, but at the end of that time still has unrepaired nonconformities, the consumer should not lose more than approximately 1/7th of the purchase price of the vehicle when trading it in, certainly not as much as 20% [1/5th] or even 33 1/3% [1/3rd]). However, the manufacturers' and dealers' representatives disagree strongly with the seven year method.

A new definition the committee has not previously seen is that of "repairing agent." A repairing agent is either an authorized franchise dealer or some other person who has been specifically authorized to do warranty repair by a manufacturer or distributor. The attorney for the dealers' association and myself felt that this definition was necessary to bring within the act those independent repair facilities who are sometimes authorized by a manufacturer to do warranty repairs, and who could cause problems in the chain of events causing a "lemon" vehicle. In addition, if the sections of the bill requiring the manufacturers to expeditiously ship warranty parts to Alaskan dealers passes, a repairing agent authorized by the manufacturer should also be able to get the parts quickly without extra cost to the repairing shop or the consumer. "Repairing agent" is definition 10 on page 6 of this draft.

II.

SUBSTANTIVE PROVISIONS OF THE BILL

The analysis returns to the beginning of the bill. While working on the bill, it seemed that the first two sections of the bill, (a) and (b), contained some fairly confusing language.

Basically, paragraph (a) merely requires manufacturers to live up to their warranties by attempting to repair vehicles. Therefore, at page 1, line 12, it was important that we clarify that in order to receive warranty repair service, the consumer needs merely to "report" the nonconformity either to the manufacturer or to an authorized dealer. This is not the section where a

procedure for written formal notice is necessary, but oral notice or taking the car to the dealer's shop should be sufficient notice. Also, at line 15, the word "original" has been inserted to make it clear that the one-year period covered by this bill starts with delivery to the first owner, even though a subsequent owner might file a claim under the bill.

Subsection (b), starting at page 1, line 18, is the section of the bill which requires a refund or replacement for nonconforming vehicles. You will note that wherever the word "defective" appeared, it has been replaced with "nonconforming." This was considered important by the dealers' association and, I believe, is to the benefit of consumers. (In product liability law, it is very difficult to prove that a vehicle is "defective," and therefore it is better to stay within the language of the statute and just talk about "nonconforming" vehicles.)

Also, you will notice in subsection (b) at line 21, that instead of setting out the substantive definition of nonconformity, the definition is incorporated by reference. This greatly helped the flow of the language of the rest of subsection (b).

At page 1, line 24, you will note that the words "full purchase price" are no longer followed by "including all collateral charges." This is because the term "full purchase price" has been defined in (m) so as to include most collateral charges incident to the purchase. In line 26 again, the word "original" is inserted before "owner" to make it clear that the allowance for use runs from and covers all use from when the vehicle was delivered.

The rest of the changes on page 1, lines 26 through 29, and the top of page 2, lines 1 and 2, were made at the suggestion of the dealers' association to properly cover the interests of lienholders on vehicles. Lines 26 to 28 are not new, but page 1, line 29, through page 2, line 2, now mandate that in the case of a refund, the manufacturer would first extinguish the interests of all lienholders of record, and only then pay the remaining amount to the owner. A consumer could of course go out and arrange for a new loan to finance the purchase of a new car, so that the consumer is not hurt by this language.

Page 2, lines 3 through 20. This is a new subsection (c) which significantly modifies the bill's operation, and deserves the committee's close attention. Many debates have gone on in committee, also between various persons discussing the bill with me, as to exactly how, when, and where consumers should have to give written notice to the manufacturer about a "lemon" car.

Finally, I wrote this new subsection (c), which the dealers' association representative approved, to set out exactly how the consumer has to give notice. This may seem more formalistic than the general reference to "report" made in the previous bill drafts, but in fact it would probably create less work for lawyers and courts to have the notice provisions clearly spelled out. (Also remember that should a consumer somehow fail to make the notice required by this bill, they still have other legal causes of action against the manufacturer for a lemon car, just not the provisions of this bill.)

New subsection (c) states that before consumers can claim a refund or replacement, they must mail to both the manufacturer and to the repairing dealer, within 60 days from when their express warranty or the one-year period from delivery terminates, a written notice. The notice must contain three pieces of information: (1) the fact that the vehicle has nonconformities which are reasonably described, (2) the fact that either the manufacturer, distributor, dealer or repairing agent have made a reasonable number of attempts to conform the vehicle, as those terms are used already in the bill, and (3) that the owner will, on the 30th day after the mailing of the written notice, demand a refund or replacement of the vehicle.

(This new section could be inferred to give the manufacturer and dealer yet another 30 days to satisfy the consumer by making one last attempt to fix the vehicle. If the consumer is still willing to work with the manufacturer and dealer, this is good. If, however, the relationship has become so strained that the consumer sends this notice and does not wish to allow any more repair, this is another outcome that the manufacturers will have to work to avoid in how they run their warranty system. Under this section, the manufacturer has still had the 30 business days during the first year to make repairs, or the four attempts to cure nonconformities per subsection (f).)

Subsection (d) is also a new section which goes along with the formalistic notice requirements of subsection (c). Basically (d) requires the manufacturer to deliver to every original owner a brochure explaining the Alaska lemon law, and how a consumer can use it.

Subsection (e) is the old subsection (c) from the previous draft. The language has been changed slightly at page 2, line 21 so that instead of saying that the manufacturer has a "affirmative defense" to a consumer's claim, it now reads that the consumer will not be entitled to a claim for refund or replacement if, as

set out at line 23, the manufacturer or the distributor "shows" that the nonconformity complained of does not impair use nor market value or is the result of a consumer's abuse or neglect. The dealers' representative and I agree that this new revision better sets out for all parties involved, including arbitrators and the courts, the fact that it is the manufacturer's duty to counteract a consumer's claim for refund by bringing up these two defenses.

Starting at page 2, line 30, subsection (f) is the old subsection (d), which sets out what is going to be the legal presumption about a reasonable number of attempts to repair a vehicle under a warranty. This language has stayed basically the same, with some clarifying amendments and the addition of words such as "original" owner. On page 3, starting at lines 2 through lines 13, we broke the two conditions for a lemon into subparagraphs for clarity of reading.

The committee should note in subparagraph (f)(2), page 3, lines 7 to 13, that we deleted the language previously at page 3, lines 7 through 9, which excluded from the one year period any time during which repair services were not available to the owner for reasons not the responsibility of the owner. (The dealers' representative and I discussed this at great length, and decided that if the intent of the deleted lines was to extend the consumer's warranty by every day that the car was in the shop, that there was really no need to do this in the case of a lemon car, because the consumer was going to be demanding a refund or replacement. I agreed that this term did not really seem necessary in light of the other consumer remedies in this bill.)

Page 3, line 14, subsection (g), is a new section, inserted specifically to meet the concerns of Alaskan dealers. This new subsection requires manufacturers to ship needed warranty repair parts in as quick a manner as reasonably possible at no additional freight charge, if the Alaskan dealer does not have a part in inventory. (This section only covers serious nonconformities as defined in the statute, so it would not require a manufacturer to air freight every brake light or windshield wiper, but only parts necessary to cure substantial nonconformities.) I believe that this would be a great benefit to Alaska consumers and dealers, and I urge the committee to adopt this language. However, I am sure that the manufacturers' representatives may have some disagreement with this stance.

Page 3, lines 21 through 24, subsection (h), has stayed basically the same, and basically makes it an unfair trade practice to refuse to replace or refund the motor vehicle when the manufacturer is required to do so. An addition is to make it also an unfair trade practice for a manufacturer to refuse to reimburse a "lemon" owner's costs for shipping a vehicle for repair or to ship warranty parts quickly to the dealer at no cost.

Page 3, lines 25 through 29, subsection (i), has not been significantly changed except for renumbering, and as the committee desired, requires full disclosure before a returned "lemon" vehicle is resold. However, the subsection now incorporates the dealers' association suggestion that this disclosure requirement only be imposed upon the manufacturer, distributor, or actual repairing dealer so that a innocent used car dealer or private consumer not be required to make this disclosure.

Page 3, line 29, through page 4, lines 1-5. The first part of this subsection (j) was already in the bill, and basically says that the provisions of the lemon law do not limit other rights or remedies available to the consumer. However, at the top of page 4, three new lines have been added to state that the lemon law does not create a new type of legal cause of action against a dealer or repairing agent, who either sells or attempts to repair a nonconforming vehicle. (This was a concern brought up by the dealer's association, and it is one which I believe can be accommodated without significant harm to the consumer. It never appeared to be the intent of the original sponsors of this bill, nor of this committee, to make the lemon law penalties directly apply to dealers. Although we all acknowledge that the dealers will be affected by the bill and their manner of doing warranty work may be altered, this bill was not meant to give consumers new legal rights against the dealer. The dealer is, of course, subject to being sued or complained about under any other existing statutes or common law theories, but just not under the lemon law.)

Page 4, lines 6 through 19, subsection (k), is a reworking of the section regarding repair facility requirements within the state. The committee should note at lines 9 through 13 that the concept of "population centers" has been reinserted in the bill. This section is meant to strongly encourage manufacturers to set up additional repair facilities or to select, train and compensate authorized repair facilities. I believe that the manufacturers' association will have a great deal of concern about this section, and the committee must make the choice.

In the same subsection (k), page 4, lines 13 through 19, we added a section which the committee saw at its last hearing, requiring the manufacturer who actually buys back a "lemon" vehicle to also pay for any shipping costs which the consumer had already incurred for getting the vehicle back and forth to a dealer for warranty work. I urge the committee to adopt this language, since this really makes a fair offset against the reasonable deduction for the consumer's use. It allows consumers who live in Sitka or Bethel, if they initially bear the cost of shipping their motor vehicle back to a dealer for repair, to recover those costs if and when the vehicle is found to be a "lemon." This section would not give all consumers back their shipping costs when, for example, they shipped a vehicle back to the dealership and it was repaired and the vehicle did not become a "lemon." Only when the car is a "lemon" and it is going to be bought back or replaced do these shipping charges get mandatorily added in.

Page 4, line 20, subsection (l) is about the informal dispute settlement procedures. You will note the addition of some new language at lines 23 through 30. The thrust of this amendment was suggested by the dealer's association, so as to allow maximum flexibility. In case the manufacturer does not set-up, in advance, a strict arbitration program under the federal Magnuson-Moss Act (16 C.F.R. 703), but is willing to participate in some other arbitration or mediation process, such as with a local conflict resolution center, or a local better business bureau, as long as that arbitration/mediation process is procedurally fair, and has been approved by the attorney general, there is no reason to limit the manufacturer to only using 16 C.F.R. 703 type of procedures. It is good policy to encourage settlement outside the courts and I believe this is a good change.

However, since subsection (l) requires consumers to go through this arbitration/mediation process before litigating, I wanted to make sure that manufacturers could not stall the consumer by negotiating for months and then suddenly offering to go to arbitration, delaying the consumer's right to go on to court. Therefore, I have inserted a requirement that once the owner sends the 30-day notice that they are going to claim a refund or replacement, if the manufacturer then offers to the consumer in writing to participate in an arbitration/mediation process which has been approved by the attorney general, then the consumer is bound to try this method of informal settlement before getting a refund or replacement or getting their shipping costs replaced as paid in subsection (k).

One more major change to the bill, which is significant by its absence is the deletion of the former subsection (j), which had set out the time limits of when consumers could file a court cause of action for a failure to refund or replace by a manufacturer. The dealers' representative and I had significant discussion over this point, and decided that since subsection (h) of this present draft makes the failure to refund or replace an unfair trade practice, that the statute of limitations in that other statute is sufficient. As the draft stands before the committee today, consumers have up to the length of their express warranty or one year from delivery, whichever comes first, plus 60 days, to give written notice to the manufacturer that they intend to file a claim within 30 days. Then at 30 days (this is now up to as much as one year and three months), the consumer can demand the refund or replacement. If the manufacturer offers to go to an approved mediation or arbitration process, the consumer has to go through that process. If the arbitrators award a refund or replacement, and then the manufacturer refuses to follow the award, the manufacturer would at that time be committing an unfair trade practice, and a consumer would have two years to file a lawsuit under the private cause of action section of the Unfair Trade Practices Act, AS 45.50.531(f). Similarly, if the manufacturer does not offer to go to arbitration, they would be "refusing" the consumer's claim and the unfair trade practice two-year filing limit of .531(f) would start to run.

III.

MATTERS OF CONTINUING DEBATE BETWEEN THE ATTORNEY GENERAL'S CONSUMER PROTECTION SECTION AND THE DEALERS' ASSOCIATION

I believe that the committee draft before you reflects a substantial agreement between the Attorney General's Consumer Protection Section and the dealers' representatives. However, there remain several areas of major disagreement, including specifically:

1. The length of time or depreciation method for calculating the "reasonable allowance" deduction for a consumer's use of a nonconforming vehicle. The dealers would prefer the IRS method, which is now three years, or at the longest, five years. Consumer Protection urges that seven years more accurately reflects the amount of time consumers can expect the vehicle to be useable.

2. The dealers' association, like the manufacturers' representatives, strongly disagree with subsection (b) at page 1, line 23, where the "lemon" vehicle is to be replaced by a "new, comparable" vehicle. They wish the word "new" to be deleted. This committee rejected such a proposal at its 1/31/84 hearing on the bill. The dealers and manufacturers feel that if a consumer-owner of a "lemon" drove the vehicle for nearly a year, or drove very hard, or damaged, or maintained it poorly, the replacement car should only be "comparable," but not necessarily "new." I understand their concern, but giving the "lemon" owner a comparable used car and also deducting a "reasonable allowance" for the owner's use of the "lemon" would be an unjust "double-whammy" against the consumer. (Further, if the owner of a "lemon" were thus penalized, the owner ought to be able to collect consequential damages such as lost wages, taxi or rental car fees, from the manufacturer.)

If the committee feels inclined to compromise further on this point, I would suggest a moderate amendment to the definition of "reasonable allowance," to read:

(m)(9) "reasonable allowance" means an amount attributable to all owners use of a motor vehicle since its delivery to the original owner. A "reasonable allowance" on a vehicle which has been the subject of only normal wear and tear by the owner may not exceed an amount equal to the depreciation in value of the vehicle for the period during which the vehicle is available for use by the owner, calculated by a straight line depreciation method over seven years.

3. The Dealers' Association would prefer that this bill only cover vehicles sold by authorized franchise dealers within the State of Alaska. This would mean that a car sold by a franchise dealer in Texas and then moved to Alaska within the warranty or one-year period would not be covered by the statute. This would also mean that cars sold by dealers in the Pacific Northwest and shipped directly to Alaskans would not be covered by the bill. I do not support this proposed limitation of the bill.

The committee should note that under this draft in front of you, the bill has already become somewhat limited in that when a new vehicle is sold to an Alaskan by a dealer who does not have franchise authorization, then the consumer will not be covered by this bill if that non-franchise dealer causes the nonconformity defect to the vehicle. If the consumer buys from a non-franchise dealer, but then takes the vehicle to a properly authorized dealership for repair, the consumer should be covered for repairs

and for any lemon condition caused by the original manufacturer or by the authorized repairing dealer. However, I can contemplate some occasions where both manufacturer and repairing dealer would argue that a defect or nonconformity condition was caused by the improper setup or preparation of the vehicle by the non-franchise seller.

IV.
REMAINING AREA OF POSSIBLE AMBIGUITY

When I agreed to delete the words "including collateral charges" from subsection (b) at page 1, line 25, I did so because I believed the committee meant "collateral charges" to be only those additional costs incidental to the original purchase of the vehicle (which costs are in this draft included in the definition of "full purchase price.")

However, the committee members may wish to compensate "lemon" owners for a different type of "collateral charges," somewhat like consequential damages. These "collateral charges" could include costs incurred by the consumer directly due to the nonconformities of a "lemon," such as: taxi fares, rental car fees, towing charges, telephone calls. If this is the desire of the committee, I propose the addition of a definition to read:

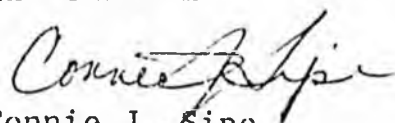
(m)(3) "collateral charges" means those additional charges or expenses incurred by the owner of a non-conforming vehicle, not part of the purchase price of the vehicle, which may include, but are not limited to, expenses for replacement transportation, towing, and long-distance telephone calls to the manufacturer, distributor, dealer or repairing agent.

I believe the manufacturers' representatives and the dealers' association would not support this additional amendment, but I wanted to be sure we all understood the intent of the committee.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Connie J. Sipe
Assistant Attorney General
Chief, Consumer Protection
Section

/aw

Attachment

cc Senator Bill Ray
Representative Mike Miller (Juneau)
Art Peterson, Department of Law
Norman Gorsuch

MOTOR VEHICLE MANUFACTURERS ASSOCIATION
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LEE A. IACOCCA, *Chairman*
V. J. ADDUCI, *President and Chief Executive Officer*
THOMAS H. HANNA, *Senior Vice President*

June 17, 1983

Laura Fleming
Senate Labor & Commerce Committee
Alaska State Capitol
Pouch V
Juneau, Alaska 99811

Re: SB 286

Dear Laura:

Please find listed below some key provisions which we feel should be included in any realistic lemon car legislation. It is somewhat difficult to specifically comment since I have not seen the amended version of the proposed SB 286. As I indicated, we have opposed this type of legislation in the past.

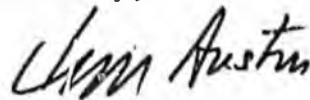
The following, though, are priority issues:

1. Manufacturer Notification - includes the provision that manufacturers are liable only if they have received direct notification from the consumer and are given an opportunity to repair.
2. Nonconformity Definition - includes a statement that the nonconformity substantially impairs the use and market value of the vehicle.
3. Miscellaneous - excludes unique and unusual provisions (e.g., statements which absolve dealers of any responsibility, extend the manufacturer's express warranty, identify components and systems which impair use and value, etc.).
4. Prerequisite - includes the prerequisite that the consumer must use an informal dispute mechanism meeting Federal Trade Commission regulations under Part 703 if available from the manufacturer (Ford Consumer Appeals Boards, i.e., Better Business Bureau, Chrysler Consumer Satisfaction Board).
5. Replacement Criteria - allows the manufacturer to deduct a reasonable allowance for use prior to first report and time not out of service for repair of the nonconformity.

6. Repair Attempts - defines reasonable as four or more repair attempts or vehicle out of service for 30 business days. This may create serious complications due to uniqueness of Alaska.
7. Timeframe - includes a provision that the law is applicable during the express warranty or 12,000 miles or for one year, whichever comes first after delivery date.
8. Affirmative Defense - includes a statement that it is an affirmative defense that the nonconformity does not impair use and market value or is caused by neglect, abuse, unauthorized modifications or alterations by the consumer.
9. Affected Vehicles - applies to passenger motor vehicles as defined by state statutes, purchased for other than resale and normally used for personal, family or household purposes (should exclude motorcycles, motor homes, off-road vehicles). Also, in the event the manufacturer must refund the purchase price or replace the vehicle, the replaced vehicle must be returned to the manufacturer or dealer.
10. Effective Date - this act applies to those vehicles purchased subsequent to the implementation of this act.

I look forward to receiving the amendments to SB 286 and will call you Tuesday afternoon, June 21. This is an issue that we are extremely concerned about and if the Alaska Legislature does find they need to pass this type of legislation, we want to make sure it is in fact workable and will provide the consumer with an effective remedy.

Sincerely,



James W. Austin
Public Affairs Manager
Pacific Coast Region

JWA/eb

Senate passes 'lemon law' bill

Associated Press

Juneau — A proposed "lemon law" that would require manufacturers to issue refunds for cars under warranty if they can't be repaired after three tries was sent to the House on Wednesday.

The measure sped through the Senate, 20-0, after Sen. Dick Eliason, R-Sitka and chairman of the Senate Labor and Commerce Committee, said it would "allow Alaskans to recover their loss if they find themselves owning vehicles that can't be fixed."

"This means strong, new protection for consumers . . . when they make the second largest purchase of their lives — the purchase of a new automobile," Eliason said. "This might not be the total vehicle to solve (consumer) problems, but it will certainly get us down the road."

Under the bill, if dealers fail to correct a serious defect in a new vehicle after three attempts, or if a car has spent more than 30 working days during the warranty period undergoing repairs, then it would be considered a "lemon" and the manufacturer would have to refund the purchase price — less depreciation.

A manufacturer or distributor failing to refund the purchase

price of a car when there is a requirement to do so would be "presumed to have committed an unfair trade practice" under the bill, sponsored by Sen. Bill Ray, D-Juneau.

Such a violation means that a consumer could file suit asking for a refund, replacement or triple damages if subject to a willful refusal, said Connie Sipe, an assistant attorney general and chief of the Consumer Protection Section, who has been testifying in support of the bill.

"It could also mean that if manufacturers would start getting into the habit of waiting six months to send refund checks, the attorney general's office could file under the Uniform Trade Practices Act," she said Wednesday from her Anchorage office.

A similar bill was introduced in the House last year by Rep. Mike Miller, D-Juneau, but that was before the dealers were able to organize and begin lobbying for changes in the legislation, Sipe said.

"The bill is similar but has not had the industry compromises worked into it like the Senate bill," she said. "I hope it will make a difference (for passage) in the House."

House Speaker Joe Hayes, R-Anchorage, said "support for the Senate bill looks good." The House probably will act on the Senate measure, Hayes said, instead of dealing with Miller's bill, which has been in the House Labor and Commerce Committee since last March.

Anchorage Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

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'Lemon law' gives car-buyers a break

Consumerism progresses in fits and starts in Alaska — but sometimes advances are made. The Alaska Legislature is on the verge of such an advance this year with its so-far-favorable consideration of a "lemon law" requiring auto manufacturers to back up their products.

Considerable compromise went into the bill before it gained approval of the pertinent Alaska Senate committee last week, but what emerged appears to be useful. The bill requires manufacturers to issue refunds for cars sold in Alaska and still under warranty if this cannot be repaired after three tries. If dealers fail to correct a serious defect in a new car after three attempts, or if a car has spent more than 30 working days undergoing repairs, the manufacturer must fix the car or refund the purchase price.

Automobile buyers in Alaska already "pay the freight" — in a number of ways — for their isolation from the manufacturers when they purchase a vehicle. Shipping and handling charges to obtain delivery in Alaska often are only part of the problem. Dealers who struggle with high labor and inventory costs are therefore likely to charge high local markups. Service departments encounter delays in procuring parts and supplies, not to mention employee turnover in a highly transient community — and ultimately the consumer pays, in money and inconvenience. Small local inventories can mean major delays in getting desired styles, colors and models when the consumer goes shopping.

Having run all those costs and risks, the Alaska car buyer deserves legal recourse and some satisfaction if a car under warranty turns out to be a mechanical monster. The "lemon law" aims to provide just that. It ought to be enacted as promptly as possible.

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Strickland, Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1987 to 1991

Alaska's Only Morning Newspaper • Founded in 1946 by Norman C. Brown

Repair law would offer 'lemon aid'

It's called the lemon law, but it sounds sweet to Alaskans stuck with new cars that scream out — and out and out — for repair. Now before the Senate Labor and Commerce Committee, SB 286 sets specific standards for determining when a car can officially be declared "a lemon," and lays some legal groundwork for resolving habitual car repair hassles.

In doing so, it promises to put some teeth into the express warranties offered by manufacturers as part of virtually every new car package.

SB 286 stipulates that if new-car dealers fail to correct a serious defect after four attempts, or if a car has spent more than 30 working days under repair, manufacturers must replace the car or refund the purchase price. The law would apply only to those defects covered under new-car warranties, and only during the first year of ownership.

Although real duds comprise only a small fraction of the automobiles sold in this country, anyone who has ever suffered the maddening outrage of repeated — futile — attempts to rectify a warranty-covered problem will appreciate the need for some firm guidelines for all concerned.

Not surprisingly, some opposition to the measure has been voiced by some local automobile dealers. Although the dealers say they don't oppose the concept of the law itself, they fear they will be caught between such a law and manufacturer-caused delays they have no control over. They claim that much of the delay with auto repairs in the 49th state can be placed at the hands of the manufacturers themselves — who air-freight parts for warranty repairs to every state except Alaska. (If Alaskans want parts air-freighted, they must pay the additional cost.) The dealers also claim manufacturers are loathe to reimburse them fully for the higher cost of doing warranty repairs in Alaska.

Although we can sympathize with the dealers' often frustrating long distance role in the new car equation, they represent the front line of automobile responsibility to consumers. They are the people who sell the cars; they must shoulder the responsibility to stand behind the cars they sell.

The Consumer Protection Division of the Attorney General's Office receives more complaints each year about warranty-related problems than any other consumer problem. And, as Attorney General Norm Gorsuch put it, "If prodding a recalcitrant manufacturer to fix a problem car is difficult for the dealer, that difficulty is magnified ten-fold for the consumer." It shouldn't be. A car is one of the major purchases most people make in their lifetimes, second only to a home.

So far, 18 states have passed lemon laws. Another seven states are now considering them. Alaskans pay more for their cars than anyone else; they have the right to expect those cars to last for a while — at least long enough to celebrate their first birthday.

SENATOR RICHARD I. ELIASON
Pouch V
Juneau, Alaska
#99811

Dear Senator Eliason:

Reference the Lemon Law

First thank you very much for your help and aid to All Alaskan Consumers regarding the second most expensive purchase a consumer makes.

PLEASE CORRECT AND OR ADD TO THE LEMON LAW, SO THAT THERE ARE NO LOOP-HOLES AND THE LAW WILL BE AN EFFECTIVE INSTRUMENT.

Page 5; (6) "Reasonable Attempts"

(A) Shall be limited to no more than three (3) attempts.

Page 5; (7) "Time period of repairs"

(A) Manufacturer, Dealer/Seller shall work to complete repairs as time is of the essence.

Page 5; (8) "Not an affirmative Defense"

- (A) Repairs of a vehicle which has left driver/owner stranded.
- (B) Repairs of a vehicle that has created or will create a life - health hazard.
- (C) Repair of a vehicle which is beyond a pre-set distance from manufacturers, Dealer/Seller representative or authorized repair station.
- (D) Oil, Gas, Fuel, Air Filters and oil changes when done by owner or repair service facility.

With every vehicle sold, Manufacturer, Dealer/Seller, must provide a complete copy of the UCC - Moss Magnuson, statute of limitations, regarding purchase by consumer of a Motor Vehicle.

Alaska State Attorney Generals Office:

- (A) Has the responsibility and authority to monitor any and or all arbitration procedures and results thereof.
- (B) Has the responsibility and authority to issue an injunction against a Manufacturer, Dealer/Sales outlet, which attempts to sell and or service motor vehicles which do not conform to advertisements or statements made to consumers, which vehicles may be classified by law as "Lemons".
- (C) Has the responsibility and authority to cancel Business Licenses of natural and foreign corporations, which are found guilty of doing business against Public Policy, Public Safety and against Public Economic good.

The enclosed copies and documentation are provided as proof that there are indeed abuses of the Alaskan and U.S. consumers which consumers, need the full protection of the law to put the consumer on an equal footing with giant Business Merchants, against whom the average consumer is but a blade of grass in a forest.

Thank you for your help and efforts in this very important matter:

Sincerely Yours;

Robert A. Byers

Robert A. Byers
P.O. Box 865
Soldotna, Alaska
#99669
(907) 262-9860

Automotive News

May 30, 1983

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"When you bring it back
for the fourth time with
the same complaint, we
call pest control."



Section Analysis of CSSB 286 (2/23/84 version)

Subsection (a)

If a new vehicle does not conform to an express warranty, the manufacturer must make the necessary repairs. No time limitation is mentioned in this section. It merely requires the manufacturers to honor their own express warranty for whatever term they give it (1 to 5 years, or by mileage limits).

Subsection (b)

If the manufacturer is unable to repair a nonconformity vehicle within one year, the manufacturer must accept the return of the car and shall refund the full purchase price to the consumer.

Subsection (c)

This section clarifies exactly how and when a consumer must give notice to the manufacturer that the consumer believes he or she has a lemon car for which a refund is requested.

Subsection (d)

This section, following the lemon laws in the states of Massachusetts and California, requires the manufacturer to deliver some type of explanation to all new owners of vehicles about their rights under the lemon law.

Subsection (e)

This section states that an owner may not receive a refund if the manufacturer can show that the nonconformity does not impair the use or value of the vehicle or that the nonconformity is the result of alteration or abuse by the owner or a person other than the repairing agent.

Subsection (f)

A vehicle is considered a "lemon" if the same nonconformity has been subject to repair four or more times within a one-year period or if the vehicle has been in the repair shop for a total of 30 or more business days during the one-year period.

Subsection (g)

A manufacturer must provide its dealers with any part necessary to make repairs of a nonconformity covered under the warranty as soon as reasonably possible without additional charge for freight or handling.

Subsection (h)

Under this subsection, a manufacturer who fails to refund the purchase price of a "lemon" is "presumed to have committed" an unfair trade practice. "Presumed to have committed" sets out a legal presumption which the manufacturer can then rebut by showing the courts that the manufacturer had some valid reason (when applicable).

Subsection (i)

This subsection states that when a "lemon" is resold, a full disclosure of the reason for the return must be made to the prospective buyer.

Subsection (j)

This bill does not limit the rights of a vehicle owner as stated in other provisions of law.

Subsection (k)

This subsection requires manufacturers to retain repair facilities within the state, able to service the vehicles they sell.

Subsection (l)

Once a "lemon" car has been returned to the manufacturer for a refund, the manufacturer must compensate the owner for all reasonable costs which the owner incurred in shipping the vehicle back and forth from the nearest authorized repair facility for warranty service.

Subsection (m)

This subsection allows the manufacturer to use any arbitration or mediation process, even if the manufacturer has not set up in advance a Magnuson-Moss type (16.C.F.R. 703) informal dispute settlement procedure. In all cases, the attorney general must approve the process and the arbitration decision must be binding on the manufacturer but not on the owner. This subsection insures that as many of these lemon law disputes as possible will stay out of the court system, and that both consumer and manufacturer will be encouraged to use informal settlement processes.

Subsection (n)

The definition section outlines the specific meanings of terms used in this legislation. Note should be taken of the following definitions:

Subsection (n) (4) - "full purchase price" includes all fees paid at the time of the sale, including finance charges.

Subsection (n) (6) - "motor vehicle" includes land vehicles with four wheels "normally" used for personal, family or household purposes.

Subsection (n) (9) - "reasonable allowance" is set at a sum which will include no more than straight-line depreciation figured over seven years, plus, when applicable, an amount for depreciation in value of the vehicle caused by neglect or abuse by the owner.

TELECOPY COVER SHEET

TO: Lee Ridgeway / Tim Austin PHONE: (916) 443-2100 ^{GM.}

FROM: Sen Eliason PHONE: _____

INSTRUCTIONS: please give to Tim Austin

RECEIVED: DATE _____ TIME _____

SENT: DATE 2/20/84 TIME 8:50

DISPOSAL OF ORIGINAL: THROW AWAY ☒ HOLD FOR PICK UP _____

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Original sponsor: Ray by request

IN THE SENATE

BY THE LABOR & COMMERCE
COMMITTEE

CS FOR SENATE BILL NO. 286 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to motor vehicle warranties."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45.45 is amended by adding a new section to read:

ARTICLE 6. MOTOR VEHICLE WARRANTIES.

Sec. 45.45.300. MOTOR VEHICLE WARRANTIES. (a) If a new motor vehicle does not conform to an express warranty that is applicable to it and the owner of the vehicle reports the nonconformity to the manufacturer of the vehicle or to the manufacturer's or distributor's ~~repairing~~ dealer during the term of the warranty or within one year after the date of delivery of the motor vehicle to the original owner, whichever period terminates first, the manufacturer, distributor, ~~or~~ its dealer ^{or repairing agent} shall make the necessary repairs to conform the vehicle under the express warranty.

(b) If the manufacturer, distributor, ~~or~~ its ^{dealer or} ~~repairing~~ ^{agent} dealer is unable to conform the motor vehicle under an applicable express warranty under (a) of this section after a reasonable number of attempts, and the vehicle is nonconforming due to a nonconformity as defined in (m), the manufacturer or distributor shall accept the return of the nonconforming motor vehicle, and shall replace the motor vehicle with a new, comparable motor vehicle, or refund the full purchase price to the owner, less a reasonable allowance for the use of the motor vehicle from the time it was delivered to the original owner. If the motor vehicle is replaced under this subsection, the owner shall insure that the interests of all lienholders are properly protected and transferred to the replacement vehicle. A refund under this subsection shall first be made to

1 all lienholders of record to extinguish their interest in the motor
2 vehicle, and any remaining amount shall be paid to the owner.

3 (c) To claim a refund or replacement under this section, the owner
4 shall give reasonable written notice, mailed to the manufacturer and to the
5 repairing dealer, within 60 days of the expiration of the express warranty
6 or the one-year period from the date of delivery of the motor vehicle to
7 the original owner, whichever period terminates first, which notice states
8 that:

9 (1) the vehicle has one or more nonconformities which are
10 reasonably described in the notice;

11 (2) the manufacturer, distributor, ~~or~~ repairing dealer ^{overseer agent} have
12 already made a reasonable number of attempts to conform the vehicle, as a
13 reasonable number is defined in (f) of this section; and

14 (3) The owner intends to demand a refund or replacement on the
15 thirtieth day following the mailing of the written notice.

16 (d) The manufacturer or distributor shall cause to be delivered to
17 every original owner of a vehicle a separate written brochure explaining in
18 clear and conspicuous language the procedures by which an owner may assert
19 a claim for refund or replacement under this section.

0 (e) An owner is not entitled to a claim made pursuant to subsection
1 (b) of this section for a replacement motor vehicle or a refund if the
2 manufacturer or distributor shows that the nonconformity complained of:

3 (1) substantially impairs neither the use nor the market value of
4 the motor vehicle; or

5 (2) is the result of abuse, neglect, or alternation of the motor
6 vehicle, not authorized by the manufacturer or distributor, by the owner or
7 any other person other than the repairing dealer.

8 (f) A presumption that a reasonable number of attempts have been
9 undertaken to conform a motor vehicle under an applicable express

warranty is established if:

(1) the same nonconformity has been subject to repair four or more times by the manufacturer, distributor, ~~or repairing dealer~~ ^{or repairing agent} during the term of express warranty or the one-year period after delivery of the motor vehicle to the original owner, whichever period terminates first, but the nonconformity continues to exist; or

(2) the vehicle is out of service for repair for a total of thirty or more business days during the express warranty term or the one year-period referred to in (1) of this subsection, whichever period terminates first. Any period of time that repairs are not performed for reasons which are beyond the control of the manufacturer, distributor, ~~or dealer~~ ^{agent} ~~the repairing dealer~~ is excluded from the 30-day time period referred to in (2) of this subsection.

(g) Any manufacturer whose vehicles are sold in the state through an authorized dealer must provide to its dealer ^{or repairing agent} any part necessary to effect a repair covered under an express warranty, in as quick a manner as is reasonably possible, at no additional charge for freight or handling, if the necessary part is not in the dealer's ^{or agent's} inventory when the nonconformity is brought to the ~~dealer~~ ^{dealer or agent} repairing dealer for repair.

(h) A manufacturer or distributor who refuses to replace or refund the purchase price of a motor vehicle when there is a requirement to do so under this section commits an unfair trade practice under AS 45.50.471.

(i) A motor vehicle returned under (b) of this section may not be resold by the manufacturer, distributor or repairing dealer unless full disclosure of the reasons for the return is made to the prospective buyer before the resale is concluded.

(j) The provisions of this section do not limit other rights and remedies that may be available to the owner of a motor vehicle under other

provisions of law. Nothing in this section shall be construed to create a
new cause of action against a dealer^{or repairing agent}who either sells or attempts to repair
a motor vehicle found to be nonconforming under this section.

(k) A manufacturer or distributor of motor vehicles sold in the state
shall maintain repair facilities within the state that are able to perform
the service and make the repairs required by the manufacturer's express
warranty and by this section. In lieu of establishing a repair facility in
each community in the state with a population greater than 7,500 persons, a
manufacturer or distributor may pay the actual costs of shipping a motor
vehicle to and from the nearest authorized repair facility for warranty
service and repairs of a nonconformity. A manufacturer or distributor who
accepts the return of a nonconforming motor vehicle under this section
shall reimburse the owner of the motor vehicle for the costs of shipping
the motor vehicle to and from the nearest authorized facility
for warranty service and repair of the nonconformity or nonconformities which
use the return of the nonconforming motor vehicle to the manufacturer or
distributor.

(l) If a manufacturer or distributor has established an informal
dispute settlement procedure which substantially complies with the
requirements of 16 C.F.R. 703, as that section may be amended, or if the
manufacturer or distributor, after receipt of the owner's notice as
required in (c), offers to the owner, in writing, to participate in an
arbitration or mediation process, the decisions of which are binding on the
manufacturer or distributor but not on the owner, and if the informal
dispute settlement or the arbitration or mediation process is approved by
the attorney general, then the provisions of (b) of this section concerning
refund or replacement or of subsection (k) concerning shipping costs do not
apply to an owner who has not first resorted to the informal dispute

1 settlement procedure or to the arbitration or mediation process offered to
2 the owner by the manufacturer or distributor.

3 (m) In this section,

4 (1) "dealer" means a person, as defined in AS 01.10.060, who has
5 obtained a franchise from, or is authorized by a motor vehicle manufacturer
6 to engage in the retail sale ^{and repair} of the manufacturer's new motor vehicles in
7 the state;

8 (2) "distributor" means a person, as defined in AS 01.10.060,
9 authorized by a manufacturer to engage in the wholesale distribution of the
10 manufacturer's new motor vehicles.

11 (3) "express warranty" or "warranty" means an express written
12 warranty provided by the manufacturer of a new vehicle;

13 (4) "full purchase price" means the total price paid for the
14 vehicle by the original owner, including but not limited to all costs added
15 to the manufacturer's suggested retail price, such as original registration
16 fees, transportation fees, dealer preparation, dealer installed options,
17 and accrued finance charges;

18 (5) "manufacturer" means a person, as defined in AS 01.10.060,
19 which by labor transforms raw materials and component parts into motor
20 vehicles for wholesale or retail sale;

21
22 (6) "motor vehicle" or "vehicle" means a motor land vehicle,
23 having four or more wheels, which is self-propelled by a mechanical motor,
24 that is purchased primarily for personal, family, or household purposes,
25 and which is required to be registered under AS 28.10; but not including
26 mopeds, scooters, motorcycles, tractors, farm vehicles or vehicles designed
27 primarily for off-road use;
28
29

1 (7) "nonconformity" means a defect or condition in a motor
2 vehicle caused by a manufacturer, distributor, dealer or repairing dealer
3 which substantially impairs the use or market value of a vehicle.

4 (8) "owner" means a purchaser, other than for resale, of a new
5 motor vehicle, and a person to whom ownership of the motor vehicle is
6 transferred in conformity with AS 28.

7 (9) "reasonable allowance" means an amount attributable to an
8 owner's use of a motor vehicle. A "reasonable allowance" may not exceed an
9 amount equal to the depreciation in value of the vehicle for the period
0 during which the vehicle is available for use by the owner, calculated by a
1 straight line depreciation method over seven years.

2 (10) "repairing ^{agent} ~~dealer~~" includes a "dealer" as defined above or
3 other person, ^{as defined in AS 01.10.060,} who has been specifically authorized by a motor vehicle
4 manufacturer or distributor to perform warranty repairs to ^{one or} ~~the~~ ^{more}
5 ^{of the} manufacturer's ^{or distributor's} motor vehicles in the state;

6 (11) "substantially impairs the market value" means a
7 nonconformity in a vehicle which decreases the dollar value of the vehicle
8 to the owner when compared to the dollar value of a similar vehicle that
9 does not have such a nonconformity;

10 (12) "substantially impairs the use" means a nonconformity in a
11 vehicle which prevents the vehicle from being operated or makes the vehicle
12 unsafe to operate.

Original sponsor: Ray by request

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 CS FOR SENATE BILL NO. 286 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to motor vehicle warranties."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 45.45 is amended by adding a new section to read:

9 ARTICLE 6. MOTOR VEHICLE WARRANTIES.

10 Sec. 45.45.300. MOTOR VEHICLE WARRANTIES. (a) If a new motor vehicle
11 does not conform to an express warranty that is applicable to it and the
12 owner of the vehicle reports [GIVES A REASONABLE NOTICE OF] the
13 nonconformity [IN WRITING] to the manufacturer [OR DISTRIBUTOR] of the
14 vehicle [OR THE AGENT OF THE MANUFACTURER OR DISTRIBUTOR] or [AND] to the
15 manufacturer's [OR DISTRIBUTOR'S] selling dealer or if not the same, the
16 repairing dealer during the term of the warranty or within one year after
17 the date of delivery of the motor vehicle to the owner, whichever date is
18 earlier, the manufacturer, [DISTRIBUTOR, AGENT] or its dealer or agent
19 shall make the necessary repairs to conform the vehicle under the express
20 warranty.

1 (b) If a manufacturer, or its dealer or agent [DISTRIBUTOR, AGENT, OR
2 DEALER] is unable to conform the motor vehicle under an applicable express
3 warranty, under (a) of this section after a reasonable number of attempts
4 and the nonconformity is a defect or condition that substantially impairs
5 the use or market value of the motor vehicle to the owner, the manufacturer
6 or distributor shall accept the return of the nonconforming [DEFECTIVE]
7 motor vehicle and shall replace the motor vehicle with a new, comparable
8 motor vehicle, or refund the full purchase price to the owner, including
9 all collateral charges less a reasonable allowance for the use [CONSUMER'S

1 USE] of the motor vehicle from the time it was delivered to the original
2 owner. A refund under this subsection shall be made to the owner and to
3 all lienholders as their respective interests appear. If the motor vehicle
4 is replaced under this subsection, the owner shall ensure that interests of
5 all lienholders are properly protected and transferred to the replacement
6 vehicle. To claim a refund or replacement under this section, the owner
7 shall give reasonable written notice to the manufacturer and to the
8 repairing dealer which states that:.

9 (1) the vehicle is nonconforming to its warranty and a reasonable
10 description of the nonconformity;

11 (2) the manufacturer or its agent have already made a reasonable
2 number of attempts to conform the vehicle, as a reasonable number is
3 defined in (d) of this section; and

4 (3) ~~that~~ the owner intends to claim a refund or replacement on
5 the thirtieth day following the mailing or personal delivery of the written
6 notice.

7 (c) It is an affirmative defense to a claim made under (b) of this
8 section for a new motor vehicle or a refund that the nonconformity com-
9 plained of

0 (1) [DOES NOT] substantially impairs neither [EITHER] the use nor
1 [OR] the market value of the motor vehicle; or

2 (2) is the result of abuse, unreasonable neglect, or unauthorized
3 modification or alteration of the motor vehicle by the owner or any other
4 party who is not an official representative of the manufacturer, distribu-
5 tor, agent, or dealer.

6 (d) A presumption that a reasonable number of attempts have been
7 undertaken to conform a motor vehicle under an applicable express warranty
8 is established if (1) the same nonconformity has been subject to repair
9 four or more times by the manufacturer or [DISTRIBUTOR] its dealer or.

1 agent, [OR ITS DEALER] during the term of the express warranty or the
2 one-year period after delivery of the motor vehicle to the owner, whichever
3 period terminates first, but the nonconformity continues to exist; or (2)
4 the vehicle is out of service for repair for a total of 30 or more business
5 days during the express warranty term or the one-year period referred to in
6 (1) of this subsection, whichever period terminates first. The warranty
7 term or the one-year period referred to in (1) of this subsection is ex-
8 tended by any period during which repair services are not available to the
9 owner for reasons that are not the responsibility of the owner. Any period
0 of time that repairs are not performed for reasons that are beyond the
1 control of the manufacturer or the manufacturer's dealer or agent is ex-
2 cluded from the 30-day time period referred to in (2) of this subsection.

