ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672
2596 HLC • SB 182 - SB 286

The State at that time kept the right to make spot checks on Municipal elevators should it be determined that safety hazards and other considerations be involved.

It is the writers opinion that current inspections being made by the Muncipality are not as indepth as those made by the State.

Certain requirements being forced upon owners outside the Municipality are not being requested on similar installations within the Anchorage area.

Every nine days OTIS Elevators alone move the equivalent of the worlds population and we are exposed to tremendous liabilities. Subsequently, we encourage professional safety inspections by both our service mechanics, installation crews and the appropriate inspection agency to ensure that all aspects of the installation are within the ANSI guidelines.

By the same token we would encourage the Municipality to become more stringent in their inspections as we fear that any new competitors that come into our State may take shortcuts in installation and maintenance services to provide more attractive pricing with their products or services.

Although we realize the section indicates that it is up to the Commissioner to determine that the inspection and certification by the Municipality adequately protect the public we feel that this is a provision which will be ineffectively regulated and enforced. We feel the Commissioner is not intimately familiar with elevator systems and unless the inspectors are in constant training they themselves will not be able to understand the "workings" of the new computerized equipment.

We respectfully request that you reconsider your Senate Bill and not ammend Section 2 AS18.60.800 (b)(2).

Respectfully submitted,

OTIS ELEVATOR COMPANY

J. D. Verlinde

J. D. Verlinde
Manager - Alaska

CC: Senator John Sackett
Senator Don Bennett
Senator Pat Rodey
Senator Richard Eliason
Senator Bob Mulcahy

THIS

I. REQUEST

Bill/Resolution No.: Senate Bill 182
Title: "...elevator safety standards..."
Sponsor: Senator Josephson
Requestor: Labor and Commerce

II. FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Worker Protectio
BRU, Program of Subprogram(s) Affected: Labor Standards and Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
Division: Labor Standards and Safety Date: March 23, 1983

Approved by Commissioner: Jim Robison Date: March 23, 1983
Department: Labor

LEG:A:29

SB

184

SENATE
LETTER OF INTENT
FOR
CSSB 184

During the scheduled hearings in which the Alaska Transportation Commission (A.T.C.) was discussed and reviewed, many problem areas were identified. The Performance Review of the Alaska Transportation Commission conducted by the Division of Legislative Audit, April 1, 1982, concluded that the functions of A.T.C. could be better performed if A.T.C. were to merge with the Alaska Public Utilities Commission.

However, several questions were raised which remain unanswered:

1) Is State involvement in the Essential Air Service Program required?

2) Does the State want to deregulate surface and air transportation within Alaska?

3) What method does the State wish to employ to assure the public that air and motor carriers have sufficient insurance coverage to protect the public's interest?

4) What is the role of the Alaska Transportation Commission in regard to a commercial vehicle safety program?

5) Would a citizen's board be an appropriate mechanism to perform the oversight functions which are currently the responsiblity of the Commissioners of the Alaska Transportation Commission.

6) Do the Alaska Transportation Commission's policies regarding light aircraft ensure that innovative competition which could be beneficial to the public is not eliminated?

With the passage of this legislation, it is the intent of the Senate Labor and Commerce Committee that the Office of Management and Budget conduct a thorough performance review of the functions of A.T.C. The review will include, but will not be limited to, the scope of areas previously outlined.

The Office of Management and Budget will report back to the Thirteenth Legislature within ten days after the second session convenes in 1984. The report shall outline the findings of the audit as well as specific actions to implement any changes recommended.

Adopted in the Senate, April 27, 1983.

SUPPLEMENTAL
SENATE LETTER OF INTENT
TO CSSB 184 (L&C)

In the interim it is the intent of the Senate that the Alaska Transportation Commission fulfill its statutory responsibility with concentration on protection of the public.

Adopted in the Senate, April 27, 1983.

