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Daily News 1/18/86

Lemon squeeze

Laws protect owners of bum cars, pickups

By KAY MONROE LEVINE
Daily News reporter

Your car says ka-chunk, ka-chunk, ka-thwwwwup. Then it's "The Sounds of Silence."

The mechanic tells you it'll be \$42 an hour for exploratory tinkering, the nearest parts are in Los Angeles and he's up to his eyebrows in work. Weeks later you have to threaten mayhem to get the car back and now it has this strange whine . . .

That may sound like an episode from "I Love Lucy," but consumer advocates say it can happen in Alaska.

More people complain about

their cars — and repairs performed on those cars — than about anything else handled by the Attorney General's Consumer Protection Section. During fiscal year 1985, there were 660 vehicle-related complaints, topping the 404 complaints dealing with mail-order companies.

Rhonda Huffman, who runs the Alaska Better Business Bureau Auto Line program, doesn't know how many complaints her bureau handles but says the load is heavy.

Automotive complaints are high in Alaska because we don't have an abundance of

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State and federal laws aim to protect car buyers stuck with new or used lemons

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mechanics — especially mechanics who know what they're doing, says Ronald "Scotty" Dawkins, who investigates auto fraud for the attorney general.

"If you look at some numbers, you'll find from 1977 till 1982, Alaska auto dealers had an increase in sales, measured in dollars, of 80 percent. During that same period, they increased the number of employees in the five or six percent range. You go into any of the dealers, there are lots of sales folks but there's nobody to fix the damned automobiles.

"We also don't pay the mechanics very well — the good ones move on to (North) Slope jobs, move on to construction jobs, move on to fixing fishing boats. Most good mechanics don't stay working for car dealers."

Dieter Wuerth, general manager at Pacific Mitsubishi, agrees that good mechanics are hard to come by, but he says wages are not the reason.

"Mechanics, by and large, are well-paid," he says. He attributes the nationwide shortage — despite healthy wages — to the complexity of modern automobiles and to the fact that mechanics have to work with asbestos and toxic chemicals.

Wuerth adds that customers fume about the cost of car maintenance because cars start depreciating in value just when they become more expensive to keep up.

If you're having trouble with cars or repairs, your options dealing with the problem include:

- Talking to the car dealer or repair shop involved in the dispute;
- Writing the manufacturer;
- Notifying the Attorney General's Consumer Protection Section;
- Notifying the Better Business Bureau;
- Going to court.

Before you file a formal complaint anywhere, you should talk to the owner of the shop or dealership

first, consumer advocates say. This step is recommended by Consumer Protection but is *required* by the Better Business Bureau.

Another smart preliminary step is to check with a national auto safety hotline to find out if your problem is related to anything that's the subject of a manufacturer's recall. The hotline is operated by the National Highway Traffic Safety Administration. The number is (800) 424-9393.

This suggestion applies to used cars as well as new ones, says Dawkins, especially if your complaint relates to premature failure of some part or if your car has a problem with brakes or steering that mechanics can't diagnose. You'll also be helping to build up a valuable national record about mechanical defects in automobiles if you register your complaint with the traffic safety administration.

At this point, the complaint-resolution path begins to branch.

USED CARS

• **Complaints against private parties:** If you're having trouble with a car you bought from an individual, your only recourse — if the person won't take responsibility — is legal action. Small claims court is the place to go if the amount is less than \$2,000; superior court handles cases that are more than \$2,000.

• **Complaints against dealerships:** If you bought your secondhand car from a licensed dealer, you'll find several mechanisms for settling disputes.

One is the Attorney General's Consumer Protection Section. Workers here will ask you to fill out a complaint form or submit a letter describing your problem. It doesn't cost anything. Dawkins probably will handle your case unless it centers on deceptive advertising. In that case, you'll be working with attorney Sheridan Strickland.

Both these investigators rely on informal mediation whenever possible: They will telephone the shop

owner or car dealer and try to convince him to "make it right," as Dawkins puts it. Because the case-load is so high, however, legal action is reserved for businesses that violate consumer protection statutes flagrantly or often.

Consumer Protection can require any business to respond to customer complaints and can file lawsuits in civil court against owners who commit fraud, run false advertising or misrepresent their goods.

Further, the section can turn over its most serious cases — like those involving automobile odometer roll-backs — to the District Attorney's office for criminal prosecution.

Another way to settle used-car complaints is through the voluntary mechanism run by the Alaska Better Business Bureau. This group, which opened in 1984, mediates complaints between nearly 600 member companies and their customers; expenses are paid by business membership fees. Businesses don't have to join the bureau, but those that do are required to respond to complaints and participate in arbitration if necessary.