3 (e) Any manufacturer whose vehicles are sold in the state through an
4 authorized dealer must provide to its dealer any part necessary to effect a
5 repair covered under an express written warranty, in as quick a manner as
6 is reasonably possible, at no additional charge for freight or handling, if
7 the necessary part is not in the agent's or dealer's inventory when the
8 defect is detected and verified. A system under which an agent or dealer
9 can be reimbursed for the entire freight and handling charges through the
0 normal warranty claims process shall be acceptable under this subsection.

1 (f) [E] A manufacturer which fails [FAILURE] to replace or refund the
2 purchase price of a motor vehicle when there is a requirement to do so
3 under this section commits [IS] an unfair trade practice under
4 AS 45.50.471.

5 (g) [F] A motor vehicle returned under (b) of this section may not be
6 resold unless full disclosure of the reasons for the return is made to the
7 prospective buyer before the resale is concluded.

8 (h) [G] The provisions of this section do not limit other rights and
9 remedies that may be available to the owner of a motor vehicle under other.

1 provisions of law. Nothing in this section shall be construed to create a
2 new cause of action against a dealer who either sells or attempts to repair
3 a motor vehicle found to be nonconforming under this section.

4 (i) [H] A manufacturer [OR DISTRIBUTOR] of motor vehicles sold in the
5 state, which [UNDER] manufacturer['S OR DISTRIBUTOR'S] provides an express
6 warranty for the motor vehicles sold, shall maintain a repair facility
7 within the state that is able to perform the service and make the repairs
8 required by the warranty and by this section. A manufacturer [OR
9 DISTRIBUTOR] may comply with the requirements of this subsection by enter-
0 ing into a warranty service contract with an independent service and repair
1 facility that provides for the manufacturer or distributor to reimburse the
2 facility for all service and repairs that are covered by the written in-
3 dependent service contract. In lieu of establishing a repair facility or
4 entering into a warranty service contract with an independent service and
5 repair facility as required by this subsection, a manufacturer [OR
6 DISTRIBUTOR] may pay the actual costs of shipping a motor vehicle to and
7 from the nearest authorized facility for warranty service and repairs. A
8 manufacturer or distributor who accepts the return of a defective motor
9 vehicle under (b) of this section will reimburse the owner of the motor
0 vehicle for the costs of shipping the motor vehicle to and from the nearest
1 authorized facility for warranty service and repair of the nonconformity or
2 nonconformities which caused the return of the defective motor vehicle to
3 the manufacturer or distributor.

4 (j) [i] If a manufacturer [OR DISTRIBUTOR] has established an informal
5 dispute settlement procedure in the state that has been approved by the
6 attorney general as substantially complying with the provisions of [TITLE]
7 16 C.F.R. [PART] 703, as that section [PART] may be amended, the provisions
8 of (b) of this section concerning refund or replacement do not apply to an
9 owner who has not first resorted to the informal dispute settlement.

1 procedure.

2 (k) [j] a cause of action may not be filed under this section by an
3 owner after the later of the following dates:

4 (1) 12 [18] months after the expiration of the express warranty,
5 or 24 months after the date of delivery of the motor vehicle to the
6 original owner, whichever date is earlier or;

7 (2) six months after a decision [IN] delivered by an informal
8 dispute procedure under (j) [I] of this section.

9 (1) [k] "Manufacturer" shall include a national or regional distr-
0 ibutor which, as an agent of the manufacturer is authorized to engage in
1 the wholesale distribution of the manufacturer's motor vehicles to retail
2 motor vehicle dealers;

3 (2) "motor vehicle" or "vehicle" means a motor vehicle, as
4 defined in AS 28.35.260, that is purchased primarily for personal, family,
5 or household purposes and required to be registered under AS 28.10 or with
6 a governmental agency of another jurisdiction performing a similar
7 function; but not including mopeds, scooters, motorcycles, tractors, farm
8 vehicles or vehicles designed exclusively for off-road use.

9 (3) "owner" means a purchaser, other than for resale, of a new
0 motor vehicle, a person to whom title to the motor vehicle is transferred
1 during the term of an express warranty applicable to the vehicle, or any
2 other person entitled to enforce an express warranty on the vehicle under
3 the terms of the warranty;

4 (4) "reasonable allowance" means an amount attributable to an
5 owner's use of a motor vehicle, not including any period after the owner's
6 first report to the manufacturer, its authorized agent[S], or its
7 authorized dealer[S], of a nonconformity covered by an express warranty
8 that puts the vehicle out of service. A "reasonable allowance" under this
9 section may not exceed an amount equal to the depreciation in value of the

1 vehicle for the period during which the vehicle is in service, calculated
2 by a straight-line depreciation method over seven years;

3 (5) "dealer" means a person who has obtained a franchise from or
4 is authorized by a motor vehicle manufacturer to engage in the retail sales
5 and repair of new motor vehicles;

6 (6) "express written warranty" or "warranty" means an express
7 written warranty provided by the manufacturer of a new motor vehicle;

8 (7) [6] "substantially impairs [EITHER] the use" means [OR THE
9 MARKET VALUE" REFERS TO] a defect or condition in a vehicle that (a)
0 prevents it from being operated, or makes it unsafe to operate;

1 [(C) DECREASES THE DOLLAR VALUE OF THE VEHICLE TO THE
2 OWNER.]

3 (8) "substantially impairs the market value" means a defect or
4 condition in a vehicle which decreases the dollar value of the vehicle to
5 the owner when compared to the dollar value of a similar vehicle that does
6 not have such a defect or condition;

7 (9) "full purchase price" means the total price paid for the
8 vehicle by the original purchaser including all costs added to the
9 manufacturer's suggested retail price, including but not limited to dealer
0 preparation charges and dealer installed or sold optional accessories or
1 services;

2 (10) [9] "collateral charges [COSTS] means those additional
3 charges or expenses incurred by a consumer not directly attributable to the
4 purchase price of the motor vehicle, which may [SHALL] include but are not
5 limited to charges for registration fees, towing, replacement
6 transportation costs and [TITLE FEES, BUT DOES NOT INCLUDE] finance charges
7 on the purchase price.

Technical amendments to version #3, 2/21/84:

1. Page 1, line 22, subsection (b), delete the following:

[AND THE NONCONFORMITY CONTINUES AFTER THE REPAIR ATTEMPTS,]

2. Page 2, lines 27-29 subsection(e)(2), amend to read:

"(2) is the result of

(A) alteration of the motor vehicle, by the owner or a person other than a repairing agent, that is not authorized by the manufacturer or distributor;"

3. Page 3, lines 1 through 3, subsection(e)(2) amend to read:

"(B) abuse or neglect, by the owner or a person other than a repairing agent."

[Delete (C)]

4. Page 3, line 21, subsection (g), amend by inserting

"any part necessary to make a repair of a nonconformity covered under an express warranty,"

5. Page 3, line 22, subsection (g), delete word "reasonably," to read:

"as soon as is [REASONABLY] possible, without additional charge"

6. Page 4, line 14, subsection (k), starting "To satisfy...", through line 19:

"To satisfy the requirements of this subsection a manufacturer or distributor may either authorize [ESTABLISH] a repairing agent [FACILITY] in each community in the state with a population of more than 7,500 persons or may pay the actual costs of shipping a nonconformity motor vehicle to and from the nearest authorized repairing agent [FACILITY] for the necessary warranty [SERVICE OR] repairs."

7. Page 6, definition (11), amend:

(11) "substantially impairs the market value" means a nonconformity that substantially decreases the dollar value of a vehicle to the owner when compared to the dollar of a similar vehicle that does not have the conformity;

8. Page 6, definition (10), amend:

(10) "repairing agent" includes a dealer or other person who has been specifically authorized by a motor vehicle manufacturer or distributor to perform warranty repairs in the state on one or more of the manufacturer's or distributor's motor vehicles;

MOTOR VEHICLE MANUFACTURERS ASSOCIATION
of the United States, Inc.

300 NEW CENTER BUILDING • DETROIT, MICHIGAN 48202 • AREA 313-872-4811
1107 Ninth Street, Suite 1030, Sacramento CA 95814

PHILIP CALDWELL, Chairman
V. J. ADDUCI, President and Chief Executive Officer
THOMAS H. HANNA, Senior Vice President

February 20, 1984

The Honorable Richard Eliason
Chairman, Senate Labor & Commerce Committee
Room 417, Capitol Building
Juneau AK 99811

Re: Senate Bill 286 Amendments

Dear Dick:

The comments which we have developed in response to the multiple copies of Version #3 have been very hastily prepared, at best. We hope this will give the committee some feeling of our major concerns with regard to this proposed bill in lieu of our presence. The following is commentary on the third copy of Version #3 of SB 286, dated February 21, 1984.

1. Page 1, Sec. 43.43.300 (a), lines 10 through 18 does not provide for prior written notification to the manufacturer in order that we may look at the nonconforming defect on the vehicle and possibly have an opportunity to cure it.

We feel that the language as outlined in Version #2 of the bill was clearer in that it provided for advance written notification to the manufacturer of the nonconforming defect prior to filing the complaint with the third party dispute mechanism.

2. Page 3, line 16, we would like to see the committee seriously consider concluding section (g) after the word "possible," which deals with additional freight and handling charges.

If the dealer does not have sufficient inventory and the manufacturer must absorb those air freight costs, we feel that is asking a great deal and is somewhat unrealistic. In each situation where the dealer and manufacturer have a contractual Sales and Service Agreement, reference is made to a section on Inventory of Parts and Accessories which states "the dealer will stock sufficient parts and accessories to meet customer demand in order to perform warranty repairs and special policy adjustments."

It is true that the dealers will pay for air freighted warranty parts if the part is not in the dealer's stock. However, the manufacturer does pay for freight when the manufacturer announces a recall or other exceptional cases. The way this section is worded, the dealer could conceivably reduce

The Honorable Richard Eliason

- 2 -

February 20, 1984

his stock to an unrealistically low level. This would be detrimental to the consumer and we do not feel that is good public policy.

In addition, we do not feel this proposed language, which creates further specific responsibilities between the dealer and manufacturer, should be included in the statutes. The requirement to meet the provisions of the express warranty is the responsibility of the manufacturer and the dealer as his agent as it relates to the repairs on this warranty. The dealer is not at risk if the provisions of the proposed statute are not met, which is another reason why we feel this additional language is excessive.

3. Page 4, line 5, following the word "section" add, "except with respect to failure by an authorized dealer to properly effect preparation, installation of options or repairs when such preparation, installation of options or repairs would have prevented the occurrence of or cured a nonconformity."

With the addition of this proposed language, we feel that it would also indemnify the manufacturer if the dealer does not properly perform his responsibility.

4. Page 4, lines 6 through 20 (k), we would like to see this new language omitted from the bill.

The manufacturers are aware of the unique and different problems that exist in Alaska. We also understand that if this bill is passed, the responsibility to conform to the law and provide warranty work and facilities is on the manufacturer. We do not, however, feel that it is appropriate to lay out the guidelines in statute as to how the manufacturer is to meet these responsibilities. Therefore, we would like to see this section omitted.

5. Page 6, line 8, section (9). Again, we object to statutorily determining what a "reasonable allowance" means.

Each customer's set of circumstances is different and unique. We feel this should be left up to the arbitration procedure to make this determination and not have it placed in the statutes.

Basically, these are our primary objections with the proposed amendments in Version #3. We hope if the committee is to act on this issue that they seriously evaluate these concerns. The intent of the proposed legislation is to help the consumer expedite his or her warranty problem and not to be involved in the contractual relationships and responsibilities between the manufacturer and dealer.

Sincerely,



James W. Austin
Public Affairs Manager
Pacific Coast Region

To: Connie Sipe

From: Sheila Peterson

Date: 2/10/84

Attached is the wording proposed by Ralph Seakins, Fairbanks.

Paragraph (i) deals with parts situation

Paragraph (h) is also his concern. I told him it may not be possible. What do you think?

THANKS !!

motor vehicle under other provisions of law.

(h) Any person or entity selling more than three (3) vehicles per calendar year in the State of Alaska which are covered by a manufacturer's or distributor's express written warranty must maintain and operate a warranty repair station, authorized by the manufacturer or distributor, which is fully capable of performing repairs in a timely and professional manner.

(i) Any manufacturer or distributor whose vehicles are sold in the State of Alaska through an authorized dealer, must provide to such dealer any part necessary to effect a repair covered under an express written warranty in the quickest possible manner, at no additional charge for freight or handling, if the necessary part is not in the agent's or dealer's inventory when the defect is detected and verified. A system under which an agent or dealer can be reimbursed for the entire freight and handling charges through the normal warranty claims process shall be acceptable under this subsection.

(j) If a manufacturer or distributor has established an informal dispute settlement procedure in the State that substantially complies with the provisions of 16 C.F.R. Part 703, as that Part may be amended, the provisions of (b) of this section concerning refund or replacement do not apply to an owner who has not first resorted to the informal dispute settlement procedure.

(k) No claim under this section may be filed by an owner more than 30 days after expiration of the express written warranty or one year, whichever period terminates first, unless the owner has filed for a decision through an informal dispute settlement procedure as outlined in (j) and then no later than 12 months after the expiration of the express written warranty.

(l) In this section:

(1) "manufacturer" means a legal entity, which by labor transforms raw materials and component parts into motor vehicles for wholesale or retail sales;

HUGHES THORSNESS GANTZ
POWELL & BRUNDIN

ATTORNEYS AT LAW

309 WEST THIRD AVENUE

ANCHORAGE, ALASKA 99501

TELEPHONE (907) 274-7522

CABLE ADDRESS: DENALI

TELESCOPIER: 274-7525

TELEX: 090-26376

JOHN C. HUGHES
OF COUNSEL

590 UNIVERSITY AVE., SUITE 200
FAIRBANKS, ALASKA 99701
TELEPHONE (907) 479-3161
CABLE ADDRESS: DENALI
TELECOPIER: 479-8478

210 FERRY WAY, SUITE 100
JUNEAU, ALASKA 99801
TELEPHONE (907) 586-5912

200 CHENEGA STREET
P.O. BOX 767
VALDEZ, ALASKA 99686
TELEPHONE (907) 835-2988

DAVID M. THORSNESS
RICHARD O. GANTZ
JAMES M. POWELL
BRIAN J. BRUNDIN
MARCUS R. CLAPP*
KENNETH P. JACOBUS
GARY W. GANTZ
JERRY E. MELCHER
JOE M. HUDDLESTON
SIGURD E. MURPHY
RICHARD D. THALER
CARL J. D. BAUMAN
FRED B. ARVIDSON
DENNIS M. BUMP*
MARY K. HUGHES
FRANK A. PFIFFNER
RALPH R. BEISTLINE*
GORDON J. TANS***
R. CRAIG HESSER
ROBERT L. MANLEY
JAMES M. GORSKI
TIMOTHY R. BYRNES

JAMES M. SEEDORF
RONALD E. NOEL*
FREDERICK J. ODSEN
MICHAEL L. LESSMEIER**
STEVEN S. TERVOOREN
MATTHEW K. PETERSON
JOSEPH R. D. LOESCHER
JAMES F. KLASSEN
KENNETH D. LOUGEE*
KENNETH F. BRITTAIN
DAVID M. MERSEREAU
CORY A. CARLSON
EARL M. SUTHERLAND
CRAIG A. CARLSON
JAMES E. RAMSEY
JOSEPH S. SLUSSER*
LESLIE A. MORRILL
JOHN B. THORSNESS
JAMES R. SZENDER
GAIL M. BALLOU*
GREGORY W. LESSMEIER*

*FAIRBANKS OFFICE
**JUNEAU OFFICE
***VALDEZ OFFICE

February 7, 1984

TO: Senate Labor and Commerce Committee

RE: New Motor Vehicle Warranty Act

Members of the Labor and Commerce Committee:

The Alaska Motor Vehicle Dealers Association supports the concept presented by Senate Bill 286 concerning new motor vehicle warranties. The Association asked our law firm to correct the ambiguities in Senate Bill 286 while strengthening the protection provided by the Bill to the consumer.

Attached to this letter is the Association's proposed legislation.

Before reviewing the specific changes to the proposed Bill, it should be noted that additions have been made for the protection of the consumer which were not contained in Senate Bill 286. These include the following:

1. an addition to subsection (b) ensuring that a replaced automobile transfers lienholder interests;
2. an addition to subsection (d) which mandates that manufacturers and distributors will make diligent efforts to ensure that vehicle parts needed by a dealer to repair a nonconformity will be rapidly delivered to the dealer;
3. an addition to subsection (h) which requires a manufacturer or distributor who accepts the return of a defective motor vehicle to fully reimburse the owner for reasonable costs of shipping the motor vehicle to and from a dealer for repairs of any nonconformity;

4. an addition to subsection (i) of consumer-industry appeals, arbitration and mediation procedures which should provide additional redress by a consumer without the expense of costly litigation;

5. an additional definition for "full purchase price" which for reimbursement purposes includes the total price paid for the vehicle by the original purchaser including costs added on to the manufacturer's suggested retail price such as registration fees, transportation fees, dealer set-up charges, additional undercoating and dealer installed options.

Before reading the main body of the proposed attached legislation, it would be of benefit to first review the definitions of the attached proposed Senate Bill:

1. "manufacturer": The purpose of this definition is to reduce any ambiguity between a "manufacturer" and a "distributor."

2. "distributor": The purpose of this definition is to reduce any ambiguity between a "distributor" and a "manufacturer."

3. "dealer": This definition differentiates a "dealer" from a "manufacturer" or a "distributor" to reduce ambiguities. Both "franchised" and "authorized" were included to ensure full and proper representation of the class.

4. "motor vehicle": The statement in the original Senate Bill 286 defining "motor vehicle" is vague. Included in this definition is a "land motor vehicle" having four or more wheels. The "or more wheels" is to ensure that family-owned pickup trucks having dual rear wheels and other similar vehicles are included in the definition. The attached proposed Bill incorporates the "personal, family or household purposes" language from the original Senate Bill 286. A review of similar legislation adopted in other states indicates that the majority have excluded off-road vehicles, motorcycles and other similar vehicles which exclusions are contained in the attached proposed Bill. Most of these vehicles undergo vigorous activities and are not meant to fall within the parameters of an automotive warranty Bill.

5. "owner": The original Senate Bill 286 makes reference to only "a person" to whom the motor vehicle is transferred

whereas many transfers are to legal entities which are now added to the proposed attached legislation. The reference in the prior Senate Bill to "during the term of the express warranty . . ." was redundant in that it is incorporated in the main body of the Bill.

6. "express written warranty": This definition has been added to ensure that there are no ambiguities as to the warranties which are the focus of this legislation. There are many types of "express" warranties besides a manufacturer's express written warranty that could be argued to fall within the ambiguous language of the prior proposed legislation. As an example, a prior owner of a relatively new vehicle could make an "express warranty" that, for instance, his compact vehicle will pull a four-horse trailer. Under the provisions of the old Bill, without defining "express warranty," the ambiguities created could cause litigation.

7. "substantially impairs the use": In the prior Senate Bill 286 the terms, "impairs the use" and "impairs the market value," were used in conjunction with one another even though they are distinct concepts. They have, therefore, been treated differently in the proposed attached legislation. This definition includes the fact that the defect or the condition in the motor vehicle was caused by the manufacturer, either by the manufacturer's design or by the actual manufacturing process. This, coupled with the separate definition for "nonconformity" as set forth below, will ensure the proper application of this legislation. As an example, the original Senate Bill 286 Section (d) (2) states, "the vehicle is out of service for repair for a total of 30 or more business days during the warranty term . . ." This would mean that a vehicle that had been involved in a serious accident, because of the negligence of the owner, and was "out of service for repair," would have to be replaced under the language of the original Senate Bill. This obviously is not the intent of the law nor is it legal or equitable. By defining "substantially impairs the use" and "substantially impairs the market value" as well as what is a "nonconformity," inherent problems of the prior wording of the original Senate Bill are removed.

8. "substantially impairs the market value": This definition again incorporates a defect caused by the manufacturer. Referencing a defect involving a "nonconformity" removes the ambiguities in the prior Bill which could have allowed an owner's negligence resulting in severe damage to a vehicle from a basis for impairment of market value.

February 7, 1984

9. "full purchase price": This definition was added to aid the consumer. The prior Senate Bill made a reference in Section (b) to "all collateral charges" but failed to define what that phrase meant. By fully incorporating the same into this definition of "purchase price" there will be no ambiguities that might otherwise be available to a manufacturer or distributor when making a refund.

10. "reasonable allowance": The definition in the original Senate Bill was poorly worded. The original Bill makes reference to a "consumer's use of a motor vehicle." This could be argued to mean only a subsequent owner where multiple owners are involved with the vehicle. This is corrected by utilization of the words "its owners." The definition in the original Bill made reference to "the consumer's first report to the manufacturer." The definition in the proposed Senate Bill ties in "reasonable allowance" with the notice requirement set forth in the altered subsection (a). The original Bill made reference to a straight-line depreciation over seven years. The attached proposed Bill incorporates by reference the applicable vehicle depreciation allowed by the Internal Revenue Service of the Federal Government. It would appear that since the consumer in most instances would use the same depreciation calculations of the Internal Revenue Service, that calculation should be the basis for depreciation under the legislation. Because of the changes made to the applicable tax law on an annual basis, reference in the proposed definition has been made to the applicable law "at the time of the calculation."

11. "nonconformity": Without a definition of "nonconformity" and references to a manufacturing defect, even self-induced damage to a vehicle by an owner could arguably have been included within the scope of the language of the original Senate Bill 286. It is important to construe both "market value" and "use" together. As an example, an owner could have, because of a defect on a locking mechanism, lost a decorative wire wheel cover for one of the wheels of his vehicle. It could well be that the repairing dealer made an attempt prior to receipt of the needed part from the manufacturer, to repair the lock mechanism and replace the wire wheel cover but that the same was not properly repaired within 30 days. This could arguably be construed to cause a reduction of the market value of the vehicle but would obviously not impair the vehicle's use.

This concludes the discussion with regard to the definitions. With those definitions in mind, please review the other sections of the proposed attached Bill.

Section (a) has a few changes. The "selling dealer" has been added to the "manufacturer" and "distributor" for purposes of receipt of the written notification of a nonconformity. The Alaska Motor Vehicle Dealers Association was concerned that a manufacturer or distributor may fail to pass on the written notice to the appropriate dealer thus possibly causing the loss of a good customer. Reference to "the agent of the manufacturer, distributor or manufacturer's or distributor's dealers" has been deleted from the attached proposed legislation because when you multiply the number of individuals or legal entities who may receive notification you also increase the risk that the needed repair will not be made in a timely manner. In addition, there are too many ambiguities, legally, involving a determination of "agent." The original Bill made reference to "whichever date is earlier" concerning the warranty period. However, other portions of the original Bill made reference to "whichever period terminates first." To create continuity, the latter definition was included in the proposed attached legislation. The phrase "upon delivery of the vehicle by the owner to the nearest appropriate dealer" has been included. It has been suggested that manufacturers and distributors should open secondary repair stations throughout the state. This is unrealistic and could cause serious harm to the consumer. First, the added expense of such a system would most likely be passed on to the consumers raising the cost of new vehicles. Secondly, manufacturers and distributors could not ensure the quality control of repairs performed by smaller, secondary repair stations. This could result, not only in unsatisfactory multiple attempts to repair nonconformities, but could also create hazards which cause injuries or deaths. With this prospect in mind, manufacturers and distributors would not invest the funds or time to set up rural repair stations because of fear of product litigation and the economic fear of losing good customers that would otherwise be satisfied by having their vehicles repaired by authorized dealerships. It is important to note that this language, compelling the owner to deliver the vehicle for repair, is counterbalanced in favor of the consumer by the addition to section (h) requiring a manufacturer or distributor to reimburse an owner for the reasonable costs of shipping the motor vehicle to and from the nearest authorized facility for warranty service and repairs if in fact the nonconformity or nonconformities caused rejection of the vehicle by the owner.

Subsection (b) has been altered to clarify prior ambiguities in the original Senate bill. As an example, reference to

"collateral charges" was deleted because these charges are now included in the more specific definition of "full purchase price." In the original Bill there was no reference made to ensure that a lienholder's interests will be protected if a rejected vehicle is replaced by another vehicle. This has been added to the proposed attached Bill which, as worded previously, would not have been acceptable to the business community. Because lienholder agreements are contractual relationships between the vehicle owner and the a separate legal entity and because usually dealers are not specific parties to such lienheld agreements; the proposed legislation requires the owner to ensure that the lienholder's interests are protected. The prior Bill, in referring to refunds, made reference to one lienholder. On occasion, there can be more than one lienholder for a specific vehicle and therefore the plural has been added making to reference to "lienholders of record."

Subsection (c), as worded in the original Bill, was also ambiguous and has been redrafted in conformity with the new definitions. Since the manufacturer or distributor works through a repairing dealer to make the corrections, reference to the repairing dealer has been added.

Subsection (d) has a number of changes. Most of these changes are made by way of the alteration or addtions to the definition section. In the original Senate Bill sections (1) and (2) were not coordinated with reference to the one-year express warranty period which has been corrected in the attached proposed legislation. Section (2) received the greatest change. As read before, a vehicle could have been out of service because of an accident caused by the owner and still have fallen within the 30-day requirement. The section now distinguished between a vehicle being "unavailable for use" as opposed to being "out of service for repairs." As an example, a vehicle could be perfectly safe to drive while awaiting parts (such as a decorative wheel cover) and still be available for use by the owner.

Subsection (e) concerns unfair trade practice. The prior language makes reference to "a failure" which has been replaced with "who refuses." There could have been a failure to refund because the notification was lost within the postal system. This section, as previously worded, does not state that there is a "presumption" of unfair trade practices but specifies a finding without trial of unfair trade practices. For that reason, the language "without a valid reason for refusal" has been added. It would be unacceptable under the law to have a manufacturer or distributor held without a right to their day in court for a finding that they committed a breach of the fair trade practices act if in fact they had a reasonable or valid reason.

Subsection (f) is basically the same as worded in the original Bill.

Subsection (g) has an important change. In the prior Bill there was no disclaimer indicating that the Bill did not create a new cause of action against manufacturers, distributors or dealers. This has been added.

Subsection (h) has been greatly enhanced by adding the second sentence requirement concerning reimbursement for shipping, if there is a nonconformity and a return of a defective motor vehicle under subsection (b). It should be noted that the words "reasonable costs" are included in the language of the attached proposed legislation. Otherwise, as an example, if someone took the notion to hire a helicopter to have his car brought into a repair station even though other means of transportation were available, including rail, it could be argued that any transportation mode chosen by the owner should be reimbursed.

Subsection (i) has added to it reference to appeals, arbitration and mediation procedures. The addition of available avenues that a consumer can take, short of the expenses of court litigation, should aid the consumer to ensure appropriate redress.

The old subsection (j) has been completely deleted. First, with the addition of the exclusion clause in subsection (g) of the proposed legislation the language of the old subsection (j) is not applicable. Secondly, the time constraints set forth in the old subsection (j) would be at odds with the one-year period or express warranty, whichever is first, time constraints set forth throughout the remainder of the proposed legislation. In addition, Chrysler, who has a five-year vehicle warranty, would, under the old subsection (j), have had prospect of litigation for five years and 18 months. This specifically violates the intent and language of Alaska Statute 09.10.070 which states that there is a two-year statute of limitations for tort actions, which, together with the case decisions on point concerning automotive product defect matters, states that product cases fall within the two-year statute of limitations.

The proposed attached legislation taken as a whole eliminates ambiguities in the original Senate Bill while ensuring increased protection for the consumer. The Alaska Motor Vehicle Dealers Association, and for that fact, new automotive dealers throughout the state fully support this legislation but wish to

Senate Labor and Commerce Committee HUGHES THORSNESS GANTZ POWELL & BRUNDIN
Page 8 ATTORNEYS AT LAW
February 7, 1984

ensure that the law is equitable. It is their hope that you will give consideration to the adoption of the proposed attached legislation.

Very truly yours,

HUGHES, THORSNESS, GANTZ,
POWELL & BRUNDIN



Sigurd E. Murphy

SEM/dsr

Attachment
proposed legislative Senate Bill 286

MOTOR VEHICLE MANUFACTURERS ASSOCIATION
of the United States, Inc.

300 NEW CENTER BUILDING • DETROIT, MICHIGAN 48202 • AREA 313-872-4311
1107 Ninth Street, Suite 1030, Sacramento CA 95814

PHILIP CALDWELL, Chairman
V. J. ADDUCI, President and Chief Executive Officer
THOMAS H. HANNA, Senior Vice President

February 3, 1984

The Honorable Richard Eliason
Chairman, Senate Labor & Commerce Committee
Room 417, Capitol Building
Juneau AK 99811

Re: Senate Bill 286 Amendments

Dear Dick:

The following is a narrative outlining the suggested amendments that we made on SB 296 during the committee hearing last Tuesday, January 31, in Senate Labor & Commerce. My source is SB 286 Version #2, dated January 26, 1984.

1. On Page 1, line 13-5, omit the words beginning on line 13:
"or distributor of the vehicle, the agent of the manufacturer
or distributor, or the manufacturer's or distributor's dealer."

With that language removed from the bill, it would require that the consumer at least once notify the manufacturer in writing that they are in fact having a continuing problem with a nonconforming defect that is under warranty. It is extremely important that the manufacturer receive written notification since we are charged with the responsibility of buying the vehicle back and without this notification the manufacturer would not be aware that there is a problem existing with the vehicle.

2. On Page 1, line 26, we would like to see the word "new" omitted so that it would read: "replace the motor vehicle with a comparable motor vehicle."

The reason for this is that if in fact the third party mechanism determines that the vehicle has to be replaced, a comparable vehicle will be either a new one or one that is comparable to the vehicle the consumer had when the difficulty occurred; so in reality, comparable could mean "new."

3. On Page 1, line 28, insert after the words "collateral charges"
"less interest."

The rationale behind this language is that the full purchase price including other fees, such as registration, sales tax, etc., does not include

February 3, 1984

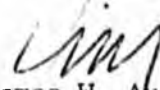
interest on the note. The consumer elects whether he wants to pay cash or pay on an installment basis in addition to the purchase price of the vehicle.

4. On Page 3, lines 3-5, omit "(f) A motor vehicle returned under (b) of this section may not be resold unless full disclosure of the reasons for the return is made to the prospective buyer before the resale is concluded."

The reason for this is if a vehicle that is determined to be a "lemon" but is subsequently fixed and made whole again, the restored vehicle would carry a new warranty and in fact be sound and usable. If the vehicle was made whole through repair but required to have such notification placed on it before resale, it could definitely prejudice the sale of that vehicle, which might be of concern to the dealer.

We look forward to continuing to work with you and the committee on this issue. If there are any further questions or if we can provide any additional information, please let us know.

Sincerely,



James W. Austin
Public Affairs Manager
Pacific Coast Region

JWA/eb

MEMORANDUM

January 31, 1984

TO: Rep. Mike Miller

FROM: Denise Zachary, AA *dz*

SUBJECT: Sectional Analysis/ CS SB 286(L&C)

Section 1: When an express warranty given by a manufacturer against defects of design, manufacturing or assembly is not being carried out, then the owner may report, in writing, the nonconformity to either the manufacturer, or in case of a foreign manufacturer the U.S. "distributor" of the vehicle, or their agent.

- (a) Limits the application of bill to the term of the warranty, or one year, whichever comes first. Manufacturer of its dealer is required to make necessary repairs to bring vehicle to conformity under express warranty.
- (b) Provides remedy for the owner if the manufacturer, distributor, agent, or dealer is unable to repair vehicle, namely, the defective vehicle is returned to manufacturer or distributor for either a comparable, new replacement vehicle OR a full purchase price refund -- less a reasonable allowance for consumer use.
- (c) Gives the manufacturer two affirmative defenses to owner's claim for refund. Manufacturer may not be liable if the defect complained of does not cause substantial impairment to owner's ability to use vehicle or to the value of vehicle OR if defect is not in fact a manufacturers defect but something that resulted from abuse or modification of the vehicle by the owner.
- (d) Legal definition for "defective" -- defines defective vehicle as a vehicle which has had the same defect worked on four or more times, OR which has been out of service for more than 30 days during the warranty. Such a car is legally presumed to be "a lemon".

(e) Makes the manufacturer's failure to honor the owner's request for replacement of, or refund of the purchase price of a defective motor vehicle an unfair trade practice under the Alaska Unfair Trade Practices and Consumer Protection Act.

This section provides an efficient statutory enforcement mechanism, it gives Attorney General public enforcement powers against a manufacturer or dealer who refuse to honor it's warranty obligations. It also gives individuals a private cause of action, with up to triple damages, costs and attorney fees.

(f) If defective vehicle is returned to manufacturer, or dealer, this vehicle may not be resold unless a full disclosure of nonconformities is listed.

(g) Insures that the provisions of this act do not limit any other rights or remedies that the motor vehicle owner might have under common right law regarding express or implied warranties.

(h) "Alaskanizes" legislation -- If a manufacturer or distributor sells a vehicle in this state, they are responsible for maintaining repair facilities to perform service and make repairs to vehicles under express warranty service contracts. They will reimburse independent repair facilities for doing warranty work, OR they may pay shipping costs of vehicle to nearest authorized facility.

(i) Refers to federal Magnuson-Moss Warranty Act -- manufacturer of vehicle may set up informal dispute settlement procedure, outside court, to which consumers must take defect or warranty claim before filing suit against manufacturer. Informal dispute procedure must follow standards in federal regulations and must be approved by Attorney General. Arbitration is binding on manufacturer. Owner has option to accept award or proceed to court.

(j) Limits consumer from filing cause of action 18 months after expiration of express warranty, or 6 months after informal dispute procedure as described in (i).

(k) Definition section.



Alaska State Legislature House of Representatives

POUCH V
JUNEAU, ALASKA 99811
OFFICIAL BUSINESS

MEMORANDUM

January 21, 1984

TO: Senator Dick Eliason
Chair, Senate Labor & Commerce

FROM: Denise Zachary, *daz*
Rep. Mike Miller

RE: Senate CS for CS for SSHB 7 (L&C)

Thank you for allowing my review of this version of the "lemon law". For your information, I have highlighted, in yellow, amendments that were made to Work Draft CS SB 286 (L&C).

If I may suggest further changes to protect the Alaska consumer, the following amendments were compiled with the assistance of the Attorney General's office, Consumer Protection Agency. When this legislation is scheduled for a hearing, a representative from this agency will testify on behalf of the amendments.

** I realize that HB 7 is in Conference Committee and we are considering the substance of SB 286. I've used page and line numbers from CS for SSHB 7 since this is the last version of this legislation that Senate Labor and Commerce Committee considered.

Amendment 1, page 2, line 12: Before "market value"; delete "and" and insert "or".

Amendment 2, page 2, line 14: Delete "at it's option".

Amendment 3, page 2, line 23: Before "market value"; delete "and" and insert "or".

Amendment 4, page 4, line 12: After "in the state" delete "that substantially complies", and insert "has been approved by the attorney general as substantially complying".

Amendment 5, page 4, lines 17 and 18: Delete "no claim under this section may be filed by an owner more than 12 months after the expiration of the warranty", insert "no cause of action under this section may be filed by an owner more than 18 months after the expiration of the express warranty or 6 months after a decision by an informal dispute settlement procedure under (i), whichever date is later."

Amendment 6, page 5, line 9: After "nonconformity.", insert "The reasonable allowance shall not exceed the depreciation in value of the vehicle, for the period of time the vehicle is in service, when depreciation is calculated by a straight-line method over the life expectancy of a new vehicle, which, for purposes of this subsection shall be deemed to be 7 years."

Amendment 7, page 5, line 10: Before "value", delete "and" and insert "or market".

The intent behind introduction of this bill is to clarify and define the legal warranty rights and responsibilities between owners of new motor vehicles and the vehicle manufacturer, when a new vehicle is seriously defective. This bill DOES NOT write the warranty. It does make the manufacturer honor the warranty that is given, and paid for, when purchasing a new vehicle.

This legislation has no fiscal impact.

Thank you again for your attention on this legislation.

Version #1
Folta
6/22/83

Original sponsors: Hayes, Barnes,
Phillips, et al

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 7 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to motor vehicles; and providing for
7 an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. DECLARATION OF PURPOSE. (a) The legislature is concerned
10 over the rising toll of motor vehicle accidents and the suffering and loss
11 inflicted by them. The legislature determines that it is a matter of grave
12 concern that motorists be financially responsible for their negligent acts
13 so that innocent victims of motor vehicle accidents may be recompensed for
14 the injury and financial loss inflicted upon them. The legislature finds
15 and declares that the public interest can best be served by the requirement
16 that the owner of a motor vehicle be required to furnish evidence of the
17 existence of a motor vehicle liability policy issued in conformity with
18 AS 28.22.010 or of a certificate of self-insurance issued under AS 28.20.-
19 400 when the vehicle registration is made or renewed as a prerequisite to
20 the exercise of the privilege of registering and operating a motor vehicle
21 in the state.

22 (b) The legislature further finds and declares that the public
23 interest can be best served by providing for the improvement of motor
24 vehicle warranty.

25 * Sec. 2. AS 45.45 is amended by adding a new section to read:

26 ARTICLE 6. MOTOR VEHICLE WARRANTIES.

27 Sec. 45.45.300. MOTOR VEHICLE WARRANTIES. (a) If a new motor
28 vehicle does not conform to an express warranty that is applicable to
29 it and the owner of the vehicle reports the nonconformity in writing

1 to the manufacturer or distributor of the vehicle, the agent of the
2 manufacturer or distributor, or the manufacturer's or distributor's
3 dealer during the term of the warranty or within one year after the
4 date of delivery of the motor vehicle to the owner, whichever date is
5 earlier, the manufacturer, distributor, agent, or dealer shall make
6 the necessary repairs to conform the vehicle under the express
7 warranty.

8 (b) If a manufacturer, distributor, agent, or dealer is unable
9 to conform the motor vehicle under an applicable express warranty
10 under (a) of this section after a reasonable number of attempts and
11 the nonconformity is a defect or condition that substantially impairs
12 the use ^{OR} [and] market value of the motor vehicle to the owner, the
13 manufacturer or distributor shall accept the return of the defective
14 motor vehicle and shall, ~~[at its option]~~ replace the motor vehicle with
15 a new, comparable motor vehicle, or refund the full purchase price to
16 the owner, including all collateral charges less a reasonable
17 allowance for the consumer's use of the motor vehicle. A refund under
18 this subsection shall be made to the owner and to a lienholder as
19 their respective interests appear.

20 (c) It is an affirmative defense to a claim made under (b) of
21 this section for a new motor vehicle or a refund that the nonconformi-
22 ty complained of

23 (1) does not substantially impair the use ^{OR} [and] market value
24 of the motor vehicle; or

25 (2) is the result of abuse, unreasonable neglect, or un-
26 authorized modification or alteration of the motor vehicle by the
27 owner or any other party who is not an official representative of the
28 manufacturer, distributor, agent, or dealer.

29 (d) A presumption that a reasonable number of attempts have been

By nonconformity is a defect in the motor vehicle that makes it unsafe for the owner to operate it + the defect is reported under (a) of this section, the time period for repair, refund or replacement under (b) of this section is reduced to 14 days.

1 undertaken to conform a motor vehicle under an applicable express
2 warranty is established if (1) the same nonconformity has been subject
3 to repair four or more times by the manufacturer or distributor, its
4 agent, or its dealer during the term of the warranty or the one-year
5 period after delivery of the motor vehicle to the owner, whichever
6 period terminates first, but the nonconformity continues to exist; or
7 (2) the vehicle is out of service for repair for a total of 30 or more
8 business days during the warranty term or the one-year period referred
9 to in (1) of this subsection, whichever period terminates first. (The
10 warranty term or the one-year period referred to in (1) of this sub-
11 section is extended by any period during which repair services are not
12 available to the owner for reasons that are not the responsibility of
13 the owner.) Any period of time that repairs are not performed for
14 reasons that are beyond the control of the manufacturer or the manu-
15 facturer's agent is excluded from the 30-day time period referred to
16 in (2) of this subsection.

17 (e) A failure to replace or refund the purchase price of a motor
18 vehicle when there is a requirement to do so under this section is an
19 unfair trade practice under AS 45.50.471.

20 (f) A motor vehicle returned under (b) of this section may not
21 be resold unless full disclosure of the reasons for the return is made
22 to the prospective buyer before the resale is concluded.

23 (g) The provisions of this section do not limit other rights and
24 remedies that may be available to the owner of a motor vehicle under
25 other provisions of law.

26 (h) A manufacturer or distributor of motor vehicles sold in the
27 state under manufacturer's or distributor's express warranty shall
28 maintain a repair facility that is able to perform the service and
29 make the repairs required by the warranty and by this section. A

1 manufacturer or distributor may comply with the requirements of this
2 subsection by entering into a warranty service contract with an inde-
3 pendent service and repair facility that provides for the manufacturer
4 or distributor to reimburse the facility for all service and repairs
5 that are covered by the written independent service contract. In lieu
6 of establishing a repair facility or entering into a warranty service
7 contract with an independent service and repair facility as required
8 by this subsection, a manufacturer or distributor may pay the actual
9 costs of shipping a motor vehicle to and from the nearest authorized
10 facility for warranty service and repairs.

11 (i) If a manufacturer or distributor has established an informal
12 dispute settlement procedure in the state ^{has been approved by A.C. 35 Subsection 1211} [that substantially complies
13 with the provisions of 16 C.F.R. Part 703, ^{complying} as that Part may be
14 amended, the provisions of (b) of this section concerning refund or
15 replacement do not apply to an owner who has not first resorted to the
16 informal dispute settlement procedure.

17 (j) No claim under this section may be filed by an owner more
18 than 12 months after expiration of the express warranty.

19 (k) In this section ^{No Cause of Action under this section may be}
20 ^{filed by an owner more than 18 mon. after the}

21 (1) "distributor" means an agent of a manufacturer or a
22 corporation engaged in the wholesale distribution of motor vehicles to
23 retail motor vehicle dealers; ^{expiration of the express warranty or 6 mon. after}
^{a decision by an informal dispute settlement}
^{procedure under (i), whichever is later.}

24 (2) "motor vehicle" or "vehicle" means a motor vehicle as
25 defined in AS 28.35.260 that is purchased for personal, family,
26 household purposes and required to be registered under AS 28.10 or
27 with a governmental agency of another jurisdiction performing a
28 similar function;

29 (3) "owner" means a purchaser, other than for resale, of a
new motor vehicle, a person to whom the motor vehicle is transferred

1 during the term of an express warranty applicable to the vehicle, or
2 any other person entitled to enforce an express warranty on the vehi-
3 cle under the terms of the warranty;

4 (4) "reasonable allowance" means an amount attributable to
5 a consumer's use of a motor vehicle, but does not include any period
6 after the consumer's first report to the manufacturer, or any of its
7 authorized agents or dealers, of a nonconformity with an express
8 warranty applicable to the motor vehicle during which the motor
9 vehicle is out of service due to the nonconformity;

10 *shall not exceed the depreciation in value of the vehicle, for the time the vehicle*
is in service, when (5) "substantially impairs use [and] value" refers to a
depreciation is

11 defect or condition in a vehicle that

12 *calculated by 3 straight-line method*

13 *over the life*

(A) prevents it from being operated;

14 *expectancy of 2 new*

(B) makes it unsafe to operate; or

15 *vehicle, which, for purposes of this*

(C) decreases the economic life of the vehicle.