STATE OF ALASKA
FISCAL NOTE

Revision Date 4/6 , 1983

I. REQUEST

Bill/Resolution No.: SB 184
Title: Extending termina[illegible] of ATC
Sponsor: Labor & Commerc[illegible]mmittee
Requestor:

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Developm
Program Category Affected: Consumer Protec
BRU, Program of Subprogram(s) Affected: Alaska Transportation Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Catherine Wallen Phone: 465-2504
Division: Administrative Services Date: 4/7/83

Approved by Commissioner: Richard A. Lyon Date: 4/7/83
Department: Commerce & Economic Development

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/R/F

SB 184 FISCAL NOTE ANALYSIS

The submitted FY '84 budget request for ATC follows:

Operating Expenditures	FY '83	FY '84
Personal Services	1,356.6	1,293.1
Travel	57.7	61.2
Contractual	182.5	192.2
Commodities	16.2	16.9
Equipment	1.2	-0-
	1,614.2	1,563.4
Capital Expenditures	Ø	Ø
Revenue	145.2	155.2

If the legislation fails to pass and ATC sunsets, there will continue to be a financial impact to the State for the administration of the State's share in the Essential Air Services Program and for verification of insurance registration. The reduced responsibilities would be reflected in the FY '85 budget request. In this case, the budget would be as follows:

Operating Expenditures	FY'83	FY '84	FY '85	FY '86	FY '87
Personal Services	1,356.6	1,293.1	69.6	73.8	78.2
Travel	57.7	61.2	Ø	Ø	Ø
Contractual	182.5	192.2	16.5	17.5	18.5
Commodities	16.2	16.9	2.0	2.1	2.2
Equipment	1.2	Ø	Ø	Ø	Ø
Total Operating	1,614.2	1,563.4	88.1	93.4	98.9
Capital Expenditures	Ø	Ø	Ø	Ø	Ø
Revenue	145.2	155.2	Ø	Ø	Ø
Positions (Full-Time)	30	28	2	2	2

SB

188

PATRICK M. RODEY
3271 MONTCLAIRE CT.
ANCHORAGE, AK 99503

DURING SESSION:
POUCH V
JUNEAU, AK 99811
(907) 465-3717

ALASKA STATE SENATE

M E M O R A N D U M

DATE: March 21, 1983

TO: Senator Patrick OK

FROM: Jim Kelly, Aide

RE: Senate Bill 188: "An Act relating to bank holding companies."

This bill would make a single change in the domestic bank holding companies section of the Alaska Banking Code. The change, accomplished by the deletion of the words "unless the bank is a recently formed bank" in AS 06.05.235(b), is intended to restore the principle of parity for banks doing business in Alaska.

The problem is that domestic bank holding companies, of which Alaska presently has four - Alaska Pacific Bancorp, Alaska Bancshares, Alaska Bancorporation and United Bancorporation of Alaska, are prohibited from establishing new banks in the state; and recently formed banks, such as the Alaska Continental Bank, are prohibited from establishing domestic bank holding companies.

These legal prohibitions went into effect on July 1, 1982, as a result of passage last session of SB 752, the interstate banking bill. That bill, being the first of its kind enacted anywhere in the country, though carefully drafted, was nonetheless quite complex. The major effect of SB 752 was to allow Outside banks to enter the local market; that has happened, and was intended. The problem mentioned above was not intended, and, in fact, was not even discovered until Alaska Continental Bank made application to establish its own domestic bank holding company and was informed by the Division of Banking that that was prohibited.

It is unfair to allow some Alaskan banks to form relationships with domestic bank holding companies, and prohibit some other Alaskan banks from doing likewise. As there can be significant economic advantages to such relationships, it is not in the public interest to grant the opportunity to some, and withhold it from others. For the consumer to realize the very real benefits of true competition, that is competitive services and competitive prices, it is necessary for rivals within the banking industry to be competing on a "level playing field". This legislation would help accomplish that.

I. REQUEST

Bill/Resolution No.: SB 188

Title: Act relating to bank holding companies

Sponsor: Rodey

Requestor:

II. FISCAL DETAIL

Agency Affected: Div. Banking

Program Category Affected: Public Pr[illegible]rt

BRU, Program of Subprogram(s) Affe[illegible]:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Willis F. Kirkpatrick Willis F. Kirkpatrick

Phone: 465 2521

Division: Banking, Securities & Corporations

Date: 3/23/83

Approved by Commissioner: Richard A. Lyon

Date: 3/28/83

Department: Commerce & Economic Developement

SB

281

Offered: 5/5/83
Referred: Finance

Original sponsor: Finance Committee

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 281 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to energy development and conservation functions of the Department of Commerce and Economic Development and the Department of Community and Regional Affairs; and providing for an effective date."