NEW CARS

Owners having problems with new cars that are still under warranty have more ways to settle disputes. The ultimate solution is filing suit under the 1984 Alaska Lemon Law. The first known Lemon Law suit was filed against Ford Motor Co. on Jan. 8.

Your car might qualify as a lemon if:

• Mechanics have tried three times to repair the same defect while the warranty is in effect or while the original owner has had the car for a year or less;

• If the vehicle is out of service for repair for 30 or more business days during the same one-year period;

• Or if the problem substantially impairs the use or the market value of the vehicle.

For more details, contact Con-

sumer Protection for a brochure on the Lemon Law.

The law requires you to submit your Lemon Law case to an approved arbitration board before filing a civil suit in court. In Alaska, the attorney general has the authority to approve or disapprove such arbitration boards. The only one it has approved so far is the one at the BBB.

The BBB's Auto Line got under way in November 1984 and covers these manufacturers:

American Motors, Audi, Buick, Cadillac, Chevrolet and Chevrolet truck, General Motors Corp. (trucks only), Honda, Jeep, Nissan, Oldsmobile, Pontiac, Porsche, Renault, Rolls-Royce, Volkswagen, Volvo, Jaguar, Maserati, Peugeot and Saab.

But before you go to the BBB with a potential Lemon Law problem, there are several steps you should take first.

To start with, talk to the dealer or authorized repair shop about your problem. Follow up those calls with letters. If that doesn't resolve your grievance, write to the manufacturer's headquarters. If the car dealer won't give you the address, you can get it from the reference desk at the Z.J. Loussac Library. Always keep copies of letters and retain the originals of any documentation such as receipts, experts advise.

If the manufacturer agrees with your position, it may instruct the local dealer to handle your complaint.

If that doesn't work, your next step is the Better Business Bureau. The manufacturers listed above have volunteered to participate in arbitration. The arbitrator's decision is binding on the manufacturers, but not on you.

If you're not satisfied with the decision, you can hire an attorney and file a lawsuit.

Two major manufacturers not participating in the BBB's program are Ford and Chrysler Corp. They have in-house arbitration set-ups, and both have taken steps to gain Consumer Protection approval for their procedures.

If Consumer Protection approves

these manufacturers' arbitration boards, participation will be mandatory for complaining customers.

In November, the attorney general rejected Chrysler's application because it was decided the process favored the manufacturer. Last Monday, Ford's application was turned down for the same reason. However, consumer officials say the door is open for both companies to re-apply.

Until and unless Ford and Chrysler arbitration boards are approved, the customer may bypass arbitration and take his case directly to court.

Since the Alaska Lemon Law and the BBB arbitration mechanism both are new, consumer experts say, it's not yet certain whether the Ford and Chrysler customers have a better deal. They may be fortunate because they can sue immediately; they may also be missing an opportunity for cheap and relatively easy complaint resolution.

A strong, private-sector arbitration program, seen as fair by industry and customers alike, would be invaluable, say consumer advocates; however, it may take some years to build such a program.

Linda Chamberlain is a paralegal who volunteers as an arbitrator for the Auto Line program. Before moving to Alaska, she served as an arbitrator in an Auto Line program in New York state.

She says the Alaska BBB should provide a comprehensive training program for arbitrators (they get a one-night meeting now); she also advocates a three-person panel to review "buy-back" decisions, those cases where an arbitrator orders the manufacturer to refund the customer's money.

Where to find help:

• Alaska Better Business Bureau, 417 Barrow St., Anchorage 99501. 276-5901.

• State Consumer Protection Section, 1031 W. 4th Ave., Suite 300, Anchorage 99501. 279-0428.

• Workers at either agency can tell you how to contact a car manufacturer's in-house arbitration board.