16 *substitution shall be deemed to be 1 yrs.*

* Sec. 3. AS 28.20.440(b)(3) is amended to read:

17 (3) contain coverage in the amounts set out in (2) of this
18 subsection for the protection of the persons insured under the policy
19 who are legally entitled to recover damages from owners or operators
20 of uninsured or underinsured motor vehicles because of bodily injury
21 or death, or damage to or destruction of property arising out of the
22 ownership, maintenance or use of the uninsured or underinsured motor
23 vehicle, except that this coverage or part of it may be waived in
writing by the insured on or before the effective date of the policy.

24 * Sec. 4. AS 21.89.020(a) is amended to read:

25 (a) An automobile liability policy that [WHICH] insures an owner
26 or operator of a motor vehicle against loss resulting from [HIS]
27 liability for bodily injury or death, or for property injury or de-
28 struction, or both, which is sold in the state [AFTER JANUARY 1, 1969,
29 BY AN INSURANCE CARRIER AUTHORIZED TO TRANSACT BUSINESS IN THIS

Version #1
Folta
6/22/83

Original sponsors: Hayes, Barnes,
Phillips, et al

IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 7 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to motor vehicles; and providing for
an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. DECLARATION OF PURPOSE. (a) The legislature is concerned
over the rising toll of motor vehicle accidents and the suffering and loss
inflicted by them. The legislature determines that it is a matter of grave
concern that motorists be financially responsible for their negligent acts
so that innocent victims of motor vehicle accidents may be recompensed for
the injury and financial loss inflicted upon them. The legislature finds
and declares that the public interest can best be served by the requirement
that the owner of a motor vehicle be required to furnish evidence of the
existence of a motor vehicle liability policy issued in conformity with
AS 28.22.010 or of a certificate of self-insurance issued under AS 28.20.-
400 when the vehicle registration is made or renewed as a prerequisite to
the exercise of the privilege of registering and operating a motor vehicle
in the state.

(b) The legislature further finds and declares that the public
interest can be best served by providing for the improvement of motor
vehicle warranty.

* Sec. 2. AS 45.45 is amended by adding a new section to read:

ARTICLE 6. MOTOR VEHICLE WARRANTIES.

Sec. 45.45.300. MOTOR VEHICLE WARRANTIES. (a) If a new motor
vehicle does not conform to an express warranty that is applicable to
it and the owner of the vehicle reports the nonconformity in writing

Last draft considered by committee

1 to the manufacturer or distributor of the vehicle, the agent of the
2 manufacturer or distributor, or the manufacturer's or distributor's
3 dealer during the term of the warranty or within one year after the
4 date of delivery of the motor vehicle to the owner, whichever date is
5 earlier, the manufacturer, distributor, agent, or dealer shall make
6 the necessary repairs to conform the vehicle under the express
7 warranty.

8 (b) If a manufacturer, distributor, agent, or dealer is unable
9 to conform the motor vehicle under an applicable express warranty
10 under (a) of this section after a reasonable number of attempts and
11 the nonconformity is a defect or condition that substantially impairs
12 the use ^{OR} [and] market value of the motor vehicle to the owner, the
13 manufacturer or distributor shall accept the return of the defective
14 motor vehicle and shall, ~~[at its option]~~ replace the motor vehicle with
15 a new, comparable motor vehicle, or refund the full purchase price to
16 the owner, including all collateral charges less a reasonable
17 allowance for the consumer's use of the motor vehicle. A refund under
18 this subsection shall be made to the owner and to a lienholder as
19 their respective interests appear.

20 (c) It is an affirmative defense to a claim made under (b) of
21 this section for a new motor vehicle or a refund that the nonconformi-
22 ty complained of

23 (1) does not substantially impair the use ^{OR} [and] market value
24 of the motor vehicle; or

25 (2) is the result of abuse, unreasonable neglect, or un-
26 authorized modification or alteration of the motor vehicle by the
27 owner or any other party who is not an official representative of the
28 manufacturer, distributor, agent, or dealer.

29 (d) A presumption that a reasonable number of attempts have been

...nonconformity is a defect in the motor vehicle that makes it unsafe for the owner to operate it + the defect is reported under (a) of this section, the time period for repair, refund, or replacement under (b) of this section is reduced to 14 days.

1 undertaken to conform a motor vehicle under an applicable express
2 warranty is established if (1) the same nonconformity has been subject
3 to repair four or more times by the manufacturer or distributor, its
4 agent, or its dealer during the term of the warranty or the one-year
5 period after delivery of the motor vehicle to the owner, whichever
6 period terminates first, but the nonconformity continues to exist; or
7 (2) the vehicle is out of service for repair for a total of 30 or more
8 business days during the warranty term or the one-year period referred
9 to in (1) of this subsection, whichever period terminates first. (The
10 warranty term or the one-year period referred to in (1) of this sub-
11 section is extended by any period during which repair services are not
12 available to the owner for reasons that are not the responsibility of
13 the owner.) Any period of time that repairs are not performed for
14 reasons that are beyond the control of the manufacturer or the manu-
15 facturer's agent is excluded from the 30-day time period referred to
16 in (2) of this subsection.

17 (e) A failure to replace or refund the purchase price of a motor
18 vehicle when there is a requirement to do so under this section is an
19 unfair trade practice under AS 45.50.471.

20 (f) A motor vehicle returned under (b) of this section may not
21 be resold unless full disclosure of the reasons for the return is made
22 to the prospective buyer before the resale is concluded.

23 (g) The provisions of this section do not limit other rights and
24 remedies that may be available to the owner of a motor vehicle under
25 other provisions of law.

26 (h) A manufacturer or distributor of motor vehicles sold in the
27 state under manufacturer's or distributor's express warranty shall
28 maintain a repair facility that is able to perform the service and
29 make the repairs required by the warranty and by this section. A

1 manufacturer or distributor may comply with the requirements of this
2 subsection by entering into a warranty service contract with an inde-
3 pendent service and repair facility that provides for the manufacturer
4 or distributor to reimburse the facility for all service and repairs
5 that are covered by the written independent service contract. In lieu
6 of establishing a repair facility or entering into a warranty service
7 contract with an independent service and repair facility as required
8 by this subsection, a manufacturer or distributor may pay the actual
9 costs of shipping a motor vehicle to and from the nearest authorized
10 facility for warranty service and repairs.

11 (i) If a manufacturer or distributor has established an informal
12 dispute settlement procedure in the state ^{has been approved by A.C. 25 Subsection 712} [that substantially complies
13 with the provisions of 16 C.F.R. Part 703, ^{complying} as that Part may be
14 amended, the provisions of (b) of this section concerning refund or
15 replacement do not apply to an owner who has not first resorted to the
16 informal dispute settlement procedure.

17 (j) No claim under this section may be filed by an owner more
18 than 12 months after expiration of the express warranty.

19 (k) In this section ^{no cause of action under this section may be}
20 ^{filed by an owner more than 16 months after the}

21 (1) "distributor" means an agent of a manufacturer or a
22 corporation engaged in the wholesale distribution of motor vehicles to
23 retail motor vehicle dealers; ^{expiration of the express warranty or 6 months after}
^{a decision by an informal dispute settlement}
^{procedure under (i), whichever is later.}

24 (2) "motor vehicle" or "vehicle" means a motor vehicle as
25 defined in AS 28.35.260 that is purchased for personal, family, or
26 household purposes and required to be registered under AS 28.10 or
27 with a governmental agency of another jurisdiction performing a
28 similar function;

29 (3) "owner" means a purchaser, other than for resale, of a
new motor vehicle, a person to whom the motor vehicle is transferred

1 during the term of an express warranty applicable to the vehicle, or
2 any other person entitled to enforce an express warranty on the vehi-
3 cle under the terms of the warranty;

4 (4) "reasonable allowance" means an amount attributable to
5 a consumer's use of a motor vehicle, but does not include any period
6 after the consumer's first report to the manufacturer, or any of its
7 authorized agents or dealers, of a nonconformity with an express
8 warranty applicable to the motor vehicle during which the motor
9 vehicle is out of service due to the nonconformity;

10 *shall not exceed the depreciation in value of the vehicle, for the time the vehicle*
is in service, when (5) "substantially impairs use [and] value" refers to a
11 *depreciation is* defect or condition in a vehicle that

12 *calculated by 2 straight-line method*

13 *over the life* (A) prevents it from being operated;

14 *expectancy of 2 new* (E) makes it unsafe to operate; or

15 *vehicle, which, for purposes of this* (G) decreases the economic life of the vehicle.

16 *substantially shall be deemed to be 7 yrs.*

* Sec. 3. AS 28.20.440(b)(3) is amended to read:

17 (3) contain coverage in the amounts set out in (2) of this
18 subsection for the protection of the persons insured under the policy
19 who are legally entitled to recover damages from owners or operators
20 of uninsured or underinsured motor vehicles because of bodily injury
21 or death, or damage to or destruction of property arising out of the
22 ownership, maintenance or use of the uninsured or underinsured motor
23 vehicle, except that this coverage or part of it may be waived in
24 writing by the insured on or before the effective date of the policy.

* Sec. 4. AS 21.89.020(a) is amended to read:

25 (a) An automobile liability policy that [WHICH] insures an owner
26 or operator of a motor vehicle against loss resulting from [HIS]
27 liability for bodily injury or death, or for property injury or de-
28 struction, or both, which is sold in the state [AFTER JANUARY 1, 1969,
29 BY AN INSURANCE CARRIER AUTHORIZED TO TRANSACT BUSINESS IN THIS

Asper
6/17/83✓

Original sponsor: Ray by request

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 286 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to motor vehicle warranties."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 45.45 is amended by adding a new section to read:

9 ARTICLE 6. MOTOR VEHICLE WARRANTIES.

10 Sec. 45.45.300. MOTOR VEHICLE WARRANTIES. (a) If a new motor
11 vehicle does not conform to an express warranty that is applicable to
12 it and the owner of the vehicle reports the nonconformity ^{in writing} to the
13 manufacturer or distributor of the vehicle, the agent of the manufac-
14 turer or distributor, or the manufacturer's or distributor's dealer
15 during the term of the warranty or within one year after the date of
16 delivery of the motor vehicle to the owner, whichever date is earlier,
17 the manufacturer, distributor, agent, or dealer shall make the neces-
18 sary repairs to conform the vehicle under the express warranty.

19 (b) If a manufacturer, distributor, agent, or dealer is unable
20 to conform the motor vehicle under an applicable express warranty
21 under (a) of this section after a reasonable number of attempts and
22 the nonconformity is a defect or condition that substantially impairs
23 the use and value of the motor vehicle to the owner, the manufacturer
24 or distributor shall accept the return of the defective motor vehicle
25 and shall, at the option of the owner, replace the motor vehicle with
26 a new motor vehicle, or refund the purchase price to the owner, in-
27 cluding all collateral charges. A refund under this subsection shall
28 be made to the owner and to a lienholder as their respective interests
29 appear.

1 (c) It is an affirmative defense to a claim made under (b) of
2 this section for a new motor vehicle or a refund that the nonconformi-
3 ty complained of

4 (1) does not substantially impair the use and value of the
5 motor vehicle; or

6 (2) is the result of abuse, unreasonable neglect, or un-
7 authorized modification or alteration of the motor vehicle by the
8 owner.

9 (d) A presumption that a reasonable number of attempts have been
10 undertaken to conform a motor vehicle under an applicable express
11 warranty is established if (1) the same nonconformity has been subject
12 to repair four or more times by the manufacturer or distributor, its
13 agent, or its dealer during the term of the warranty or the one-year
14 period after delivery of the motor vehicle to the owner, whichever
15 period terminates first, but the nonconformity continues to exist; or
16 (2) the vehicle is out of service for repair for a total of 30 or more
17 business days during the warranty term or the one-year period referred
18 to in (1) of this subsection, whichever period terminates first. The
19 warranty term or the one-year period referred to in (1) of this sub-
20 section is extended by any period during which repair services are not
21 available to the owner for reasons that are not the responsibility of
22 the owner. Any period of time that repairs are not performed for
23 reasons that are beyond the control of the manufacturer or the manu-
24 facturer's agent is excluded from the 30-day time period referred to
25 in (2) of this subsection.

26 (e) A failure to replace or refund the purchase price of a motor
27 vehicle when there is a requirement to do so under this section is an
28 unfair trade practice under AS 45.50.471.

29 (f) A motor vehicle returned under (b) of this section may not

1 be resold unless full disclosure of the reasons for the return is made
2 to the prospective buyer before the resale is concluded.

3 (g) The provisions of this section do not limit other rights and
4 remedies that may be available to the owner of a motor vehicle under
5 other provisions of law.

6 (h) A manufacturer or distributor of motor vehicles sold in the
7 state under manufacturer's or distributor's express warranty shall
8 maintain a repair facility that is able to perform the service and
9 make the repairs required by the warranty and by this section. A
10 manufacturer or distributor may comply with the requirements of this
11 subsection by entering into a warranty service contract with an inde-
12 pendent service and repair facility that provides for the manufacturer
13 or distributor to reimburse the facility for all costs of performing
14 warranty service and repairs, including diagnostic costs, telephone
15 expenses, and shipping costs. In lieu of establishing a repair facil-
16 ity or entering into a warranty service contract with an independent
17 service and repair facility as required by this subsection, a manufac-
18 turer or distributor may pay the actual costs of shipping a motor
19 vehicle to and from the nearest authorized facility for warranty
20 service and repairs.

21 (i) If a manufacturer or distributor has established an informal
22 dispute settlement procedure in the state that complies with the
23 provisions of 16 C.F.R. Part 703, as that Part may be amended, the
24 provisions of (b) of this section concerning refund or replacement do
25 not apply to an owner who has not first resorted to the informal
26 dispute settlement procedure.

27 (j) In this section

28 (1) "distributor" means an agent of a manufacturer or a
29 corporation engaged in the wholesale distribution of motor vehicles to

1 retail motor vehicle dealers;

2 (2) "motor vehicle" or "vehicle" means a motor vehicle as
3 defined in AS 28.35.260 that is required to be registered under
4 AS 28.10 or with a governmental agency of another jurisdiction per-
5 forming a similar function;

6 (3) "owner" means a purchaser, other than for resale, of a
7 new motor vehicle, a person to whom the motor vehicle is transferred
8 during the term of an express warranty applicable to the vehicle, or
9 any other person entitled to enforce an express warranty on the vehi-
10 cle under the terms of the warranty;

11 (4) "substantially impairs use and value" refers to a
12 defect or condition in a vehicle that

13 (A) prevents it from being operated;

14 (B) makes it unsafe to operate; or

15 (C) decreases the economic life of the vehicle.
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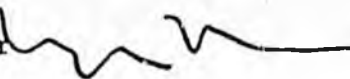


Representative Mike Miller

MEMORANDUM

October 17, 1983

TO: Senate Labor & Commerce Committee members
House Labor & Commerce Committee members

FROM: Rep. Mike Miller 

SUBJECT: HB 344/ SB 286 -- Automobile Warranty legislation

HB 344 and SB 286 are currently in the House and Senate Labor and Commerce Committees. I do hope that additional public hearings will be scheduled on these bills relating to automobile warranties -- or better known as "lemon laws". I continue to urge your support for passage of this legislation which would protect our Alaska consumers by making sure that their automobile warranties are honored.

I thought you might be interested in the attached September 30, Daily News clipping which lends additional support for these bills.

ALASKA STATE LEGISLATURE POUCH V
JUNEAU, ALASKA 99811

JAMES W. AUSTIN

Public Affairs Manager
Pacific Coast Region

July 13, 1983

Laura Fleming
Senate Labor & Commerce Committee
Pouch V
Juneau AK 99801

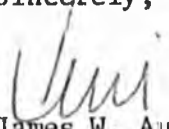
Dear Laura:

Just a note to say that I received the package of information you forwarded to me and I very much appreciate it. Also, I would again like to thank you and Rocky for your efforts regarding the lemon car bill in Senate Labor & Commerce recently. I am sure the issue will be back upon us next session and I will be up there again.

I hope with the Legislature being gone that you are beginning to enjoy the summer.

Thanks again. If there is anything you need or that I can do for you, please let me hear from you.

Sincerely,



James W. Austin

JWA/eb

MOTOR VEHICLE MANUFACTURERS ASSOCIATION
1225 8th Street, Suite 300
Sacramento, California 95814 • (916) 444-3767



Alaska State Legislature

House of Representatives

POUCH V
JUNEAU, ALASKA 99811
OFFICIAL BUSINESS

MEMORANDUM

January 21, 1984

TO: Senator Dick Eliason
Chair, Senate Labor & Commerce

FROM: Denise Zachary, *ditte*
Rep. Mike Miller

RE: Senate CS for CS for SSHB 7 (L&C)

Thank you for allowing my review of this version of the "lemon law". For your information, I have highlighted, in yellow, amendments that were made to Work Draft CS SB 286 (L&C).

If I may suggest further changes to protect the Alaska consumer, the following amendments were compiled with the assistance of the Attorney General's office, Consumer Protection Agency. When this legislation is scheduled for a hearing, a representative from this agency will testify on behalf of the amendments.

Amendment 1, page 2, line 12: Before "market value"; delete "and" and insert "or".

Amendment 2, page 2, line 14: Delete "at it's option".

Amendment 3, page 2, line 23: Before "market value"; delete "and" and insert "or".

Amendment 4, page 4, line 12: After "in the state" delete "that substantially complies", and insert "has been approved by the attorney general as substantially complying".

Amendment 5, page 4, lines 17 and 18: Delete "no claim under this section may be filed by an owner more than 12 months after the expiration of the warranty", insert "no cause of action under this section may be filed by an owner more than 18 months after the expiration of the express warranty or 6 months after a decision by an informal dispute settlement procedure under (i), whichever date is later."

Amendment 6, page 5, line 9: After "nonconformity.", insert "The reasonable allowance shall not exceed the depreciation in value of the vehicle, for the period of time the vehicle is in service, when depreciation is calculated by a straight-line method over the life expectancy of a new vehicle, which, for purposes of this subsection shall be deemed to be 7 years."

Amendment 7, page 5, line 10: Before "value", delete "and" and insert "or market".

The intent behind introduction of this bill is to clarify and define the legal warranty rights and responsibilities between owners of new motor vehicles and the vehicle manufacturer, when a new vehicle is seriously defective. This bill DOES NOT write the warranty. It does make the manufacturer honor the warranty that is given, and paid for, when purchasing a new vehicle.

This legislation has no fiscal impact.

Thank you again for your attention on this legislation.

Original sponsors: Hayes, Barnes,
Phillips, et al

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 7 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to motor vehicles; and providing for
7 an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. DECLARATION OF PURPOSE. (a) The legislature is concerned
10 over the rising toll of motor vehicle accidents and the suffering and loss
11 inflicted by them. The legislature determines that it is a matter of grave
12 concern that motorists be financially responsible for their negligent acts
13 so that innocent victims of motor vehicle accidents may be recompensed for
14 the injury and financial loss inflicted upon them. The legislature finds
15 and declares that the public interest can best be served by the requirement
16 that the owner of a motor vehicle be required to furnish evidence of the
17 existence of a motor vehicle liability policy issued in conformity with
18 AS 28.22.010 or of a certificate of self-insurance issued under AS 28.20 -
19 400 when the vehicle registration is made or renewed as a prerequisite to
20 the exercise of the privilege of registering and operating a motor vehicle
21 in the state.

22 (b) The legislature further finds and declares that the public
23 interest can be best served by providing for the improvement of motor
24 vehicle warranty.

25 * Sec. 2. AS 45.45 is amended by adding a new section to read:

26 ARTICLE 6. MOTOR VEHICLE WARRANTIES.

27 Sec. 45.45.300. MOTOR VEHICLE WARRANTIES. (a) If a new motor
28 vehicle does not conform to an express warranty that is applicable to
29 it and the owner of the vehicle reports the nonconformity in writing

1 to the manufacturer or distributor of the vehicle, the agent of the
2 manufacturer or distributor, or the manufacturer's or distributor's
3 dealer during the term of the warranty or within one year after the
4 date of delivery of the motor vehicle to the owner, whichever date is
5 earlier, the manufacturer, distributor, agent, or dealer shall make
6 the necessary repairs to conform the vehicle under the express
7 warranty.

8 (b) If a manufacturer, distributor, agent, or dealer is unable
9 to conform the motor vehicle under an applicable express warranty
10 under (a) of this section after a reasonable number of attempts and
11 the nonconformity is a defect or condition that substantially impairs
12 the use ^{OR} [and] market value of the motor vehicle to the owner, the
13 manufacturer or distributor shall accept the return of the defective
14 motor vehicle and shall, ~~[at its option]~~ replace the motor vehicle with
15 a new, comparable motor vehicle, or refund the full purchase price to
16 the owner, including all collateral charges less a reasonable
17 allowance for the consumer's use of the motor vehicle. A refund under
18 this subsection shall be made to the owner and to a lienholder as
19 their respective interests appear.

20 (c) It is an affirmative defense to a claim made under (b) of
21 this section for a new motor vehicle or a refund that the nonconformi-
22 ty complained of

23 (1) does not substantially impair the use ^{OR} [and] market value
24 of the motor vehicle; or

25 (2) is the result of abuse, unreasonable neglect, or un-
26 authorized modification or alteration of the motor vehicle by the
27 owner or any other party who is not an official representative of the
28 manufacturer, distributor, agent, or dealer.

29 (d) A presumption that a reasonable number of attempts have been

...the time period for repair, refund or replacement under (b) of this section is reduced to 14 days.

undertaken to conform a motor vehicle under an applicable express warranty is established if (1) the same nonconformity has been subject to repair four or more times by the manufacturer or distributor, its agent, or its dealer during the term of the warranty or the one-year period after delivery of the motor vehicle to the owner, whichever period terminates first, but the nonconformity continues to exist; or (2) the vehicle is out of service for repair for a total of 30 or more business days during the warranty term or the one-year period referred to in (1) of this subsection, whichever period terminates first. (The warranty term or the one-year period referred to in (1) of this subsection is extended by any period during which repair services are not available to the owner for reasons that are not the responsibility of the owner.) Any period of time that repairs are not performed for reasons that are beyond the control of the manufacturer or the manufacturer's agent is excluded from the 30-day time period referred to in (2) of this subsection.

(e) A failure to replace or refund the purchase price of a motor vehicle when there is a requirement to do so under this section is an unfair trade practice under AS 45.50.471.

(f) A motor vehicle returned under (b) of this section may not be resold unless full disclosure of the reasons for the return is made to the prospective buyer before the resale is concluded.

(g) The provisions of this section do not limit other rights and remedies that may be available to the owner of a motor vehicle under other provisions of law.

(h) A manufacturer or distributor of motor vehicles sold in the state under manufacturer's or distributor's express warranty shall maintain a repair facility that is able to perform the service and make the repairs required by the warranty and by this section. A

1 manufacturer or distributor may comply with the requirements of this
2 subsection by entering into a warranty service contract with an inde-
3 pendent service and repair facility that provides for the manufacturer
4 or distributor to reimburse the facility for all service and repairs
5 that are covered by the written independent service contract. In lieu
6 of establishing a repair facility or entering into a warranty service
7 contract with an independent service and repair facility as required
8 by this subsection, a manufacturer or distributor may pay the actual
9 costs of shipping a motor vehicle to and from the nearest authorized
10 facility for warranty service and repairs.

11 (i) If a manufacturer or distributor has established an informal
12 dispute settlement procedure in the state ^{has been approved by A.C. 25 500512.1} [that substantially complies]
13 with the provisions of 16 C.F.R. Part 703, ^{compliance} as that Part may be
14 amended, the provisions of (b) of this section concerning refund or
15 replacement do not apply to an owner who has not first resorted to the
16 informal dispute settlement procedure.

17 (j) No claim under this section may be filed by an owner more
18 than 12 months after expiration of the express warranty.

19 (k) In this section ^{the cause of action under this section may be}
20 ^{filed by an owner more than 12 months after the}

21 (1) "distributor" means an agent of a manufacturer or a
22 corporation engaged in the wholesale distribution of motor vehicles to
23 retail motor vehicle dealers; ^{expiration of the express warranty or 6 months after}
24 ^{a decision by an informal dispute settlement}
25 ^{procedure under (i), whichever is later.}

26 (2) "motor vehicle" or "vehicle" means a motor vehicle as
27 defined in AS 28.35.260 that is purchased for personal, family, or
28 household purposes and required to be registered under AS 28.10 or
29 with a governmental agency of another jurisdiction performing a
similar function;

(3) "owner" means a purchaser, other than for resale, of a
new motor vehicle, a person to whom the motor vehicle is transferred

1 during the term of an express warranty applicable to the vehicle, or
2 any other person entitled to enforce an express warranty on the vehi-
3 cle under the terms of the warranty;

4 (4) "reasonable allowance" means an amount attributable to
5 a consumer's use of a motor vehicle, but does not include any period
6 after the consumer's first report to the manufacturer, or any of its
7 authorized agents or dealers, of a nonconformity with an express
8 warranty applicable to the motor vehicle during which the motor
9 vehicle is out of service due to the nonconformity;

The reasonable allowance

shall not exceed the depreciation in value of the vehicle, for the time the vehicle

is out of service, when (5) "substantially impairs use [and] value" refers to a

defect or condition in a vehicle that

calculated by a straight-line method

over the life (A) prevents it from being operated;

expectancy of a new (B) makes it unsafe to operate; or

vehicle, when the purpose of this (C) decreases the economic life of the vehicle.

substitution shall be deemed to be 1 unit.

* Sec. 3. AS 28.20.440(b)(3) is amended to read:

16 (3) contain coverage in the amounts set out in (2) of this
17 subsection for the protection of the persons insured under the policy
18 who are legally entitled to recover damages from owners or operators
19 of uninsured or underinsured motor vehicles because of bodily injury
20 or death, or damage to or destruction of property arising out of the
21 ownership, maintenance or use of the uninsured or underinsured motor
22 vehicle, except that this coverage or part of it may be waived in
23 writing by the insured on or before the effective date of the policy.

* Sec. 4. AS 21.39.020(a) is amended to read:

24 (a) An automobile liability policy that [WHICH] insures an owner
25 or operator of a motor vehicle against loss resulting from [HIS]
26 liability for bodily injury or death, or for property injury or de-
27 struction, or both, which is sold in the state [AFTER JANUARY 1, 1969,
28 BY AN INSURANCE CARRIER AUTHORIZED TO TRANSACT BUSINESS IN THIS

Amendments to SB 286/ Act Relating to Motor Vehicles

by Rep. Mike Miller

Amendment 1. Page 2, line 6. After "is the result of abuse,"; insert "unreasonable".

Amendment 2. Page 2, line 15. After "a total of 30 or more"; insert "business".

Amendment 3. Page 2, lines 17-18. Delete ", WHICHEVER PERIOD TERMINATES FIRST. A PERIOD OF TIME UNDER THIS SUBSECTION IS"; and insert the following, "shall be".

Amendment 4. Page 2, line 20. After "responsibility of the owner." Add "The 30 day limit shall extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or it's agents."

Amendment 5. Page 2, lines 21-24. Delete entire subsection (e) and renumber following subsections accordingly.

Amendment 6. Page 2, after line 27. Insert new subsection to read: "No motor vehicle returned by a consumer under subsection (b) may be resold unless full disclosure of the reaosns for return is made to any prospective buyer."

Amendment 7. Page 3, after line 1. Add new subsection to read: "The manufacturer or distributor of motor vehicles sold in the state for which manufacturer or distributor has made an express warranty shall maintain sufficient repair facilities reasonably close to all population centers where vehicles are sold to carry out terms of such warranties.

(a) As a means of complying with (h) manufacturer or distributor shall be permitted to enter into warranty service contracts with independent service and repair facilities. The manufacturer shall establish procedures to reimburse the independent repair facility for all costs of affecting the repair including diagnostic costs, telephone expenses, and shipping costs.

(b) As an alternative to establishing repair facilities manufacturer shall pay the actual costs of shipping the defective vehicle to the closest authorized repair facility.

Renumber following subsections accordingly.

Amendment 8. Page 3, line 3. After "dispute settlement procedure"; insert "in state".

SB 286 Amendments, cont.

Amendment 9. Page 3, line 10. Delete ".360"; insert ".260".

Amendment 10. Page 3, after line 22. Add:

(4) "distributor" means an agent of the manufacturer or a corporation engaged in the wholesale distribution of motor vehicles to retail motor vehicle dealers.

(5) "population center" is a contiguous community of over 7,500 persons.

###

MEMORANDUM

State of Alaska

TO: Denise Zachary, Legislative Aide
Rep. Mike Miller (Juneau)

DATE: June 23, 1983

FILE NO:

NORMAN C. GORSUCH
ATTORNEY GENERAL

TELEPHONE NO: 279-0428

FROM: By: *Connie J. Sipe* Assistant AG SUBJECT: Suggested
Consumer Protection Section Amendments to HB7

Amendment 1, page 2, line 12: Before "market value"; delete "and" and insert "or."

Amendment 2, page 2, line 14: Delete "at its option."

Amendment 3, page 2, line 23: Before "market value"; delete "and" and insert "or."

Amendment 4, page 3, line 27: After "repair facility" insert "in all population centers."

Amendment 5, page 4, line 12: After "in the state" delete "that substantially complies"; insert "has been approved by the attorney general as substantially complying."

Amendment 6, page 5, line 9: After "nonconformity"; insert "The reasonable allowance shall not exceed the depreciation in value of the vehicle, for the period of time the vehicle is in service, when depreciation is calculated by a straight-line method over the life expectancy of a new vehicle, which, for purposes of this subsection shall be deemed to be 7 years."

Amendment 7, page 5, line 10: Before "market value"; delete "and" insert "or."

Amendment 8, page 5, after line 14: Add: (6) "population center" means a contiguous community of over 7500 persons.

* * * * *

LEGAL CLEANUP TO CLARIFY INTENT. (Very important).

Page 4, lines 17 and 18: Delete "no claim under this section may be filed by an owner more than 12 months after the expiration of the warranty" insert "no cause of action under this section may be filed by an owner more than 18 months after the expiration of the express warranty or 6 months after a decision by an informal dispute settlement procedure under (1)." (Note that "claim" is extremely ambiguous; could mean a "claim" (1) to manufacturer for refund, (2) to dispute panel, (3) or to court, for refusal to refund.)

whichever date is later.

cc Art Peterson
AGO/Juneau

Population determination definition derived
from these statistics:

Table 10
Population by Election District - 1980

<u>House Election District</u>	<u>1980 Population*</u>	<u>%</u>
1 - Ketchikan	15,138	3.8
2 - Wrangell	7,804	1.9
3 - Sitka	8,742	2.2
4 - Juneau	22,143	5.5
5 - Cordova	10,702	2.7
6 - Mat-Su	17,739	4.4
7-12 Anchorage	173,017	43.2
13 - Kenai	22,241	5.6
14 - Kodiak	8,757	2.2
15 - Aleutians	9,472	2.4
16 - Bristol Bay	6,830	1.7
17 - Bethel	8,790	2.2
18 - Galena	8,322	2.1
19 - Nenana	9,168	2.3
20 - Fairbanks	55,756	13.9
21 - Kotzebue	8,152	2.0
22 - Nome	7,708	1.9
Total	400,481	100.0

*Includes military population.

Source: Election District Population Comparison, Reapportionment Board
March 16, 1981

Amendments to SB 286/ Act Relating to Motor Vehicles

Amendment 1. Page 1, line 2. After "reports the nonconformity"; insert "in writing".

Amendment 2. Page 1, line 23. After "the use and"; insert "market".

Amendment 3. Page 1, line 25. Delete "the option of the owner" and insert "it's option".

Amendment 4. Page 1, line 26. After "a new"; insert ", comparable".

Amendment 5. Page 1, line 26. After "refund the"; insert "full".

Amendment 6. Page 1, after line 27. After "all collateral charges"; insert "less a reasonable allowance for the consumers' use of the vehicle".

Amendment 7. Page 2, after line 4. After "the use and"; insert "market".

Amendment 8. Page 2, line 8. After "owner"; insert "or any other party that is not an official representative of the manufacturer, distributor, agent, or dealer".

Amendment 9. Page 3, line 13. Delete "cost of performing warranty service and repairs, including diagnostic costs, telephone expenses, and shipping costs" and insert in it's place, "provisions that are provided for in written independent service contract".

Amendment 10. Page 3, line 22. After "in the state that"; insert "substantially".

SB 286

proposed amendments, cont.

Amendment 11. Page 3, line 26. After "dispute settlement procedure." Insert a new sentence to read, "Action for filing complaint should be commenced during the express warranty or twelve (12) months thereafter."

Amendment 12. Page 4, line 11. After "impairs use and"; insert "market".

Amendment 13. Page 4, after line 15. Add definition for "reasonable allowance". (5) "reasonable allowance" means an amount attributable to a consumer's use of a motor vehicle, but does not include any period after the consumer's first report to the manufacturer, or any of its authorized agents or dealers, of a nonconformity with an express warranty applicable to the motor vehicle during which the motor vehicle is out of service due to the nonconformity.

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

June 9, 1983

SUBJECT: Sectional analysis of proposed CSSB 286 (L&C)

TO: Senator Richard I. Eliason
Chair, Senate Labor and Commerce Committee

FROM:  Linn H. Asper
Legislative Counsel

You have requested a sectional analysis of the proposed Labor and Commerce committee substitute for SB 286.

Section 1 adds a new section to AS 45.45 relating to motor vehicle warranties.

AS 45.45.300(a) places a duty on a manufacturer or distributor of motor vehicles, or their agents or dealers, to make repairs under the terms of express warranties that apply to new vehicles, during the term of the warranty or one year, whichever period ends first.

AS 45.45.300(b) provides that if a motor vehicle cannot be repaired under the terms of the warranty after a reasonable number of attempts, and the defect that cannot be repaired substantially impairs the use and value of the vehicle, the owner may return the vehicle and receive a replacement or a refund of the purchase price, at the option of the owner.

AS 45.45.300(c) gives the manufacturer, distributor, agent or dealer two affirmative defenses to the owner's claim for replacement or refund:

- (1) that the defect complained of does not substantially impair the use and value of the vehicle; and
- (2) that the defect is the fault of the owner.

AS 45.45.300(d) establishes a presumption that a reasonable number of attempts to repair the vehicle have occurred if the defect has been repaired four or more times during a

year, but continues to exist, or if the vehicle is out of service for more than 30 days during the warranty term or the one-year period. The one-year time period during which the owner may seek repair is extended by periods during which repairs are not available for reasons that are not the responsibility of the owner. The 30 day time period does not include periods of time when repairs are not made for reasons that are beyond the control of the manufacturer, distributor, agent, or dealer.

AS 45.45.300(e) makes violation of the section an unfair trade practice under AS 45.50.471.

AS 45.45.300(f) prohibits the resale of a vehicle returned under the section, without full disclosure of the reason for the return to the prospective buyer.

AS 45.45.300(g) makes the remedy provided by the section non-exclusive and allows owners to seek remedies that they may have under other provisions of law.

AS 45.45.300(h) requires manufacturers or distributors to maintain warranty service facilities near population centers of the state to service vehicles sold in the state. Manufacturers or distributors may contract with independent facilities to provide warranty service if the contract requires full payment for such service. Payment for shipping motor vehicles to and from service facilities is allowed in lieu of establishing additional facilities.

AS 45.45.300(i) requires owners to resort to informal dispute settlement procedures established under federal law, if such procedures exist in the state, before exercising the rights provided in (b) of the section.

AS 45.45.300(j) defines terms used in the section, including "distributor", "motor vehicle", "owner", "population center", and "substantial impairment of use and value".

LHA:ljb
24/002



Representative Mike Miller

TO: Senator Eliason
Labor and Commerce Committee

FROM: Rep. Mike Miller

Date: June 6, 1983

RE: SB 286/ Motor Vehicle Warranties

Attached are the election district population comparisons that were used in the definition of "population center" in Amendment 10.

Thank you for your time and consideration on this legislation.

Table 10
Population by Election District - 1980

<u>House Election District</u>	<u>1980 Population*</u>	<u>%</u>
1 - Ketchikan	15,138	3.8
2 - Wrangell	7,804	1.9
3 - Sitka	8,742	2.2
4 - Juneau	22,143	5.5
5 - Cordova	10,702	2.7
6 - Mat-Su	17,739	4.4
7-12 Anchorage	173,017	43.2
13 - Kenai	22,241	5.6
14 - Kodiak	8,757	2.2
15 - Aleutians	9,472	2.4
16 - Bristol Bay	6,830	1.7
17 - Bethel	8,790	2.2
18 - Galena	8,322	2.1
19 - Nenana	9,168	2.3
20 - Fairbanks	55,756	13.9
21 - Kotzebue	8,152	2.0
22 - Nome	7,708	1.9
Total	400,481	100.0

*Includes military population.

Source: Election District Population Comparison, Reapportionment Board
 March 16, 1981

Senate Labor + Commerce Cmte

Jan 31, 1984

SB 286

1:30 pm

Members present

Eliason, chair

Sackett

Mulcahy

Pettyjohn

Rodey

0 Sen. Eliason convened the S L+C cmte at 1:30 with all members in attendance

10 Sen Ray, prime sponsor of SB286, stated the purpose of legislation ^{is} ~~was~~ to require a manufacturer of a new vehicle to live up to the express warranty offered. Sen Ray further commented that an estimated 800-900 Alaskans purchase defective vehicles each year. Therefore, there is a problem and SB286 is designed to address this concern.

73 Sen. Pettyjohn ~~stated his objection to~~ outlined a possible scenario where a new vehicle is purchased in Anchorage and then shipped to a remote site in Alaska not connected by the road system. Would the manufacturer be responsible to ship the car out to fix it?

132

Sen. Sackett asked for clarification regarding two memorandums placed in committee members file

144

Connie Sipe, Consumer Protection, explained her memorandum addressed to ~~Sam Eliason~~ ^{Chair}, in which ~~proposed~~ the amendments incorporated into ~~SS~~ the work draft before the cmte were outlined. Connie also recommended a further amendment to clarify the meaning of the legislation

The Office of the Attorney General supports SB286 and urges the passage of this legislation. The Attorney General recognizes the ^{monetary} value of a warranty which can add between \$400-\$1000 to the purchase price of a new vehicle. Alaskans deserve the added protection to see that a ^{their} warranties ^{are} honored. It is hoped that this legislation will encourage the automobile manufacturer to better service their automobiles; therefore, giving Alaskans the full value of their warranties.

Connie reiterated the Attorney General's opinion (as expressed in written memo to the chair of Senate L+C) that, ^{perhaps the} automobile manufacturers don't treat Alaskan dealers / ~~customer~~ consumers as fairly as dealers / consumers in other states. For example, dealers cannot get warranty parts air freighted to Alaska at manufacture expense even though this practice is in place for the other 49 states.

Raising the ^{manufacturer level of} responsibility under their own warranty will get the attention Alaska deserves

344

Sen. Rodey posed a question concerning the ~~id~~ wondered if many dealers had filed complaints with ^{had been filed} Consumer Protection concerning the necessity of servicing an automobile in which was not sold by that dealer. dealers who were "less than enthusiastic" to service cars in which they had not sold.

Connie responded that not many complaints were reported, but it is a factor to consider. ~~It was also noted~~

382

The concern of honoring a warranty to an automobile in a remote location was raised by Sen. Pettyjohn. ~~It~~ ^{on page 3, sub-section} was acknowledge that ~~section (h), it~~ ^{should} read "a manufacturer... ~~should~~ ^{shall} maintain a repair facility IN THE STATE (or words to that effect)"

434

Connie Sipe explained that the ^{proposed} work draft of SB 286 does not require the manufacturer to pay for the shipment of a vehicle from a remote site. ~~This section was in a prior~~ ~~versions of this legislation, but it is~~ ~~si~~ ~~That section was in prior~~ ~~This language has been deleted from~~ ~~SB 286.~~

~~It~~ was further explained by Sen. Eliason that the proposed draft was the result of compromises by the ~~manufacturers~~ ^{at} meetings between

the car manufacturers and interested parties.

456 Jim Austin ^{representing the Motor Vehicle Manufacturers Assn,}
and Lee Ridgeway ^{General Motors Corporation,} stated they were in
accord ⁱⁿ with many respects, with SB286.
Their official position is ~~that~~ while
not specifically endorsing this legislation,
they are not opposing its passage.

~~XX~~ Jim Austin continued by outlining
several proposed amendments for
committee consideration.

500 It was suggested by Mr. Austin that
a nonconformity be reported ^{in writing} to the
manufacturer to ensure that the
manufacturer is aware of the
consumer's concern. As the manufacturer
is the party responsible, the manufacturer
must be kept informed regarding
the defect.

623 After much committee input, Connie
presented proposed language which clarified
that owner of a vehicle needed to notify
the manufacturer ^{only} once that ~~any~~ defects

~~in the car~~ the owner was experiencing difficulties with the vehicle

630 Jim Austin acknowledge that the presented testimony would satisfy the manufacturer's concerns.

653 The proposal to make the manufacturer responsible to provide a new OR comparable vehicle ~~when~~ available to the consumer ~~who has~~ who had previously purchased "a lemon" was discussed at great detail

736 It was noted by Lee Ridgeway that General Motors receives payment of the full purchase price, but not any interest charges. An amendment was proposed to take this fact into consideration when determining the buy-back value.

802 Less than $\frac{1}{2}$ of 1% of vehicle sold are involved in a buy-back situation. The proposed amendments would make SB 286 effective for all parties concern stated Mr. Ridgeway

833

~~The automobile manufacturer's~~
It was requested by the
manufacturer representatives that the
disclosure concerning a vehicle's
history ~~be~~ deleted. ~~It was pointed~~
~~out that it is a "lemon"~~. Once a
"lemon" is restored, ~~to~~ the vehicle
is covered by a new warranty
and therefore; as expressed by
Lee Ridgeway, should be treated
as a "new" automobile and not
as vehicle with a history.

Side 2

02

Sen. Ray voiced support for the
full disclosure on the vehicle's
history. It is important that the
consumer has this information.

66

Discussion regarding an outside
limit for "reasonable allowance" followed
~~on~~ Jim Austin's proposal to
eliminate the maximum dollar amount.
Jim felt the third party arbitrators
should have the flexibility to set
an amount which seemed reasonable.

123 Connie Sipe~~x~~ suggested this
out~~side~~^{line} limit as expressed in
straight depreciation over a 7yr
life span for a vehicle was ~~just~~
~~equitable~~ and ~~provided the consumer~~
~~with a needed~~ protection
and gave the arbitrators some
guidance to ^{what was meant by} ~~what~~ reasonable
allowance". ~~was to mean.~~

190 Proposed clarification of the
term "economic life" was suggested
and no~~t~~ objections were voiced.

Sen. Eliason announced a teleconf.
scheduled for Feb 9 at 1:30 pm
to further discuss SB286

284 Sen. Eliason directed Connie Sipe~~x~~
to prepare a memorandum on ^{for the comm. Hec}
the proposed amendments ^{members}

290 Sen Ray expressed his ~~appreciation~~
to the committee for the ^{comm. Hec's} courtesy

294. Meeting adjourned - 2:30pm

SPONSOR: Senate Labor + Commerce
leg non-leg/pub hear work ses inv hear

T/C DATE/DAY: THURS. 2/9/84.