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

* Section 1. AS 43.20.037(d)(2)(K) is amended to read:

(K) any other energy conservation [ENERGY-SAVING] device approved by the commissioner of community and regional affairs [COMMERCE AND ECONOMIC DEVELOPMENT UNDER AS 44.33.040-(12)].

* Sec. 2. AS 44.47.050 is amended by adding a new paragraph to read:

(19) plan, study, implement, and assist programs for energy development and energy conservation, including weatherization, to meet community and regional needs.

* Sec. 3. AS 44.83.162(1) is amended to read:

(1) In order to qualify for power cost assistance, each electric utility must make every reasonable effort to minimize administrative, operating, and overhead costs, including using the best available technology consistent with sound utility management practices. In reviewing applications for power cost assistance, the commission has the authority to require the elimination of duplicative or otherwise unnecessary operating expenses. Each eligible electric utility shall cooperate with appropriate state agencies [, INCLUDING BUT NOT LIMITED

TO THE ALASKA PUBLIC UTILITIES COMMISSION, THE ALASKA POWER AUTHORITY, THE ALASKA ENERGY CENTER, AND THE DIVISION OF ENERGY AND POWER DEVELOPMENT IN THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT,] to implement cost-effective energy conservation measures, and to plan for and implement feasible alternatives to diesel generation.

* Sec. 4. AS 44.83.177(d) is amended to read:

(d) In completing a reconnaissance study, the authority shall consult with the [DIVISION OF ENERGY AND POWER DEVELOPMENT IN THE] Department of Community and Regional Affairs [COMMERCE AND ECONOMIC DEVELOPMENT] to determine the information that each may require for energy planning and the development of technology.

* Sec. 5. AS 44.83.400(2)(B) is amended to read:

(B) the [DIVISION OF ENERGY AND POWER DEVELOPMENT,] Department of Community and Regional Affairs [COMMERCE AND ECONOMIC DEVELOPMENT]; and

* Sec. 6. AS 45.89.010 is amended to read:

Sec. 45.89.010. FUND ESTABLISHED. There is established in the Department of Commerce and Economic Development the residential energy conservation fund to carry out the purposes of this chapter. Loans and [REFUNDS,] grants [AND LOANS] made under this chapter may be used to purchase, construct, and install an energy conservation improvement in residential buildings. The fund may not be used for any [NO] other purpose.

* Sec. 7. AS 46.11.040(3)(B) is amended to read:

(B) is located or is to be located in an area where thermal and lighting energy standards are not justified because of the high cost of implementation of the standards, as determined under regulations adopted by the commissioner of community and regional affairs [COMMERCE AND ECONOMIC DEVELOPMENT], or

* Sec. 8. AS 46.11.900(3) is amended to read:

(3) "energy audit" means a determination and written summary prepared under [AS 46.11.030 OR] sec. 215(b)(1)(A) of the National Energy Conservation Policy Act (42 U.S.C. 8216(b)(1)(A)) of

(A) the energy consumption characteristics of a building, including the size, type, and rate of energy consumption of major energy consuming systems of the building and the climate characterizing the region where the building is located; and

(B) the energy conservation and cost savings likely to result from appropriate energy-conserving maintenance and operating procedures and modifications, including the purchase and installation of energy-related fixtures; for purposes of this subparagraph when a fossil fuel is the energy source, the energy cost savings shall be determined with reference to the projected price of that fossil fuel over a 10-year period;

* Sec. 9. AS 46.11.900(9)(B) is amended to read:

(B) by the commissioner of community and regional affairs [COMMERCE AND ECONOMIC DEVELOPMENT UNDER AS 44.33.040-(12)] for buildings and structures that [WHICH] are not public facilities.

* Sec. 10. The following laws are repealed: AS 44.33.030 - 44.33.060; AS 45.88.500(2)(C); AS 45.89.020, 45.89.500(3)(A); AS 46.11.030, 46.11.-900(1)(B)(iii); and AS 46.12.120(4).

* Sec. 11. On the effective date of this Act a program or project that is supervised by the section of power development in the Department of Commerce and Economic Development, including an unexpended appropriation for a program or project, is transferred to the Department of Community and Regional Affairs. The Department of Community and Regional Affairs may delegate supervision of a program or project transferred under this section

to a state department or agency, including the Alaska Power Authority and the University of Alaska.