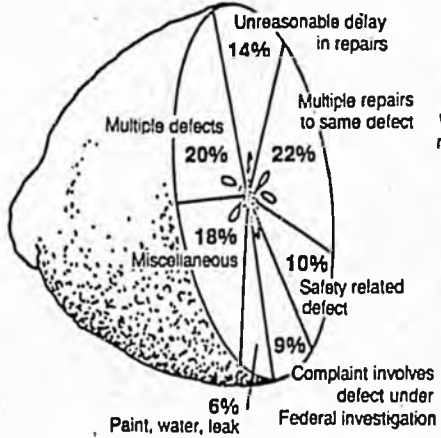
ALASKA'S AUTO LEMONS

PROFILE OF AUTO WARRANTY COMPLAINTS TO CONSUMER PROTECTION

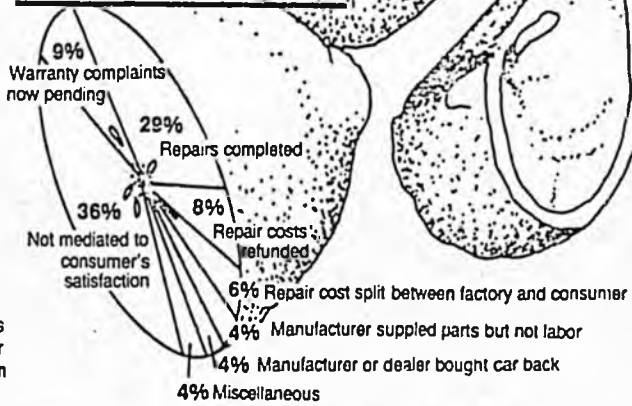
January, 1981 to April, 1983

TOTAL: 133

COMPLAINTS BY PRIMARY ALLEGATIONS

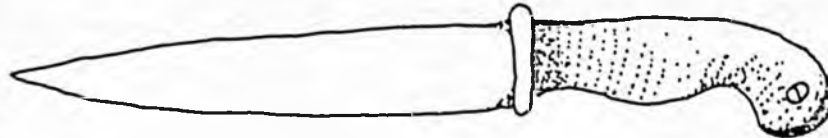


DISPOSITION OF WARRANTY COMPLAINTS



REGIONAL BREAKDOWN

Southcentral/Anchorage 76%
 Interior/Fairbanks 10%
 Southeast/Juneau 14%



SOURCE: Alaska Department of Law

Anchorage Daily News/ Pamela Dunlap-Snohl

USED CAR LEMON LAW **USED CAR LEMON LAW**

USED CAR LEMON LAW

State of New York Attorney General Robert Abrams



STATE OF NEW YORK
DEPARTMENT OF LAW

ALBANY 12224

ROBERT ABRAMS
ATTORNEY GENERAL

Dear New Yorker:

We have all heard stories of people who bought used cars only to experience breakdown after breakdown. Some people even have had difficulty making it from the used car lot to home without mishap. Unfortunately these stories are not fiction -- but painful facts.

Buyers of new cars are protected by the manufacturer's warranty and by various state laws. But until now, there has not been adequate protection for used car buyers even though used cars outsell new cars two to one. Now, New York State has passed the first law in the nation to offer real protection to the hundreds of thousands of New Yorkers who buy used cars each year from dealers.

The Used Car Lemon Law represents a great victory for consumers. My office was instrumental in formulating this bill and, along with others, worked hard to secure its passage. The new law, which went into effect November 1, 1984, provides long-needed consumer protection for used car buyers. It requires dealers to give consumers a written warranty when they buy a used car costing \$1,500 or more. If the car has over 36,000 miles, the warranty lasts for 30 days or 1,000 miles; if the car has under 36,000 miles, the warranty lasts for 60 days or 3,000 miles. Most essential mechanical parts are covered.

The workings of this new law are explained in this publication prepared by my office to help consumers understand the law and how it affects and protects them.

If you have further questions about the lemon law for used cars or require additional assistance, write to my nearest local office.

Sincerely,

Robert Abrams

What Is The Purpose Of The Used Car Lemon Law?

The Used Car Lemon Law (General Business Law §198-b) provides a new legal remedy for buyers of used cars that turn out to be lemons. The law requires dealers to give consumers a written warranty the duration of which is determined by the mileage on the used car purchased. Under the warranty, dealers must either repair, free of charge, or replace used cars that turn out to be lemons.

Who Is Protected By The Used Car Lemon Law?

The law protects consumers who purchase any used passenger motor vehicle sold for \$1500 or more from a dealer in New York State on or after November 1, 1984. A consumer is the purchaser of a used motor vehicle normally used for personal, family or household purposes. The spouse or child of the purchaser is covered if the car is transferred to either during the duration of any applicable warranty. Any other person entitled by the terms of the warranty to enforce its obligations is also covered.

The private sale of a used car between individuals is not covered by the lemon law.

Which Used Motor Vehicles Are Covered?

A used motor vehicle is a passenger motor vehicle which has been driven more than the limited use necessary in moving or road testing a new car prior to delivery. Used motorcycles, motor homes, off-road vehicles and cars which sell for less than \$1,500 are not covered by the law. A "classic car" registered under §401 of the vehicle and traffic law is not covered.

Which Used Car Dealers Are Included?