SUBJECT: SB 286 Temon Jaw

TIME: Alaska 1:30-3:00

MAILING ADDRESS: _____

DATE TAKEN/BY hsh. 2/1

PHONE 4917 CONTACT: Shela

JUNEAU ROOM _____

SITES PARTICIPATING:

North Slope

Anaktuvuk Pass
* Barrow
Kaktovik
Point Hope
Wainwright

Interior

* Delta Junction
* Fairbanks
** Fort Yukon
Galena
* Glennallen

Nana

Ambler
* Kotzebue
Noorvik
Selawik

Bristol Bay

Aleutians
* Bethel
* Dillingham
St. Paul
Sand Point
** Unalaska
Togiak
Toksook
Naknek
Newhalen

South Central

* Anchorage
* Homer
* Kenai (Sol)
* Kodiak
* Mat-Su
* Seward
* Valdez

Norton Sound

Gambell
Hooper Bay
* Nome
Savoonga
Shishmaref
** Unalakleet

Southeast

Cordova
* Haines
Hoonah
* Jingau
* Ketchikan
* Petersburg
* Sitka
Wrangell
Yakutat

ALL ALASKA

ALL LIO's

ALL LIO's, OTHER SITES WELCOME
WITH PRIOR NOTIFICATION

*any site with interest
may participate*

Chairing Site/person Sen. Eliason / Tru

Special Offnet _____
Location/Phone # _____

Shela Peterson 2/1/84

☐ This teleconference is an advertized public hearing
required to meet the public hearing law.

SIGNATURE OF SPONSOR/CONTACT PERSON

DATE

-----TELECONFERENCE OFFICE USE ONLY-----

2-Wire _____ 4-Wire X

Publicity:

_____ Local calls/list attached

X Media P.S.A. attached

Can Expect:

_____ Lengthly Back-up

_____ Bill Summary

_____ Participants List

LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

2/9/84_____ : DATE
FBX_____ : SITE/LOCATION
SEN. LABOR & COMMERCE "LEMON LAW"_____ : SPONSOR/SUBJECT
SB286

TESTIFIED/PARTICIPATED:

OBSERVED:

1. JOHN P. IMMEL, 1924 HILLING, FBX, 99701 456-5248
2. TERRY PIPOLY, 302 ANTOINETTE, FBX, 99701 452-3300
3. LARRY WALKER, 4013 EVERGREEN, FBX, 99701 479-2310
4. GEORGE DROWER, 4841 DALE ROAD, FBX, 99701 479-5951

0_____TESTIFY/ED
4_____OBSERVE/ED
4_____TOTAL

-----STATS-----
*****T/C STARTED: 1:30 P.M.
*****T/C ENDED: 3:10 P.M.

=====LEOM

HSG 84-00012042 PRTY 1 02/09/84 15:46:03 ORIG: SOL# IN= 0016 OUT= 0027
FROM: SOLDOTNA/BECKY TO: JUNEAU T/C
TARGET: LJH6 SUBJ: F. STATS

MSG 84-00612010 PRTY 1 02/09/84 15:16:24 ORIG: LS00 IN= 0014 OUT= 0024
FROM: SITKA TO: PRIMARY MODERATOR & JUNEAU TC
TARGET: LJH6 SUBJ: HOONAH FINAL STATS/2-9, LEMON LAW TC

LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

DATE: FEBRUARY 9, 1984
SITE: HOONAH
SPONSOR/SUBJECT: (S) LABOR & COMMERCE COMMITTEE/ LEMON LAW

0	TESTIFIED	*****T/C STARTED: 1:30PM
2	OBSERVED	*****T/C ENDED: 3:00PM
2	TOTAL	

OBSERVED

- | | | |
|----|---|----------|
| 1. | LED HOUSTON, JR., BOX 236, HOONAH, AK 99829 | 945-3377 |
| 2. | THOMAS JACK, SR., BOX 359, HOONAH, AK 99829 | 945-3239 |

MSG 84-00011982 PRTY 1 02/09/84 14:40:31 ORIG: LM01 IN= 0001 OUT= 0025
FROM: MATSU TO: PRIMARY MODERATOR & JUNEAU T/C
TARGET: LJH6 SUBJ: SEN. LABOR AND COMMERCE/SB 286

LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

-FEB. 9, 1984- : DATE
-MAT-SU LIO- : SITE/LOCATION
-SENATE LABOR AND COMMERCE/SB 286 : SPONSOR/SUBJECT
-1- TESTIFY/ED *****T/C STARTED ADT
-0- OBSERVE/ED *****T/C ENDED ADT
-1- TOTAL

NAME/REPRESENTING	ADDRESS/PHONE	TESTIFY	OBSERVE

1. GLORIA KENYON,	PO BOX 17103, BIG LAKE 99687	892-6911 TESTIFY	10

MSG 84-00012024 PRTY 1 02/09/84 15:28:40 ORIG: LF02 IN= 0007 OUT= 0026
FROM: TRACIE/FBX TO: JND T/C
TARGET: LJH6 SUBJ: FINAL STATS LEMON LAW LEG. PUBL. HEARING

LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

__FEB 9, 1984__ : DATE
 __KTN/LIO__ : SITE/LOCATION
 __SL&C/LEMON LAW-SB286__ : SPONSOR/SUBJECT

FINAL STATS:

--2---: TESTIFIED *****T/C STARTED: -1:35 PM--
 --0---: OBSERVED *****T/C ENDED: -3:05 PM--
 --2---: TOTAL

NAME/REPRESENTING	ADDRESS/PHONE	TESTIFY	OBSERVE
-------------------	---------------	---------	---------

1. LES HIATT, SELF	PHONE 225-5878	(4)	X
ROUTE 1-BOX 194, KETCHIKAN, AK 99901			
2. PAUL L. BECK, SELF	PHONE 225-4906	(3)	X
PO BOX 5720, KETCHIKAN, AK 99901			

NOTE: THESE STATS ARE FOR KETCHIKAN ONLY; WRANGELL DID NOT PARTICIPATE IN THIS TELECONFERENCE.

MSG 84-00012012 PRY 1 02/09/84 15:17:31 ORIG: L000 IN= 0009 OUT= 0023
 FROM: KODIAK TO: JUNEAU T/C
 TARGET: LJH6 SUBJ: KODIAK "FINAL STATS" SEN. L&C SB 286 LEM

LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

DATE: FEBRUARY 9, 1984
 SITE/LOCATION: KODIAK / L.I.O.
 SPONSOR/SUBJECT: SENATE LABOR & COMMERCE/SB 286 LEMON LAW
 LOCAL MODERATOR: MARY JO

___1___ TESTIFY/ED *****T/C STARTED: 1:30 P.M.____
 ___0___ OBSERVE/ED *****T/C ENDED: 3:09 P.M.____
 ___1___ TOTAL

NAME/REPRESENTING	ADDRESS/PHONE	TESTIFY	OBSERVE
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1. LORNA LEE ARNDT, P.O. BOX 2069, KODIAK, 486-6486	(6)	X	
2.			
3.			
4.			
5.			
6.			

 LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

2/9/84_____ : DATE
 SOLDOTNA_____ : SITE/LOCATION
 SB 286 LEMON LAW_____ : SPONSOR/SUBJECT
 1:35_____ : T/C START
 3:10_____ : T/C ENDED

5___TESTIFY/ED
 3___OBSERVE/ED
 8___TOTAL

NAME/REPRESENTING	ADDRESS/PHONE	TESTIFY	OBSERVE
1. JIM CONKLIN	BOX 8287 KENAI	X	
2. ROBERT BYERS	BOX 865 SOLDOTNA	X	
3. LINDA LAUGHRIDGE	BOX 990 KENAI	X	
4. SHIRLEY CONKLIN	BOX 8227 MRB KENAI		X
5. FRANK MULLEN	BOX 57 SOLDOTNA	X	
6. CHARLES ROSER	BOX 172 SOLDOTNA		X
7. MARTIN MCGAHAN	BOX 8106 NIKISHKA		X
8. MR. M.M. MCGAHAN	BOX 8106 NIKISHKA	X	

REGIONAL STATS

-----LTC SITE
 -----TESTIFIED
 -----OBSERVED
 -----TOTAL

1.
 2.
 3.
 4.

REGIONAL STATS

-----LTC SITE
 -----TESTIFIED
 -----OBSERVED
 -----TOTAL

1.
 2.
 3.
 4.

MSG 84-00011886 PR 1 02/09/84 13:22:49 ORIG: LG00 IN= 0011 OUT= 0004
FROM: JOANN GLENNALLEN TO: TOM JUNEAU T/C
TARGET: LJH6 SUBJ: SP 286 LEMON LAW T/C 02-09-84 1:30

GLENNALLEN HAS ONE OBSERVER PRESENT AT THIS TIME:

JAMES D. SPARKS
REPRESENTING:

COPPER RIVER NATIVE ASSOCIATION

DRAWER H COPPER CENTER AK. 99573

822-5241

7

NOTE: HE MAY WISH TO TESTIFY LATER AS T/C PROGRESSES - WILL OMNI YOU IF
HE WISHES TO.

Shiela from Tom Tele

MSG 84-00012018 PRTY 1 02/09/84 15:23:26 ORIG: LA19 IN= 0007 OUT= 0021
FROM: ANCHORAGE TO: FINAL STATS JNUTC
TARGET: LJH6 SUBJ: (S) LABOR & COMMERCE

LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

DATE: FEB. 9
SITE: ANCHORAGE
SPONSOR/SUBJECT: SB 286 SENATE LABOR & COMMERCE

..8...TESTIFIED *****T/C STARTED: 1:30
.31...OBSERVED *****T/C ENDED: 3:10
.39...TOTAL

TO TESTIFY:

1. DENNIS STOVALL, 2603 W. 30TH, 248-1485 (1)
2. FRED MORINO, 935 GAMBELL STREET, 99501, 272-5522 (2)
3. DAVID GARRISON, P.O. BOX 875351, WASILLA, 376-2900 (40)
4. SIG MURPHY, 4200 RABBIT CREEK RD., 99516, 345-6688 (11/12)
5. MAUREEN KENNEDY/AKPIRG, P.O. BOX 1093, 99510, 278-3688 (13)
6. JANIC SMITH, 2900 BONIFACE PARKWAY, # 326 785-5528 (14)
7. CONNIE SIPE, 1031 W. 4TH AVENUE, SUITE 110 279-0428 (11, 12)
8. DEBBIE TURNER, SR BOX 1196, CHUGIAK, AK 688-9686 (OMNI # 3) (5)

*****NOTE: DEBBIE TURNER HAS INDICATED A TIME CONSTRAINT AND WOULD LIKE TO SPEAK ASAP *****

TO OBSERVE:

1. DICK SILBERER, 821 E. 5TH AVE,
 2. BARBARA HENDRICKSON, 1031 W. 4TH AVE, SUITE 110, 279-0428
 3. MARK RILEY/KENI RADIO
 4. D C MORN, DAILY NEW, 786-4343
 5. MAX HESSEL, 1226 ST., ANCHORAGE (?)
- AND

26 STUDENTS FROM NORTHWOOD ELEMENTARY SCHOOL
DENNIS STOVALL
4807 NORTHWOOD DRIVE
ANCHORAGE, AK 99503

Henry Pratt (15)

Ralph Seatins (16)

MSG 84-00012017 PRTY 1 02/09/84 15:22:59 ORIG: LK00 IN= 0017 OUT= 0022
FROM: E/ELYN/KETCHIKAN TO: JNUTC
TARGET: LJH6 SUBJ: 2/9/84-T/C SB286 LEMON LAW

MEMORANDUM

State of Alaska

TO: Senator Richard L. Eliason

DATE: June 6, 1983

FILE NO:

TELEPHONE NO: 279-0428

FROM: NORMAN GORSUCH
ATTORNEY GENERAL
By:
Scotty Dawkins, Investigator
Consumer Protection Section
AGO/Anchorage

SUBJECT: SB 286
Motor Vehicle
Warranties

Dear Mr. Chairman. Thank you for allowing me to testify today. My name is Scotty Dawkins, I am an investigator for the Consumer Protection Section of the Department of Law and I specialize in automotive complaints. Before moving into the government arena, I spent over 15 years in the automobile industry. I am a nationally certified general mechanic and I am licensed by the State of Michigan as a master mechanic both in passenger cars and heavy duty trucks. I have worked in dealerships as a mechanic and as a service manager. I was employed by a vehicle manufacturer as an engineering technician, a garage supervisor, a service representative, a technical instructor, and as a German based international service manager. My experience then and my more recent experiences convinces me that Alaskans need the protection offered by SB 286.

Last month's newspaper "Automotive News" reported that the average 1982 automobile sold for \$9911.00. In Alaska we know this figure to be considerably higher, however, even at this price vehicles routinely are delivered to buyers with

built-in problems. A General Motor's spokesman recently said "When a product is mass-produced, it is possible that from time to time a particular item may be completed and yet contain a defect in material or workmanship". The GM spokesman was speaking to the problems with the Oldsmobile diesel engine, the Chevette transmission GM installed in their full size cars and the tens of thousands of camshafts that have failed in the 305/350 Chevrolet V8 since 1974. The GM spokesman was making the understatement of the year, when they made this admission.

Consumer Reports often find over twelve built-in defects in the new cars they test. Often the manufacturer is aware of these defects but seldom is any voluntary action taken to correct the problems in cars that are already built. Instead the manufacturer relies on a predelivery inspection performed by the dealer to detect and correct these problems. What actually happens is that the buyer discovers the problems after delivery and faces the hassle of attempting to have repairs completed by the dealer's service department.

Most, if not all new car warranties require that you take your car back to the dealer for these warranty repairs. In Alaska the fact that your new car dealer may be hundreds of miles away somewhat complicates this requirement. We earlier had suggested an amendment to the house bill to alleviate this situation.

Even if you live in the Anchorage area warranty service can be a problem. Consumers often report to me that it takes

two weeks or more just to get their car into the dealer's repair shop. It is clear many Alaskan automobile dealer's lack adequate service departments for the number of vehicles they sell. I was recently told by a major manufacturer's representative that their largest Alaskan dealer had, by national standards, half the number of mechanics they should have. Indeed, it is not unusual to find an Alaskan dealership that has more sales personnel than it has skilled mechanics. Although Alaskan dealers complain they would hire additional mechanics if they could, not a single Alaskan new car dealer has a bonafide apprenticeship program in operation.

Last year the 25 Alaskan new car dealers sold 27,705 new vehicles, which works out to be 1,148 new vehicles per dealership. Automotive News of May 1983, reports the sales per dealer of the average GM single line dealer is 265 vehicles. The average Alaskan automobile dealership does much better than this with average gross sales in excess of \$10,480,000. Indeed Alaska is host to two of the most profitable dealerships in the country and the only full line GM dealer this side of Kuwait.

Despite the healthy condition of the auto dealers in Alaska, Alaskan buyers of new cars have problems when it comes to obtaining service on the defective products they were sold. What recourse do these buyers have? In Alaska very little. While all vehicle manufacturers have a service support system spread across the country, a system that

includes thousands of employees and dozens of offices, not one manufacturer has an office or an employee in this state that is responsible for any of the aspects of customer service. However, they do have offices and personnel to assist you in financing the purchase price of a new car. An Alaskan with vehicle problems has to rely on an Oregon or Washington service representative that visits once every 6 to 8 weeks, or long distance telephone calls to Seattle, California or Detroit. In other states most of the manufacturers have set up third-party arbitration systems to help deal with these problems. In Alaska nobody has as of this date. Instead you may be referred to a Seattle based arbitration programs. A consumer may seek redress through litigation, however, the Small Claims limit of \$2000.00 precludes most of these cases. Alaskan attorneys normally are reluctant to handle these cases due to the lack of statutory definitions and minimal case law, besides the time and expense involved.

I don't wish to waste the committee's time with any unnecessary rhetoric but let me outline five separate complaints that I have recently been involved with. The first complaint came from a District Court Judge who for 18 months had been trying to have his 1980 vehicle's thirst for engine oil and an inoperative horn repaired. The dealer who had worked on this problem many times told the judge that the warranty had now expired, and since the dealer didn't build the car just sold it, he was not responsible. Instead the dealer offered half of the \$9000 selling price in trade for

a new car. The judge then contacted the manufacturer only to be rebuffed, they would not even return his calls. My intervention did convince the manufacturer to rebuild the vehicles engine, however, I was recently informed that the newly rebuilt engine is consuming one quart of oil every 50 to 100 miles. Senate Bill 286 would resolve this problem.

The second complaint came from a Valdez resident who purchased a car from an Anchorage dealer. The salesman assured the buyer that warranty work could be handled in Valdez. The buyer also paid several hundreds of dollars for an additional service contract to expand his warranty to 5 years or 50,000 miles. Seven months later the vehicle's engine failed. Contact was made with the dealer who informed the consumer that repairs would only be made at the dealership and whatever expenses were accrued in towing the now disabled vehicle from Valdez to Anchorage would be out of the owners pocket. I tried but was unsuccessful in resolving this dilemma. The consumer ended up paying to have his disabled truck shipped to Anchorage, and probably hundreds more to ship it home after the repairs. An amended Senate Bill 286 would have resolved this problem.

The third complaint was by an Alaska State Trooper. His station wagon had been in the dealers shop 8 times in a futile battle to effect repairs to a defective engine. Our intervention finally convinced the manufacturer to replace the engine. However, the problems did not end. The replacement engine also failed. It was again repaired but continued

to use an excessive amount of oil. A different dealership service department resolved the problem when they discovered the valve seals had not been installed during the previous repair. Senate Bill 286 would have resolved this problem much earlier.

The fourth complaint came from a Ketchikan resident. The vehicle in question had been purchased in Washington. Again assurance was made by the selling dealer that warranty repairs could be done in the buyer home community. The vehicle, a small four wheel drive unit, developed a severe vibration. The consumer soon found out how reliable the warranty representations were. After having paid a number of local garages work on the problem, the consumer paid to have the vehicle shipped back to the Washington dealer. The dealer made a number of modifications to the vehicle then shipped the vehicle back to Ketchikan, at the consumer's expense. The problem persisted, however, and finally progressed to the point that the State Troopers ordered the car off the road. Our office was called and finally after technical information was received from Detroit a local garage was able to correct the defect. The car however, is in a deteriorated condition caused by the vibrations of the defect. If the manufacturer had an established service facility in Ketchikan as per our amendment this dilemma would never have occurred.

Alaskan dealers and their employees have on numerous occasions stated they wish they could do more to correct

these problems. On occasion I have been told by dealership personnel that a particular automobile was a lemon and should be brought back; however, their hands were tied and they could only follow manufacturers procedures or that the manufacturer would not authorize what needed to be done. Even when repairs are authorized, the manufacturer reimburses the dealer considerably less than their normal retail rate for the service and parts provided. We have earlier proposed an amendment to speak to this issue.

The availability of service parts is a part of this problem. No manufacturer warehouses any service parts in this state. Instead, reliance is placed on the supplies stocked by the dealer. If a part is not available locally to repair a warranty covered defect that has placed a vehicle out of service, a Lower-48 dealer can have that part shipped by air and the manufacturer will cover the costs. An Alaskan dealer is not afforded the same service, therefore the vehicle owner has to pay airfreight charges or wait for the part to arrive by surface freight. In short, Alaskan new car buyers have special problems in having their new cars repaired and Senate Bill 286 goes a long way towards resolving some of these issues. I feel Alaskans should have similar protection already afforded citizens of California, Connecticut, Wyoming, Minnesota, and Wisconsin.

STATE
of ALASKA

MEMORANDUM

TO: ☐ Rep. Walt Furnace, Chairman DATE May 4, 1983
House Labor & Commerce Committee
House of Representatives FILE NO.

TELEPHONE NO 279-0428

FROM: Norman C. Gorsuch SUBJECT House Bill 344
Attorney General (Motor Vehicle Warranties)
By: *C. J. Sipe*
Connie J. Sipe
Assistant Attorney General
Chief, Consumer Protection Section
AGO/Anchorage

The Office of the Attorney General is in favor of House Bill 344, although we do suggest some possible amendments to the bill which would enhance its benefit to Alaskan citizens. Before I analyze the bill section by section, I would like the committee to note that state legislation which dictates a certain degree of performance of warranties on consumer goods is not unusual, and in many states, it has been a frequent subject of legislative action. The Alaska legislature passed a bill in 1978 setting minimal warranty standards for mobile homes and providing for performance bonds by manufacturers of mobile homes sold in the state. (AS 45.30.011--100.) The Uniform Commercial Code for the State of Alaska also addresses warranties in a more general manner.

It is our information that as of this date the states of Connecticut, California, and Wyoming have passed a bill similar to House Bill 344, and that the State of Wisconsin is likely to pass a bill this section. Several other states are considering these bills.

Analysis of HB 344

Section 1. Section 1 of the bill states that when the express warranty given by a manufacturer against defects of design, manufacturing or assembly is not being carried out, because the vehicle is displaying a defect, then the owner may report the nonconformity to either the manufacturer, or in the case of a foreign manufacturer the U.S. "distributor" of the vehicle, or their agent. Subsection (a) limits the application of the bill to the term of the warranty, or one year, whichever comes first. Many manufacturers are now offering three to five years warranties with extended mileage periods, but HB 344 would only apply to the first year of ownership of the vehicle if a year is shorter than the manufacturer's express warranty.

Subsection 1(a) also requires the manufacturer or its dealer to make the necessary repairs to bring the vehicle to conformity under the express warranty. Testimony which will be submitted by our auto investigator will show that Alaskans have great difficulty in getting such repairs performed in a timely fashion.

Sect. on 1(b), at line 19, sets out the burden of proof which a consumer would have to meet if the consumer sued the manufacturer of a vehicle. (Under case law interpreting the Uniform Commercial Code and other common law warranty rights, the consumer's burden of proof can be more difficult.) By the operation of (b), the vehicle owner would enjoy a legal presumption that after a reasonable number of attempts to correct a deformity, that the vehicle is in fact defective or a "lemon." HB 344 also provides a remedy: namely, that the owner has the option of returning the defective vehicle for a refund of the purchase price (including all collateral charges) or having the new motor vehicle replaced with an identical motor vehicle. (The bill does provide for a refund to a lien holder if one exists.)

Subsection (c) (page 2, line 1) gives the manufacturer two affirmative defenses to the owner's claim for a refund. The manufacturer may not be liable if the defect complained of does not actually cause substantial impairment to the owner's ability to use the vehicle or to the value of the vehicle, or if the defect is not in fact a manufacturer defect but resulted from the abuse or modification of the vehicle by the owner. I would urge the addition of the word "unreasonable" just before "neglect." Otherwise, an express warranty may set up such an unreasonably strict maintenance schedule for the consumer to follow that the manufacturer would always be able to claim that any defect was caused by consumer "neglect." I think that a modification to "unreasonable neglect" would be a good balance.

Subsection (d) creates the presumption (or in other words a legal definition) of when a car is "defective" by defining as defective a vehicle which has been worked on four or more times for the same nonconformity, or which is out of service * for more than 30 days, during the warranty term or the first year (whichever comes earlier). Such a car is legally presumed to be a "lemon."

Please note that an amendment needs to be made in subsection (d), at page 2, lines 17-20. This last section of the sentence should read:

... The warranty term or the one year period referred to in (1) of this section shall be extended by any period during which repair services are not available to the owner for reasons that are not the responsibility of the owner.

As the section reads now, the presumption of what is a lemon (4 repairs or 30 days out of use) would be taken away from the consumer by being "extended" (?) when the manufacturer fails to provide repairs.

Subsection (e). Frankly, I do not understand what the legislative drafter meant by subsection (e). The clear intent of the passage seems to be that if the nonconformity which is a defect in the motor vehicle is one that makes the vehicle unsafe for owner operation, that a repair must be effected within 14 days. However, the 14 days language references back to subsection (b) which does not contain any time period. Perhaps the drafter meant to refer back to subsection (d) saying that if the vehicle is unsafe to operate, then only 14 instead of 30 days would be required to create a presumption of a "lemon." However, as you will hear from testimony of the auto investigator, 14 days is the norm in Alaska even for safety defects. I think the 14 days would probably be too strict a time period in terms of a standard for creating the presumption that the vehicle is a lemon. I think that 30 days out of service during the warranty period, or the first year, is a reasonable time period for creating a presumption that the owner owns a defective car.

Subsection (f) makes the manufacturer's failure to honor the owner's request for replacement of, or refund of the purchase price of a defective motor vehicle an unfair trade practice under the Alaska Unfair Trade Practices and Consumer Protection Act. This is an efficient way of providing an enforcement mechanism for the statute, since it gives the Attorney General public enforcement powers against a manufacturer or dealer who is engaging in a pattern of refusal to honor its warranty obligations, but it also gives private individuals a private cause of action, with up to triple damages, costs and attorneys fees, under AS 45.50.531. Since the Alaska Unfair Trade Practices Act already discusses warranty work at AS 45.50.471(b)(17), and since the warranty becomes "false" if it is not honored by the manufacturer, it is appropriate to put the enforcement section in this

statute. It also dovetails well with the Motor Vehicle Repair statute which is already incorporated into the Unfair Trade Practices Act, at AS 45.50.471(b) (23).

Subsection (g) insures that the provisions of this act do not limit any other rights or remedies that the motor vehicle owner might have under common law regarding express or implied warranties. This is a good provision, since the courts might develop a higher standard for manufacturers, and some courts might rule in the owner's favor on a defect which shows up after the one year period.

Subsection (h) refers to the federal Magnuson-Moss Warranty Act act, and the regulations promulgated pursuant to that act. Under that act a manufacturer of vehicles may set up an informal dispute settlement procedure, outside the court, (usually an arbitration panel) to which consumers must take their defect or warranty claim before filing suit against the manufacturer for a defective vehicle. However, the informal dispute settlement procedure must follow carefully the standards in the federal regulations, including a provision that the award of the arbitration panel is binding on the manufacturer but is not necessarily binding on the consumer owner of the vehicle unless the owner accepts the award. If the owner does not agree with the award the owner may then proceed to court. Subsection (h) insures that under the Alaska motor vehicle warranty act we would allow the national manufacturers to exercise this s... ion.

* [The committee should know that historically, it was the hope of Congress to encourage all the manufacturers to create such informal dispute resolution programs, but that to date none of the manufacturers have set up a national program that complies with the Magnuson-Moss Act. In the last year, General Motors has contracted with the Better Business Bureau in some states (not Alaska) to do arbitrations with discontented vehicle owners, but the arbitrations do not meet the federal requirements because they are binding on both parties and the consumer does not have the option of refusing the arbitration award. Because of this requirement, consumers are not required to use the GMC/BBB program before going to court on what the consumer believes to be a defective GMC car.]

Subsection (i) of the bill includes pertinent definitions. The definition of "owner" includes not only the original purchaser of the vehicle but anyone to who the vehicle is transferred during the term of the express warranty, which is appropriate, since the warranties on new vehicles are transferrable by their own terms. Also, this subsection includes examples of what are "substantial impairments" of the use and value of a vehicle. These definitions seem to cover most instances that a court would want to consider and I think they are adequate.

OVERALL COMMENTS ON HB 344

HB 344 is very well drafted in respect that it avoids some problems found in its counterpart in Connecticut statutes. Specifically, in the Connecticut statute, the consumer owner who asks for a refund of the purchase price of the vehicle will have deducted from it a "reasonable allowance for use of the vehicle." This is a serious problem, and one which it is anticipated that dealers or the manufacturers may suggest as an amendment to HB 344. HB 344 should not include this kind of set off provision, because, under court case law developed pursuant to under the U.C.C. on warranties, when a consumer revokes acceptance of a defective vehicle the consumer is usually entitled to the full refund of the purchase price, and may sometimes recover from the manufacturer "cover" costs for buying a more expensive replacement vehicle. Also, under the U.C.C., the consumer may recover incidental and consequential damages from the dealer, not just the purchase price. Under the U.C.C., a consumer could claim consequential damages caused by the vehicle's failure, such as: loss of work due to a car that broke down, long distance telephone calls, towing charges. HB 344 is a better statute than the Connecticut lemon law because it does not allow the manufacturer to ask for the set off for use of the defective vehicle. This is appropriate in light of the case law.

Overall, HB 344 if passed would greatly help the work of the Consumer Protection Section of the Office of the Attorney General in mediating and investigating warranty complaints by consumers. As our auto investigator will report, a great number of our auto repair problems are alleged warranty violations or defects in vehicles.

It is my opinion, after working in this area for seven years, that very few Alaskans, especially those who live outside the three major cities, receive full value of the warranty on their vehicles. We know that warranties, and the service guaranteed under warranties, is a substantial selling tool of the manufacturers. We also know that the warranty has a definite, although unstated, economic value as part of the purchase price of a motor vehicle. Since Alaskans pay not only the top manufacturers' suggested retail price but usually amounts in addition to the suggested retail price we can see that Alaskans do not get any break or allowance for their difficulty in obtaining warranty work. (As far as I know this is the only marketplace in the entire United States where consumers pay manufacturer's suggested price or above.)

Suggested Amendments

I would suggest the addition of language like the following, although this has not yet been refined to legislative standards. The suggested language, which is attached, would require manufacturers of motor vehicles to either maintain sufficient repair facilities reasonably close to all areas where its vehicles are sold or to designate independent shops in various towns as authorized warranty repair facilities.

Most manufacturers and their corporate organization provide for such independent repair facilities, but in fact, we do not know of any non-dealer, factory authorized repair centers in the State of Alaska. We have tried to negotiate directly with a couple of manufacturers to get them to authorize repairs in population centers like Ketchikan, but we have failed in our efforts.

Also as you will note in the suggested amendments, it is important that the manufacturer be required to fairly compensate either the dealer or the non-dealer authorized repair facility for the warranty work done. As the auto repair investigator can testify, the flat rate paid to dealers for warranty work often reflects the economic and political power differential between the manufacturer and the dealer more than it does the actual time and effort necessary to cure a warranty defect. Also, the warranty service manual's suggested times for repair are geared to large dealer service centers with computer diagnostic equipment and factory-trained technicians. Since an independent repair facility in Bethel would be unlikely to have the same sophistication of equipment or personnel training, the manufacturer should pay the actual time necessary to repair the warranty defect, not just the suggested flat rate time in a warranty repair manual.

Availability of parts. Another problem in Alaska is the availability of repair parts for warranty work. The manufacturer should fairly reimburse the repair facility for shipping cost on warranty covered repairs. Also, the manufacturer should timely reimburse repair facilities for warranty expenses. Consumers should not be required to pay for parts shipments on warranty repairs.

Substitute Transportation. Another suggested addition to the bill is a requirement that if a vehicle is not timely fixed, within two weeks of notice of defect, that the manufacturer should be obligated to provide substitute transportation or rental car cost, from the two week date until the car is repaired. (At the present time, only one national manufacturer promises a loaner car in its express warranty. In Alaska, most dealers do not offer loaner cars as a courtesy, although that courtesy is a common practice in the lower 48.)

The manufacturers should be encouraged to beef up their repair facilities and their inventory of repair parts within the state or face the obligation to provide alternative transportation, at least after the first two-week period that a vehicle has been unuseable.

Vehicle Transport Costs. It is important that Alaska take action to clarify what is the duty of the customer to re-deliver a vehicle to the manufacturer's nearest dealership for warranty repairs. This is requirement in most express warranties, but it creates great difficulties, especially when there are no roads back from the consumer's location, (such as Bethel) to the nearest dealership (say in Anchorage). Perhaps manufacturers should not be required to bear all the high cost of transportation of vehicles within the state, but the manufacturer could choose an alternative if these amendments were put into law. The manufacturer should either authorize independent repair facilities in the communities to repair vehicles, or pay for at least one way of the transportation of the vehicle, namely from the dealership back to the customer after repair.

Sec. 45.45.305. WARRANTY REPAIR FACILITIES AND

OBLIGATIONS. (a) Every manufacturer or distributor of motor vehicles sold in this state for which the manufacturer or distributor has made an express warranty shall maintain in this state sufficient repair facilities, reasonably close to all population centers where its vehicles are used, to carry out the terms of such warranties.

(b) As a means of complying with section (a), a manufacturer or distributor shall be permitted to enter into warranty service contracts with independent repair facilities. The warranty service contracts may provide for a flat rate schedule of repair times to be used in calculating charges for warranty service or repair work, provided that the contract hourly rates must reimburse the repair facility at normal retail rates, for the community where the facility is located, for any service and parts reasonably required to carry out warranty repairs. The manufacturer or distributor shall also fairly reimburse a dealer or authorized contract repair facility for expenses incurred in ordering and shipping parts needed to effect warranty covered repairs. Any request by a contract repair facility for reimbursement of warranty covered repairs must be paid by the manufacturer or distributor within 30 days.

(c) In the event that repairs of any warranty covered malfunction or defect are not completed within two weeks of (1) the customer's delivery of the vehicle to the manufacturer's or distributor's designated repair facility or dealer; or, (2) the customer's notification to the manufacturer, distributor, or its dealer of a warranty malfunction which renders the vehicle inoperable; then reasonable charges for the owner's rental of substitute transportation shall be paid by the manufacturer or distributor, or the manufacturer or distributor shall provide

a substitute vehicle, from the date two weeks after delivery of the vehicle or notification of a malfunction rendering a vehicle inoperable, until repairs are complete.

[NOTE: Subsection d, below, is very rough, even in concept!]

(d) If the express warranty requires the owner to deliver the vehicle to the nearest manufacturer's dealer for warranty repair, that duty shall not be binding on the owner, nor a waiver of the owner's warranty rights when, (1) due to the malfunction or defect the vehicle cannot safely be operated, or (2) the delivery of the vehicle cannot be made by road or by shipment by boat or ferry of less than one day's shipping or travel time. Should the customer be unable to effect return of the vehicle for any of the above reasons, the customer shall notify the manufacturer, distributor or its nearest dealer or authorized repair facility within the state. Written notice of the malfunction or defect to the manufacturer, distributor, dealer or repair facility shall constitute "return" of the vehicle for purposes of this section. Upon receipt of such notice of malfunction or defect the manufacturer or distributor shall, at its option, repair the vehicle at the customer's residence or town of residence, or arrange for transporting the vehicle to a dealer or repair facility. All reasonable costs of transporting the vehicle when, pursuant to (1) above, the owner is unable to effect delivery, shall be at the manufacturer's expense. When the owner cannot deliver the vehicle under the time limits of (2) above, if the manufacturer does not choose to repair the vehicle at the owner's residence or town of residence, the reasonable cost of transporting the vehicle to the dealer or designated repair facility shall be paid one-half by the owner and one-half by the manufacturer.

WARRANTIES - MOTOR VEHICLES - REPAIRS

COMMENTARY: Under existing case law, a manufacturer who is sued because of failure to service or repair goods to conform to applicable express warranties after a reasonable number of attempts may be required by a court to either replace the goods or reimburse the customer. However, the costs of determining in the court what is a "reasonable" number of repair attempts and by what method a customer should be reimbursed makes such suits very difficult and costly.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties, if, during the first year or 12,000 miles of the applicable express warranty (note that some warranties are now "5-year"): (1) the same malfunction or defect has been subject to repair four or more times by the manufacturer or its agent or authorized dealers or (2) the vehicle is out of service by reason of repair (or repair delays) of a warranty covered malfunction or defect for a cumulative total of more than 30 business days during the first year of the warranty.

The bill would provide that the presumption may not be asserted by the customer until after the customer has resorted to an in-state qualified third party dispute resolution process, if one is available in state. The bill would also provide that a manufacturer shall be bound by a decision of the third party process if the customer elects to accept it, and that if the customer is dissatisfied with the third party decision the customer may assert the presumption in an action to enforce the buyer's rights as specified. (This tracks the federal Magnuson-Moss Warranty Act.) The bill also would require manufacturers to pay for the shipping of parts.

Rep. Walt Furnace, Chairman

May 04, 1983

279-0428

NORMAN GORSUCH
ATTORNEY GENERAL

HB 344
Motor Vehicle
Warranties

By: . . .
Scotty Dawkins, Investigator
Consumer Protection Section
AGO/Anchorage

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average Alaskan automobile dealership is big business with the average gross sales in excess of \$10,480,000. Indeed Alaska is host to two of the most profitable dealerships in the country and the only full line GM dealer this side of Kuwait.

Despite the healthy condition of the auto dealers in Alaska, Alaskan buyers of new cars have problems when it comes to obtaining service on the defective products they were sold. What recourse do these buyers have? In Alaska very little. While all vehicle manufacturers have a service support system spread across the country, a system that includes thousands of employees and dozens of offices, not one manufacturer has a office or an employee in this state that is responsible for any of the aspects of customer service. An Alaskan with vehicle problems has to rely on an Oregon or Washington service representative that visits once every 6 to 8, weeks or long distance telephone calls to Seattle, California or Detroit. In other states most of the manufacturers have set up third-party arbitration systems to help deal with these problems. In Alaska nobody has as of this date. Instead you may be referred to a Seattle based arbitration programs. A consumer may seek redress through litigation. However, the Small Claims limit of \$2000.00 precludes most of these cases. Alaskan attorneys normally are reluctant to handle these cases due to the lack of statutory definitions and minimal case law, besides the time and expense involved.

I don't wish to waste the committee's time with any unnecessary rhetoric but let me outline five separate complaints that I have recently been involved with. The first complaint came from a District Court Judge who for 18 months had been trying to have his 1980 vehicle's thirst for engine oil and an inoperative horn repaired. The dealer who had worked on this problem 10 times told the judge that the warranty had now expired, and since the dealer didn't build the car just sold it, he was not responsible. Instead the dealer offered half of the \$9000 selling price in trade for a new car. The judge then contacted the manufacturer only to be rebuffed. They would not even return his calls. It is well known that this brand of vehicle had an oil-burning defect but the Alaskan industry refused to acknowledge it.

The second complaint came from a Valdez resident who purchased a car from an Anchorage dealer. The salesman assured the buyer that warranty work could be handled in Valdez. The buyer also bought an additional service contract to expand his warranty to 5 years or 50,000 miles. Seven months later the vehicle's engine failed. Contact was made with the dealer who informed the consumer that repairs would only be made at the dealership and whatever expenses were accrued in towing the now disabled vehicle from Valdez to Anchorage would be out of the owners pocket. I tried but was unsuccessful in resolving this dilemma. The consumer ended up paying several hundred dollars to have his disabled truck shipped to Anchorage, and probably hundreds more to ship it home after the repairs.

The third complaint was by an Alaska State Trooper. His station wagon had been in the dealers shop 8 times in a futile battle to effect repairs to a defective engine. Our intervention finally convinced the manufacturer to replace the engine. However, the problems did not end. The replacement engine also failed. It was again repaired but to this day still uses an excessive amount of oil.

The fourth complaint came from a Ketchikan resident. The vehicle in question had been purchased in Washington. Again assurance was made by the selling dealer that warranty repairs could be done in Ketchikan. The vehicle, a small four wheel drive unit, developed a severe vibration. The consumer soon found out how reliable the warranty representations were. After having a number of local garages work on the problem, the consumer paid to have the vehicle shipped back to the Washington dealer. The dealer made a number of modifications to the vehicle then shipped the vehicle back to Ketchikan, at the consumer's expense. The problem persisted, however, and finally progressed to the point that the State Troopers ordered the car off the road. Our office was called and finally after technical information was received from Detroit a local garage was able to correct the defect. The car however, is in a deteriorated condition caused by the vibrations of the defect.

Alaska dealers and their employees have on numerous occasions stated they wish they could do more to correct these problems. On occasion I have been told by dealership personnel that a particular automobile was a lemon and should be brought back; however, their hands were tied and they could only follow manufacturers procedures or that the manufacturer would not authorize what needed to be done.

I could go on with many more "horror" stories but I think I've made my point. Alaskans have severe problems in obtaining service on their new cars, and House Bill 344 goes a long way to correct these woes.

May 1983

DEPARTMENT OF LAW -- CONSUMER PROTECTION SECTION

AUTOMOTIVE WARRANTY COMPLAINTS

A Note on Complaint Statistics: A total of 133 auto warranty complaints were formally filed with Consumer Protection from January 1981 to April 1983. This figure, although significant, does not necessarily reflect the total number of warranty problems in Alaska.

A study by T.A.R.P. Inc., a Washington D.C. based research firm, revealed that 96 percent (96%) of consumers with a complaint never even tell the business of the problem, much less complain to a government agency. The Consumer Protection Section's experience over a ten year period is that for each consumer who complains, there are probably five or more additional consumers in a similar situation. Many Alaskans do not file a complaint with Consumer Protection because: they don't know we exist, they are distant from our offices, or our limited ability to negotiate voluntary settlements may not satisfy their needs. National automobile industry complaint statistics show that three percent (3%) of all new car buyers feel they were sold a defective vehicle and are frustrated in their attempts to have the defects corrected. If this three percent number holds true in Alaska (and indeed it might be higher) last year alone 846 Alaskans purchased defective vehicles that may meet the criteria established in HB 344.

AN ANALYSIS OF AUTO WARRANTY COMPLAINTS

January 1981 - April 1983

TOTAL NUMBER WARRANTY COMPLAINTS 133

REGIONAL BREAKDOWN:

	<u>Number</u>	<u>Percentage</u>
South Central/Anchorage	101	76%
Interior/Fairbanks	14	10%
Southeast/Juneau	18	14%

COMPLAINTS BY PRIMARY ALLEGATIONS:

Multiple Repairs to Same Defect	28	22%
Unreasonable Delay in Repairs	17	14%
Multiple Defects	27	20%
Safety Related Defect	13	10%
Complaint Involves Defect Under Federal Investigation (FTC, NHTSA, EPA, ect.)	12	9%
Paint, Water Leak	7	6%
Miscellaneous	10	8%

DISPOSITION OF WARRANTY COMPLAINTS:

	<u>Number</u>	<u>Percentage</u>
<u>Mediated to Consumer's Satisfaction</u> TOTAL:	73	55%
Repairs Completed	38	29%
Repair Costs Refunded	10	8%
Repair Cost Split between Factory and Consumer	8	6%
Manufacturer Supplied Parts but not Labor	5	4%
Manufacturer or Dealer Bought Car Back	5	4%
Miscellaneous	7	5%
	(73)	(55%)

Not Mediated to Consumer's Satisfaction.TOTAL: 48 36%

Because Manufacturer's Response Was:

Warranty Expired	10	8%
Not Covered by Terms of Warranty	8	6%
Consumer Unable to Return Vehicle to Dealership, So Repairs Denied	2	2%
Factory Refused to Authorize Repairs	4	3%
Owner Abuse/Lack of Maintenance	3	2%
Consumer Refused to Return to Dealership: (Lost Confidence After Dealer's Attempts to Repair)	3	2%
Refused Consumer's Buy Back Request	8	6%
Miscellaneous	10	8%
	(48)	(36%)

WARRANTY COMPLAINTS NOW PENDING: TOTAL: 12 9%

Anchorage	8	6%
Fairbanks	2	2%
Juneau	2	2%

ECONOMIC IMPACT ON CONSUMERS

The owner of a defective vehicle suffers real economic harm, measured in: (1) hours/days of lost work, (2) cost of substitute transportation, and (3) after the warranty expires, cost of numerous repairs due to aftereffects of the defect.

Also, the economic life and value of a defective vehicle is seriously lessened, and this economic truth is recognized by the automobile industry itself. The following example is taken from the June 1983 "Blue Book," a widely used guide to used car values. Calculation of the Blue Book resale price of a 1982 Cadillac includes a deduction of \$1,335. because the vehicle is equipped with a diesel engine which has become nationally recognized as seriously defective. This sharp decrease in value, in comparison to a non-diesel version of the same Cadillac, is made despite the fact that this particular diesel engine had cost the owner \$925. extra at the time of purchase. Thus, the owner of the defective diesel vehicle can be said to have suffered an economic loss of \$2,460. in the value of his/her defective vehicle in comparison to the owner of a similar Cadillac without the defect.

opinion

Anchorage Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Katherine Fanning
Editor and Publisher

Howard Weaver
Managing Editor



Gerald E. Grilly
General Manager

Steve Lindbeck
Editorial Page Editor

Lawrence Fanning, Editor and Publisher 1967 to 1971
Alaska's Only Morning Newspaper • Founded in 1946 by Norman C. Brown

Dealing with 'lemons'

Public voices should ring clearly today at a teleconference hearing before the House Labor and Commerce Committee on a proposed state "lemon law" governing new automobile warranties. The hearing begins at 2 p.m. and deserves healthy public participation.