* Sec. 12. Notwithstanding the repeal of AS 45.89.020 made by sec. 10 of this Act, a refund or grant shall be paid under AS 45.89.020 if an energy audit is performed before July 1, 1983 for the residential building that is the subject of the refund or grant application and if the refund or grant application is filed before January 1, 1984.

* Sec. 13. This Act takes effect July 1, 1983.

Fisher, DFC
6-21-83

CS for SB 281 (L&C)

AN ACT RELATING TO ENERGY DEVELOPMENT AND CONSERVATION FUNCTIONS

Sectional Analysis

This bill would repeal the statutes concerning the division of energy and power development and substitute general powers for the Department of Community and Regional Affairs to implement energy development and conservation programs. The energy audit/grant program would be repealed, and other energy responsibilities reassigned from the Department of Commerce to Community and Regional Affairs. Energy programs remaining in Commerce would be some energy planning (in Finance and Economics) and energy conservation loans (in Business Loans). The transition sections allow for program transfer and phase-out.

Sec. 1. Approval of an energy conservation device for the purpose of a business energy conservation credit is transferred from Commerce to C&RA.

Sec. 2. C&RA is given a general power to implement energy programs.

Sec. 3. The list of state agencies with which utilities shall cooperate in implementing energy conservation, for the purpose of the power cost assistance program, is deleted.

Sec. 4. The Alaska Power Authority, in completing reconnaissance studies, is required to consult with C&RA rather than Commerce.

Sec. 5. The APA, under the Energy Program for Alaska, shall ensure that communities cooperate on energy conservation with C&RA rather than Commerce.

Sec. 6. The residential energy conservation fund is changed from a refund, grant, and loan fund to primarily a loan fund, although the ability to use it to fund grants in the future is retained.

Sec. 7. Thermal and lighting energy standards are adopted by C&RA rather than Commerce.

Sec. 8. The definition of energy audit is amended to delete the state program.

Sec. 9. Thermal and lighting energy standards are defined as those adopted by C&RA rather than Commerce.

Sec. 10. Repealers.

44.33.030-060 are the division of energy statutes.

45.88.500(2)(C) is the part of the definition of an alternative energy system as one approved by Commerce under the division of energy statutes.
45.89.020 is the refunds and grants provision under the energy audit program.
45.89.500(3)(A) is the definition of an energy audit as established by the division of energy for the audit program.
46.11.030 is the energy audit program.
46.11.900(1)(B)(iii) is the portion of the definition of an alternative energy system as one approved by Commerce under the division of energy statutes.
46.12.120(4) is the requirement that the Energy Center consult with the division of energy and other state agencies.

Sec. 11. Transition. Energy programs or projects of the division of energy are tranferred to C&RA, and C&RA may delegate supervision to another agency.

Sec. 12. Transition. Those who have received energy audits before July 1, 1983 will have until Jan. 1, 1984 to apply for grants or refunds.

Sec. 13. July 1 effective date.

SB

286

Asper
4/19/84

Original sponsor: Ray ~~by~~ request

BY THE LABOR AND
COMMERCE COMMITTEE

IN THE SENATE

HOUSE CS FOR 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 defect or condition to the manufacturer of the vehicle or to the manufacturer's or distributor's dealer during the term of the warranty, the manufacturer, distributor, dealer, or a repairing agent shall make the necessary repairs to conform the vehicle to the express warranty.

(b) If during the term of the express warranty or within one year from the date of delivery of the motor vehicle to the original owner, whichever period terminates first, the manufacturer, distributor, dealer, or repairing agent is unable to conform the motor vehicle to an applicable express warranty after a reasonable number of attempts, the manufacturer or distributor shall accept the return of the nonconforming motor vehicle, (at the owners option) - legal to change and shall 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. A refund under this subsection shall be made to a lienholder of record, if any, and the owner, as their interests may appear.

(c) Before claiming a refund under (b) of this section, the owner shall give written notice by certified mail to the manufacturer

and its dealer or repairing agent at any time before 60 days have elapsed after the expiration of the express warranty or the one-year period after the date of delivery of the motor vehicle to the original owner, whichever period terminates first (1) stating that the vehicle has a nonconformity; (2) providing a reasonable description of the nonconformity; (3) stating that the manufacturer, distributor, dealer, or repairing agent has made a reasonable number of attempts to conform the vehicle; and (4) stating that the owner demands that he receive intends to claim a refund within 60 days after mailing the written notice. Within 30 days after receiving the notice required by this subsection the manufacturer may make a final attempt to conform the vehicle before a refund is made under (b) of this section.