A dealer is any person or business which sells or offers for sale a used car after selling or offering for sale three or more used cars in the previous twelve month period. Banks or other financial institutions are not included. Others excluded are: a business selling a used car to its own employee; a lessor selling a leased car to the lessee of that car; a family member or an employee of such lessee; the state or local government.

What Does The Law Require The Dealer To Do?

A dealer who sells a used car to a consumer is required to give the consumer a mandatory written warranty whose terms are specified in the law. This warranty is called a statutory warranty and must be honored by the dealer. The statutory warranty must specify that while it is in effect the dealer or

his agent will repair, free of charge, the failure of any part of the used car covered by the warranty. The dealer may elect to reimburse the consumer for the reasonable cost of repairing the failure of any covered part.

How Long Does The Warranty Last?

If the used car has 36,000 miles or less, the warranty must last for at least 60 days or 3,000 miles, whichever comes first.

If the used car has more than 36,000 miles, the warranty must last for at least 30 days or 1,000 miles, whichever comes first.

What Parts Are Covered?

Covered parts must at least include:

ENGINE -- All lubricated parts, water pump, fuel pump, manifolds, engine block, cylinder head, rotary engine housings and flywheel.

TRANSMISSION -- The transmission case, internal parts, and the torque converter.

DRIVE AXLE -- Front and rear axle housings and internal parts, axle shafts, propeller shafts and universal joints.

BRAKES -- Master cylinder, vacuum assist booster, wheel cylinders, hydraulic lines and fittings and disc brake calipers.

RADIATOR

STEERING -- The steering gear housing and all internal parts, power steering pump, valve body, piston and rack.

ALTERNATOR

GENERATOR

STARTER

IGNITION SYSTEM EXCLUDING BATTERY

What If The Dealer Does Not Give The Statutory Warranty?

If a dealer fails to give a consumer the written statutory warranty as required, the dealer is nevertheless considered to have given the warranty.

Can A Dealer Limit Coverage Under The Statutory Warranty?

Yes, but only as specified in the law. The law permits a dealer to add additional language to the statutory warranty excluding coverage:

(a) for a failure of a covered part caused by a lack of customary maintenance;

(b) for a failure of a covered part caused by collision, abuse, negligence, theft, vandalism, fire or other casualty and damage from the environment (windstorm, lightning, road hazards, etc.);

(c) if the odometer has been stopped or altered such that the vehicle's actual mileage cannot be readily determined or if any covered part has been altered such that a covered part was thereby caused to fail;

(d) for maintenance services and the parts used in connection with such services such as seals, gaskets, oil and grease unless required in connection with the repair of a covered part;

(e) for a motor tuneup;

(f) for a failure resulting from racing or other competition;

(g) for a failure caused by towing a trailer or another vehicle unless the used motor vehicle is equipped for this as recommended by the manufacturer;

(h) if the used motor vehicle is used to carry passengers for hire;

(i) if the used motor vehicle is rented to someone else;

(j) for repair of valves and/or rings to correct low compression and/or oil consumption which are considered normal wear;

(k) to the extent otherwise permitted by law, for property damage arising or allegedly arising out of the failure of a covered part; and

(l) to the extent otherwise permitted by law, for loss of the use of the used motor vehicle, loss of time, inconvenience, commercial loss or consequential damages.

Can The Dealer Cause Buyers To Waive Their Rights Under The Lemon Law By Use Of A Contract Clause?

No. Any contract clause which seeks to waive a buyer's rights under the Used Car Lemon Law is void.

Can A Dealer Give Additional Warranty Protection?

Yes. The statutory warranty sets only minimum obligations for dealers. A dealer may agree as part of the sale to give a consumer more warranty protection than the law requires. Extra warranty protection can be a matter of negotiation between the dealer and consumer.

What Should A Used Car Buyer Do If There Is A Problem?

The buyer should immediately report any malfunction or defect of a covered part to the dealer and give the dealer the opportunity to make the necessary repairs. If the consumer has notified the dealer of a problem within the warranty period, the dealer must make the repair even if the warranty has expired.

What Happens To The Warranty When The Car Is Being Repaired?

The warranty is extended during any in-shop time for repairs.

How Can The Buyer Help Prove He/She Is A Lemon Owner?

It is very important to keep careful records of complaints and copies of all work orders and repair bills.

What If The Dealer Does Not Repair The Car?

If the dealer is unable to repair the problem after a reasonable number of attempts, and if the problem "substantially impairs the value of the used car" to the consumer the dealer must accept the return of the car and make a refund. A refund includes the full purchase price plus the sales tax. A reasonable allowance may be taken by the dealer for any damage beyond normal wear or use. An adjustment may also be made for any modification to the car which either increases or decreases its market value.