The law essentially would shift part of the burden of proof in dealing with defective automobiles from the consumer to the dealer and manufacturer. It provides that a consumer is entitled to either a new vehicle or a full refund if a manufacturer's defect renders it undriveable for 30 days or more during the first year of ownership.

The major effect would be to encourage dealers to stand up and pay heed to the products and warranties they offer. For the dealer who already performs warranty service promptly and efficiently, the impact of the law would be negligible, and in fact good for credibility. For the dealer who ducks or delays the demands of a good-faith warranty there would be new incentive to meet the obligations of doing business.

And for the consumer who has a right to expect automobiles under warranty to run properly, there would be an improved chance of gaining full value for a very expensive investment. That seems like a good deal for all concerned.

'Lemon law' would force dealers to replace cars

By JIM ERICKSON
Daily News reporter

Alaska auto dealers would be forced to buy back or replace automotive "lemons," defective new cars that defy all attempts at repair, if legislation introduced recently in the state Senate and House becomes law.

House Bill 344 calls for replacement of a new car or a refund of the purchase price when manufacturing defects make the car undriveable for 30 days or more during the first year of ownership.

The so-called "lemon law" is scheduled for a House Labor and Commerce Committee hearing Monday.

An identical bill introduced in the Senate by Sen. Bill Ray, D-Juneau, has not been scheduled for a hearing.

The House measure was introduced last month by Rep. Mike Miller, D-Juneau. Miller said Saturday the legislation would compel dealers and manufacturers to honor new-car warranties promptly.

"The legislation doesn't spell out the warranty," he cautioned. "That's up to the manufacturer. What it does do is put full force of the state law behind customer satisfaction of that warranty."

If the defect poses a safety

hazard, the car must be repaired within 14 days, the measure states.

In all cases, dealers would be allowed four chances to fix the car, before the buyer could demand a refund or a replacement. The measure applies only to failures covered by new-car warranties, and only during the first year of ownership.

"What we are talking about is correcting major problems of the vehicle," Miller said. "This is not in regard to trivial repairs or problems that result due to owner abuse."

Similar legislation has been adopted in California, Connecticut, Montana and Wyoming, said legislative aide Denise Zachary. Ten other states are considering lemon laws, she said.

Monday's hearing will be linked to Anchorage, Fairbanks and Ketchikan via the state teleconference network.

Zachary said the public can comment on the bill by attending the teleconference, to be held in Anchorage at the Anchorage Legislative Information Office, 1024 W. 6th Ave.

The teleconference will begin at 7 a.m.

Some of the grubby details

By Andy Rooney

ter traveling for inside of this two-y helicopter we're look the same as car after a week

eked up little bags hings and added we brought origi-ht a small cooler nks in and at the we clean out the k cans, but when people in a con-bound to get a lit-r a while. There a few of those lit-ef around, for ex-

p briefly for fuel rt, someone buys chips or peanuts ls up on the floor llion dollar ma-seems funny to eport that the as-do some house-r space ship be- after this trip I t.

ing before we o decide what to n the helicopter k in the big suit- the van follow-ht and bulk are s.

we flew from d in Dallas for on to Oklahoma lew the straight ahoma City and ay it's a straight ie Bill and Dave, iding those com-I'm sticking to Esso Road map. e road between ough Amarillo a straight line. ed to carry the road maps of oma, and a Cer-so that I could an (I'm not too ooe state to an- h I had one of e maps of The n I was a kid) mera; binocu-small tape re-ersonal phone ke to be with d made in ad- we were

which I should be entering all my expense account items; a calendar on which I've marked our itinerary; a light jacket; a small box of chocolate candies the manager of the hotel in Houston had put in my room. At the airport in Houston, I packed up two newspapers and added them to the one from the day before. I hadn't had time to read that, either.

Well, it was not good packing. As so often happens with me when I travel, I brought a lot of stuff I didn't need and didn't bring what I needed. For one thing, it got cold and windy when we approached Tucumcari and I realized I should have brought a warmer jacket. Binoculars don't work very well in any kind of aircraft. (I'm not even sure binoculars ever really work.) With a professional cameraman in the aircraft, I had no need whatsoever for my own little camera. Naturally I never touched the expense account notebook nor did I look at my calendar.

There never was any time to read any of the newspapers I bought. The candies in the little gold box looked too good to throw away, but I had no interest in eating them and neither did anyone else on board. Dave put his in his pocket and forgot about them. Several hours later he reached in his pocket for something else and found a gooey, chocolate mess. He had to buy a new shirt at the next airport we stopped at for jet fuel. I'm pleased to find that pilots, who are so conservative and careful about some things, are human in other ways.

DAVE'S CHOCOLATE shirt was one of the items that added to the used look of the inside of the helicopter. I don't know whether he's going to keep it or throw it away. We've been arriving at our motel or hotel every night hungry, thirsty, tired and too late to bother finding a laundromat.

These are some of the grubby details of this great trip. We're seeing a magnificent America from the uniquely intimate vantage point a helicopter provides. I'll tell you about the magnificent part later.

Letters to the

Auto insurance

Dear Editor:

This letter is to inform our House member in Juneau, Joe Hayes, that the majority do not support state mandated auto insurance. I think Joe Hayes needs

to get his hands out of our pockets and off our backs and try to help the people he is supposed to serve.

Richard Payton
672 Fairbanks St.

Dear I: artie child Steve lent a Hc

The third party

Dear Editor:

A two party bill is being introduced by the House Judiciary Committee. This bill is designed to stop third party candidates, specifically Libertarian candidates, from running for office.

If the Republican Party of Alaska is concerned that Libertarian candidates will take away votes from them, I feel the Republican Party should re-think its position on political matters.

It was proved in the last governor's race that over 10 percent

of Alaska's voters supported Libertarian principles by the votes cast for Dick Randolph.

This country was founded on the basis of individual freedoms. Over 10 percent of a state's voters should be a sufficient amount to allow a third party on the ballot. If this percentage were to vote only for candidates who did not support this bill, that percentage could make a great difference in the next election.

Vicki Padberg
1405 Turpin

Dear I s: system about we sel no the Why n Wh. changi lector haps t body would More of cou cially greater I at grundle

Lemon law Times 5/19

Dear Editor:

When you buy an item that is defective, you have the option of returning to the store to exchange it or get a refund. Not so when you buy a new car that is defective, at least not in Alaska. The "lemon law" has been passed in four states and has been proposed in Alaska and several other states.

Understandably, the local car dealers are not in support of the lemon law because, according to them, your warranty coverage takes care of all possible problems your car might have and this added legislation is unneces-

sary.

However, a true, "lemon" cannot be fixed and continues to have problems when the warranty runs out. This law would insure that if the manufacturer is unable to fix your car in a reasonable number of attempts and the defect substantially impairs the value of your car, then at the option of the owner, your car must be replaced with a new one or the purchase price of the car refunded to you. This law would be very good insurance for new car owners.

N. Allen
Anchorage

Dear E You titled "the clo: of the J prevent handling not true Hous 1076, w Jones A U.S. caport to i register sel for p The fore propose: German port Ca. Alaska c sage of l using U. move AL nadian px The J. laws ena. of the we waterborn registerec manned t Members Rep. Don amending the Jones. of the iss supporting the best ir the U.S. as.

Permanent fund dividends

Dear Editor:

I would like to commend Rep. Hugh Malone of Kenai and Rep. Mike Miller for their defense of the direct distribution from the permanent fund. They have grasped that there is a principle involved and the principle is that the oil royalty money belongs to the people of Alaska. I can imagine the hue and cry if Texas were to confiscate royalty checks from their citizens.

The fact that our constitution sets out a different set of mechanics does not change the principle. In fact, the governor and legislators (that I have heard) all say, "It's the people's money." They agree on that; they split asunder on whether the people get to spend their own

money (as they do in Texas) or whether the governor and the legislature gets to spend it for us "for our own good." The fact that the checks may be smaller this year is another good reason for a direct distribution. If a person's check is smaller, he can adjust very quickly his spending plans; unfortunately, a government cannot.

Hooray for the legislators who see the principle and who are not afraid to stand up and be counted.

Donnis Thompson
Kenai

EDITOR'S NOTE: Ms. Thompson was the candidate for lieutenant governor on the Libertarian ticket last fall.

What others say

Here's the sugar for the lemonade

From The Juneau Empire

SOMETIMES IT SEEMS that all cars should be painted yellow just to warn buyers what they are getting themselves into. All too often, expensive cars transform themselves into "lemons" before their owners' very eyes.

Before a sale is made, salesmen point out all of the wonderful aspects of a new car. It's pretty, the doors slam with a solid "thunk" and it sounds good idling there in front of the dealer.

But a select few cars turn into "lemons," some the minute they are driven off the lot. Some don't start right; some don't stop right; some don't do anything right.

ANY DEALER IS MORE THAN happy to provide buyers with a copy of the warranty manufacturers give for their cars. Some last for a year; some last for five years. But unless the dealer and manufacturer back up the claims of those warranties, they aren't worth the paper they are printed on.

Introduced in the Alaska Legislature last week was a bill aimed at taking the "lemon" out of the lives of Alaska car buyers. The bill, whose prime sponsors are Juneau Sen. Bill Ray in the Senate and Reps. Jim Duncan and Mike Miller in the House, does nothing more than make manufacturers and dealers live up the promises made in war-

ranties.

For most people, buying an automobile is the second-largest purchase they will make in their lives. The largest purchase, of course, is a home, but it should be remembered that the price of some 1983 cars would buy a nice house 20 years ago.

BECAUSE OF THE TREMENDOUS expense of cars, no one should be stuck with a "lemon" — a car that doesn't work properly. Yet we all know people with horror stories about how their expensive new cars went to pot on them and they were unable to get satisfaction from the dealer.

It is for those people that the "lemon law" before the Legislature is meant. A warranty is not written on paper that self-destructs once the sales agreement is signed. It is a document in which the manufacturer, through the dealer, promises to make a car run properly, no ifs, ands or buts.

Dealers should welcome the advent of a "lemon law" in Alaska. It means dealers that have been standing behind their products won't be affected in the slightest. Other dealers, who are unwilling to stand behind their products and the warranties that go with them, will — and should — find themselves having to shape up.

The "lemon law" bill deserves your support.

Anchorage Times
5/14/83

jim erickson



TROUBLESHOOTER

✓ CONSUMER ADVISORY-ALASKA LEMON LAW:

A statewide teleconference has been set for Wednesday on a proposed Alaska "lemon law," legislation that would give consumers substantially more leverage when wrangling with automobile dealers and manufacturers over warranty obligations.

Under the provisions of House Bill 344, automakers would be forced to replace or refund the purchase price of new cars that, due to manufacturing defects covered by the new-car warranty, cannot be satisfactorily repaired.

If the defect causes the car to be undriveable for 30 days or more during the first year of ownership, the car buyer would be entitled to either an identical new vehicle or a refund, including repair costs. Auto dealers would be given four chances to repair the defect.

Fred Morino, part-owner and general manager of Ecco Volkswagen in Anchorage, said Monday that he felt the bill was unnecessary in light of the track record of Alaska dealers.

"If the customer has a legitimate complaint, most (dealers) really seemed to bend over backward" to help iron out difficulties, he said. "If there is a problem, none of us to our knowledge haven't got it fixed within a reasonable length of time."

Marino, who called the bill "heavy and cumbersome," added that the legislation would increase taxpayers' expense, despite legislative estimates to the contrary. "Just enacting it would cost a great deal," Marino said.

In written testimony submitted to the House Labor and Commerce Committee May 9, Assistant Attorney

General Connie Sipe noted the bill gives vehicle owners the benefit of "a legal presumption that after a reasonable number of attempts to correct a deformity, that the vehicle is in fact defective or a lemon."

Sipe, head of the Consumer Protection Section of the Attorney General's Office, said under current common law warranty rights, it is up to the vehicle owner to prove a car is a lemon before the courts can compel automakers to replace a vehicle.

If HB 344 is passed, she said, that burden of proof would be shifted. If the manufacturer cannot prove a defect does not cause substantial impairment to the operation or value of the vehicle or prove the owner caused the failure by abuse or modification of the car, the car would be presumed to be a lemon and the buyer would be entitled to reimbursement.

"It is my opinion, after working in this area for seven years, that very few Alaskans, especially those who live outside the three major cities, receive full value of the warranty on their vehicles," Sipe said. "Since Alaskans pay not only the top manufacturers' suggested retail price, but usually amounts in addition to the suggested retail price, we can see that Alaskans do not get any break or allowance for their difficulty in obtaining warranty work."

Consumer Protection auto investigator Scotty Dawkins said before the House Labor and Commerce Committee May 8 that automakers routinely deliver vehicles to buyers with built-in problems.

"Often the manufacturer is aware of these defects but seldom is any voluntary action taken to correct the problems in cars that are already built," Dawkins said.

"Instead, the manufacturer relies on the predelivery inspection performed by the dealer to detect and correct these problems. What actually happens is that the buyer finds the problems after delivery and faces the hassle of attempting to have repairs completed by the dealer."

Dawkins added that new car warranties require the buyer to return to the dealer for warranty work, but "in Alaska, the fact that your new-car dealer may be hundreds of miles away somewhat complicates this requirement."

The Attorney General's Office is calling for an amendment to the bill that would require manufacturers to establish factory-authorized repair centers in towns where there are no dealers.

The public is invited to testify at Wednesday's public hearing before the House Labor and Commerce Committee. The hearing will be held via the Legislative Teleconference Network at 2 p.m. ADT. Anchorage residents who would like to participate can contact the Legislative Information Office, 1024 W. 6th Ave (270-9624).

Alaska's auto dealers protest 'lemon law' proposal

Dealers: Law unneeded Consumer rep: Yes it is

By DEBBIE REINWAND ROSE
Empire Staff Reporter

Alaska car dealers converged on teleconference sites throughout the state this morning to protest a bill its sponsors say will protect consumers who purchase autos.

Labeled the "lemon law," the legislation sponsored by local Reps. Jim Duncan and Mike Miller and Sen. Bill Ray would force car dealers to adhere strictly to the advertised warranty on a new car.

If a customer complained of a "substantial" problem not caused by owner abuse, the manufacturer or distributor would be given four chances to fix the vehicle. Failing that, the customer could receive a refund or a new car to replace the defective model.

Testimony at today's teleconference, organized at the request of car dealers in the state, ran heavily against the bill. Input came primarily from auto distributors.

Fairbanks car dealer James Masters said the consumer already has plenty of protection from defective autos.

"In case of a difference between the consumer and the dealership, they can go directly to the dealer, or the manufacturer," he said. "If that doesn't work, the (state) Consumer Protection Division is very good at following through on these

complaints."

Consumer Protection officials, however, favored the legislation as offering the car buyer "some recourse" when dealing with faulty vehicles, according to Scotty Dawkins in the Anchorage Consumer Protection office.

"In Alaska, it often takes two weeks or more just to get the cars into the service department. Not one manufacturer has a service representative in the state, so the consumer has to wait six to eight weeks for that rep to come up here," he said. When dealing with many warranty problems, the defect often must be checked by the service representative.

Alaska has a booming automobile sales business, Dawkins said, and dealers should be responsive to the public's needs. Last year, 27,705 cars were sold in the state for an average of 1,148 sales per

distributorship. In the rest of the nation, the average is 205 cars per year for each dealership, he added.

As an example of problems faced by Alaska car owners, Dawkins cited several complaints received over defective cars:

- One district court judge had his car worked on 10 times for, among other things, a defective horn. After all attempts to repair the car had failed, he was offered half the \$9,000 sticker price on a trade-in, said Dawkins.
- An Alaska State Trooper had his station wagon worked on eight times, and ended up having the engine replaced after the protection agency intervened in the matter.
- After purchasing a car in Anchorage, complete with a \$700 service contract, a Valdez resident had to pay towing fees bet-

Continued on Page 2

'Lemon'...

Continued from Page 1

ween Anchorage and Valdez when the engine quit running. He had been assured by the dealership in Anchorage that his service

contract would be honored in Valdez, Dawkins said.

Bill sponsor Miller said the crux of the testimony revolved around "people giving excuses for not conforming to the warranty."

"We are not trying to place the burden on the dealer. ... They are missing the point of the bill. If there is a major problem with a car, then it should be corrected. The manufacturer issues the warranty, and they are ultimately responsible for living up to that warranty," he said.

Extensive testimony from disgruntled car dealers continued until adjournment of the meeting. House Labor and Commerce Chairman Walt Furnace, R-Anchorage, has scheduled a statewide teleconference on the bill for May 18, from 4 to 6 p.m. in the Labor and Commerce room in the Behrends Building.

Lemon law would force dealers to replace cars

By JIM ERICKSON
Daily News reporter

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hazard, the car must be repaired within 14 days, the measure states.

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Similar legislation has been adopted in California, Connecticut, Montana and Wyoming, said legislative aide Denise Zachary. Ten other states are considering lemon laws, she said.

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Zachary said the public can comment on the bill by attending the teleconference, to be held in Anchorage at the Anchorage Legislative Information Office, 1024 W. 6th Ave.

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Photo by Danny Daniels

si Walk for Hope, which was C-3.

s a phrase for every misdeed

(Not to mention the ultimate disaster: "If you eat that now, you won't be hungry for dinner!")

And then there is the chapter on Questions Without Answers. These generally come along during the teen-age years.

Questions like, "You're not going out dressed like that, are you?"

Or, "You know this goes against everything we've ever taught you, don't you?"

Not to mention the all-time winner, which spans most of the formative years: "Just what do you think you're doing?"

Experienced mothers know they can mix and match these phrases for special effect, as in: "Just where do you think you're going dressed like that?"

"When you're grown and have children of your own, that's when."

This last, especially, falls under the definition of all-purpose Motherese, touching as it does on the perpetually ripe arena of life after one has children of one's own.

Of course, it's not all conflict and threats in Motherese. There's the Broken Heart chapter, things mothers say to make you feel better. Things like, "Ten years from now this will all seem funny" and "Just think of it as good experience" — not to mention the alltime classic, "Well, just consider yourself lucky, a man will never marry a girl like that!"

I suppose with changing mores they'll be wanting to update the Mother's Phrase Book before long, make it a little more hip, but I

'Lemon law' deserves support

Sometimes it seems that all cars should be painted yellow just to warn buyers what they are getting themselves into. All too often nowadays, expensive cars transform themselves into "lemons" before their owners' very eyes.

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For most people, buying an automobile is the second-largest purchase they will make in their lives. The largest purchase, of course, is a home, but it should be remembered that the price of some 1983 cars would buy a nice house 20 years ago.

Because of the tremendous expense of cars, no one should be stuck with a "lemon" — a car that doesn't work properly. Yet we all know people with horror stories about how their expensive new cars went to pot on them and they were unable to get satisfaction from the dealer.

It is for those people that the "lemon law" before the Legislature is meant. A warranty is not written on paper that self-destructs once the sales agreement is signed. It is a document in which the manufacturer, through the dealer, promises to make a car run properly, no ifs, ands or buts.

Dealers should welcome the advent of a "lemon law" in Alaska. It means dealers that have been standing behind their products won't be affected in the slightest. Other dealers, who are unwilling to stand behind their products and the warranties that go with them, will — and should — find themselves having to shape up.

The "lemon law" bill deserves your support.

Berry's World



DON'T KNOW THE DIFFERENCE BETWEEN NOISE AND MUSIC.

We went up the stairs to a glass-enclosed booth. When Widget shut the door he said, "I want you to meet my Master Robot, Turnbull. He is programmed to program the robots on the floor."

Turnbill gave me a steely look and reluctantly put out his arm which I shook.

"How many sneakers did we make today, Turnbull?" Widget asked.

Turnbill's lights blinked, and a deep voice said, 12,890." Widget rubbed his hands. "I used to make that many in 2 week.

Eyeing the ne

WASHINGTON (NEA) — "I can make a million through the union," Jackie Presser boasted several years ago to a magazine in his hometown of Cleveland. Indeed, the union has made him rich — and now it's about to make him famous as well.

The union is the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, arguably the country's most corrupt labor organization.

When the Teamsters' executive board met recently to select a new president for the union, it could have chosen a leader whose reputation had not been blackened by compelling evidence of regular affiliation with organized crime figures.

M.E. (Andy) Anderson, area director of the union's Western Conference, is hardly a candidate for sainthood but he surely would have been more suitable as president than Presser if the Teamsters were serious about restoring at least a semblance of integrity to their organization.

The same is true, although perhaps to a lesser extent, of the other two "dark horse" contenders for the presidency — Joseph W. Morgan, area director of the union's Southern Conference and Donald Peters, a Chicago Teamster leader.

But, in an election preordained as far back as the union's 1981 convention, all three of those men were summarily rejected in favor of Presser, a glib, portly 56-year-old veteran of more than three decades as a Teamster organizer.

A detailed affidavit filed by the FBI in connection with a criminal case in U.S. District Court in Los Angeles quoted FBI informants as stating that Presser was "controlled" by members of the Mafia.

In testimony before the New Jersey Commission of Investigation, a state police sergeant identified Presser as an intermediary for syndicate members seeking loans from the Teamsters' pension and welfare funds.

Some of the most disturbing allegations about Presser come from Aladena "Jimmy the Weasel" Fratianno, believed to be the first Mafia member to testify against another Mafioso in court. His testimony has aided federal prosecutors to convict approximately two dozen organized crime figures.

According to Fratianno Presser's union activities generally have been conducted under the direction and control of James T. "Blackie" Licavoli, the reputed head of the Cleveland "family" of the nationwide crime syndicate. "Jackie Presser, he told me himself that 'I don't do nothing unless Blackie tells me,'" Fratianno said in sworn court testimony.

How does Presser respond to those allegations? He blithely denies any knowledge of La Cosa Nostra: "There's no organized crime that I know of as a person."

Presser offers a similar see-no-evil response to the documented examples of massive abuse of the union's Central States, Southeast and Southwest Areas Pension Fund: "Despite the many claims and accusations of various governmental agencies, the Central States (Fund) is a sound, well managed plan."

In 1976, Presser's father, William, was forced to resign as a trustee of the fund after he invoked his Fifth Amendment right against self-incrimination while being interrogated about trust fund abuses by federal investigators.

William Presser's position as a fund trustee was inherited by his son, Jackie, but he too was forced to resign only one year later and is one of numerous Teamster leaders being sued by the Justice Department for approving more than

Window of v

'Lemon' bill would put the squeeze

By DEBBIE REINWAND ROSE
Empire Staff Reporter

Hearings begin this week on a bill that should warm the hearts of everyone who has ever bought a "lemon" — a car that for some reason doesn't work right.

Commonly known as the "lemon law," this legislation, introduced by the Juneau delegation, would bind car dealers under state law to adhere strictly to the warranty they advertised when selling a car.

Under it, if a customer complains of a "substantial" malfunction during the warranty term, the dealer or manufacturer would

have to repair it. The dealer would be given four chances to bring the car up to par, and failing that, would then have to refund the customer's money or provide a new car.

"It's not an overly restrictive law; if anything it's conservative and could be tighter," said Rep. Mike Miller, D-Juneau. "What we're talking about correcting are major problems with the vehicle. This is not in regard to trivial repairs or problems that result because of owner abuse."

Currently, 12 states have similar legislation on the books. Montana and Wyoming just passed lemon laws.

While the bill is aimed at protecting the consumer, it should not

unnecessarily alarm car manufacturers.

"One feature is that the legislation doesn't spell out what the warranty is — that's up to the manufacturer. What it does is put the full force of state law behind customer satisfaction of that warranty," said Miller.

"The idea is if the distributor or parent company issues a warranty as a selling point for their vehicles, they should live up to it; no sloughing off," said Sen. Bill Ray, D-Juneau.

And Ray should know. Like a number of people who have contacted him about the bill, the senator once owned a "lemon."

"A lot of the time, the car wouldn't start. The dealer kept say-

ing we didn't know how to operate it. ... The car ended up being recalled because of a problem with the starter," he said.

During that experience, Ray ran into delays getting the car fixed. He advocated the clause in the bill putting a limit on how long the car can be out of commission. That provision would allow the customer a refund or new car if the "lemon" has been out of service for 30 days during the warranty period or one year, or if repair services are not available to the owner for reasons beyond the owner's control.

Rep. Jim Duncan, D-Juneau, has also had a "couple of

lemons," and backs the bill because it would benefit Alaskans.

"You run into this every once in awhile and it should be cleared up so the consumer is adequately protected," he said.

The measure has been introduced in both houses, and while House passage is unclear, the co-sponsorship of several majority coalition members may help the bill.

The first hearing on the lemon law will be Thursday at 8:45 a.m. in the Labor and Commerce Committee, room 210 in the Behrends Building.

Buyer gets \$85,000 for lemon

MEMPHIS, Tenn. (AP) — A man who complained about the treatment he got from an auto dealer after his new car burned too much oil has been awarded \$85,000 by a Circuit Court jury.

Charles Pardue was awarded \$10,000 for actual loss and \$75,000 in punitive damages in the judgment reached Tuesday.

"As far as the repair of his car was concerned, it was poorly handled," said jury foreman James Reid Jr.

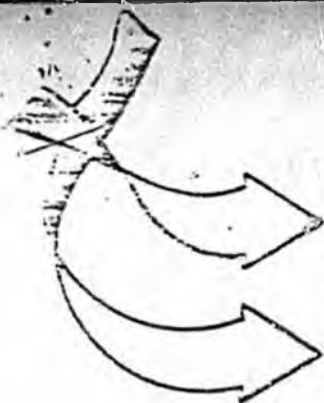
Reid said jurors discussed awards ranging from \$20,000 to \$500,000 but settled on the final figure as a "fair compromise."

Randall Noel, the lawyer for Lewis Ford Inc., where Pardue bought his 1976 Ford Grenada, said his client is considering an appeal.

Pardue, a resident of Oakland, Tenn., bought the car in 1977 for \$5,178, but said it soon began using too much oil.

He said it took two years to get the car fixed and he was charged \$1,600 for a new engine he never ordered.

Stennis Empire 4/14/83



Conflict Resolution Center

conciliation • mediation • arbitration

May 16, 1983

Walt Furnace
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Furnace:

As a constituent residing in your district and as Executive Director of the Conflict Resolution Center, I am writing to express my support for SB286, relating to motor vehicle warranties.

The Conflict Resolution Center, which opened October 1, 1982, is a private, non-profit organization dedicated to the resolution of disputes of all kinds through the use of conciliation, mediation, and arbitration. In addition to these services, the Conflict Resolution Center (CRC) provides technical assistance and training to community organizations, agencies and small businesses for the purpose of designing settlement systems that prevent disputes or expedite their resolution.

The Center is supported by grants from the Municipality, Alaska Bar Association, United Way, corporate and foundation grants, in addition to fees for service that are charged on a sliding scale according to income.

CRC was developed as the result of the efforts of a voluntary committee of the Alaska Bar Association. The committee was formed because of growing concern in our community that many disputes between citizens go unresolved because the amount in controversy makes it economically infeasible to pursue a resolution through the courts. Seldom can a government agency assist in private citizen disputes. Consequently, such disputes have simply festered, creating dissatisfaction, loss of friendship or relationship, and all too often have resulted in violence.

CRC can help close the gap between unhappy people, not by more government, but through community citizens who volunteer their time to help resolve disputes between their fellow citizens in an informal face-to-face hearing. Conciliation, mediation and arbitration are forums that can process disputes in a fair, inexpensive and timely manner.

Because the Conflict Resolution Center's work is cooperative and non-adversarial, it has been well accepted by the people of Anchorage and by

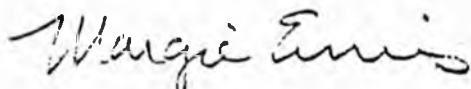
The agencies and organizations that traditionally handle civil and interpersonal complaints. In the brief time the Center has been open, CRC has successfully resolved over a hundred cases including consumer complaints, landlord/tenant disputes, neighborhood problems, contract disputes, harassment, vandalism, fights, threats, and employer/employee conflicts.

One of the primary categories for cases coming into the Center are consumer complaints. From October 1, 1982 through April 30, 1983, the Center received 85 disputes regarding the selling/buying and repair of new and used automobiles. Our experience has been that the used car dealers, generally "mom/pop" operations, have been willing to negotiate a settlement with the assistance of a neutral third party. Whereas the large dealerships have been much more recalcitrant to enter negotiations with a disgruntled customer. This, I believe, is a reflection of the few leverages/official actions that a consumer can take against a dealership when no one or thing necessarily will "encourage" a dealership to take seriously, responding in a timely manner, or settle an issue to everyone's concerned satisfaction. It is possible the proposed SB286 may just provide such "encouragement" for the dealerships to set up dispute mechanisms that are fair, timely and can provide both parties an opportunity to be fully heard and in which the needs and interests of both parties can adequately be met.

As a constituent and as a program director that has experienced the potential of alternate dispute mechanisms in resolving consumer complaints, I urge you to lend your support to SB286 as it may be a vehicle to bring auto dealers to understanding the importance of establishing voluntary dispute resolution mechanisms.

Sincerely,

CONFLICT RESOLUTION CENTER



Margie Ennis
Executive Director

ME/jm

cc: Mike Miller (Juneau)
AK. State Legislature
Pouch V (MS3100)
Juneau, Alaska 99811



MOTORCYCLE INDUSTRY COUNCIL, INC.

*Government Relations Office
Washington, D.C.*

May 10, 1983

Honorable Mike M. Miller
State House of Representatives
Juneau, AK 99811

Dear Mr. Miller:

The Motorcycle Industry Council, (MIC) is a non-profit national trade association representing motorcycle manufacturers, distributors, and members of allied trades. I am writing to you and to the members of the House Labor and Commerce Committee on behalf of the MIC member companies regarding H.B. 344 which would require a manufacturer to replace a motor vehicle after a reasonable number of attempts to repair it. The Council wishes to draw your attention to what may be the inadvertent inclusion of motorcycles in this bill, by virtue of the fact that the definition of motor vehicle encompasses motorcycles, motor homes and recreational vehicles as well as automobiles. However, due to the inherent differences between these various types of vehicles and cars, their inclusion in this type of legislation is inappropriate and unnecessarily complicates the bill.

While automobile-related problems have consistently ranked highest among consumer complaints, motorcycle-related complaints historically have been rare. A summary of consumer complaints published annually by the Council of Better Business Bureaus, compiled from statistics gathered by Better Business Bureaus located throughout the nation, confirms the infrequency of motorcycle complaints. The Bureau's report on product quality ranks products from 1 to 10 on the basis of complaints received. Motorcycles have never appeared in this report. On an expanded list of 150 categories which the Bureau tracks, motorcycles account for a mere 1.2% of complaints. There is a lack of evidence of any demonstrated need for burdensome regulation in light of these statistics.

The very nature of motorcycle use as compared to that of automobiles helps explain why the number of motorcycle-related complaints is negligible and does not warrant regulation. A motorcycle typically is not the consumer's primary mode of transportation and consequently, the necessity for expeditious repair service is not urgent, as it is in the case of a car owner who is dependent on his car. Additionally, motorcycle use is very seasonal and it is not unusual for customers to take their motorcycles to dealerships for service and leave them there by choice for extended periods of time as a convenient storage place during those months of non-riding weather. Any law requiring vehicle replacement if it has been out of service for 30 days may be unfeasible if applied to motorcycles.

Mr. Mike Miller
May 10, 1983
Page Number Two

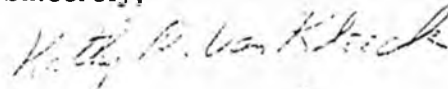
Both the California and Connecticut laws which were the first two laws of this sort to be enacted and which have been used as models for other state legislation, recognize the unique nature of motorcycles and exclude them from regulation.

Motorcycle manufacturers are currently acting in a responsible and conscientious manner to ensure product quality and customer satisfaction. Adequate remedy for the resolution of any consumer problems is readily available at the manufacturer level and procedures for such, including telephone numbers for easy access, are published in owner's manuals and on written warranties. All motorcycle manufacturers have fully staffed customer relations departments which provide assistance with warranty and other service problems.

In light of the foregoing, we feel that inclusion of motorcycles in H.B. 344 is neither needed nor justified and we urge you to amend H.B. 344 to exclude motorcycles.

Thank you for your consideration.

Sincerely,



Kathy Van Kleeck
Director
Legislative Affairs

KVK/tlf

DEAR Individuals,

1ST I'd like to say that I'm dissapointed this is held during the day. I've had to take enough time off to get my car fixed. I totally support a lemon law. I have had my then new 1983 Plymouth Reliant in 8 times for the same problem. They have yet to fix it right. Please pass a lemon law. It's in the best interest of the public.

THANK YOU

KEVIN NISTER

2601 RASPBERRY Rd

Arch 99502

243-0014

Wall Street Journal: Page 31 - Tuesday, July 12, 1983

'Lemon Laws' Gaining Popularity Despite Auto Makers' Opposition

By WILLIAM M. BULKELEY

Staff Reporter of THE WALL STREET JOURNAL

EAST HARTFORD, Conn. — Michael White's 1982 Chevrolet Camaro had a transmission problem that wouldn't go away. The clutch was so stiff he could barely depress it. It whined and squealed. "I cursed it every time I shifted," he says.

Mr. White took the car to his dealer seven times in five months. Then he told the dealer to give him a new car under the state's lemon law, which forces auto makers to replace cars if they can't fix them in four attempts or 30 days in the shop. Soon he had a new 1983 Camaro. He paid \$1,300 for the car, reflecting the 13,000 miles he had put on the old car and some optional equipment.

Mr. White says his success in wheedling a new car out of General Motors Corp. shows the effectiveness of Connecticut's nine-month-old lemon law, the first such law in the country.

General Motors disagrees. Replacing Mr. White's car is the type of action the company occasionally takes "as a matter of good customer relations," says a GM spokesman in Detroit. GM says lemon laws are unnecessary, encourage litigation and "mislead customers into thinking some new right is being bestowed upon them."

Despite the opposition of GM and other car makers, lemon laws are sweeping the country. Since Connecticut's law went into effect Oct. 1, 10 other state legislatures have passed similar laws, including California, New York and New Jersey. Ten more states may adopt such laws by year-end, advocates say.

Supporters' Arguments

If Connecticut's experience is typical, car replacements will remain uncommon. The industry says it has been building better cars and repairing them faster, anyway. But supporters of the new laws maintain that they will subtly force dealers and manufacturers to respond more attentively to consumer complaints.

Such legislation is enormously popular. "This is the kind of consumer issue that looks good when legislators go back home," says Charles L. Spillman, director of state relations for the Motor Vehicle Manufacturers Association, a trade group that lobbies against the bills. In New York, the bill was approved by a Senate vote of 55-1 and a House vote of 155-2. In Massachusetts, 14 legislators introduced lemon law bills, one of which passed.

Lemon laws, or repair-replace laws, as the auto industry calls them, aren't a new idea. The Motor Vehicle Manufacturer's Association says such a law was first proposed in Hawaii in 1972.

John J. Woodcock, a legislator from South Windsor, Conn., who wrote Connecti-

cut's law, says he got the idea when he read a column by humorist Erma Bombeck that mentioned a California bill. When he proposed the bill, other legislators and the local press were amused, he recalls. But he arranged a public hearing, and "people came from all over the state with their own personal horror stories" about new cars that kept breaking down, he says. "The timing was right, and the grass-roots support made it a political home run for any legislator," he says.

Connecticut's lemon law is similar to most of the laws that have been passed since. It says that if a car dealer doesn't repair substantial defects covered by the new-car warranty within a reasonable time, the

A GM spokesman contends that lemon laws, or repair-replace laws, are unnecessary, encourage litigation and "mislead customers into thinking that some new right is being bestowed upon them."

consumer may be entitled to a comparable new car or a refund. The law defines a reasonable period for repair efforts as four separate trips to repair the same defect or a total of 30 days in the repair shop. If the auto maker or dealer objects to providing a new car, the car owner must go through an independent arbitration procedure—if the car manufacturer has one—before going to court to sue.

The independent arbitration panels have existed in some places for a few years, and auto makers say the panels make lemon laws unnecessary. Ford and Chrysler have established panels to judge disputes between consumers and car makers and dealers; General Motors Corp., Nissan and Volkswagen have contracts with the Better Business Bureau. Many importers use a National Automobile Dealers Association program called Autocap to arbitrate disputes.

The arbitration panels are made up of people who aren't employed in the industry, and are free to consumers. Their decisions are binding on the company, although consumers can usually appeal decisions to the courts. Generally they handle disputes over whether an auto maker should pay for problems that occur after a warranty expires.

Auto makers and consumer groups say the panels work. Ford Motor Co.'s panels, which were started in 1977 and are being expanded nationally, have judged 7,500 cases. The boards decided Ford or its dealers were fair about two-thirds of the time and gave the consumers more than Ford had offered the other third. A Ford spokesman says Ford has been ordered to replace a car about a dozen times. "Typically a new board takes if we're serious about replacing a car—usually a Lincoln," a spokesman says.

Replacing Cars

The three big U.S. auto makers didn't have arbitration procedures in Connecticut before the law was passed, so it's impossible to tell if they have changed their practices because of the law. General Motors says it has replaced nine cars in the state since last September. Nationwide, it says it replaced 267 cars since 1978, when it started the arbitration agreement with the Better Business Bureau.

In Connecticut, some lawsuits are pending, but no lemon-law suits have gone through the Connecticut courts, attorneys say.

Nevertheless, the lemon law is having an effect, advocates say. Mr. Woodcock, the legislator who wrote the law, concedes that nobody knows how many cars have been replaced. But, he says, "the true measure of the effect is the spirit of cooperation between dealer and consumer in working things out." William H. Clendenen, a New Haven, Conn. lawyer who says he has brought a lemon-law suit against General Motors, says the law "could make a difference for consumers" because it transfers responsibility from the dealer to the auto maker. "The deep pocket, the manufacturer, now has a clear responsibility. Prior to this the dealer often had to bite the bullet."

The Connecticut Automobile Dealers Association initially opposed the law because they thought it would lead to a lot of lawsuits, but "after some experience, we see the manufacturers are stepping forward and working out the arbitration system," says Richard Meek, executive vice president of the dealer trade group. "I told the national association meeting they don't have that much to fear from the laws."

The law seems to have improved dealer repair practices. After the law went into effect, manufacturers sent representatives to dealerships, advising them to avoid long tie-ups in the shop and to notify dealers about recurring new-car problems. "Now we put on the computer the number of times and days a car is in the shop," says Harvey Lipman, owner of Lipman Chevrolet in East Hartford.

Bitter Contest for Control of World Airway

One of the most effective pieces of consumer protection legislation ever put on the books has never been used. It is the automotive Lemon Law, which is designed to protect the new car buyer from being stuck with a lemon—a car that can't be fixed. First passed in Connecticut last fall, now law in 16 states and under consideration in several more, the law has yet to be tested in court. And yet, it appears to be highly effective, because car buyers with serious, supportable complaints are finding dealers and manufacturers displaying a degree of understanding and responsiveness that didn't exist before the law was passed.

John Woodcock, who sponsored the Connecticut bill, says, "We haven't had a court case, but the Lemon Law works every day. Since it went into effect, at least 20 cars have been replaced."

Why this sudden change in attitude if the law hasn't even been used in court? Simple, Woodcock says. No manufacturer wants a judge to publicly stamp one of its products a lemon. The negative publicity a court action could create is enough to encourage dealers and manufacturers to change their stance.

Although Lemon Laws vary in wording from state to state, they are all based on

essentially the same guidelines. If, during the first year, four unsuccessful attempts are made to correct the same fault, or if the car is out of service for the same problem for 30 days total, the manufacturer must replace the vehicle or refund its cost, less a fair amount for the time the car was actually used. However, if the manufacturer objects, the owner must first take his or her complaint to an independent arbitration panel. Only if that fails does the case go to court.

Arbitration panels have existed for years—since 1977 Ford's has heard more than 7,500 cases, with two-thirds decided in Ford's favor. According to a report in the *Wall Street Journal*, GM has replaced 267 cars since 1978.

But, under the Lemon Law threat, solutions are being reached long before official arbitration is necessary.

Eight days after buying a new Ford station wagon, a Connecticut couple was back at the dealership with an automatic transmission that wouldn't shift into reverse. After 39 days in the shop, they were told the car would be replaced—at an additional cost of \$1,500 to \$2,000.

The couple contacted Woodcock, who wrote Ford, noting the car had been out of

service for more than the 30-day maximum the Connecticut law allows. Ford's first response was negative, but later that day, a Ford representative called Woodcock to say the car would be replaced at no cost.

Some car dealers, it appears, look on lemon laws as good things. Jay DeFuria is a consultant to the California legislature and worked on passage of the law there.

"Dealers used to be caught in the middle, between the customer and the manufacturer," DeFuria says. "Now, with the Lemon Law making the manufacturer ultimately responsible, dealers feel they can make those big replacements, like engines and transmissions, and not get left holding the bag."

DeFuria also notes that service departments are solving repeat problems earlier in attempts to make effective repairs before the cars are out over the allowable 30 days.

As this was written, Lemon Laws were reported to be in effect or virtually enacted in: California, Connecticut, Florida, Maine, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Hampshire, New York, North Carolina, Washington, Wisconsin, and Wyoming.

—Mike Knepper

Lemon Laws: New Aid for Auto Buyers

Help has arrived for owners of new cars with intractable problems. In 19 states, they can now obtain a refund.

When Henry Adelman drove his new imported car out of a Palo Alto, Calif., showroom, he thought the gold four-door sedan was just peachy. Within a week, he concluded that he'd bought a leaky lemon.

"Every time it rained, the floor on the driver's side would fill up with water," recalls Adelman, a professor at the University of Santa Clara. "The interior stank with mold." Adelman took the car back to the dealer three times, to no avail. Then he let it sit unused "because it smelled so bad."

Adelman's bitter experience ended sweetly. Taking advantage of California's law on defective new cars, the professor went before a panel of arbitrator who ordered the auto maker to refund his \$12,450.

The movement to pass such lemon laws is in high gear. Just this year, 17 states have enacted lemon laws, bringing the total states to 19. Bills are pending in 11 more legislatures.

Most lemon laws copy the one in Connecticut, where the nation's first such law took effect in 1982. Generally, a new car is a lemon if it is repaired four times for the same type of problem—braking, electrical, steering or transmission—or exceeds 30 days in the shop in its first year. Most states encourage consumers to seek arbitration before suing.

Proper repairs. Proponents, led by the Center for Auto Safety in Washington, D.C., say repairs are more often being done correctly the first time, while arbitration eases court backlogs.

They also believe lemon laws give auto makers needed incentive to make a better product. J. D. Power & Associates, which does automotive market research, found "recurring repair problems" among 29 percent of those responding to a poll of 23,000 domestic and foreign-car owners who had their 1982 models a year or more. Three to

1, the owners blamed manufacturers, not dealers, for the breakdowns.

Few lemon laws hold dealers to blame for flaws. "The manufacturer produces the defective auto," says State Representative Vincent Palumbo, sponsor of New Hampshire's lemon law. "The auto dealer does not."

The Motor Vehicle Manufacturers Association, the auto makers' trade group, says lemon laws were unnecessary because people could always sue, and because car makers had established their own consumer-arbitration panels.