(d) An owner may not receive a refund under this section if the manufacturer or distributor shows that the nonconformity complained of

(1) does not substantially impair either the use or the market value of the motor vehicle; or

(2) is the result of

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

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

(e) A presumption that a reasonable number of attempts have been made to conform a motor vehicle under an applicable express warranty is established if:

(1) the same nonconformity has been subject to repair three or more times by the manufacturer, distributor, dealer, or repairing agent during the term of the 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;

(2) the nonconformity makes the vehicle unsafe to operate and the same nonconformity has been subject to repair at least twice by the manufacturer, distributor, dealer, or repairing agent during the express warranty term or the one-year period referred to in (1) of this section, whichever period terminates first, but the nonconformity continues to exist; or

(3) the vehicle is out of service for repair for a total of 30 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 that are beyond the control of the manufacturer, distributor, dealer, or repairing agent is excluded from the 30-day time period referred to in this paragraph.

(f) A manufacturer whose vehicles are sold in the state through an authorized dealer shall provide its dealer or repairing agent with any part necessary to make a repair of a nonconformity covered under an express warranty, as soon as possible, without additional charge for freight or handling, if the part is not in the dealer's or agent's inventory when the nonconforming vehicle is brought to the dealer or repairing agent for repair.

(g) A manufacturer or distributor who fails to refund the full purchase price of a motor vehicle when there is a requirement to do so under this section is presumed to have committed an unfair trade practice under AS 45.50.471.

(h) A motor vehicle returned under (b) of this section may not be resold by the manufacturer or distributor in the state unless full disclosure of the reason for the return is made to the prospective buyer before the resale is concluded.

(i) 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. This subsection does not create a new cause of action against a dealer or repairing agent who sells or attempts to repair a motor vehicle found to be nonconforming under this section.

(j) A manufacturer or distributor of motor vehicles who authorizes the sale of the manufacturer's or distributor's motor vehicles in the state shall maintain authorized dealership 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.

(k) A manufacturer or distributor who accepts the return of a nonconforming motor vehicle under (b) of this section shall reimburse the owner for any reasonable cost incurred in shipping the vehicle to and from the nearest authorized facility for warranty service and repair of a nonconformity that causes the return of the vehicle.

(l) If a manufacturer or distributor has established an informal dispute settlement procedure that 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 notice required by (c) of this section, offers in writing to participate in an arbitration or mediation process with the owner and the arbitration or mediation decision is binding on the manufacturer or distributor but not on the owner, and if the informal dispute settlement or arbitration or mediation process is approved by the attorney general, the provisions of (b) of this section concerning refund or (k) of this section concerning shipping costs do not apply to an owner who has not first resorted to the informal dispute settlement procedure or arbitration or mediation process.

(m) In this section,

(1) "dealer" means a person who has obtained a franchise from, or is authorized by, a motor vehicle manufacturer to engage in the retail sale and warranty repair of the manufacturer's new motor vehicles in the state;

(2) "distributor" means a person who is authorized by a manufacturer to engage in the wholesale distribution of the manufacturer's new motor vehicles in the state;

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

(4) "full purchase price" means the total price paid for a motor vehicle by the original owner, including costs added to the manufacturer's suggested retail price, such as original registration fees, transportation fees, dealer preparation, dealer installed options, and accrued finance charges;

(5) "manufacturer" means a person who by labor transforms raw materials and component parts into motor vehicles for wholesale or retail sale;

(6) "motor vehicle" or "vehicle" means a land vehicle having four or more wheels, that is self-propelled by a motor, is normally used for personal, family, or household purposes, and is required to be registered under AS 28.10; but does not include a tractor, farm vehicle, or a vehicle designed primarily for off-road use;

(7) "nonconformity" means a defect or condition in a motor vehicle caused by a manufacturer, distributor, dealer or repairing agent that substantially impairs the use or market value of a vehicle;

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

(9) "reasonable allowance" means an amount attributable to an owner's use of a motor vehicle; a "reasonable allowance" 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~~ 10 years, plus an amount equal to the depreciation in value of the vehicle that is caused by

(A) any neglect or abuse by the owner; or

(B) body damage not caused by a nonconformity;

(10) "repairing agent" means a 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;

(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 value of a similar vehicle that does not have the nonconformity;

(12) "substantially impairs the use" means a nonconformity that prevents a motor vehicle from being operated or makes the vehicle unsafe to operate.