Does The Law Set Limits On The Number Of Repair Attempts?

Yes. It is presumed that there have been a reasonable number of repair attempts by the dealer if during the statutory warranty period: (1) the same problem has been subject to repair three or more times and the problem continues to exist - or (2) the car is out of service by reason of repair for a cumulative total of 15 or more days. When calculating this 15 day total, days during which repairs could not be completed due to the unavailability of necessary parts are not included. However, the dealer is required to exercise due diligence in attempting to get the necessary parts and there is an absolute 45 day limit.

Under The Law, Can The Dealer Provide A Replacement Vehicle Instead Of A Full Refund To The Consumer?

Yes, if the consumer is willing to accept a replacement car instead of a full refund. But the decision to offer a replacement car rests with the dealer. If the dealer offers a replacement vehicle and the consumer agrees, the parties must negotiate between themselves any adjustment in price.

If A Trade-in Was Involved, How Is A Refund Determined?

The dealer can choose either to return any vehicle traded-in by the consumer at the time of the sale of the used car; or, to refund the wholesale value of the car when it was traded-in. The wholesale value must be determined by referring to the "NADA Used Car Guide"*. An adjustment may be taken for mileage, improvements or major defects that existed at the time of the trade-in. The dealer need not refund the value of the trade-in car listed in the sales contract. The sales contract must clearly describe this required method of calculating the value of any trade-in vehicle which is not returned to the consumer.

* The State Motor Vehicle Department is authorized to approve the use of an alternative guidebook.

Are There Any Exceptions To The Requirement For Refund Or Replacement?

Yes. The dealer does not have a duty to make a refund of the purchase price if: (1) the problem does not substantially impair the value of the car to the buyer; or (2) the problem is the result of the buyer's abuse, neglect or unreasonable alteration of the car.

What Type Of Problem Will Be Considered A Substantial Impairment Of The Value Of The Used Car To The Buyer?

There is no easy answer. It will depend on the facts in each case. In general, the buyer's complaint must be about a serious problem. A defect in the engine which makes the car inoperable is clearly substantial. Some courts have found that the cumulative effect of numerous minor defects can add up to a substantial impairment of value.

Is The Buyer Automatically Eligible For A Refund After A Reasonable Number Of Repair Attempts?

No. The buyer must first participate in any mediation procedure that the dealer may have established or joined if that procedure conforms to Federal Trade Commission regulations.

What Are The Major Federal Trade Commission Requirements For Mediation Procedures?

The mediation procedure must be: (1) free of charge; (2) non-binding on the buyer; (3) explained in the car warranty; (4) a decision must be generally given within 60 days after receipt of the buyer's complaint; and (5) the decision must be free from the influence of the dealer.

How Can A Buyer Find Out If A Particular Dealer's Mediation Procedure Complies With Federal Trade Commission Requirements?

A buyer can write to the Federal Trade Commission, Washington, D.C. 20508, or to the nearest office of Attorney General Robert Abrams.

What Happens After The Buyer Participates In A Mediation Procedure And Is Not Satisfied With The Decision?

The buyer can sue the dealer in court to enforce his/her rights under the law. In court, a car which has not been repaired after three attempts, or 15 days, will be presumed to be a lemon.

If The Buyer Decides To Sue The Dealer When Must The Lawsuit Be Started?

The lawsuit must be started within four years of the date of original delivery to the consumer.

If The Buyer Wins In Court Can Attorney's Fees Also Be Recovered?

Yes. The law authorizes the court to award reasonable attorney's fees to a buyer who wins in court.

Does The Used Car Lemon Law Eliminate Or Limit Any Of The Other Legal Remedies Already Available To Buyers Of Defective Cars Or Other Goods?

No. The Used Car Lemon Law adds to the buyer's arsenal of existing legal remedies. The most important of these remedies is the warranty of serviceability. (Vehicle and Traffic Law §417) This warranty cannot be waived by the buyer. It requires a dealer to certify to a used car buyer that the car is in condition and repair to render, under normal use, satisfactory and adequate service at the time of delivery. In addition, specified safety equipment must be in good working order. The Motor Vehicle Department can help a buyer to enforce this warranty.

Where Can I Get Help On Any Questions Regarding The Used Car Lemon Law?

You can contact the nearest office of Attorney General Robert Abrams listed in this pamphlet. You may also wish to consult your own lawyer.

This fact sheet was prepared by Assistant Attorney General Sandy Mindell and Assistant Attorney General In Charge of the Consumer Frauds and Protection Bureau, Peter Bienstock. Produced by the Office of Public Information, Joan Libby, Director.

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