Auto makers say the definition of a lemon car is too arbitrary. They complain, too, that some lemon laws exceed their own one-year, 12,000-mile warranties. New York's law, for example, covers a new car for two years or 18,000 miles.

But some states give auto makers far more leeway. Wyoming allows a car to be in the shop for 30 business days—as long as six weeks—before its law is invoked. In most states, the option of

whether to replace the car or issue a refund is solely the manufacturer's.

In any event, very few autos are returned under provisions of lemon laws—just 40 in Connecticut in the first 13 months, during which 113,000 new cars were registered.

Auto makers take varying approaches to these laws. Chrysler sued Texas authorities on November 16, charging that the state's arbitration statute is "unfair and confusing" to consumers. Ford Motor Company seeks laws that require notification of manufacturers about consumer complaints. In Connecticut, after one Ford owner returned with a minor problem, the dealer deposited the car on his lot for 45 days, an act that by state law made it a lemon. Grips Ford spokesman Mike Davis: "It isn't one, but we didn't even know about it."

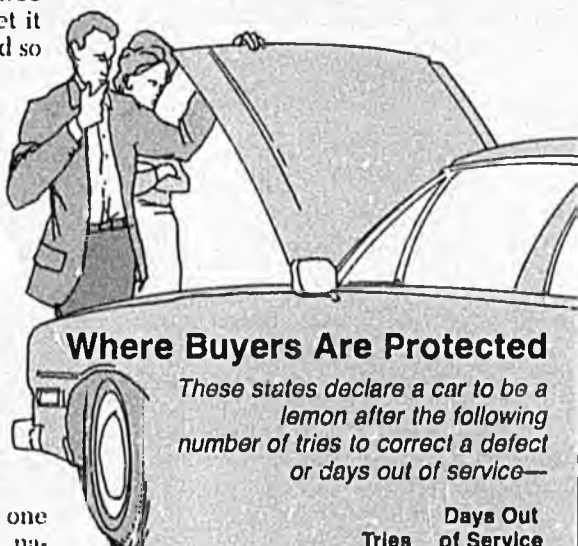
Limitations sought. Ford also wants to restrict the laws to serious functional and safety defects. The company wants to avoid, says spokesman Davis, "the guy who trades down a bigger car for a smaller car to save gas and then says, 'Make this car ride as nicely as the other one.'" Auto makers have pushed, with much success, to be able to deduct for actual mileage that the consumer drove while the car worked properly.

Even proponents are dissatisfied with the way some lemon laws work. A recent study by the attorney general of Connecticut complains that Better Business Bureau arbitrators, who adjudicate that state's law, take an average of 93 days to decide cases—a violation of the state's statutory 40-day time limit. The study claims the BBB did not adopt written procedures, used manufacturers' service staff as technical advisers and trained its arbitrators poorly. The BBB says it is resolving the problems.

State Atty. Gen. Robert Abrams wants New York's law extended to cover used cars so that buying a second-hand auto will stop resembling the picking of "a camel in an Oriental bazaar—on the basis of a guess, a hunch and a sales pitch." Abrams says New Yorkers buy almost twice as many used cars as new ones.

"A snowball's chance." Auto-industry opposition is stalling a proposal to enact a federal lemon law. Hearings have not been scheduled for a bill introduced in Congress by Representative Tom Lantos (D-Calif.). One industry lobbyist's terse assessment of its prospects: "A snowball's chance in hell."

But almost everyone agrees that additional states are certain to join the parade. Remarks Davis at Ford, "Fighting lemon laws is like fighting motherhood and sunshine." □



Where Buyers Are Protected

These states declare a car to be a lemon after the following number of tries to correct a defect or days out of service—

	Tries	Days Out of Service
California	4	30
Connecticut	4	30
Delaware	4	30*
Florida	4	25*
Illinois	4	30*
Maine	4	30*
Massachusetts ..	4	22*
Minnesota	4	30*
Montana	4	30*
Nebraska	4	40
Nevada	4	30
New Hampshire ..	4	30*
New Jersey	4	31*
New York	4	30
Oregon	4	30*
Texas	4	30
Washington	4	31*
Wisconsin	4	30
Wyoming	4	30*

*Business days.

USNAWR—Basic data: Center for Auto Safety



"American Aristocracy Is Very Much Alive and Growing"

Martin Stansfeld, a Scottish-born writer, is editorial director of the American editions of *Debrett's Peerage*, premiering with a volume on Texas. In Britain, *Debrett's* is a social register of nobility. In the next decade, publication is scheduled of 10 U.S. regional editions that will name 10,000 American "aristocrats" picked by the editors on advice of local social leaders.

Noblesse oblige in "the broad public interest"

Some people think American aristocracy died out 200 years ago when inherited titles were banned by the Constitution, but that is definitely not so. There are no inherited American titles, but aristocracy in every other sense—people of substance, education, influence and wealth—goes all the way back to the George Washingtons and Thomas Jeffersons. It is very much alive and growing in this country today.

Our research indicates that the influence of American aristocracy is becoming stronger, particularly as elected leaders have come under a cloud. Because the public is suspicious of politicians, aristocrats have been called upon to exert their ameliorating influence.

Aristocrats don't always consult the public. They take their friends to dinner or on a fishing trip and persuade them to donate a new wing to the museum or run for mayor. They accomplish their goals quietly through their banks, law firms, clubs and political donations. They're the ones who make a community work after the elected politicians have failed. The cleanup is left to the aristocrats as a matter of noblesse oblige—caring for the broad public interest.

Regions where patricians are "more visible"

Some regions have a more visible aristocracy than others. There's definitely a vitality among aristocracy in the southern tier of states, from Virginia to Texas and California, that is lacking in the North. The trouble with many Northern aristocrats these days is that they are taught to be low-keyed—to shy away from outside affairs, such as politics and social causes. The Rockefellers and Kennedys are the exceptions.

In the South, many aristocrats, such as the Byrds of Virginia and the Klebergs of Texas, are families that have been community leaders for decades. They are comfortable using their power and privilege. Over the years, those families have sent some of their offspring west, and now there is considerable behind-the-scenes leadership in California from those families and the old landowning Mexican Americans retaining influence.

A large number of noblemen—people with real inherited titles such as princes and dukes—have fled European socialism and settled recently in the Rocky Mountain states, as well as New York, Virginia and Florida.

"Ways you can climb the social ladder"

New forces among the aristocracy are providing more vitality in American leadership. In all parts of the United States, there are growing numbers of "new men and

women"—people of wealth and community clout and social distinction created in a generation or two. In Texas, the children of the late oil man H. L. Hunt are examples of important new community leaders.

One of the quickest ways you can climb the social ladder in America is with donations to museums, opera houses, ballet and the like. There's nothing particularly phony about that, because to get extremely rich in America today you have to have a first-rate education. So these people are interested in the arts anyway. It's natural for them to donate.

People also climb by such activities as backing social causes or becoming involved in politics. Texas is an extraordinary case of a state with a diverse establishment that pulls together. There's a very successful Texas lobby in Washington that cooperates whether the politician is a poor radical or a fat cat.

U.S. "should have a House of Lords"

Even though the Constitution rules out the granting of titles, many people would welcome the custom today. Texas came close to establishing titles when it was a republic, and Texas-born Princess "Titi" von Furstenberg says, "If Texas hadn't joined the Union, we Texans would all have titles."

In Britain, the House of Lords, composed of titled people, works well as a restraining hand on the more immoderate actions of the House of Commons, which is composed of elected politicians. Across the United States, our researchers are hearing that this country should have titled people and a kind of House of Lords, too. Because such an institution doesn't exist in America, aristocrats here are forced to wield their influence from the closet.

Houston Grand Opera patrons mingle with international stars and the opera's music director after a performance.



'Lemon law' bill draws mild comments

By DEAN FOSDICK
The Associated Press

A proposed "lemon law" that would put the squeeze on auto manufacturers for defective vehicles and which ultimately could require that they provide replacements or refunds drew some relatively mild comment from two industry representatives at a Senate hearing Tuesday.

The measure (CSSB 286), backed by state Attorney General Norm Gorsuch, "would require manufacturers to live up to the warranties they offer," said Sen. Bill Ray, D-Juneau and the bill's sponsor.

Connie Sipe, an assistant attorney general and chief of the department's Consumer Protection Section, said 18 other states have similar bills and as many as 30 will enact such measures before the end of this legislative session.

"A car is expensive and a warranty is an expensive part of that purchase price," she testified before the Senate Labor and Commerce Committee. "When people buy their cars and take them to remote areas, they often don't get their money back from the

warranty expense."

In a Jan. 31 letter to the committee, Gorsuch said such laws indicate national recognition of a problem "and a need to restore consumer confidence and manufacturer responsiveness in the new car market.

"With the lemon law in place, the manufacturers, the consumers and the courts have clear standards to apply as to what is a 'lemon,' which is a reasonable number of attempts or time period for repair of a vehicle, how a consumer should be compensated and what type of notice the consumer should give the manufacturer before demanding a refund or replacement," Gorsuch wrote.

A lemon law would save consumers money because they are required to run their complaints through informal mediation and arbitration procedures before going to court, Gorsuch contended.

Under the amended bill, a manufacturer, dealer or agent would be required to make the necessary repairs under the warranty or replace the original "with a new, comparable motor vehicle, or

refund the full purchase price to the owner."

"The intent of the measure is to insure quality from the beginning," Sipe told a reporter. "The manufacturer and dealer will be on their best behavior to do a good job and do a better job along the way. This gives them an economic incentive to fix it, or they buy it back."

Jim Austin, public affairs manager, Pacific Coast region, for the Motor Vehicle Manufacturers Association, said, "We're pretty much in accord in many respects.

"We're not endorsing the bill but we're not opposing it, either," Austin said.

C. Lee Ridgeway, a representative of GMC's industry-government relations staff from Sacramento, Calif., said, "Our position is that with lemon laws in, total payouts aren't necessary.

"In two years in San Francisco, GM bought back only 10 or 11 cars," Ridgeway said. "Normally, they fix them."

The committee delayed action on the measure until hearing testimony from a Feb. 9 teleconference.

GM's earnings could set industry record

DETROIT (AP) — General Motors Corp.'s 1983 earnings could set a record for the nation's largest automaker and lift combined U.S. car industry profits for the year to an all-time high, analysts say.

Many analysts see GM surpassing its record profit of \$3.51 billion set in 1978, a year before the American car industry plunged into a four-year sales slump that Detroit began to shake off just last year.

David Healy, an automotive industry analyst for Drexel Burnham Lambert Inc. in New York, said the earnings will be "in the neighborhood of" \$3.7 billion.

"Dollars weren't what they were in 1978, so it won't be a record in real dollars. But that's still a very good figure," Healy said.

GM Chairman Roger B. Smith, who has led the company on its way out of the industry's sales slump, was to make the earnings announcement in an address to the National Press Club in Washington this afternoon.

When Ford Motor Co., Chrysler Corp. and American Motors Corp. close their books later in the month, the U.S. car industry is expected to have racked up profits far exceeding the industry record of \$5.18 billion in 1977.

The record earnings for a year by a U.S. corporation was set in 1982 when AT&T recorded a profit of \$7.23 billion, earning more than \$2 billion in one quarter alone.

Analysts predict that Ford's earnings could approach, or even exceed, its record of nearly \$1.7 billion in 1977. Chrysler is a sure

bet to set a record for 1983. Its record for a year was \$422.6 million in 1976 and it eclipsed that in just three quarters of 1983, earning \$582.6 million. AMC says it will post a profit for the fourth quarter, but has not predicted a profit for the year.

Healy said GM's results came "from a combination of three things: the recovery in car sales, a reduction in their break-even point — doing it with fewer people — and the market mix, which is very profitable. They were selling more of the profitable big cars and not as many of the smaller cars."

Gary Glaser, an automotive analyst for Sanford C. Bernstein & Co. Inc. in New York, said GM piled up the profits because of improved sales in big cars, GM's specialty, the improved sales market that has aided all carmakers and better efficiency, which has dramatically lowered GM's break-even point.

"The overriding factor has been the significant increase in (cars and trucks) sold as the market comes back," Glaser said. "Certainly, part of it relates to the fact that GM is the most significant player in the higher end of the market."

He also cited "the excellent programs GM has made in lowering and containing costs."

Glaser said that in 1978, when GM hit its previous record profit, "they needed to build 5 million vehicles to break even. By 1983, Glaser said, GM had lowered that "to 4 million. This is really the key, with the fact that sales have indeed come back."

MSG 84-00011905 PRY 1 02/09/84 13:42:02 ORIG: LF01 IN= 0003 OUT= 0108
FROM: PAULA/EKS
TARGET: LJHK SUBJ: FOR 24
TO: JNU INFO

TO: SENATE LABOR & COMMERCE
SENS ELIASON, MULCAHY, PETTYJOHN, SACKETT, RODEY

ALSO: REPS DAVIS, BETTISWORTH, KOPONEN, RINGSTAD, M.W. MILLER
& SENS BENNETT, FAHRENKAMP, & MOSS

1 FROM: REBECHA MILLER, P.O. BOX 75395, FKS, 99707, 452-7126-W

RE: SB 286, LEMON LAW

MSG: THANK YOU FOR ALLOWING THE OPPORTUNITY TO COMMENT. WHOLEHEARTEDLY
I ENDORSE THE CONCEPT OF SB 286. ONE SUGGESTION, HOWEVER, WOULD BE TO
CLARIFY WHAT YOU MEAN BY 30 DAYS OUT OF SERVICE (LINE 19). IF THIS IS
LEFT TO INTERPRUTATION, IT COULD WELL PROVE COSTLY. LANGUAGE SHOULD BE
INSERTED IN SECTIONS (K) TO THE EFFECT THAT THE 30 DAYS ARE COUNTED FROM THE
TIME AN OWNER REPORTS THE PROBLEM AND REQUESTS AN APPOINTMENT.

-----EOM

MSG 84-00002253 PRTY 1 01/10/84 15:42:09 ORIG: LA09 IN= 0002 OUT= 0085
FROM: SHIRLEE ANC LIO TO: POMS/JUNEAU INFO
TARGET: LJHK SUBJ: POM

TO: ALL LEGISLATORS

FROM: KEITH KLEMME
6630 EAST TENTH AVENUE
ANCHORAGE, AK 99504 (H) 337-2216

I AM AGAINST MANDATORY INSURANCE FOR AUTOMOBILES IN THE STATE
OF ALASKA, BUT I AM FOR A VERY MUCH NEEDED LEMON LAW FOR THE
AUTOMOBILE INDUSTRY FOR THE STATE OF ALASKA TO PROTECT THE
CONSUMER AGAINST THE CAR DEALERS.

MSG 84-00013117 PRTY 1 02/13/84 17:01:53 ORIG: KIN IN= 0012 OUT= 0136
FROM: KIN / ANCH LIO TO: JUNEAU INFO / POM
TARGET: LJHK SUBJ: POM

TO: ALL LEGISLATORS

FROM: JOSEPH IRETON, 3425 CREEKSIDE DRIVE, 99504 *Arch.*
H 333-7602

I AM FOR A TOUGH LENON LAW ON NEW CARS. THANK YOU.

FROM: DR. FRANK MOORE, PO BOX 773329, EAGLE RIVER, 99577
H 694-5865 W 564-9111

AS A DIRECTOR OF THE EMERGENCY DEPARTMENT AT PROVIDENCE HOSPITAL,
I HAVE HAD TO CARE FOR MANY CHILDREN BADLY INJURED OR KILLED BECAUSE
THEY WERE NOT PROPERLY RESTRAINED. I STRONGLY URGE YOU TO PASS SB163
SO WE CAN DECREASE THE NEEDLESS INJURIES TO THE CHILDREN OF OUR STATE.

MSG 84-00013134 PRTY 1 02/13/84 17:43:48 ORIG: LA17 IN= 0002 OUT= 0148
FROM: KIN / ANCH TO: JNU INFO / POM
TARGET: LJHK SUBJ: P O M

TO: ALL LEGISLATORS

FROM: STEVE PAULS, 13590 SEABREEZE CIRCLE, ANCHORAGE 99516
H 345-3405 W 276-4218

I BELIEVE THAT THE AUDIT OF THE STATE'S AIRCRAFT SECTION IS A WHITEWASH.
SERIOUS THEFT HAS TAKEN PLACE AND THOSE INVOLVED MUST BE HELD ACCOUNTABLE.
IMMEDIATE ACTION MUST BE TAKEN TO STOP THIS CRIMINAL USE OF PUBLIC MONEY.

MSG 84-00012417 PRTY 1 02/10/84 14:04:25 ORIG: LF00 IN= 0007 OUT= 0082
FROM: PAULA/FKS TO: JNU INFO
TARGET: LJHK SUBJ: POM

TO: SENATE LABOR & COMMERCE - SENS ELIASON, MULCAHY, PETTYJOHN, SACKETT,
RODEY
FROM: ELIZABETH DUGDALE JACKSON, BX 83318, FKS, 99708, 479-0733-H 456-2030-W
RE: SB 286, LEMON LAW

MSG: I WHOLEHEARTEDLY SUPPORT THE PASSAGE OF THIS BILL. IT WOULD BE A
GREAT STRIDE FORWARD FOR THE CONSUMERS OF ALASKA. BASED ON PERSONAL
EXPERIENCE, IT IS ABSOLUTELY CRUCIAL TO HAVE SUCH A LAW.

-----EOM

MSNG 17007

a MARY/MATSU

TO: SENATORS KERTTULA, ELIASON, MULCAHY; PETTYJOHN, RODEY, SACKETT

REPS. LACHER, LARSON

FR: GREG AND KATHLEEN WILKINS

SR BOX 3364-A

WASILLA 99687

PH: 376-6144

RE: SB 286 - LEMON LAW

I HAVE REVIEWED THIS LEGISLATION AND KNOW IT IS NEEDED AS I HAVE PURCHASED A "LEMON". THIS WILL DEFEND THE PUBLIC. THE PUBLIC HAS BEEN VICTIMIZED ALL TOO FREQUENTLY IN THE AREA OF NEW CARS. MY CAR HAS A DEFECT WHICH MAKES IT UNSAFE TO DRIVE. ALTHOUGH ORIGINALLY COVERED BY WARRANTY, THE REPAIRS HAVE STILL NOT BEEN MADE AND THE WARRANTY HAS EXPIRED. I AM NOW BEING CHARGED FOR REPAIRS. URGE IMMEDIATE PASSAGE OF THIS BILL. THANK YOU.

MSG 84-00017007 PRTY 1 02/23/84 16:26:56 ORIG: LM00 IN= 0013 TWT= 0153
FROM: MARY/MATSU TO: JNU INFO
TARGET: LJHK SUBJ: P O M

TO: SENATOR ELIASON

FR: ELSIE O'BRYAN
BOX 24
HOUSTON 99694

RE: LEMON LAW - SB 286

THE SERVICE DEPARTMENT AND MANUFACTURERS DO NOT COORDINATOR LIABILITY
FO DEFECTIVE VEHICLES UNDER WARRANTY. I RECOMMEND REVIEW OF CLAUSE
TO ALLEVIATE RESPONSIBILITY FOR MINOR PROBLEMS. SUGGEST CONSIDERATION
OF "SAFETY OF OPERATING VEHICLES" AS UPPERMOST IMPORTANCE. URGE
PASSAGE OF LEGISLATION AS QUICKLY AS POSSIBLE.

Alaska Public Interest Research Group

P.O. Box 1093

Anchorage, Alaska 99510

Phone (907) 278-3661

February 15, 1984

Senate LABOR & COMMERCE
Room 417 Capitol
Pouch V
Juneau, AK 99811

Dear Senator Richard I. Eliason:

Enclosed is a copy of my testimony at the Committee hearing on SB 286, the Lemon Car bill.

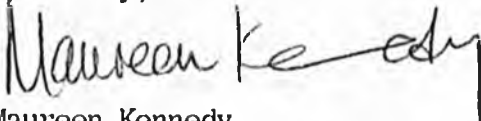
Two bills have been introduced to the Connecticut legislature, amending that state's Lemon Car Law. One would set up a statewide arbitration committee for owners of cars whose manufacturers do not have a program set up. The other bill requires the Attorney General to authorize that each manufacturer's arbitration program complies with 16 CFR part 703.

The AG had found that several manufacturers purporting to have arbitration programs in compliance with Part 703 in fact did not. As a result, owners of vehicles were having to wait inordinate periods of time for a hearing, and then a decision. Many consumers with strong cases eventually dropped out of the process through sheer frustration as manufacturers used arbitration to their advantage in putting consumers off.

We feel that it is especially important that the Alaska Office of the Attorney General authorize the manufacturer's programs in this state. Moreover, there is no reason that the programs can't comply in all respects with Part 703.

Please feel free to call me in Anchorage, if you have any additional questions.

Sincerely,



Maureen Kennedy
Director

COMMENTS BEFORE THE SENATE LABOR AND COMMERCE COMMITTEE ON THE LEMON CAR BILL

Good afternoon, my name is Maureen Kennedy, and I am the director of the Alaska Public Interest Research Group. AkPIRG does research and advocacy on economic and social issues and has over 400 members statewide.

We are very supportive of the concept of lemon car legislation, though we support the language embodied in the original version over that of the current version. Nevertheless, I was pleased to hear that industry representatives are satisfied with the committee substitute.

We would like to see the following changes made before the bill is passed out of committee:

The manufacturer or dealer should be required to fix the car until it conforms to both the express warranty AND the implied warranties of merchantability and fitness for purpose. There is plenty of precedent for this in the federal Magnuson/Moss Warranty Act and in other states' lemon car laws. As the bill is now worded, only problems with materials or workmanship must be resolved, while DESIGN defects that "substantially impair the car's use and value" need not be fixed by the dealer or manufacturer.

If a manufacturer produces a car with a design defect that has the same impact on the owner as a problem with materials or workmanship, that is, the car is in the shop for 30 working days, then the company should have the obligation to replace the car. Overall, the car should do what it's supposed to do, even if the problem is with the specifications rather than the production.

In part (b) of the bill, the OWNER of the vehicle should be able to choose between a replacement car and a full refund. Car owners who must resort to the Lemon Car Law will probably have little faith in the model and perhaps the manufacturer after the ordeal. They should be entitled to a refund if THEY wish, rather than a replacement car, which may be more palatable from the perspective of the dealer or manufacturer.

We are pleased that Part (f) dealing with full disclosure at resale, has been added to the bill.

In Part (i), the dispute settlement procedure should comply rather than substantially comply with the provisions of 16 CFR part 703. Moreover, this section should expressly say that no member of the arbitration committee can be a manufacturer, distributor or dealer of cars. The state that passed the first lemon car law, Connecticut, is having substantial problems with this portion of its law, and a bill to tighten up the language has been introduced this session.

The bill should include a requirement that the manufacturer give notice in the express warranty of the owner's rights under any arbitration procedure and the Lemon Car Law, including deadlines for action.

One final point. Though we were pleased to see that an Alaskan received a refund through a manufacturer's arbitration program, we all need to keep in mind that such programs solve only a few of the difficulties the Lemon Car bill is meant to address. Many manufacturers don't have these programs in place and other consumers may not be satisfied with the results of arbitration. Most Alaskans with lemons will have no recourse until this bill becomes law.



MOTORCYCLE INDUSTRY COUNCIL, INC.

*Government Relations Office
Washington, D.C.*

February 6, 1984

Honorable Richard Eliason
Chairman
Senate Labor and Commerce
Committee
State Capitol
Juneau, AK 99811

Dear Chairman Eliason:

The Motorcycle Industry Council is a nonprofit national trade association which represents the manufacturers and distributors of motorcycles and over 100 other companies involved in allied trades. I am writing with regard to SB 286, the "lemon" bill.

The Council believes that motorcycles should be excluded from the legislation and would like to share with you some reasons why we believe exclusion is merited.

There are several factors unique to the motorcycle industry and some inherent differences between motorcycles and passenger cars which complicate and make inappropriate the inclusion of motorcycles in such laws.

While car-related problems consistently rank high among consumer complaints, probably because of their sheer numbers and the high expenditures involved, motorcycle-related complaints historically have been few. The Council of Better Business Bureaus compiles statistics gathered nationwide and ranks products from 1 to 10 on the basis of complaints received. Motorcycles have never appeared in this report, nor did they appear on the latest available expanded list of 88 categories of complaints which were received by the Bureau in 1981.

Expanding a lemon law to products that are not a subject of concern is unnecessary and costly and will probably cause more problems than it will solve; for example: increased disputes and litigation between motorcycle manufacturers and their dealers which would be inherent in the shared yet undefined requirements and responsibilities imposed by the bill, probable reduced voluntary consumer accommodation by dealers, and a probable reduction of goodwill repairs by the manufacturer.

Likening motorcycles to cars for the purpose of this legislation does not seem appropriate when taking into consideration both the size and nature of the industries and the costs and use differences of the products.

The motorcycle industry is far smaller than the auto industry. Based on 1982 sales figures for Alaska, there were only 1,247 motorcycles sold that would be subject to this legislation. For every 100 cars sold there would be only 7.6 motorcycles, and in terms of dollar volume, motorcycle sales would constitute a mere 2.2% of car sales.

While some motorcycle models are indeed expensive, this bill also would be regulating for instance, the small Honda Express, which at under \$300 is less expensive than many bicycles and used for the same purposes, namely recreation and errand running. Cars are one of the major expenditures a consumer will ever make, and one on which he is the most dependent. Motorcycles on the other hand are generally discretionary purchases and some are less expensive than major household appliances and entertainment devices. It seems no more appropriate to cover motorcycles by a specific lemon law than it does to cover any other such purchases, from refrigerators to stereos. These consumer purchases, including motorcycles, are covered adequately already under the Uniform Commercial Code which offers protection to buyers of defective products.

The majority of motorcycle dealerships are relatively small businesses. The average dealership has 5 full-time employees which typically include the owner/operator, his or her spouse and one mechanic. I believe it is a common misconception that lemon laws will be only a manufacturer concern with regard to compliance. The dealer is and will continue to be the focal point of the customer in all matters having to do with the purchase. The manufacturers' responsibilities and ability to comply will be very much dependent upon the dealer's performance of his or her responsibilities with regard to service management and particularly the extensive record-keeping that will be required. The motorcycle industry as a whole is a drop in the bucket compared to the auto industry and motorcycles' inclusion will impose a proportionally much greater burden on our industry than on the larger automobile industry, not only in terms of increased dealer burden, but in the prohibitive cost of establishing formal dispute resolution mechanisms when effective customer service procedures are already in place.

Finally, motorcycle use is very seasonal and it is common for customers to leave their motorcycles for service at dealerships for extended periods of time. In this regard, a law requiring vehicle replacement if it has been out of service for 30 days would be more of a consumer inconvenience than a benefit, for this practice will surely end. The manufacturer's risk exposure will overshadow the owner's convenience and the dealer's efficiency.

Motorcycle manufacturers view warranty repair policies as an investment in good customer relations and future repeat sales. Motorcycles are largely a discretionary purchase and if a consumer is dissatisfied, he simply won't buy another motorcycle of any make. A dissatisfied car buyer usually will not nor cannot abandon the automobile market, since for most people a car is a necessity. Motorcycle manufacturers have to be responsive to complaints if they want to retain their customer base. It is not uncommon for motorcycle manufacturers to perform goodwill repairs on vehicles, even though the repair is not required under warranty or the vehicle's warranty has expired. If motorcycles were included in a lemon bill, these goodwill repairs would surely end since they would be included in the number of repairs allowed before a vehicle is considered a lemon. In effect, a lemon law could prove to be detrimental, rather than beneficial to consumers.

Honorable Richard Eliason

Page 3

February 6, 1984

In view of the small number of motorcycles, the even smaller incidence of problems in this area and the fact that motorcycle manufacturers are currently acting in a responsible and conscientious manner to ensure customer satisfaction, we believe motorcycles should be excluded from SB 286.

I appreciate your consideration of these comments and would be pleased to discuss them with you in more detail or send you any additional information on the motorcycle industry which you may want.

Sincerely,



Kathy Van Kleeck

Director

Legislative Affairs

KVK/tlr

jim erickson



TROUBLESHOOTER

✓ **CONSUMER ADVISORY:** Alaska Attorney General Norman Gorsuch Tuesday announced several proposed changes in Alaska consumer protection laws that may be supported by the Sheffield administration.

Gorsuch's remarks came during a small-business seminar held in Anchorage. The seminar was sponsored by the Federal Trade Commission, the Anchorage Chamber of Commerce, the U.S. Small Business Administration and the Alaska Attorney General's Office.

Of particular note to consumers:

- The Department of Law may urge the administration to back an Alaska "lemon law," which 19 other states have already passed. While lemon laws across the country vary, most are based on a provision that forces auto makers to refund the purchase price of defective new vehicles that can't be repaired.

Passage of a lemon law would ensure that "national automobile manufacturers afford to Alaskans the full benefits of the warranties which are part of the purchase price of every automobile," Gorsuch said.

- Gorsuch vowed to urge administration support for a legislative bill that would expand the Alaska Unfair Trade Practices Act to include real property, such as homes and condominiums, as well as commodities and investments. Alaska courts have recently ruled that only consumers of goods and services are protected by the act.

Similarly, Gorsuch said the administration may introduce legislation that would ensure the act protects business as well as consumers. Restrictive court rulings recently have tended to exclude businesses from legal recourse under the act, leaving them with little defense against "paper pirates" who prey on small business owners. By changing the legal definition of "consumer" so it embraces businessmen acting as consumers, businesses could freely seek assistance of the Consumer Protection Section of the attorney general's office, he said.

- Gorsuch said he is considering recommending legislation that would require promoters of "time-share" vacation and condominium sales to give adequate and fair disclosure to consumers before the sale.

"Resort promoters from around the country and outside the country have discovered that Alaskans need to get some sun in the winter, which may make our citizens ripe victims for a 'burn,'" he said.

- Formal legal opinions in the area of consumer and business rights and responsibilities may be issued by the Department of Law when warranted.

Gorsuch cited the Alaska Landlord/Tenant Act as an area of law that at times might need public clarification.

"Our office has seen acts and practices which seem to be outside the lawful scope (of the act)," he said. "The small landlord sees larger landlords engaged in these practices and does not want to be at a competitive disadvantage, but does not know whether this activity is lawful. The tenant may feel squeezed by the practice, but can't afford to litigate it."

In such cases, the Department of Law could formally issue an opinion as to the legality of questionable practices under Alaska law, he said.

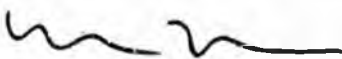


Representative Mike Miller

MEMORANDUM

October 17, 1983

TO: Senate Labor & Commerce Committee members
House Labor & Commerce Committee members

FROM: Rep. Mike Miller 

SUBJECT: HB 344/ SB 286 -- Automobile Warranty legislation

HB 344 and SB 286 are currently in the House and Senate Labor and Commerce Committees. I do hope that additional public hearings will be scheduled on these bills relating to automobile warranties -- or better known as "lemon laws". I continue to urge your support for passage of this legislation which would protect our Alaska consumers by making sure that their automobile warranties are honored.

I thought you might be interested in the attached September 30, Daily News clipping which lends additional support for these bills.

jim erickson



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Anchorage Evening News

Friday, September 30, 1983

C3

THE NEW LEMON LAWS—DO THEY WORK?

New laws in 19 states promise a fair shake for new car buyers. They are a last-resort alternative to lawsuits.

BY ED FALES; Illustration by Howard Lewis

When Anthony Conti's dealer in Connecticut couldn't fix his Lincoln Continental, he sued—under old credit laws that say any "appliance" must work. Sure enough, he got his money back. But it took seven years.

When Prof. Henry Adelman's feet got wet in his new '82 VW Quantum, his dealer couldn't find the trouble (open bolt holes that let the rain in). Adelman, however, didn't sue. He waved a copy of California's brand new "lemon law." He got his money back in 100 days.

When Chester Sobolewski's new Ford wouldn't back up, his dealer couldn't cure it. Chet didn't sue, either. He knew his rights under Connecticut's new lemon law: (1) a new car or (2) his money back. He got the new car—in seven days.

Like a series of blasts, an astonishing eruption of fierce state lemon laws—19 were passed in 17 months—has shaken the auto industry. Lemon laws are affecting owner-

(Please turn to page 52)



LEMON LAWS

(Continued from page 50)

service manager relationships wherever they're in effect, from Oregon to Florida.

Although they vary, in general, they provide that any car under warranty that a dealer can't fix in four tries (Florida, Wyoming and Massachusetts say three) is a lemon. U.S. law says warranted repairs must be made. But the lemon laws now add that if repairs are not made, you're entitled to a new car. Or you can get your money back. But your problem must be genuine—must involve a major problem that affects your car's value or use.

In some states your claim must be made in the first 18 months, in others within 24. New York allows four years. Some give no time limit. The cure is the factory's responsibility.

Buyers get more respect

All this is a drastic attempt—some say too drastic (and needless)—to soothe the angry owner who feels shafted. As written, the new laws are supposed to protect new-car owners. In fact, legislators say, there's a trickle-down effect. Even old-car owners say they're getting more respect from car dealers.

What really shook the industry is the dismaying enthusiasm with which 19 legislatures rushed to act. In some states, the vote was overwhelming. In New York's huge legislative body it was unbelieveable: 201 to 3. All this has put backbone in owners who used to feel intimidated by some service managers. "I didn't get a new car," says one owner. (Few really do.) "But I did feel stronger at the service door."

Under lemon laws, settlements are free. The factory or dealer must do as ordered by a remarkable crop of quasi-judicial auto dispute juries that have sprung up from coast to coast.

Are the laws working?

How are the lemon laws really working? Even the first—Connecticut's—is only 17 months old. Some were born only weeks ago. So in most states, actual cases are few. But in Connecticut, Rep. John Woodcock, who fathered the law, estimates that in the first 17 months alone, 40 owners were either awarded new cars or refunds. "And in most cases," says Woodcock, who has become the nation's lemon law guru, "they got new cars."

Here's a small, early sampling of 13 cases in Connecticut, Minnesota and California:

- Got a new car: 1.
- Secretly settled, possibly with a new car: 1.
- Got money back: 3.

Questions You Might Ask

What is a lemon?

The new laws in most states say a lemon is a car with a substantial defect that the dealer fails to fix in three to four tries. The defect must affect the value, use or safety of a car. Most laws also say a car must have been laid up for a total of 30 days. (Massachusetts and Florida say 15, Nebraska says 10.) Minnesota's tough law cites any car that has to be fixed just once for steering or brakes. Kentucky, although not considered strictly a lemon law state, has a law that involves any car with serious mechanical problems, even if not on warranty.

How old can a lemon be?

Most states say a car must still be on warranty, or, if warranty mileage has run out, no older than a year. New York stretches the limit to two years or 18,000 miles, and even lets the law be invoked if the owner warned the carmaker during the warranty period of troubles that might grow worse.

Are motorcycles covered?

Lawyers are still interpreting the laws in different ways. Center for Auto Safety attorneys say motorcycles appear to be covered in all lemon law states except California, Delaware, Illinois, Minnesota, New Hampshire, New Jersey and New York.

Are pickups covered?

Yes, in all states but Delaware. Most laws say pickups must be bought for personal, not commercial, use to be covered.

How much of a refund can an owner get?

Minnesota lets the carmaker deduct

10 cents a mile for past use (or a small percentage of the car's cost). New York allows a deduction for mileage over 12,000. Florida allows carmakers 20 cents a mile. Otherwise, you get what you paid for the car if you win.

Does the owner get back taxes, prep and other charges?

Several states, including Massachusetts and Florida, say refunds must include collateral items like sales tax, license fee, finance costs, and (in Florida) undercoating, towing, car-rental and dealer-prep charges.

Do lemon laws give free repairs?

They do not address this. U.S. law, however, says a manufacturer must stand behind his repair warranties. Lemon laws indirectly encourage dealers or carmakers to complete any entitled warranty repairs. And an owner who appeals to Autocap or some of the factory juries may get good-will bill adjustments if there has been mistreatment.

Can a lemon be resold by the factory or a dealer?

In Minnesota, no lemon with defective brakes or steering can ever be resold. In some states, the carmaker must give any buyer a note saying that the car had been a lemon (in some states, "an incurable lemon").

Are noncritical items like defective radios or upholstery covered?

Not by lemon laws. Autocap and some auto juries will consider such items, however.

If you lose a lemon law claim, can you still go to court?

Yes.

■ Got troublesome problems fixed at last: 1.

■ Owners lost their appeals, got no benefits, are "disappointed with the lemon law": 2.

■ Cases pending: 5.

How appeals juries work

Many of these new juries—there are now at least 30—sprang up while lawmakers were busy drafting lemon laws. The most interesting, Autocap (Automotive Consumer Action Program), suddenly has 15,000 dealer-sponsors who pay to run its 41 appeals panels. The others were created by the manufacturers, U.S. and foreign, partly in self-defense, but partly in an honest try at winning back your loyalty.

Most lemon laws require that, before you can claim a refund or new car, you must go before an appeals jury that meets dispute-settlement standards established by the Federal Trade Commission. According to John Woodcock's staff, Ford and Chrysler juries do. Some

Autocaps do, others are working toward it. The Better Business Bureau (BBB) is trying to find out whether it qualifies.

Here's what to do if you appeal:

1. Make one last try to settle the problem with the dealer, zone office, or factory. Local dealers have phone numbers of the zone office and factory.

2. If this won't get results, phone or write your appropriate jury (see list at the end of the story). Gather every scrap of evidence—bills, invoices, work orders, memos, dates. In Texas, you're required to appeal any dispute first to the State Motor Vehicle Commission.

Usually, the jury's staff will call the dealer or factory and try to coax a settlement. If this fails, most invite you to sit around their table, informally, with you and your dealer both telling your story. Some investigate very thoroughly. You may have to bring your car and they may test it.

You may get a decision in days, or
(Please turn to page 54)

LEMON LAWS

(Continued from page 52)

even hours, and it binds the manufacturer and/or dealer. By contract, he must do what the jury says—unless, of course, you lose.

You don't usually need a lawyer. In fact, as this is written, BBB juries won't admit them. You can appeal to such juries in any state, whether it has lemon laws or not. Some juries have awarded new cars or refunds in states that have no such laws.

Who are the jurors? Mainly, they're unpaid volunteers, often leading citizens who give time as a public service. Often, they're merchants, independent mechanics, editors, housewives, teachers, ministers, lawyers. Some boards, like Autocap, have dealer members. But for every dealer, there's a consumer rep sitting opposite.

Most juries are fair

Are their decisions fair? There are gripes, but many juries seem surprisingly fair. Says Gerald Murphy, head of Autocap's Washington, D.C., jury office: "Funny thing, our dealer members are usually tougher on dealers, and our consumer reps are usually tougher on car owners!"

For U.S. and foreign-car owners in general, there are now 41 dealer-estab-

lished Autocap panels coast to coast. Many have 10-member juries and they'll consider reasonable disputes about anything from a 1984 AMC to a Rolls-Royce that's gone 150,000 miles. Half the jurors are consumer reps, half are dealers.

For Ford-Lincoln-Mercury owners, a new network of over 30 Consumer Appeals Boards (CABs) will hear any honest product or service dispute, no matter how old your car. In fact, Ford's Mike Davis says: "We find most complaints are on out-of-warranty cars." CABs have five voting members (three consumer reps, one Ford, one Lincoln-Mercury dealer).

In its first five years, CABs have had 42,000 inquiries and accepted 10,000 cases for investigation. Ford says more than two in five get a better break on appeal. A few new cars have been given, there have been some refunds, and some major parts like transmissions or engines have been replaced. Only 43 owners went to court.

Reviewing warranty repairs

For Chrysler-Dodge-Plymouth owners, at least 52 Chrysler Customer Satisfaction Boards (CSBs) review only service-related disputes over warranty repairs. They won't handle disputes over alleged design defects or out-of-warranty cars.

CSBs have five members: a consumer rep, a public rep (who could be a public official), a technician certified by the National Institute for Automotive Service Excellence (NIASE), a Chrysler rep and a Dodge or Chrysler-Plymouth dealer.

Chrysler's routine is more stringent than some. Your appeal is all handled in writing. You do not appear. If your car must be tested, you get a free loaner. CSB decisions bind Chrysler or the dealer.

Keeping customers happy

Believe it or not, GM is getting tips from IBM, AT&T and even McDonald's on good ways to keep customers happy. GM began testing a Customer Assistance Program in 1978 and now pays the Council of Better Business Bureaus to administer the mediation of disputes in its 140 Bureaus. GM doesn't discuss details, but according to one report, each Bureau gets \$15 to mediate a dispute or, if that fails, \$35 for binding arbitration. GM calls mediation "an informal process of re-establishing communication between both parties." Arbitration binds GM but not the owner, if he doesn't like the decision. BBB will look at GM cars up to five years old, with no mileage limitation.

First, as noted, an owner must try to settle with (1) his dealer, or (2) GM's zone office or (3) by contacting GM

Customer Service (see *Where To Call If You Have A Dispute* on this page).

If all this fails, BBB sends you a list of five names of possible jurors, with a biography on each. You score your preferences 1 to 5. So does the factory. The highest scorer becomes your jury. Some states require a panel of three.

According to CBBB, of 26,300 appeals in eight months last year, 17,000 were settled by mediation and 1,800 by arbitration. Some 7,500 are still pending.

Auto age limit

For VW, Datsun-Nissan and Porsche-Audi owners, BBB arbitrates as it does for GM, except that cars can be no more than three years old.

For Jaguar, Rover and Triumph owners, the procedure is the same as above, but cars must still be on warranty.

Disputes in some states are resolved by the attorney general, secretary of state or the motor vehicle commission. These have clout because they enforce commercial laws and license dealers and manufacturers.

Even if you lose a jury decision, you can still hire lawyers and sue, and whatever any auto-dispute jury has ruled now becomes legal evidence for or against you. But suing is expensive, can take months or years, and may cost more than your car is worth. Some suits fall under the Magnuson-Moss federal warranty act of 1975, which says manufacturers must stand behind their warranties.

Lemon law results

In Washington, D.C., an industry-advisory group cites a survey which shows that owners who get good treatment tell eight friends. Those who got bad treatment tell 16. With manufacturers and dealers more responsive than ever to consumer complaints, perhaps we'll see the day when lemon laws are no longer needed. **FM**

Where To Call If You Have A Dispute

Owners' manuals, especially the recent ones, often give phone numbers and/or addresses of owner-assistance boards. But first talk with your dealer, then the carmaker's zone office, then the carmaker's headquarters. Some zone offices will relay your inquiry to the head office.

Autocap is listed in many big-city Yellow Pages. For phone numbers and addresses in all states, contact NADA Autocap Office, 8400 Westpark Dr., McLean, Va. 22102 (or call 703-821-7144).

For GM cars, write GM Customer Service, GM Building, 3044 West Grand Blvd., Detroit, Mich. 48202, or phone 313-556-2294.

Better Business Bureaus appear in city Yellow Pages. For a full list, with phones, write to Council of Better Business Bureaus, Wilson Blvd., Arlington, Va. 22209, or call 800-228-6505.

Ford Consumer Appeals Boards: From most places, dial 800-241-8450.

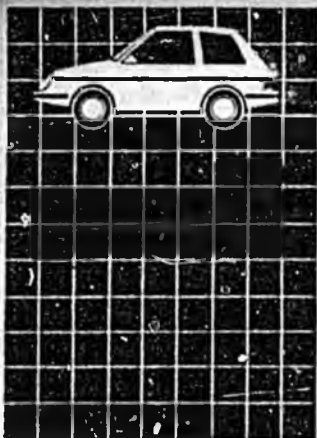
Chrysler Customer Satisfaction Boards won't take calls. Contact them by mail. Address for your area is in owners' manuals (look under "Service Assistance"). Or ask dealer or zone office for a list of boards. Detroit Customer Relations address is Box 1718, Detroit, Mich., 48288. Phone 313-956-5970.