'Lemon law' needs strong support to keep its teeth

By MIKE MILLER

One of the most important consumer protection bills before the legislature this year would, if passed, force automobile manufacturers to repair or replace "lemons" sold to Alaska car purchasers.

This legislation is literally a matter of life and death. One Kenai Peninsula resident lost family members because of defects in a car he purchased as new. This is just one of the many actual and potential tragedies on our roads due to defective automobiles — vehicles supposedly brand new and just off the showroom floor.

According to the Consumer Protection Division of the Alaska Attorney General's Office, between 800 and 900 Alaskans purchase defective vehicles each year.

Most of us are car owners, and purchasing a new car is one of the major financial commitments we make. As sponsor of the House version of the "lemon law," I feel very strongly that automobile manufacturers have a responsibility to those who purchase their cars. Unfortunately, case after case shows that the manufacturers often turn a deaf ear to the owners of cars that spend most of their time in the shop.

The Senate version of the lemon bill, CSSB 286, has passed the Senate. The House Labor and Commerce Committee is currently conducting public hearings. I strongly encourage citizens to testify in favor of this legislation.

Unfortunately, powerful economic interest groups are currently trying to water the bill

down, so that business can go on as usual. That is the reason strong citizen response is so important right now.

The bill passed by the Senate gives strong protection to the purchaser of a defective car, while putting the responsibility on the manufacturer, not the Alaskan dealer. The bill requires the manufacturer to buy back defective vehicles if the defect is not repaired — under the terms of the manufacturer's own warranty — within a year after purchase. A car is considered a "lemon" if the same defect has been subject to repair three or more times within that year, or if the vehicle has been in the repair shop for a total of 30 or more business days during the year.

If these conditions are not met, the owner of the lemon vehicle then has the right to full refund of the purchase price of the car, including finance charges, less depreciation and any damage done while in the owner's possession.

Among other provisions the bill requires manufacturers to notify the buyers of their rights under this legislation. What could be more fair? This is already being done in Massachusetts and California, and there is no reason for Alaska not to protect its citizens in this manner.

Unfortunately, both dealers and manufacturers are attempting to take the teeth out of the bill.

Dealers want the bill amended to change the number of allowed repairs from three to four; to delete finance charges from the reimbursement requirement; and to place responsibility of notifying consumers of their warranty rights with the state, not the manufacturer.

Manufacturers also want the bill weakened. Currently, Alaska is the only state in the nation in which the car owner must pay air freight if parts must be ordered from Outside. The bill would close this loophole by requiring the manufacturer to pay air freight just as they do in the other 49 states. Manufacturers want this section of the bill deleted.

Manufacturers also want to delete the section that requires them to pay back finance charges to the lemon owner. The reason for requiring the repayment of financing interest charges is simple: according to the attorney general's testimony, 75 percent of all cars purchased in Alaska are financed. Many cars are financed through dealerships and manufacturer's subsidiaries. In fact, General Motors Acceptance Corporation finances 80 percent of all GM cars sold in the state. Dealers make money if a car is financed in this way. They certainly don't want to have to give it back, even if the car they sold is a lemon.

I also have some amendments that I would like to see, because in contrast with the opinions of the dealers and manufacturers, I don't think the bill goes far enough.

I think that purchasers of lemons also should be reimbursed for their out-of-pocket expenses for necessary car rental while their lemon is being repaired, and also for any towing charges resulting from warranted failures.

If the defect is one affecting the life safety of passengers, I think the dealer should be allowed only two attempts at repair instead of three before the refund process is triggered.

I strongly urge all Alaskans to call or write their legislators in support of this all-important consumer protection issue, as written or stronger. I can think of few issues this year that will affect public safety and well-being as much as the passage of this bill. Unfortunately, I am afraid that economic interests may be talking louder than the public interest.

Don't let the House Labor and Commerce Committee turn the lemon car bill into a law that is itself a weak lemon.

☐ A teleconference committee hearing on the "lemon law" bill will be held today at 8:15 a.m. Residents may participate by going to the Legislative Information Office at 624 West 6th Avenue.

☐ Mike Miller, D-Juneau, is minority leader in the Alaska House of Representatives and a six-term legislator.

By REP. MIKE MILLER

One of the most important consumer protection bills before the legislature this year would, if passed, force automobile manufacturers to repair or replace "lemons" sold to Alaskan car purchasers.

This legislation is literally a matter of life and death. One Kenai Peninsula resident lost family members because of defects in a car he purchased as new. This is just one of many actual and potential tragedies on our roads due to defective automobiles — vehicles supposedly brand new and just off the showroom floor.

According to the Consumer Protection Division of the Alaska Attorney General's Office, between 800 and 900 Alaskans purchase defective vehicles each year.

Most of us are car owners, and purchasing a new car is one of the major financial commitments we make. As sponsor of the House version of the "lemon bill," I feel very strongly that automobile manufacturers have a responsibility to those who purchase their cars. Unfortunately, case after case shows that the manufacturers often turn a deaf ear to the owners of the cars that spend most of their time in the shop.

CSSB 286, the Senate version of the lemon bill, was introduced by Sen. Bill Ray and has passed the Senate. The House Labor and Commerce Committee is currently conducting public hearings on this legislation. I strongly encourage citizens to testify in favor of this crucial legislation.

Unfortunately, powerful economic interest groups are currently trying to water the bill down, so that business can go on as usual. That is the reason strong citizen response is so important right now.

The bill passed by the Senate gives strong protection to the purchaser of a defective car, while putting the responsibility on the manufacturer, not the Alaskan dealer. The bill requires the manufacturer to buy back defective vehicles if the defect is not repaired — under the terms of the manaufacturer's own warranty — within a year after purchase. A car is considered a "lemon" if the same defect has been subject to repair three or more times within that year, or if the vehicle has been in the repair shop for a total of 30 or more business days during the year.

If these conditions are not met, the owner of the lemon vehicle then has the right to full refund of the purchase price of the car, including finance charges, less depreciation and any damage done while in the owner's possession.

Among other provisions, the bill requires manufacturers to notify the buyers of their rights under the legislation.

What could be more fair? This is already being done in Massachusetts and California, and there is no reason for Alaska not to protect its citizens in this manner.

Unfortunately, both dealers and manufacturers are attempting to take the teeth out of the bill.

Dealers want the bill amended to change the number of allowed repairs from three to four; to delete finance charges from the reimbursement requirement; and to place responsibility of notifying consumers of their warranty rights with the state, not the manufacturer.

Manufacturers also want the bill weakened. Currently, Alaska is the only state in the nation in which the car owner must pay air freight if parts must be ordered from outside. The bill would close this loophole by requiring the manaufacturer to pay air freight just as they do in the other 49 states. Manufacturers want this section of the bill deleted.

Manufacturers also want to delete the section that requires them to pay back finance charges to the lemon owner. The reason for requiring the repayment of financing interest charges is simple: According to the Attorney General's testimony, 75 percent of all cars purchased in Alaska are financed. Many cars are financed through dealerships and manufacturer's subsidiaries. In fact, General Motors Acceptance Corp. finances 80 percent of all GM cars sold in the state. Dealers make money if a car is financed in this way. They certainly don't want to have to give it back, even if the car they sold is a lemon.

I also have some amendments that I would like to see, because in contrast with the opinions of the dealers and manufacturers, I don't think the bill goes far enough.

I think that purchasers of lemons should also be reimbursed for their out-of-pocket expenses for necessary car rental while their lemon is being repaired, and also for any towing charges resulting from warranted failures.

If the defect is one affecting the life safety of passengers, I think the dealer should be allowed only two attempts at repair instead of three before the refund process triggers.

Your local Legislative Information Office can provide you with a copy of the bill, and with dates and times of upcoming committee hearings, the next one being Wednesday at 8:15 a.m. You can also call the L.I.O. to send a Public Opinion Message to your legislators in support of this all-important consumer protection issue, as written or stronger.

I can think of few issues this year that will affect public safety and wellbeing as much as the passage of this bill.

Unfortunately, I am afraid that economic interests may be talking louder than the public interest.

Don't let the House Labor and Commerce Committee turn the lemon car bill into a law that is itself a weak lemon!

Rep. Mike Miller of Juneau is House Democratic minority leader and a six-term veteran in the state House of Representatives.