Lemon Law Tally

■ There were 19 states with lemon laws as this report was drafted. The Center for Auto Safety in Washington, D.C., lists: California, Connecticut, Delaware, Florida, Illinois, Maine, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oregon, Texas, Washington, Wyoming and Wisconsin.

■ A federal lemon law has been proposed in Congress.

■ These 18 states have considered, or are considering, lemon laws: Alaska, Arizona, Colorado, Georgia, Hawaii, Indiana, Kansas, Louisiana, Maryland, Missouri, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina and Vermont.



Average Age of Cars Continues 10-Year Rise

The total number of passenger cars in use in the United States leveled off in 1980, but the average age increased to more than 6 1/2 years for the first time since 1952.

The hike in the average age of the passenger cars in service continued a 10-year rise. In 1970 the average age was 5 1/2 years.

The number of cars on the road 16 years old or older increased nearly 20 percent from 2.9 million in 1979 to more than 3.5 million.

PASSENGER CARS IN USE BY AGE

Age in Years (1)	Number (000)	1970		Number (000)	1975		Number (000)	1979		1980		
		Simple	Percent Cum.		Simple	Percent Cum.		Simple	Percent Cum.	Number (000)	Simple	Percent Cum.
Under 1.....	6,288	7.8%	100.0%	4,684	4.9%	100.0%	7,288	7.0%	100.0%	5,868	5.6%	100.0%
1-2.....	9,299	11.6	92.2	9,763	10.3	95.1	10,699	10.2	93.0	10,402	9.9	94.4
2-3.....	8,816	11.0	30.6	11,332	11.9	84.8	10,219	9.8	82.8	10,483	10.0	84.4
3-4.....	7,878	9.8	69.6	10,098	10.6	72.9	9,203	8.8	73.1	9,931	9.5	74.4
4-5.....	8,538	10.6	59.8	8,549	9.0	62.3	6,990	6.7	64.3	8,900	8.5	64.9
5-6.....	8,506	10.6	49.2	8,341	8.8	53.3	9,004	8.6	57.6	6,582	6.4	56.4
6-7.....	7,116	8.8	38.6	8,339	8.8	44.5	9,965	9.5	49.0	8,499	8.1	50.0
7-8.....	6,268	7.8	29.8	7,556	7.9	35.7	8,431	8.1	39.5	9,151	8.8	41.9
8-9.....	5,058	6.3	22.0	6,113	6.4	27.8	6,573	6.3	31.4	7,544	7.2	33.1
9-10.....	3,267	4.1	15.7	5,796	6.1	21.4	5,909	5.6	25.1	5,653	5.4	25.9
10-11.....	2,776	3.5	11.6	4,825	5.1	15.3	5,034	4.8	19.5	4,939	4.7	20.5
11-12.....	1,692	2.1	8.1	3,234	3.4	10.2	3,999	3.8	14.7	4,049	3.9	15.8
12-13.....	799	1.0	6.0	2,229	2.3	6.8	2,862	2.7	10.8	3,172	3.0	11.9
13-14.....	996	1.2	5.0	1,407	1.5	4.5	2,460	2.3	8.1	2,280	2.3	8.9
14-15.....	794	1.0	3.8	689	.7	3.0	1,874	1.8	5.8	1,969	1.9	6.7
15-16.....	753	.9	2.8	523	.5	2.3	1,223	1.2	4.0	1,516	1.4	4.8
16 & Older.....	1,583	1.9	1.9	1,742	1.8	1.8	2,930	2.8	2.8	3,514	3.4	3.4
Subtotal.....	80,427	100.0%	—	95,220	100.0%	—	104,663	100.0%	—	104,552	100.0%	—
Year Not Given.....	22	—	—	21	—	—	14	—	—	12	—	—
Total.....	80,449	—	—	95,241	—	—	104,677	—	—	104,564*	—	—
Average Age.....	5.55 Years			5.99 Years			6.41 Years			6.59 Years		

*In 1980, 1,310,918 passenger vans were reclassified from passenger cars to trucks.

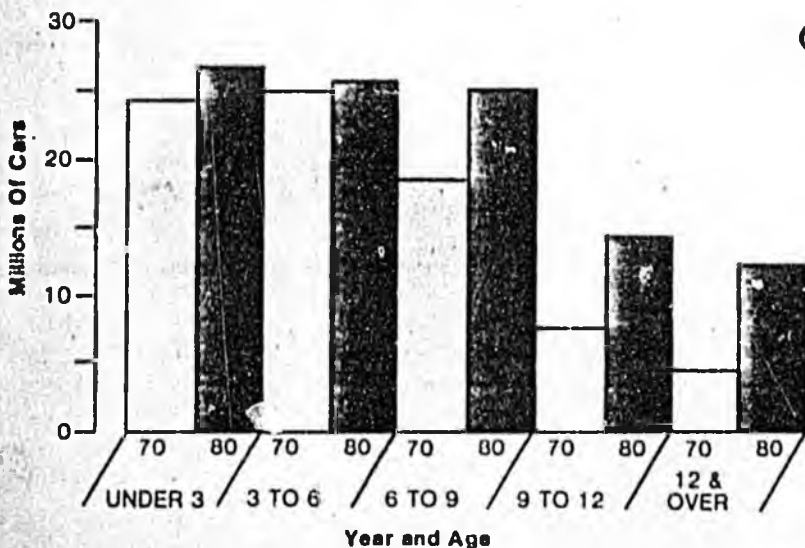
(1) Each class interval includes lower but not higher age.

NOTE: Data as of July 1 of each year.

SOURCE: Compiled by the Motor Vehicle Manufacturers Association from R. L. Polk & Co. data. Permission for further use must be obtained from R. L. Polk & Co.

AVERAGE AGE OF PASSENGER CARS IN USE IN U.S.

PASSENGER CARS BY AGE GROUPS



Year	Years Old	Year	Years Old
1980.....	6.6	1963.....	6.0
1979.....	6.4	1962.....	6.0
1978.....	6.3	1961.....	6.0
1977.....	6.2	1960.....	5.9
1976.....	6.2	1959.....	5.8
1975.....	6.0	1958.....	5.6
1974.....	5.7	1957.....	5.5
1973.....	5.7	1956.....	5.6
1972.....	5.7	1955.....	5.9
1971.....	5.7	1954.....	6.2
1970.....	5.5	1953.....	6.5
1969.....	5.5	1952.....	6.8
1968.....	5.6	1950.....	7.8
1967.....	5.6	1948.....	8.8
1966.....	5.7	1946.....	9.0
1965.....	5.9	1944.....	7.3
1964.....	6.0	1941.....	5.5

SOURCE: Estimated by the Motor Vehicle Manufacturers Association of the U.S. Inc.

Age of Car - 7²² yrs

TELEGRAM

ALASKA COM. INC.
PHONE: 585-5706
JUNEAU, AK 99801

1994 JAN 30 AM 5 24

02001 TBA SOLDOTNA AK 142 01-30 0045 YST

PMS SHEILA PATTERSON SECRETARY SENATE LABOR COMMERCE COMMITTEE
PHONE 465-4915

3152

JUN

LEMON LAW SB-286 MOTOR VEHICLE WARRANTY. PERSONAL EXPERIENCE
KNOWLEDGE FROM PURCHASING A BRAND NEW CADILLAC SEVILLE WHICH I
LEARNED HAD BEEN WRECKED OR EXTREMELY HEAVY DAMAGED IN SHIPMENT
MAJOR PARTS HAD BEEN REPAINTED INSIDE. A COMPLETE FENDER HAS
FACTORY DEFECT, FACTORY RESPONSIBLE TAG ATTACHED TO IT. ORIGINAL
SALES BROCHURE STATES ALL CADILLACS HAVE A THM-400 TRANSMISSION,
MY CADILLAC HAS INFERIOR METRIC-200 TRANSMISSION IN IT. PROBLEMS
SO SEVERE THAT NEW YORK STATE ATTORNEY GENERAL PUBLISHED A 38-
PAGE BOOKLET ABOUT IT, FRAUD, DECEIT, FALSE ADVERTISING. CAR
INVOLVED IN SERIOUS AUTO ACCIDENT FROM A REPAIR THAT TOOK 45-DAYS
TO COMPLETE ALLOWED ME APPROXIMATELY 150 MILES BEFORE FAILURE.
THIS WAS THE THIRD REPAIR TO THE POWER STEERING POWER BRAKE
UNIT WHICH IS COMBINED. WITH THIS ACCIDENT THIS MAKES THE
FOURTH FAILURE.

WE NEED A LEMON LAW PASSED TO SAVE CITIZEN LIVES.

MR. ROBERT IYERS

PBB 865 SOLDOTNA AK 99669

Lemon goes back to Buick

By K.C. MCON
Daily News

Since he bought his Buick Century new in 1982, Dennis Stovall has been cursing the car, trying to find some way to get rid of it.

Window cranks fell off in his hand. Transmission failures left him stranded. Windshield wipers quit during heavy rains. Warning lights flickered as the engine sputtered and grumbled.

Now, in what Stovall says is a monumental victory for consumers, Buick must buy back the car.

The buy-back is the result of the first Alaska arbitration of consumer complaints



Anchorage Daily News/Traf. Durner

See Back Page, CAR Dennis Stovall stands with the Buick that he'll be selling back to its makers.

Anchorage
Daily News
2/7/84

Car to be bought back by Buick after owner wins his case in arbitration

Continued from Page A-1

against General Motors, the maker of Buick models and one of the world's largest corporations.

The arbitration program is similar to one mandated three months ago by the Federal Trade Commission, which in a 1980 suit accused GM of failing to notify its customers of serious defects with many GM cars.

Instead of pursuing its federal court suit, the commission voted in November to accept GM's offer to arbitrate all consumer complaints through local Better Business Bureaus.

Since Alaska has no bureau, the bureau in Seattle handles consumer complaints for Alaskans.

Stovall's arbitration hearing was held Jan. 20 in Anchorage. He and a Buick representative argued their cases for about eight hours before three volunteer arbitrators, all from Anchorage.

Over the weekend, Stovall received a letter stating he had won his case. All arbitrators agreed with Stovall's contention that he "did not get the

reliability he bargained for when he bought the 1982 Buick and does not foresee the situation improving," according to the letter.

Stovall will get most of what he asked for, but the arbitrators decided to deduct from Stovall's \$9,865 purchase price 20 cents for each of the 7,500 miles the car has been driven.

"That deduction is the only part that upsets me," Stovall said. "But I would have put a lot more miles on it had I not been scared to drive it."

Stovall should get a check for more than \$8,300 when he turns the car over to Alaska Sales and Service, the GM dealership that sold him the car.

"I'll be glad when I never have to deal with this car again," Stovall said. "It's taken a lot of work and a lot of time, but I finally got what I wanted."

Stovall showed copies of about 50 letters he had written to the dealership and Buick customer relations offices in an effort to get the car fixed.

In the two years of ownership, the car had been almost

60 days in the Alaska Sales and Service repair shop, according to repair documents. In the first seven weeks after the sale, the car was in the shop five weeks.

Buick representative Kerry Stasch, who defended the automaker at the Jan. 20 hearing, said he could not comment on the outcome of the arbitration. Buick zone manager Bill Powell said he would answer only those questions presented in writing.

Richard Hiatt, service manager for Alaska Sales, said Monday, "We support the Better Business Bureau and whatever decision is rendered."

He said Buick, not Alaska Sales, is responsible for paying Stovall. Hiatt said he had not been in contact with Buick headquarters to find out when and where the transaction would take place.

"Most likely the car will be resold, either by us or some other dealer," Hiatt said. "It's not a bad car."

"Unfortunately, (Stovall) had problems with it, but in my opinion it's completely safe."

Hiatt said that, although it

is not Alaska Sales' policy to buy back cars sold, "we have bought back cars before."

Normal procedure for handling a complaint like Stovall's "is to try to trade the customer into another car," he said.

That offer was made to Stovall several times, but the 33-year-old schoolteacher turned it down. "I could have traded my car in at any dealership," he said. "I wanted my money back."

"We've been bowing and curtsying to these huge corporations for too long," Stovall said. "It's time we stand up and fight them."

"What I hope my case does is open Alaska up to the arbitration process," he said. "People need to know they don't have to sit there and get kicked around after they've bought a 'lemon.'"

"I know a lot of people who had worse cars than mine and couldn't do anything about it."

The arbitration program set up for Alaskans by the Seattle Better Business Bureau still is being developed. Wendy Bennington, who manages automobile arbitrations for the office,

said the bureau is planning to contract with a local organization to monitor Alaska hearings until the Anchorage bureau office opens.

Two of those who heard Stovall's case were volunteers from the Anchorage Conflict Resolution Center. The state Consumer Protection Office helped coordinate Stovall's hearing.

Bennington said her office has received 200 calls from Alaska GM owners since the November FTC ruling. The next arbitration hearing in Anchorage will be held in four weeks, she said.

Demands that manufacturers buy back autos are rare, she said. Most consumers simply seek reimbursement for repairs.

Bennington said of the complaints her office has received, only about 3 percent make it to arbitration. The rest are settled when consumers accept automakers' mediation offers.

Bennington said Alaskans wanting to participate in the arbitration program can call the Seattle Better Business Bureau collect at 206-622-2578.

Ketukitan Daily News
Feb. 7, 1984

10

GM's earnings could set industry record

DETROIT (AP) — General Motors Corp.'s 1983 earnings could set a record for the nation's largest automaker and lift combined U.S. car industry profits for the year to an all-time high, analysts say.

Many analysts see GM surpassing its record profit of \$3.51 billion set in 1978, a year before the American car industry plunged into a four-year sales slump that Detroit began to shake off just last year.

David Healy, an automotive industry analyst for Drexel Burnham Lambert Inc. in New York, said the earnings will be "in the neighborhood of" \$3.7 billion.

"Dollars weren't what they were in 1978, so it won't be a record in real dollars. But that's still a very good figure," Healy said.

GM Chairman Roger B. Smith, who has led the company on its way out of the industry's sales slump, was to make the earnings announcement in an address to the National Press Club in Washington this afternoon.

When Ford Motor Co., Chrysler Corp. and American Motors Corp. close their books later in the month, the U.S. car industry is expected to have racked up profits far exceeding the industry record of \$5.18 billion in 1977.

The record earnings for a year by a U.S. corporation was set in 1982 when AT&T recorded a profit of \$7.23 billion, earning more than \$2 billion in one quarter alone.

Analysts predict that Ford's earnings could approach, or even exceed, its record of nearly \$1.7 billion in 1977. Chrysler is a sure

bet to set a record for 1983. Its record for a year was \$422.6 million in 1976 and it eclipsed that in just three quarters of 1983, earning \$582.6 million. AMC says it will post a profit for the fourth quarter, but has not predicted a profit for the year.

Healy said GM's results came "from a combination of three things: the recovery in car sales, a reduction in their break-even point — doing it with fewer people — and the market mix, which is very profitable. They were selling more of the profitable big cars and not as many of the smaller cars."

Gary Glaser, an automotive analyst for Sanford C. Bernstein & Co. Inc. in New York, said GM piled up the profits because of improved sales in big cars, GM's specialty, the improved sales market that has aided all carmakers and better efficiency, which has dramatically lowered GM's break-even point.

"The overriding factor has been the significant increase in (cars and trucks) sold as the market comes back," Glaser said. "Certainly, part of it relates to the fact that GM is the most significant player in the higher end of the market."

He also cited "the excellent programs GM has made in lowering and containing costs."

Glaser said that in 1978, when GM hit its previous record profit, "they needed to build 5 million vehicles to break even. By 1983, Glaser said, GM had lowered that "to 4 million. This is really the key, with the fact that sales have indeed come back."

opinion

Anchorage Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Katherine Fanning
Editor and Publisher

Howard Weaver
Managing Editor



Gerald E. Grilly
General Manager

Steve Lindbeck
Editorial Page Editor

Lawrence Fanning, Editor and Publisher 1967 to 1971
Alaska's Only Morning Newspaper • Founded in 1946 by Norman C. Brown

Dealing with 'lemons'

Public voices should ring clearly today at a teleconference hearing before the House Labor and Commerce Committee on a proposed state "lemon law" governing new automobile warranties. The hearing begins at 2 p.m. and deserves healthy public participation.

The law essentially would shift part of the burden of proof in dealing with defective automobiles from the consumer to the dealer and manufacturer. It provides that a consumer is entitled to either a new vehicle or a full refund if a manufacturer's defect renders it undriveable for 30 days or more during the first year of ownership.

The major effect would be to encourage dealers to stand up and pay heed to the products and warranties they offer. For the dealer who already performs warranty service promptly and efficiently, the impact of the law would be negligible, and in fact good for credibility. For the dealer who ducks or delays the demands of a good-faith warranty there would be new incentive to meet the obligations of doing business.

And for the consumer who has a right to expect automobiles under warranty to run properly, there would be an improved chance of gaining full value for a very expensive investment. That seems like a good deal for all concerned.

'Lemon law' would force dealers to replace cars

By JIM ERICKSON
Daily News reporter

Alaska auto dealers would be forced to buy back or replace automotive "lemons," defective new cars that defy all attempts at repair, if legislation introduced recently in the state Senate and House becomes law.

House Bill 344 calls for replacement of a new car or a refund of the purchase price when manufacturing defects make the car undrivable for 30 days or more during the first year of ownership.

The so-called "lemon law" is scheduled for a House Labor and Commerce Committee hearing Monday.

An identical bill introduced in the Senate by Sen. Bill Ray, D-Juneau, has not been scheduled for a hearing.

The House measure was introduced last month by Rep. Mike Miller, D-Juneau. Miller said Saturday the legislation would compel dealers and manufacturers to honor new-car warranties promptly.

"The legislation doesn't spell out the warranty," he cautioned. "That's up to the manufacturer. What it does do is put full force of the state law behind customer satisfaction of that warranty."

If the defect poses a safety

hazard, the car must be repaired within 14 days, the measure states.

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Similar legislation has been adopted in California, Connecticut, Montana and Wyoming, said legislative aide Denise Zachary. Ten other states are considering lemon laws, she said.

Monday's hearing will be linked to Anchorage, Fairbanks and Ketchikan via the state teleconference network.

Zachary said the public can comment on the bill by attending the teleconference, to be held in Anchorage at the Anchorage Legislative Information Office, 1024 W. 6th Ave.

The teleconference will begin at 7 a.m.

Some of the grubby details

By Andy Rooney

ter traveling for inside of this two-y helicopter we're look the same as car after a week

cked up little bags things and added we brought origi-ht a small cooler nks in and at the we clean out the k cans, but when people in a con-bound to get a lit-r a while. There a few of those lit-ef around, for ex-

up briefly for fuel rt, someone buys chips or peanuts is up on the floor llion dollar ma-s seems funny to eport that the as-o do some house-r space ship be-t after this trip l it.

ing before we o decide what to n the helicopter k in the big suit- the van follow-ht and bulk are s.

, we flew from d in Dallas for on to Oklahoma flew the straight ahoma City and ay it's a straight le Bill and Dave, ading those com- I'm sticking to Esso Road map. e road between hrough Amarillo s a straight line. sed to carry the road maps of oma, and a Cen-so that I could an (I'm not too ome state to an- h I had one of e maps of The

of was a kid) mera; binocu- small tape re-ersonal phone ke to be with- d made in ad- we were and notebook in

which I should be entering all my expense account items; a calen-dar on which I've marked our iti-nery; a light jacket; a small box of chocolate candies the manager of the hotel in Houston had put in my room. At the air-port in Houston, I packed up two newspapers and added them to the one from the day before. I hadn't had time to read that, either.

Well, it was not good packing. As so often happens with me when I travel, I brought a lot of stuff I didn't need and didn't bring what I needed. For one thing, it got cold and windy when we approached Tucuman and I realized I should have brought a warmer jacket. Binoculars don't work very well in any kind of air-craft. (I'm not even sure binocu-lars ever really work.) With a professional cameraman in the aircraft, I had no need what-soever for my own little camera. Naturally I never touched the ex-pense account notebook nor did I look at my calendar.

There never was any time to read any of the newspapers I bought. The candies in the little gold box looked too good to throw away, but I had no interest in eating them and neither did any-one else on board. Dave put his in his pocket and forgot about them. Several hours later he reached in his pocket for some-thing else and found a gooey, chocolate mess. He had to buy a new shirt at the next airport we stopped at for jet fuel. I'm pleased to find that pilots, who are so conservative and careful about some things, are human in other ways.

DAVE'S CHOCOLATE shirt was one of the items that added to the used look of the inside of the helicopter. I don't know whether he's going to keep it or throw it away. We've been arriv-ing at our motel or hotel every night hungry, thirsty, tired and too late to bother finding a lau-dromat.

These are some of the grubby details of this great trip. We're seeing a magnificent America from the uniquely intimate van-tage point a helicopter provides. I'll tell you about the magnificent part later.

Letters to the

Auto insurance

Dear Editor:

This letter is to inform our House member in Juneau, Joe Hayes, that the majority do not support state mandated auto in-surance. I think Joe Hayes needs

to get his hands out of our pockets and off our backs and try to help the people he is supposed to serve.

Richard Payton
672 Fairbanks St.

Dear I artichik Stev lent H

The third party

Dear Editor:

A two party bill is being intro-duced by the House Judiciary Committee. This bill is designed to stop third party candidates, specifically Libertarian candi-dates, from running for office.

If the Republican Party of Alaska is concerned that Liber-tarian candidates will take away votes from them, I feel the Re-publican Party should re-think its position on political matters.

It was proved in the last gov-ernor's race that over 10 percent

of Alaska's voters supported Libertarian principles by the votes cast for Dick Randolph.

This country was founded on the basis of individual freedoms. Over 10 percent of a state's vot-ers should be a sufficient amount to allow a third party on the bal-lot. If this percentage were to vote only for candidates who did not support this bill, that percent-age could make a great differ-ence in the next election.

Vicki Padberg
1405 Turpin

Dear I s syste about we se no th Why chang lectio haps body would More of cou cially greate I a grunth

Lemon law Times 5/19

Dear Editor:

When you buy an item that is defective, you have the option of returning to the store to ex-change it or get a refund. Not so when you buy a new car that is defective, at least not in Alaska. The "lemon law" has been passed in four states and has been proposed in Alaska and several other states.

Understandably, the local car dealers are not in support of the lemon law because, according to them, your warranty coverage takes care of all possible prob-lems your car might have and this added legislation is unneces-

sary.

However, a true, "lemon" cannot be fixed and continues to have problems when the war-ranty runs out. This law would insure that if the manufacturer is unable to fix your car in a reasonable number of attempts and the defect substantially im-pairs the value of your car, then at the option of the owner, your car must be replaced with a new one or the purchase price of the car refunded to you. This law would be very good insurance for new car owners.

N. Allen
A. Page

Dear E You titled the clo of the J prevent handlin not true Hous 1076, w Jones A U.S. cal port to register sel for p The fore proposes German port Cal Alaska c sage of I using U. move Al nadian pc The Jo laws ena of the wc waterborn registerec manned t Members Rep. Don amending the Jones of the iss supporting the best in the U.S. as

Permanent fund dividends

Dear Editor:

I would like to commend Rep. Hugh Malone of Kenai and Rep. Mike Miller for their defense of the direct distribution from the permanent fund. They have grasped that there is a principle involved and the principle is that the oil royalty money belongs to the people of Alaska. I can imagine the hue and cry if Texas were to confiscate royalty checks from their citizens.

The fact that our constitution sets out a different set of mechanics does not change the principle. In fact, the governor and legislators (that I have heard) all say, "It's the people's money." They agree on that; they split asunder on whether the people get to spend their own

money (as they do in Texas) or whether the governor and the legislature gets to spend it for us "for our own good." The fact that the checks may be smaller this year is another good reason for a direct distribution. If a per-son's check is smaller, he can ad-just very quickly his spending plans; unfortunately, a govern-ment cannot.

Hooray for the legislators who see the principle and who are not afraid to stand up and be counted.

Donnis Thompson
Kenai

EDITOR'S NOTE: Ms. Thompson was the candidate for lieutenant governor on the Libertarian ticket last fall.

What others say

Here's the sugar for the lemonade

From The Juneau Empire

SOMETIMES IT SEEMS that all cars should be painted yellow just to warn buyers what they are getting themselves into. All too often, expensive cars transform themselves into "lemons" before their owners' very eyes.

Before a sale is made, salesmen point out all of the wonderful aspects of a new car. It's pretty, the doors slam with a solid "thunk" and it sounds good idling there in front of the dealer.

But a select few cars turn into "lemons," some the minute they are driven off the lot. Some don't start right; some don't stop right; some don't do anything right.

ANY DEALER IS MORE THAN happy to provide buyers with a copy of the warranty manufacturers give for their cars. Some last for a year; some last for five years. But unless the dealer and manufacturer back up the claims of those warranties, they aren't worth the paper they are printed on.

Introduced in the Alaska Legislature last week was a bill aimed at taking the "lemon" out of the lives of Alaska car buyers. The bill, whose prime sponsors are Juneau Sen. Bill Ray in the Senate and Reps. Jim Duncan and Mike Miller in the House, does nothing more than make manufacturers and dealers live up the promises made in war-

ranties.

For most people, buying an automobile is the second-largest purchase they will make in their lives. The largest purchase, of course, is a home, but it should be remembered that the price of some 1983 cars would buy a nice house 20 years ago.

BECAUSE OF THE TREMENDOUS expense of cars, no one should be stuck with a "lemon" — a car that doesn't work properly. Yet we all know people with horror stories about how their expensive new cars went to pot on them and they were unable to get satisfaction from the dealer.

It is for those people that the "lemon law" before the Legislature is meant. A warranty is not written on paper that self-destructs once the sales agreement is signed. It is a document in which the manufacturer, through the dealer, promises to make a car run properly, no ifs, ands or buts.

Dealers should welcome the advent of a "lemon law" in Alaska. It means dealers that have been standing behind their products won't be affected in the slightest. Other dealers, who are unwilling to stand behind their products and the warranties that go with them, will — and should — find themselves having to shape up.

The "lemon law" bill deserves your support.

Anchorage Times
5/14/83



jim erickson

TROUBLESHOOTER

CONSUMER ADVISORY-ALASKA LEMON LAW: A statewide teleconference has been set for Wednesday on a proposed Alaska "lemon law," legislation that would give consumers substantially more leverage when wrangling with automobile dealers and manufacturers over warranty obligations.

Under the provisions of House Bill 344, automakers would be forced to replace or refund the purchase price of new cars that, due to manufacturing defects covered by the new-car warranty, cannot be satisfactorily repaired. If the defect causes the car to be undriveable for 30 days or more during the first year of ownership, the car buyer would be entitled to either an identical new vehicle or a refund, including repair costs. Auto dealers would be given four chances to repair the defect.

Fred Morino, part-owner and general manager of Eero Volkswagen in Anchorage, said Monday that he felt the bill was unnecessary in light of the track record of Alaska dealers.

"If the customer has a legitimate complaint, most (dealers) really seemed to bend over backward" to help iron out difficulties, he said. "If there is a problem, none of us to our knowledge haven't got it fixed within a reasonable length of time."

Marino, who called the bill "heavy and cumbersome," added that the legislation would increase taxpayers' expense, despite legislative estimates to the contrary. "Just enacting it would cost a great deal," Marino said.

In written testimony submitted to the House Labor and Commerce Committee May 9, Assistant Attorney

General Connie Sipe noted the bill gives vehicle owners the benefit of "a legal presumption that after a reasonable number of attempts to correct a deformity, that the vehicle is in fact defective or a lemon."

Sipe, head of the Consumer Protection Section of the Attorney General's Office, said under current common law warranty rights, it is up to the vehicle owner to prove a car is a lemon before the courts can compel automakers to replace a vehicle.

If HB 344 is passed, she said, that burden of proof would be shifted. If the manufacturer cannot prove a defect does not cause substantial impairment to the operation or value of the vehicle or prove the owner caused the failure by abuse or modification of the car, the car would be presumed to be a lemon and the buyer would be entitled to reimbursement.

"It is my opinion, after working in this area for seven years, that very few Alaskans, especially those who live outside the three major cities, receive full value of the warranty on their vehicles," Sipe said. "Since Alaskans pay not only the top manufacturers' suggested retail price, but usually amounts in addition to the suggested retail price, we can see that Alaskans do not get any break or allowance for their difficulty in obtaining warranty work."

Consumer Protection auto investigator Scotty Dawkins said before the House Labor and Commerce Committee May 9 that automakers routinely deliver vehicles to buyers with built-in problems.

"Often the manufacturer is aware of these defects but seldom is any voluntary action taken to correct the problems in cars that are already built," Dawkins said.

"Instead, the manufacturer relies on the predelivery inspection performed by the dealer to detect and correct these problems. What actually happens is that the buyer finds the problems after delivery and faces the hassle of attempting to have repairs completed by the dealer."

Dawkins added that new car warranties require the buyer to return to the dealer for warranty work, but "in Alaska, the fact that your new-car dealer may be hundreds of miles away somewhat complicates this requirement."

The Attorney General's Office is calling for an amendment to the bill that would require manufacturers to establish factory-authorized repair centers in towns where there are no dealers.

The public is invited to testify at Wednesday's public hearing before the House Labor and Commerce Committee. The hearing will be held via the Legislative Teleconference Network at 2 p.m. ADT. Anchorage residents who would like to participate can contact the Legislative Information Office, 1024 W. 6th Ave (278-9024).

Alaska's auto dealers protest 'lemon law' proposal

Dealers: Law unneeded Consumer rep: Yes it is

By DEBBIE REINWAND ROSE
Empire Staff Reporter

Alaska car dealers converged on teleconference sites throughout the state this morning to protest a bill its sponsors say will protect consumers who purchase autos.

Labeled the "lemon law," the legislation sponsored by local Reps. Jim Duncan and Mike Miller and Sen. Bill Ray would force car dealers to adhere strictly to the advertised warranty on a new car.

If a customer complained of a "substantial" problem not caused by owner abuse, the manufacturer or distributor would be given four chances to fix the vehicle. Failing that, the customer could receive a refund or a new car to replace the defective model.

Testimony at today's teleconference, organized at the request of car dealers in the state, ran heavily against the bill. Input came primarily from auto distributors.

Fairbanks car dealer James Masters said the consumer already has plenty of protection from defective autos.

"In case of a difference between the consumer and the dealership, they can go directly to the dealer, or the manufacturer," he said. "If that doesn't work, the (state) Consumer Protection Division is very good at following through on these

complaints."

Consumer Protection officials, however, favored the legislation as offering the car buyer "some recourse" when dealing with faulty vehicles, according to Scotty Dawkins in the Anchorage Consumer Protection office.

"In Alaska, it often takes two weeks or more just to get the cars into the service department. Not one manufacturer has a service representative in the state, so the consumer has to wait six to eight weeks for that rep to come up here," he said. When dealing with many warranty problems, the defect often must be checked by the service representative.

Alaska has a booming automobile sales business, Dawkins said, and dealers should be responsive to the public's needs. Last year, 27,705 cars were sold in the state for an average of 1,148 sales per

distributorship. In the rest of the nation, the average is 205 cars per year for each dealership, he added.

As an example of problems faced by Alaska car owners, Dawkins cited several complaints received over defective cars:

- One district court judge had his car worked on 10 times for, among other things, a defective horn. After all attempts to repair the car had failed, he was offered half the \$9,000 sticker price on a trade-in, said Dawkins.

- An Alaska State Trooper had his station wagon worked on eight times, and ended up having the engine replaced after the protection agency intervened in the matter.

- After purchasing a car in Anchorage, complete with a \$700 service contract, a Valdez resident had to pay towing fees bet-

Continued on Page 2

'Lemon'...

Continued from Page 1

ween Anchorage and Valdez when the engine quit running. He had been assured by the dealership in Anchorage that his service

contract would be honored in Valdez, Dawkins said.

Bill sponsor Miller said the crux of the testimony revolved around "people giving excuses for not conforming to the warranty."

"We are not trying to place the burden on the dealer. ... They are missing the point of the bill. If there is a major problem with a car, then it should be corrected. The manufacturer issues the warranty, and they are ultimately responsible for living up to that warranty," he said.

Extensive testimony from disgruntled car dealers continued until adjournment of the meeting. House Labor and Commerce Chairman Walt Furnace, R-Anchorage, has scheduled a statewide teleconference on the bill for May 18, from 4 to 6 p.m. in the Labor and Commerce room in the Behrends Building.

Lemon law would force dealers to replace cars

By JIM ERICKSON
Daily News reporter

Alaska auto dealers would be forced to buy back or replace automotive "lemons," defective new cars that defy all attempts at repair, if legislation introduced recently in the state Senate and House becomes law.

House Bill 344 calls for replacement of a new car or a refund of the purchase price when manufacturing defects make the car undriveable for 30 days or more during the first year of ownership.

The so-called "lemon law" is scheduled for a House Labor and Commerce Committee hearing Monday.

An identical bill introduced in the Senate by Sen. Bill Ray, D-Juneau, has not been scheduled for a hearing.

The House measure was introduced last month by Rep. Mike Miller, D-Juneau. Miller said Saturday the legislation would compel dealers and manufacturers to honor new-car warranties promptly.

"The legislation doesn't spell out the warranty," he cautioned. "That's up to the manufacturer. What it does do is put full force of the state law behind customer satisfaction of that warranty."

If the defect poses a safety

hazard, the car must be repaired within 14 days, the measure states.

In all cases, dealers would be allowed four chances to fix the car, before the buyer could demand a refund or a replacement. The measure applies only to failures covered by new-car warranties, and only during the first year of ownership.

"What we are talking about is correcting major problems of the vehicle," Miller said. "This is not in regard to trivial repairs or problems that result due to owner abuse."

Similar legislation has been adopted in California, Connecticut, Montana and Wyoming, said legislative aide Denise Zachary. Ten other states are considering lemon laws, she said.

Monday's hearing will be linked to Anchorage, Fairbanks and Ketchikan via the state teleconference network.

Zachary said the public can comment on the bill by attending the teleconference, to be held in Anchorage at the Anchorage Legislative Information Office, 1024 W. 6th Ave.

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Photo by Danny Daniels

al Walk for Hope, which was
C-2.

s a phrase for every misdeed

(Not to mention the ultimate disaster: "If you eat that now you won't be hungry for dinner!")

And then there is the chapter on Questions Without Answers. These generally come along during the teen-age years.

Questions like, "You're not going out dressed like that, are you?"

Or, "You know this goes against everything we've ever taught you, don't you?"

Not to mention the all-time winner, which spans most of the formative years: "Just what do you think you're doing?"

Experienced mothers know they can mix and match these phrases for special effect, as in: "Just where do you think you're going dressed like that?"

"When you're grown and have children of your own, that's when."

This last, especially, falls under the definition of all-purpose Motherese, touching as it does on the perpetually ripe arena of life after one has children of one's own.

Of course, it's not all conflict and threats in Motherese. There's the Broken Heart chapter, things mothers say to make you feel better. Things like, "Ten years from now this will all seem funny" and "Just think of it as good experience" — not to mention the alltime classic, "Well, just consider yourself lucky, a man will never marry a girl like that!"

I suppose with changing mores they'll be wanting to update the Mother's Phrase Book before long, make it a little more hip, but I

Lemon law deserves support

Sometimes it seems that all cars should be painted yellow just to warn buyers what they are getting themselves into. All too often nowadays, expensive cars transform themselves into "lemons" before their owners' very eyes.

Before a sale is made, salesmen point out all of the wonderful aspects of a new car. It's pretty, the doors slam with a solid "thunk" and it sounds good idling there in front of the dealer.

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For most people, buying an automobile is the second-largest purchase they will make in their lives. The largest purchase, of course, is a home, but it should be remembered that the price of some 1983 cars would buy a nice house 20 years ago.

Because of the tremendous expense of cars, no one should be stuck with a "lemon" — a car that doesn't work properly. Yet we all know people with horror stories about how their expensive new cars went to pot on them and they were unable to get satisfaction from the dealer.

It is for those people that the "lemon law" before the Legislature is meant. A warranty is not written on paper that self-destructs once the sales agreement is signed. It is a document in which the manufacturer, through the dealer, promises to make a car run properly, no ifs, ands or buts.

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The "lemon law" bill deserves your support.

Berry's World



DON'T KNOW THE DIFFERENCE
NOISE AND ANZAK.

We went down the stairs to a glass-enclosed booth. When Widge shut the door he said, "I want you to meet my Master Robot, Turnbull. He is programmed to program the robots on the floor."

Turnbill gave me a steely look and reluctantly put out his arm which I shook.

"How many sneakers did we make today, Turnbull?" Widge asked.

Turnbill's lights blinked, and a deep voice said, 12,890."

Widge rubbed his hands. "I used to make that many in a week."

Eyeing the ne

WASHINGTON (NEA) — "I can make a million through the union," Jackie Presser boasted several years ago to a magazine in his hometown of Cleveland. Indeed, the union has made him rich — and now it's about to make him famous as well.

The union is the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, arguably the country's most corrupt labor organization.

When the Teamsters' executive board met recently to select a new president for the union, it could have chosen a leader whose reputation had not been blackened by compelling evidence of regular affiliation with organized crime figures.

M.E. (Andy) Anderson, area director of the union's Eastern Conference, is hardly a candidate for sainthood, but he surely would have been more suitable as president than Presser if the Teamsters were serious about restoring at least a semblance of integrity to their organization.

The same is true, although perhaps to a lesser extent, of the other two "dark horse" contenders for the presidency — Joseph W. Morgan, area director of the union's Southern Conference and Donald Peters, a Chicago Teamster leader.

But, in an election preordained as far back as the union's 1981 convention, all three of those men were summarily rejected in favor of Presser, a glib, portly 56-year-old veteran of more than three decades as a Teamster organizer.

A detailed affidavit filed by the FBI in connection with a criminal case in U.S. District Court in Los Angeles quoted FBI informants as stating that Presser was "controlled" by members of the Mafia.

In testimony before the New Jersey Commission of Investigation, a state police sergeant identified Presser as an intermediary for syndicate members seeking loans from the Teamsters' pension and welfare funds.

Some of the most disturbing allegations about Presser come from Aladena "Jimmy the Weasel" Fratianno, believed to be the first Mafia member to testify against another Mafioso in court. His testimony has aided federal prosecutors to convict approximately two dozen organized crime figures.

According to Fratianno, Presser's union activities generally have been conducted under the direction and control of James T. "Blackie" Licavoli, the reputed head of the Cleveland "family" of the nationwide crime syndicate. "Jackie Presser, he told me himself that 'I don't do nothing unless Blackie tells me,'" Fratianno said in sworn court testimony.

How does Presser respond to those allegations? He blithely denies any knowledge of La Cosa Nostra: "There's no organized crime that I know of as a person."

Presser offers a similar see-no-evil response to the documented examples of massive abuse of the union's Central States, Southeast and Southwest Areas Pension Fund: "Despite the many claims and accusations of various governmental agencies, the Central States (Fund) is a sound, well managed plan."

In 1976, Presser's father, William, was forced to resign as a trustee of the fund after he invoked his Fifth Amendment right against self-incrimination while being interrogated about trust fund abuses by federal investigators.

William Presser's position as a fund trustee was inherited by his son, Jackie, but he too was forced to resign only one year later and is one of numerous Teamster leaders being sued by the Justice Department for approving more than

Window of vi

The New York Times

The basic assumption of arms control may be permanently

'Lemon' bill would put the squeeze

By DEBBIE REINWAND ROSE
Empire Staff Reporter

Hearings begin this week on a bill that should warm the hearts of everyone who has ever bought a "lemon" — a car that for some reason doesn't work right.

Commonly known as the "lemon law," this legislation, introduced by the Juneau delegation, would bind car dealers under state law to adhere strictly to the warranty they advertised when selling a car.

Under it, if a customer complains of a "substantial" malfunction during the warranty term, the dealer or manufacturer would

have to repair it. The dealer would be given four chances to bring the car up to par, and failing that, would then have to refund the customer's money or provide a new car.

"It's not an overly restrictive law; if anything it's conservative and could be tighter," said Rep. Mike Miller, D-Juneau. "What we're talking about correcting are major problems with the vehicle. This is not in regard to trivial repairs or problems that result because of owner abuse."

Currently, 12 states have similar legislation on the books. Montana and Wyoming just passed lemon laws.

While the bill is aimed at protecting the consumer, it should not

unnecessarily alarm car manufacturers.

"One feature is that the legislation doesn't spell out what the warranty is — that's up to the manufacturer. What it does is put the full force of state law behind customer satisfaction at warranty," said Miller.

"The idea is if the distributor or parent company issues a warranty as a selling point for their vehicles, they should live up to it; no sloughing off," said Sen. Bill Ray, D-Juneau.

And Ray should know. Like a number of people who have contacted him about the bill, the senator once owned a "lemon."

"A lot of the time, the car wouldn't start. The dealer kept say-

ing we didn't know how to operate it. ... The car ended up being recalled because of a problem with the starter," he said.

During that experience, Ray ran into delays getting the car fixed. He advocated the clause in the bill putting a limit on how long the car can be out of commission. That provision would allow the customer a refund or new car if the "lemon" has been out of service for 30 days during the warranty period or one year, or if repair services are not available to the owner for reasons beyond the owner's control.

Rep. Jim Duncan, D-Juneau, has also had a "couple of

lemons," and backs the bill because it would benefit Alaskans.

"You run into this every once in awhile and it should be cleared up so the consumer is adequately protected," he said.

The measure has been introduced in both houses, and while House passage is unclear, the co-sponsorship of several majority coalition members may help the bill.

✦ The first hearing on the lemon law will be Thursday at 8:45 a.m. in the Labor and Commerce Committee, room 210 in the Behrends Building.

Buyer gets \$85,000 for lemon

MEMPHIS, Tenn. (AP) -- A man who complained about the treatment he got from an auto dealer after his new car burned too much oil has been awarded \$85,000 by a Circuit Court jury.

Charles Pardue was awarded \$10,000 for actual loss and \$75,000 in punitive damages in the judgment reached Tuesday.

"As far as the repair of his car was concerned, it was poorly handled," said jury foreman James Reid Jr.

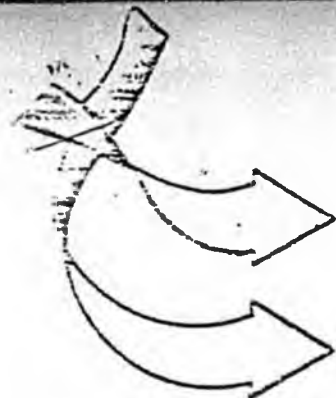
Reid said jurors discussed awards ranging from \$20,000 to \$500,000 but settled on the final figure as a "fair compromise."

Randall Noel, the lawyer for Lewis Ford Inc., where Pardue bought his 1976 Ford Grenada, said his client is considering an appeal.

Pardue, a resident of Oakland, Tenn., bought the car in 1977 for \$5,178, but said it soon began using too much oil.

He said it took two years to get the car fixed and he was charged \$1,600 for a new engine he never ordered.

Turner Empire 4/4/83



Conflict Resolution Center

conciliation • mediation • arbitration

May 16, 1983

Walt Furnace
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Furnace:

As a constituent residing in your district and as Executive Director of the Conflict Resolution Center, I am writing to express my support for SB286, relating to motor vehicle warranties.

The Conflict Resolution Center, which opened October 1, 1982, is a private, non-profit organization dedicated to the resolution of disputes of all kinds through the use of conciliation, mediation, and arbitration. In addition to these services, the Conflict Resolution Center (CRC) provides technical assistance and training to community organizations, agencies and small businesses for the purpose of designing settlement systems that prevent disputes or expedite their resolution.

The Center is supported by grants from the Municipality, Alaska Bar Association, United Way, corporate and foundation grants, in addition to fees for service that are charged on a sliding scale according to income.

CRC was developed as the result of the efforts of a voluntary committee of the Alaska Bar Association. The committee was formed because of growing concern in our community that many disputes between citizens go unresolved because the amount in controversy makes it economically infeasible to pursue a resolution through the courts. Seldom can a government agency assist in private citizen disputes. Consequently, such disputes have simply festered, creating dissatisfaction, loss of friendship or relationship, and all too often have resulted in violence.

CRC can help close the gap between unhappy people, not by more government, but through community citizens who volunteer their time to help resolve disputes between their fellow citizens in an informal face-to-face hearing. Conciliation, mediation and arbitration are forums that can process disputes in a fair, inexpensive and timely manner.

Because the Conflict Resolution Center's work is cooperative and non-adversarial, it has been well accepted by the people of Anchorage and by

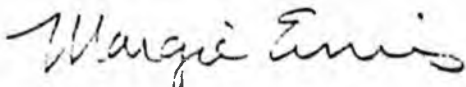
The agencies and organizations that traditionally handle civil and interpersonal complaints. In the brief time the Center has been open, CRC has successfully resolved over a hundred cases including consumer complaints, landlord/tenant disputes, neighborhood problems, contract disputes, harassment, vandalism, fights, threats, and employer/employee conflicts.

One of the primary categories for cases coming into the Center are consumer complaints. From October 1, 1982 through April 30, 1983, the Center received 85 disputes regarding the selling/buying and repair of new and used automobiles. Our experience has been that the used car dealers, generally "mom/pop" operations, have been willing to negotiate a settlement with the assistance of a neutral third party. Whereas the large dealerships have been much more recalcitrant to enter negotiations with a disgruntled customer. This, I believe, is a reflection of the few leverages/official actions that a consumer can take against a dealership when no one or thing necessarily will "encourage" a dealership to take seriously, responding in a timely manner, or settle an issue to everyone's concerned satisfaction. It is possible the proposed SB286 may just provide such "encouragement" for the dealerships to set up dispute mechanisms that are fair, timely and can provide both parties an opportunity to be fully heard and in which the needs and interests of both parties can adequately be met.

As a constituent and as a program director that has experienced the potential of alternate dispute mechanisms in resolving consumer complaints, I urge you to lend your support to SB286 as it may be a vehicle to bring auto dealers to understanding the importance of establishing voluntary dispute resolution mechanisms.

Sincerely,

CONFLICT RESOLUTION CENTER



Margie Ennis
Executive Director

ME/jm

cc: Mike Miller (Juneau)
AK. State Legislature
Pouch V (MS3100)
Juneau, Alaska 99811



MOTORCYCLE INDUSTRY COUNCIL, INC.

*Government Relations Office
Washington, D.C.*

May 10, 1983

Honorable Mike M. Miller
State House of Representatives
Juneau, AK 99811

Dear Mr. Miller:

The Motorcycle Industry Council, (MIC) is a non-profit national trade association representing motorcycle manufacturers, distributors, and members of allied trades. I am writing to you and to the members of the House Labor and Commerce Committee on behalf of the MIC member companies regarding H.B. 344 which would require a manufacturer to replace a motor vehicle after a reasonable number of attempts to repair it. The Council wishes to draw your attention to what may be the inadvertent inclusion of motorcycles in this bill, by virtue of the fact that the definition of motor vehicle encompasses motorcycles, motor homes and recreational vehicles as well as automobiles. However, due to the inherent differences between these various types of vehicles and cars, their inclusion in this type of legislation is inappropriate and unnecessarily complicates the bill.

While automobile-related problems have consistently ranked highest among consumer complaints, motorcycle-related complaints historically have been rare. A summary of consumer complaints published annually by the Council of Better Business Bureaus, compiled from statistics gathered by Better Business Bureaus located throughout the nation, confirms the infrequency of motorcycle complaints. The Bureau's report on product quality ranks products from 1 to 10 on the basis of complaints received. Motorcycles have never appeared in this report. On an expanded list of 150 categories which the Bureau tracks, motorcycles account for a mere 1.2% of complaints. There is a lack of evidence of any demonstrated need for burdensome regulation in light of these statistics.

The very nature of motorcycle use as compared to that of automobiles helps explain why the number of motorcycle-related complaints is negligible and does not warrant regulation. A motorcycle typically is not the consumer's primary mode of transportation and consequently, the necessity for expeditious repair service is not urgent, as it is in the case of a car owner who is dependent on his car. Additionally, motorcycle use is very seasonal and it is not unusual for customers to take their motorcycles to dealerships for service and leave them there by choice for extended periods of time as a convenient storage place during those months of non-riding weather. Any law requiring vehicle replacement if it has been out of service for 30 days may be unfeasible if applied to motorcycles.

Mr. Mike Miller
May 10, 1983
Page Number Two

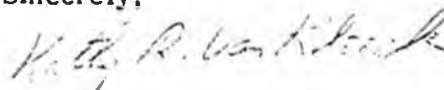
Both the California and Connecticut laws which were the first two laws of this sort to be enacted and which have been used as models for other state legislation, recognize the unique nature of motorcycles and exclude them from regulation.

Motorcycle manufacturers are currently acting in a responsible and conscientious manner to ensure product quality and customer satisfaction. Adequate remedy for the resolution of any consumer problems is readily available at the manufacturer level and procedures for such, including telephone numbers for easy access, are published in owner's manuals and on written warranties. All motorcycle manufacturers have fully staffed customer relations departments which provide assistance with warranty and other service problems.

In light of the foregoing, we feel that inclusion of motorcycles in H.B. 344 is neither needed nor justified and we urge you to amend H.B. 344 to exclude motorcycles.

Thank you for your consideration.

Sincerely,



Kathy Van Kleeck
Director
Legislative Affairs

KVK/tlf

Shows 16 states
have "lemon laws"

Basically similar
to our proposed CS

"LEMON" LAWS ENACTED BY MORE STATES:
PROMISE TO BECOME IMPORTANT LITIGATION TOOL

Since Connecticut and California enacted "Lemon" laws in 1982 (Lemon File Notes 82-III), legislatures in 16 states have passed similar bills to facilitate obtaining replacements or refunds for defective new automobiles. The states with these lemon auto refund/replacement laws are:

California	Nebraska
Connecticut	Nevada
Delaware	New Hampshire
Florida	New Jersey
Illinois	New York
Maine	Oregon
Massachusetts*	Texas
Minnesota	Washington
Montana	Wyoming

* Awaiting Governor's Signature

A table comparing some of the main features of the laws and a copy of the Connecticut law accompany this Note.

Although there are important state-by-state variations, all the laws resemble the Connecticut and California models. They establish a period of coverage; the most common period being the shorter of one year from delivery or the written warranty period. The laws reiterate the basic warranty law requirement that the manufacturer, its agent or authorized dealer make repairs so as to correct any warranty nonconformity (vehicle problem) reported by the consumer within the covered period. If certain defects cannot be repaired within a reasonable number of attempts, the laws require the manufacturer to provide a replacement or refund. Moreover, the laws provide an objective presumption of when a reasonable number of attempts has been made: the most common standard is after 4 or more repair attempts have failed to correct a problem or after the vehicle has been out of service by reason of repair a cumulative total of 30 or more days, within the covered period.

... respectively extend the Magnuson-Moss Act's "lemon" provisions (15 U.S.C. § 2304 (a) (4)) to all new vehicles, not just those with "lemon" warranties. The laws also go a step beyond Magnuson-Moss by specifying the objective presumption of when a reasonable consumer's repair attempts has been made.

Household consideration in lemon laws is when a warranty non-compliance vehicle problem, falls within the scope of the law. The laws may adapt UCC § 2-608's "substantial impairment" clause. The fairly common requirement is the existence of a defect or condition that substantially impairs the use and value of the vehicle to the consumer.

The types of vehicles covered varies among lemon laws. Some apply to all motor vehicles, while others may exclude vehicles such as motorcycles or motor homes from the law's coverage. The emphasis generally is on personal or household use rather than commercial use.

Lemon laws place the obligation to provide refund or replacement upon the manufacturer. Thus some lemon laws require the consumer to provide written notice to the manufacturer when repairs to the car are sought. Generally the laws specify that a reasonable allowance for the consumer's use may be deducted from a refund. A few states provide a formula for calculating this deduction for use.

Lemon laws encourage arbitration by generally prohibiting a consumer from asserting the lemon law right of refund or replacement without first resorting to a manufacturer's informal dispute settlement mechanism (IDSM), if the manufacturer's mechanism complies with the Federal Trade Commission's Guidelines at 16 C.F.R. 703. (An IDSM does not comply with the FTC Guidelines if it is not incorporated into a new car warranty. 16 C.F.R. § 703.1 (d), (e).) These provisions emulate Magnuson-Moss,

which allows a manufacturer to require a consumer to go to an IDSM complying with 16 C.F.R. § 703 before filing suit under the Magnuson-Moss Act. Some states' lemon laws specify additional requirements for the Mechanisms before a consumer will be required to resort to the Mechanism before using the Lemon law. The Texas law requires consumers to first submit their dispute to the state Motor Vehicle Commission.

Only a handful of lemon laws provide for the award of attorneys fees in the event of a successful lawsuit to compel a manufacturer to comply with its lemon law obligations. However, attorneys should be able to overcome this weakness in some of the laws by using the Magnuson-Moss Act or state deceptive trade practices act in conjunction with the lemon law.

Lemon laws contain an explicit "savings clause" that preserves the consumers' rights under all other laws. This clause is particularly important for the "latent" lemon that blooms after the written warranty expires. Some lemon laws also contain special statute of limitations provisions.

Lemon laws plainly provide an additional cause of action for refund or replacement beyond revoking acceptance pursuant to the UCC. While it is still too early to assess the legal effect of these statutes, they should provide real advantages in some cases over revoking acceptance pursuant to the UCC. Four of these advantages are discussed below:

- 1) Limitation of opportunity to cure.

Most courts require the buyer to have given the seller a reasonable opportunity to cure a defect before revoking acceptance under the UCC.

there is no standard for determining when a reasonable opportunity to cure has been given, so that new car buyers often must suffer continuous repair attempts and long periods without the use of their cars before revoking acceptance. A lemon law's objective prohibition of a reasonable number of attempts sets a clear cap on the opportunity to cure that must be given before a buyer may pursue a refund or replacement.

2) Relaxation of notice requirement.

Revocation of acceptance under the UCC requires notice to the seller [§ 2-608(2)]. Often this has been interpreted to require formal written notice. Lemon laws generally do not require a written demand for replacement or refund. Instead, the only notice generally required in lemon laws is to report the need to repair a warranty nonconformity (vehicle problem) to the manufacturer or its agent or authorized dealer. Since many of the laws do not specify that the report be written, taking the car to a dealer for repair and retaining the work order presumably should meet this requirement. Some of the laws, however, specify where written notification must be sent, and these provisions are summarized in the accompanying table. Nevertheless, it is plain that lemon laws have less rigid notice requirements than the UCC.

3) Extension of time.

The UCC requires that revocation of acceptance must occur "within a reasonable time" after the defect is discovered. [§ 2-608 (2).] Many courts have required revocation of acceptance to occur before the expiration of the written warranty period with the earlier the revocation occurring the better. Under lemon laws the right to a refund or replacement may accrue at any time within the covered period -- not less than one year in any state (See accompanying table).

Moreover, lemon laws do not require that the right be asserted formally within this period (although some do have a special statute of limitations).

4) No surrender of vehicle.

Many courts have imposed the UCC's requirement that a buyer relinquish ownership of rejected goods upon a buyer who revokes acceptance of goods. Thus, a revoking buyer may lose the use of his vehicle and his investment for as long as the dispute continues. This is a clear disincentive to pursuing a refund or replacement through the UCC. Although there is a trend away from this in the cases, many courts still follow the old rules.

Lemon laws generally do not require a buyer to first surrender the vehicle when seeking replacement or refund. Rather, the laws place the affirmative obligation on the manufacturer to provide a replacement or refund upon the exhaustion of a reasonable number of repair attempts. Thus, it appears that the consumer should only have to give up the vehicle at the completion of the refund/replacement transaction. If the manufacturer has indicated its unwillingness to meet its obligation to provide a replacement or refund, the consumer should be able to retain possession and use of the vehicle during the pendency of the dispute. (Of course, the use should not be inconsistent with the alleged defect.)

The advent of lemon laws raises a question as to the proper course when a vehicle contains such a major defect (a life-threatening safety defect, for example) that it is unreasonable to require the owner to go through 4 repair attempts before being entitled to a refund or replacement. First, because lemon laws contain savings clauses, one can revoke acceptance under the UCC; there can be no legitimate claim that 4 repair attempts must be allowed before revoking acceptance in such a situation, because the UCC and lemon law are separate statutes providing distinct causes of action.

Recognizing there should also be a specific cause of action for the extreme lemon, Minnesota's lemon law provides for refund or replacement after one unsuccessful repair attempt of a defect causing a failure of the brakes or steering. But the typical lemon law conditions the manufacturer's obligation to provide replacement or refund upon the exhaustion of a reasonable number of repair attempts, with the further specification of an objective presumption of when a reasonable number has been exhausted. This does not mean that a lesser number of attempts or days out of service may be all that is reasonable under a lemon law in certain situations.

In response to lemon laws, manufacturers are expanding and changing their arbitration programs to purportedly comply with 16 C.F.R. § 703, so that consumers will have to arbitrate before using a lemon law. Thus, GM's Better Business Bureau program and Ford's Consumer Appeals Board program are being incorporated into their warranties in Model Year 1984 for the first time. Nissan and Volkswagen/Forsche/Audi started incorporating their Better Business Bureau programs into their warranties in MY 1983 (VW apparently only in lemon law states). Before the proliferation of lemon laws, Chrysler's Customer Satisfaction Board was the only program purporting to comply with 16 C.F.R. § 703.

These arbitration programs will assume great importance, not only in lemon law states, but all over the country, because these manufacturers will also require consumers to resort to the programs before filing suit under Magnuson-Moss. Unfortunately, the fairness of these programs is questionable and the Center for Auto Safety doubts whether any of them comply with 16 C.F.R. § 703. The FTC has no certification process to resolve this issue. At least, all the programs are being made non-binding on the consumer so that their results may be rejected. A future Lemon File note will deal extensively with these programs.

Many questions about lemon laws will have to be answered in the courts. In New York, for example, a case filed on September 1, the lemon law's effective date, raises the question whether the law applies to all cars with warranties in effect on that date or only to new cars sold on or after that date. The Lemon File will include cases under the lemon laws and we are counting on practitioners to keep us abreast of developments in their lemon law cases, which will form the precedents for interpreting these important statutes.

SUMMARY OF STATE LEMON LAWS (Continued)

State	Types of Vehicles Covered	Presumption of Reasonable # of Repair Attempts	Notice Requirement	Attorney Fees Provision	Statute of Limitations
		death or serious bodily injury, within shorter of 1 year or express warranty term.			
<u>WY</u> 1983 Sess. Laws 81 (to be codified at Stat. § 40-17-101)	Every vehicle under 10,000 pounds.	More than 3 repair attempts for same nonconformity or total of 30 business days out of service due to repairs within 1 year.	Report of nonconformity to manufacturer, its agent, or authorized dealer.	no	No special statute of limitations.
<u>NJ</u> 1983 Laws 215 (to be codified at Rev. Stat. § 56:12-19 to 56:12-28)	Any passenger automobile except living facilities of motor homes.	4 or more repair attempts of same nonconformity or total of more than 30 business days out of service waiting for dealer to begin or complete repairs within shorter of 1 year or warranty term.	Direct written notification and opportunity to repair to manufacturer.	no	No special statute of limitation.
<u>MT</u> 1983 H.B. 18	All motor vehicles designed primarily to transport persons or property upon the public highways.	4 or more repairs of same nonconformity or total of 30 or more business days out of service (after notification) because of the nonconformity, within shorter of 1 year or express warranty term.	Written notice to manufacturer or its agent of nonconformity.	no	No special statute of limitations.
<u>WA</u> 1983 Laws 240	All motor vehicles, including automobiles, trucks, motorcycles, mopeds or motor homes, if used primarily for personal, non-commercial use.	4 or more repairs of same nonconformity or total of more than 30 business days out of service by reason of repairs within 1 year or term of express warranties.	Written report of nonconformity to manufacturer, and its agent or authorized dealer.	no	No special statute of limitations.

SUMMARY OF STATE LEMON LAWS

State	Types of Vehicles Covered	Presumption of Reasonable # of Repair Attempts	Notice Requirement	Attorney Fees Provision	Statute of Limitations
FL. 1983 Laws 83-69	All motor vehicles except off-road vehicles and mopeds.	3 repair attempts for same nonconformity or 15 total working days out-of-service for the non conformity within shorter of 1 year or written warranty period.	Written notice to manufacturer of need for for repair. Manufacturer has 10 working days to repair after delivery. (This raises the reasonable number of attempts to 4 for the same defect or 25 total working days).	yes	Earlier of 6 months after expiration of express warranty or 18 months after delivery. Or 90 days after final decision of informal dispute settlement mechanism.
NH 1983 H.B. 80 to be codified at Rev. Stat. Ann § 357-D)	Passenger or station wagon type motor vehicles not rented or used as public or livery conveyance. Any other 4-wheel motor vehicle not exceeding 9000 pounds except motorcycles, tractors, OHRV's and mopeds.	4 or more repair attempts for same nonconformity or 30 or more business days out of service within shorter of 1 year or express warranty term.	Report nonconformity to manufacturer or distributor, its agent or authorized dealer.	yes	No special statute of limitations.
NE 1983 Laws 155	New motor vehicles excluding self-propelled mobile homes.	4 or more repair attempts for same nonconformity or 40 or more days out of service for repairs within the shorter of 1 year or express warranty term.	Manufacturer must receive written direct notification by certified mail and have opportunity to cure before Lemon Law presumption may be asserted.	yes	Earlier of 1 year following expiration of express warranty term or 2 years from date of original delivery.
MN 1983 Laws 108(to be codified at Stat. §325F.665)	Passenger automobiles including pickup trucks and vans, and chassis or van portion of recreational equipment.	4 or more repair attempts for same nonconformity or total of 30 or more business days out of service for repairs or 1 unsuccessful repair attempt of a defect resulting in complete failure of the braking or steering system that is likely to cause	Written notification and opportunity to cure to manufacturer, its agent, or its authorized dealer.	yes	Later of 6 months after expiration of express warranty or 1 year of original delivery of vehicle.

SUMMARY OF STATE LEMON LAWS (Continued)

State	Types of Vehicles Covered	Presumption of Reasonable # of Repair Attempts	Notice Requirement	Attorney Fees Provision	Statute of Limitations
<u>NV</u> 1983 A.B. 59 (to be codified at Rev. Stat. § 598.	All motor vehicles but not farm tractors, specially constructed vehicles or special mobile equipment.	4 or more repairs of same nonconformity or total of 30 or more calendar days out of service for repairs within shorter of 1 year or express warranty term.	Report of nonconformity to manufacturer, its agent or its authorized dealer.	no	No special statute of limitations.
<u>CT</u> Gen. Stat. § 42-179	Passenger motor vehicle or a passenger and commercial motor vehicle.	4 or more repairs of same nonconformity or total of 30 or more calendar days out of service by reason of repair within shorter of 1 year or express warranty term.	Report of nonconformity to manufacturer, its agent or its authorized dealer.	no	No special statute of limitations.
<u>CA</u> Civil Code §1793.2	Motor vehicles used or bought primarily for personal, family or household purposes, not including motorcycle, motorhomes, or off road vehicles.	4 or more repair attempts for same nonconformity or more than 30 days out of service by reason of repair of nonconformities within earlier of 1 year or 12,000 miles.	Direct notice to manufacturer of need for repair of the nonconformity.	yes (Part of Song-Beverly Act)	No special statute of limitations.
<u>NY</u> 1983 Laws 444, amending Gen. Bus. Law § 198-a.	Passenger motor vehicles excluding motor homes, motorcycles, and off-road vehicles.	4 or more repair attempts for same nonconformity or total of 30 or more days out of service by reason of repair of nonconformity within earlier of 2 years or 18,000 miles.	Report nonconformity, defect or condition to manufacturer, its agent or its authorized dealer.	yes	4 years from date of original delivery.
<u>TX</u> 1983 S. 1141, amending Civil Code Ann. § 4413(36).	All motor vehicles or an engine, transmission or rear axle manufactured for a vehicle with gross weight rating more than 16,000 lbs. and primary purpose to transport persons or property on public highway.	4 or more repair attempts of same nonconformity or total of 30 or more days out of service for repair within shorter of 1 year or express warranty term.	Direct written notification and opportunity to cure to manufacturer or distributor.	yes (Under Deceptive Trade Practices Act)	Earlier of 6 months following (1) expiration of express warranty or (2) one year following date of original delivery.

SUMMARY OF STATE LEMON LAWS (continued)

State	Types of Vehicles Covered	Presumption of Reasonable # of Repair Attempts	Notice Requirement	Attorney Fees Provision	Statute of Limitations
<u>IL</u> H.B. 56 (1983)	All passenger cars, not including motor homes, mini motor homes, or van campers.	4 or more repair attempts for same nonconformity or total of 30 or more business days out of service by reason of repair of nonconformities, within shorter of 1 year or 12,000 miles.	Direct written notification to manufacturer, his agent, distributor or dealer and opportunity to cure before Lemon Law presumption applies.	no	18 months after original delivery.
<u>MA</u> H.B. 6504 (1983)	Any motor vehicle except auto homes, vehicles built primarily for off-road use or used primarily for business purposes.	3 or more repairs of same nonconformity or cumulative total of 15 business days out of service by reason of repair of any nonconformity within shorter of 1 year or 15,000 miles. Manufacturer shall be afforded one additional opportunity to cure, not to exceed 7 business days from the day manufacturer knows or should have known that above limits have been met or exceeded.	Report nonconformity to manufacturer, its agent or authorized dealer. (Notice to manufacturer that the 3 repair/15 business day limits have been met or exceeded is desirable, so that additional opportunity to cure is limited.)	yes (Cause of action under Consumer Protection Act)	No special statute limitations.

* Note: N.C. passed a "lemon" law in 1983 which only amended the definition of seller in the UCC (N.C. Gen. Stat. §25-2-103) so as to eliminate the requirement of vertical privity in motor vehicle warranty cases.

SUMMARY OF STATE LEMON LAWS (Continued)

State	Types of Vehicles Covered	Presumption of Reasonable # of Repair Attempts	Notice Requirement	Attorney Fees Provision	Statute of Limitations
<u>ME</u> 1983 Laws 145	All motor vehicles except commercial vehicles over 8500 pounds.	4 or more repair attempts of same nonconformity (at least 2 by the same dealer) or total of 30 business days out of service by reason of repair of nonconformities within shorter of 1 year or express warranty term.	Report nonconformity to manufacturer, its agent, or authorized dealer.	no	No special statute of limitations.
<u>OR</u> H.B. 2793 (1983)	All passenger motor vehicles.	4 or more repairs or corrections of same nonconformity or cumulative total of 30 or more business days out of service by reason of repair or correction within shorter of 1 year or 12,000 miles. Repair or correction includes a repair that must take place after expiration of shorter period.	Report each nonconformity to manufacturer, its agent or authorized dealer, for purpose of repair or correction, during covered period. Direct written notification and opportunity to cure alleged defect to manufacturer.	no	1 year following earlier of (1) 12,000 miles or (2) 1 year following date of original delivery.
<u>DE</u> S.B. 276 (1983)	Any registered passenger motor vehicle except motorcycles and the living facilities of motor homes.	4 or more repairs or corrections of same nonconformity or cumulative total of more than 30 business days out of service by reason of waiting for the dealer to begin or complete repair or correction of a nonconformity, within shorter of 1 year or express warranty term.	Direct written notification and opportunity to repair or correct the nonconformity to manufacturer.	no	No special statute of limitations.

CONNECTICUT "LEMON LAW"

Substitute House Bill No. 5729

PUBLIC ACT NO. 82-237

AN ACT CONCERNING AUTOMOBILE WARRANTIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) (a). As used in this act: (1) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty; and (2) "motor vehicle" means a passenger motor vehicle or a passenger and commercial motor vehicle, as defined in subdivisions (35) and (36) of section 14-1 of the general statutes, as amended, which is sold in this state.

(b) If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of such express warranties or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such warranty or such one-year period.

(c) If the manufacturer, or its agents or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a new motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer, and lienholder if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use by the consumer prior to his first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the

Substitute House Bill No. 5729

vehicle is not out of service by reason of repair. It shall be an affirmative defense to any claim under this act (1) that an alleged nonconformity does not substantially impair such use and value or (2) that a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle by a consumer.

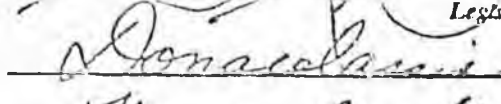
(d) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but such nonconformity continues to exist or (2) the vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days during such term or during such period, whichever is the earlier date. The term of an express warranty, such one-year period and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike or fire, flood or other natural disaster.

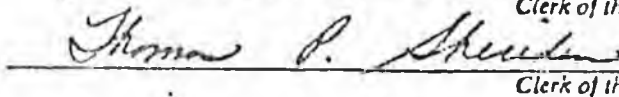
(e) Nothing in this act shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

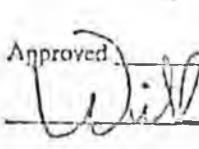
(f) If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of title 16 Code of Federal Regulations Part 703, as from time to time amended, the provisions of subsection (c) of this section concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure.

Certified as correct by


Legislative Commissioner.


Clerk of the Senate.


Clerk of the House.

Approved  June 4, 1932
Governor.

Anchorage Daily News

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Repair law would offer 'lemon aid'

It's called the lemon law, but it sounds sweet to Alaskans stuck with new cars that scream out — and out and out — for repair. Now before the Senate Labor and Commerce Committee, SB 286 sets specific standards for determining when a car can officially be declared "a lemon," and lays some legal groundwork for resolving habitual car repair hassles.

In doing so, it promises to put some teeth into the express warranties offered by manufacturers as part of virtually every new car package.

SB 286 stipulates that if new-car dealers fail to correct a serious defect after four attempts, or if a car has spent more than 30 working days under repair, manufacturers must replace the car or refund the purchase price. The law would apply only to those defects covered under new-car warranties, and only during the first year of ownership.

Although real duds comprise only a small fraction of the automobiles sold in this country, anyone who has ever suffered the maddening outrage of repeated — futile — attempts to rectify a warranty-covered problem will appreciate the need for some firm guidelines for all concerned.

Not surprisingly, some opposition to the measure has been voiced by some local automobile dealers. Although the dealers say they don't oppose the concept of the law itself, they fear they will be caught between such a law and manufacturer-caused delays they have no control over. They claim that much of the delay with auto repairs in the 49th state can be placed at the hands of the manufacturers themselves — who air-freight parts for warranty repairs to every state except Alaska. (If Alaskans want parts air-freighted, they must pay the additional cost.) The dealers also claim manufacturers are loathe to reimburse them fully for the higher cost of doing warranty repairs in Alaska.

Although we can sympathize with the dealers' often frustrating long distance role in the new car equation, they represent the front line of automobile responsibility to consumers. They are the people who sell the cars; they must shoulder the responsibility to stand behind the cars they sell.

The Consumer Protection Division of the Attorney General's Office receives more complaints each year about warranty-related problems than any other consumer problem. And, as Attorney General Norm Gorsuch put it, "If prodding a recalcitrant manufacturer to fix a problem car is difficult for the dealer, that difficulty is magnified ten-fold for the consumer." It shouldn't be. A car is one of the major purchases most people make in their lifetimes, second only to a home.

So far, 18 states have passed lemon laws. Another seven states are now considering them. Alaskans pay more for their cars than anyone else; they have the right to expect those cars to last for a while — at least long enough to celebrate their first birthday.



Official Business

Alaska State Legislature

Senate

January 26, 1984

Pouch V
State Capitol
Juneau, Alaska 99811

MEMO TO: Sheila Peterson
Senate Labor and Commerce Committee

FROM: Marlene Campbell, Administrative Assistant
to Senator Paul Fischer

SUBJECT: Robert Byers Testimony on SB 286

Robert Byers of Soldotna contacted Senator Fischer in support of SB 286, and I advised him of the upcoming Consideration of SB 286 in Labor and Commerce Committee. He wants very much to testify on this bill but is unable to attend the Committee Meeting. I advised him to send a public opinion message to your office as well as calling you if he wished to make any brief additional comments.

Byers purchased a new Cadillac automobile in 1978 and alledged he had numerous serious problems with the car and was unable to obtain any satisfactory settlement of the difficulties since that time. The car was apparently represented to be new but had sustained damage prior to his purchasing it. It had equipment that was not the same equipment represented to be in the vehicle. The car continually malfunctioned, and after several attempts to repair it under warrantee the problems were never fixed. Byers said eventually these problems caused him to have a serious auto accident.

To date, he is still seeking redress of his damages in the courts, and neither the manufacturer nor the dealer lived up to their warranty or other advertising claims, he said. He supports legislation which would enable the consumer to receive satisfactory warranty service as well as recourse when manufacturer or dealer claims or advertising are false.

If you would like further information about Mr. Byers or his concerns, please don't hesitate to contact me.

Current concerns

Lemon Laws: New Aid for Auto Buyers

Help has arrived for owners of new cars with intractable problems. In 19 states, they can now obtain a refund.

When Henry Adelman drove his new imported car out of a Palo Alto, Calif., showroom, he thought the gold four-door sedan was just peachy. Within a week, he concluded that he'd bought a leaky lemon.

"Every time it rained, the floor on the driver's side would fill up with water," recalls Adelman, a professor at the University of Santa Clara. "The interior stank with mold." Adelman took the car back to the dealer three times, to no avail. Then he let it sit unused "because it smelled so bad."

Adelman's bitter experience ended sweetly. Taking advantage of California's law on defective new cars, the professor went before a panel of arbitrators, who ordered the auto maker to refund his \$12,450.

The movement to pass such lemon laws is in high gear. Just this year, 17 states have enacted lemon laws, bringing the total states to 19. Bills are pending in 11 more legislatures.

Most lemon laws copy the one in Connecticut, where the nation's first such law took effect in 1982. Generally, a new car is a lemon if it is repaired four times for the same type of problem—braking, electrical, steering or transmission—or exceeds 30 days in the shop in its first year. Most states encourage consumers to seek arbitration before suing.

Proper repairs. Proponents, led by the Center for Auto Safety in Washington, D.C., say repairs are more often being done correctly the first time, while arbitration cases court backlogs.

They also believe lemon laws give auto makers needed incentive to make a better product. J. D. Power & Associates, which does automotive market research, found "recurring repair problems" among 29 percent of those responding to a poll of 23,000 domestic and foreign-car owners who had their 1982 models a year or more. Three to

1, the owners blamed manufacturers, not dealers, for the breakdowns.

Few lemon laws hold dealers to blame for flaws. "The manufacturer produces the defective auto," says State Representative Vincent Palumbo, sponsor of New Hampshire's lemon law. "The auto dealer does not."

The Motor Vehicle Manufacturers Association, the auto makers' trade group, says lemon laws were unnecessary because people could always sue, and because car makers had established their own consumer-arbitration panels.

Auto makers say the definition of a lemon car is too arbitrary. They complain, too, that some lemon laws exceed their own one-year, 12,000-mile warranties. New York's law, for example, covers a new car for two years or 18,000 miles.

But some states give auto makers far more leeway. Wyoming allows a car to be in the shop for 30 business days—as long as six weeks—before its law is invoked. In most states, the option of

whether to replace the car or issue a refund is solely the manufacturer's.

In any event, very few autos are returned under provisions of lemon laws—just 40 in Connecticut in the first 13 months, during which 113,000 new cars were registered.

Auto makers take varying approaches to these laws. Chrysler sued Texas authorities on November 16, charging that the state's arbitration statute is "unfair and confusing" to consumers. Ford Motor Company seeks laws that require notification of manufacturers about consumer complaints. In Connecticut, after one Ford owner returned with a minor problem, the dealer deposited the car on his lot for 45 days, an act that by state law made it a lemon. Grips Ford spokesman Mike Davis: "It isn't one, but we didn't even know about it."

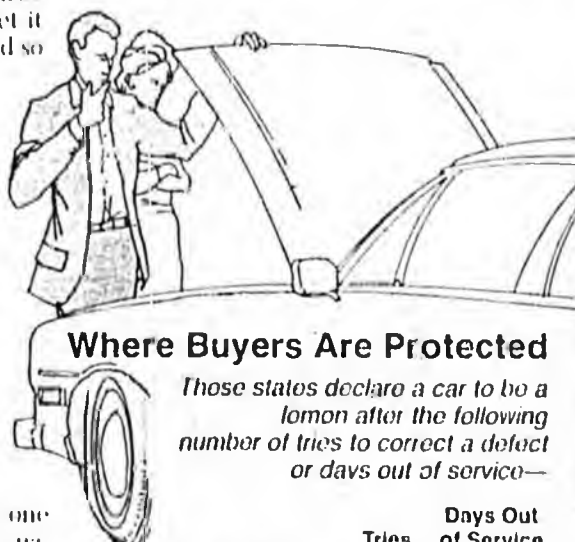
Limitations sought. Ford also wants to restrict the laws to serious functional and safety defects. The company wants to avoid, says spokesman Davis, "the guy who trades down a bigger car for a smaller car to save gas and then says, 'Make this car ride as nicely as the other one.' " Auto makers have pushed, with much success, to be able to deduct for actual mileage that the consumer drove while the car worked properly.

Even proponents are dissatisfied with the way some lemon laws work. A recent study by the attorney general of Connecticut complains that Better Business Bureau arbitrators, who adjudicate that state's law, take an average of 93 days to decide cases—a violation of the state's statutory 40-day time limit. The study claims the BBB did not adopt written procedures, used manufacturers' service staff as technical advisers and trained its arbitrators poorly. The BBB says it is resolving the problems.

State Atty. Gen. Robert Abrams wants New York's law extended to cover used cars so that buying a second-hand auto will stop resembling the picking of "a camel in an Oriental bazaar—on the basis of a guess, a hunch and a sales pitch," Abrams says New Yorkers buy almost twice as many used cars as new ones.

"A snowball's chance." Auto-industry opposition is stalling a proposal to enact a federal lemon law. Hearings have not been scheduled for a bill introduced in Congress by Representative Tom Lantos (D-Calif.). One industry lobbyist's terse assessment of its prospects: "A snowball's chance in hell."

But almost everyone agrees that additional states are certain to join the parade. Remarks Davis at Ford, "Fighting lemon laws is like fighting motherhood and sunshine." □



Where Buyers Are Protected

Those states declare a car to be a lemon after the following number of tries to correct a defect or days out of service—

	Tries	Days Out of Service
California	4	30
Connecticut	4	30
Delaware	4	30*
Florida	4	25*
Illinois	4	30*
Maine	4	30*
Massachusetts ..	4	22*
Minnesota	4	30*
Montana	4	30*
Nebraska	4	40
Nevada	4	30
New Hampshire ..	4	30*
New Jersey	4	31*
New York	4	30
Oregon	4	30*
Texas	4	30
Washington	4	31*
Wisconsin	4	30
Wyoming	4	30*

*Business days

USNAW77—Basic data: Center for Auto Safety

jim erickson



TROUBLESHOOTER

✓ **CONSUMER ADVISORY:** Alaska Attorney General Norman Gorsuch Tuesday announced several proposed changes in Alaska consumer protection laws that may be supported by the Sheffield administration.

Gorsuch's remarks came during a small-business seminar held in Anchorage. The seminar was sponsored by the Federal Trade Commission, the Anchorage Chamber of Commerce, the U.S. Small Business Administration and the Alaska Attorney General's Office.

Of particular note to consumers:

- The Department of Law may urge the administration to back an Alaska "lemon law," which 19 other states have already passed. While lemon laws across the country vary, most are based on a provision that forces auto makers to refund the purchase price of defective new vehicles "that can't be repaired."

Passage of a lemon law would ensure that "national automobile manufacturers afford to Alaskans the full benefits of the warranties which are part of the purchase price of every automobile," Gorsuch said.

- Gorsuch vowed to urge administration support for a legislative bill that would expand the Alaska Unfair Trade Practices Act to include real property, such as homes and condominiums, as well as commodities and investments. Alaska courts have recently ruled that only consumers of goods and services are protected by the act.

Similarly, Gorsuch said the administration may introduce legislation that would ensure the act protects business as well as consumers. Restrictive court rulings recently have tended to exclude businesses from legal recourse under the act, leaving them with little defense against "paper pirates" who prey on small business owners. By changing the legal definition of "consumer" so it embraces businessmen acting as consumers, businesses could freely seek assistance of the Consumer Protection Section of the attorney general's office, he said.

- Gorsuch said he is considering recommending legislation that would require promoters of "time-share" vacation and condominium sales to give adequate and fair disclosure to consumers before the sale.

"Resort promoters from around the country and outside the country have discovered that Alaskans need to get some sun in the winter, which may make our citizens ripe victims for a 'burn,'" he said.

- Formal legal opinions in the area of consumer and business rights and responsibilities may be issued by the Department of Law when warranted.

Gorsuch cited the Alaska Landlord/Tenant Act as an area of law that at times might need public clarification.

"Our office has seen acts and practices which seem to be outside the lawful scope (of the act)," he said. "The small landlord sees larger landlords engaged in these practices and does not want to be at a competitive disadvantage, but does not know whether this activity is lawful. The tenant may feel squeezed by the practice, but can't afford to litigate it."

In such cases, the Department of Law could formally issue an opinion as to the legality of questionable practices under Alaska law, he said.

'Lemon Laws' Gaining Popularity Despite Auto Makers' Opposition

By WILLIAM M. BULKELEY

Staff Reporter of THE WALL STREET JOURNAL

EAST HARTFORD, Conn. — Michael White's 1982 Chevrolet Camaro had a transmission problem that wouldn't go away. The clutch was so stiff he could barely depress it. It whined and squealed. "I cursed it every time I shifted," he says.

Mr. White took the car to his dealer seven times in five months. Then he told the dealer to give him a new car under the state's lemon law, which forces auto makers to replace cars if they can't fix them in four attempts or 30 days in the shop. So he had a new 1983 Camaro. He paid \$1,300 for the car, reflecting the 13,000 miles he had put on the old car and some optional equipment.

Mr. White says his success in wheedling a new car out of General Motors Corp. shows the effectiveness of Connecticut's amendment to its lemon law, the first such law in the country.

General Motors disagrees. Replacing Mr. White's car is the type of action the company occasionally takes "as a matter of good customer relations," says a GM spokesman in Detroit. GM says lemon laws are unnecessary, encourage litigation and "mislead customers into thinking some new right is being bestowed upon them."

Despite the opposition of GM and other car makers, lemon laws are sweeping the country. Since Connecticut's law went into effect Oct. 1, 10 other state legislatures have passed similar laws, including California, New York and New Jersey. Ten more states are expected to pass such laws by year-end, advocates say.

Supporters' Arguments

If Connecticut's experience is typical, car replacements will remain uncommon. The industry says it has been building better cars and repairing them faster, anyway. But supporters of the new laws maintain that they will subtly force dealers and manufacturers to respond more attentively to consumer complaints.

Each legislation is enormously popular. "This is the kind of consumer issue that is successful when legislators go back home," says Charles L. Spillman, director of state relations for the Motor Vehicle Manufacturers Association, a trade group that lobbies against the bills. In New York, the bill was approved by a Senate vote of 55-1 and a House vote of 155-2. In Massachusetts, 11 legislators introduced lemon law bills, one of which passed.

Lemon laws, or repair-replace laws, as the auto industry calls them, aren't a new idea. The Motor Vehicle Manufacturer's Association says such a law was first proposed in Hawaii in 1972.

John J. Woodcock, a legislator from South Windsor, Conn., who wrote Connecti-

cut's law, says he got the idea when he read a column by humorist Erma Bombeck that mentioned a California bill. When he proposed the bill, other legislators and the local press were amused, he recalls. But he arranged a public hearing, and "people came from all over the state with their own personal horror stories" about new cars that kept breaking down, he says. "The timing was right, and the grass-roots support made it a political home run for any legislator," he says.

Connecticut's lemon law is similar to most of the laws that have been passed since. It says that if a car dealer doesn't repair substantial defects covered by the new-car warranty within a reasonable time, the

A GM spokesman contends that lemon laws, or repair-replace laws, are unnecessary, encourage litigation and "mislead customers into thinking that some new right is being bestowed upon them."

consumer may be entitled to a comparable new car or a refund. The law defines a reasonable period for repair efforts as four separate trips to repair the same defect or a total of 30 days in the repair shop. If the auto maker or dealer objects to providing a new car, the car owner must go through an independent arbitration procedure—if the car manufacturer has one—before going to court to sue.

The independent arbitration panels have existed in some places for a few years, and auto makers say the panels make lemon laws unnecessary. Ford and Chrysler have established panels to judge disputes between consumers and car makers and dealers; General Motors Corp., Nissan and Volkswagen have contracts with the Better Business Bureau. Many importers use a National Automobile Dealers Association program called Autocap to arbitrate disputes.

The arbitration panels are made up of people who aren't employed in the industry, and are free to consumers. Their decisions are binding on the company, although consumers can usually appeal decisions to the courts. Generally they handle disputes over whether an auto maker should pay for problems that occur after a warranty expires.

Auto makers and consumer groups say the panels work. Ford Motor Co.'s panels, which were started in 1977 and are being expanded nationally, have judged 7,500 cases. The boards decided Ford or its dealers were fair about two-thirds of the time and gave the consumers more than Ford had offered the other third. A Ford spokesman says Ford has been ordered to replace a car about a dozen times. "Typically a new board tests if we're serious about replacing a car—usually a Lincoln," a spokesman says.

Replacing Cars

The three big U.S. auto makers didn't have arbitration procedures in Connecticut before the law was passed, so it's impossible to tell if they have changed their practices because of the law. General Motors says it has replaced nine cars in the state since last September. Nationwide, it says it replaced 267 cars since 1978, when it started the arbitration agreement with the Better Business Bureau.

In Connecticut, some lawsuits are pending, but no lemon-law suits have gone through the Connecticut courts, attorneys say.

Nevertheless, the lemon law is having an effect, advocates say. Mr. Woodcock, the legislator who wrote the law, concedes that nobody knows how many cars have been replaced. But, he says, "the true measure of the effect is the spirit of cooperation between dealer and consumer in working things out." William H. Clendenen, a New Haven, Conn., lawyer who says he has brought a lemon-law suit against General Motors, says the law "should make a difference for consumers" because it transfers responsibility from the dealer to the auto maker. "The deep pocket, the manufacturer, now has a clear responsibility. Prior to this the dealer often had to bite the bullet."

The Connecticut Automobile Dealers Association initially opposed the law because they thought it would lead to a lot of lawsuits, but "after some experience, we see the manufacturers are stepping forward and working out the arbitration system," says Richard Meek, executive vice president of the dealer trade group. "I told the national association meeting they don't have that much to fear from the laws."

The law seems to have improved dealer repair practices. After the law went into effect, manufacturers sent representatives to dealerships, advising them to avoid long tie-ups in the shop and to notify dealers about recurring new-car problems. "Now we put on the computer the number of times and days a car is in the shop," says Harvey Lipman, owner of Lipman Chevrolet in East Hartford.