Juneau Empire 4/17/84

from Connie Sipe
4/24 - hearing

Deleting finance charges from refund, continued--

Under the "Rule of 78s" which Alaska law says must be used to compute interest on early payment of a retail sales installment loan, here is an example of how a consumer will be penalized for the use of a lemon, if the finance charges are deleted from the bill.

Buyback of a lemon, used 12 out of 13 months:

Original cost of vehicle	$12,000.00
Maximum allowance for consumer use (deduction)	- 1,710.00
Buyback Refund	$10,290.00

If accrued finance charges are dropped from the bill, consumer's true purchase cost (without additional damages) is:

Down Payment	$ 2,000.00
12 payments (of 36)	3,350.04
Loan payoff	8,096.42
Total cost	$13,446.46
Less Buyback Refund	$10,290.00
Consumer's cost to use car 12 months:	$ 3,156.46

PRECEDENT:

Massachusetts, Delaware, and New Jersey specifically include finance charges in the refund. Six or seven more states allow refund of "full purchase price" plus a broad category of collateral charges (interest not specifically included or excluded).

APRIL 24, 1984

TO: JOHN

FROM: KEN

RE: CSSB 286 RELATING TO MOTOR VEHICLE WARRANTIES

THIS MORNING THE COMMITTEE IS AGAIN ADDRESSING COMMITTEE SUBSTITUTE FOR SENATE BILL 286 "RELATING TO MOTOR VEHICLE WARRANTIES. THE SUB-COMMITTEE APPOINTED TO REVIEW THIS LEGISLATION MET LAST THURSDAY. THE MEMBERS OF THAT SUB-COMMITTEE CONSIDERED AMENDMENTS TO THE BILL THAT WERE PROPOSED BY AUTOMOBILE MANUFACTURERS, AUTO DEALERS, CONSUMERS, AND BY OTHER MEMBERS OF THE LEGISLATIVE BODY. A HOUSE LABOR AND COMMERCE COMMITTEE SUBSTITUTE FOR SB 286 WAS ADOPTED BY THE SUB-COMMITTEE AND WILL BE PRESENTED TO THE FULL COMMITTEE THIS MORNING FOR CONSIDERATION. AT THIS TIME I WOULD LIKE ASK REP. FURNACE, WHO CHAIRED THE SUB-COMMITTEE, TO GO OVER THE CHANGES MADE IN THE PROPOSED COMMITTEE SUBSTITUTE.

FISCAL NOTE

Revision Date: May 4, 1984

REQUEST — HCSSB 286 (Labor & Commerce)
Bill/Resolution No.:
Title: "motor vehicle warranties."

Sponsor: Sen. Ray
Requestor: House Labor & Commerce
Date of Request: 5/4/84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director — Phone: 465-3672
Division: Administrative Services — Date: 5/4/84

Approved by Commissioner: Norman C. Gorsuch — Date: 5/4/84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HCSSB 286 (Labor & Commerce)

Revised
5/4/84

The latest version of SB 286, HCSSB 286 (Labor & Commerce), clarifies and defines the legal warranty rights and responsibilities between owners of new motor vehicles and the vehicle manufacturer, when a new vehicle is seriously defective. Subsection (g) of the bill makes the manufacturer's refusal or failure to fulfill its warranty duties an unfair trade practice under AS 45.50.471. AS 45.50.471, which is enforced by the Consumer Protection Section of the Department of Law, already covers warranties and repairs in a more general manner. The specific legal standards of the bill should not cause additional fiscal impact on Consumer Protection because the bill merely gives a better definition and therefore a better enforcement tool in the auto warranty area.

AS 45.50.471 also provides for the vehicle owner's private enforcement lawsuit, so some of the bill's impact will be in the private legal sector.

FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: CSSB 286 (Labor & Commerce)
Title: "motor vehicle warranties."
Sponsor: Sen. Rav
Requestor: Sen. Labor & Commerce
Date of Request: 2/20/84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Division Date: 2-21-84
Approved by Commissioner: Norman C. Gorsuch (Richard I. Pegues / FOR) Date: 2-21-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Fiscal Note

Fiscal Note
Analysis
CSSB 286 (Labor & Commerce)

February 21, 1984

The latest version of SB 286, ~~SCSHB~~ CSSB 286 (Labor & Commerce), clarifies and defines the legal warranty rights and responsibilities between owners of new motor vehicles and the vehicle manufacturer, when a new vehicle is seriously defective. Subsection (h) of the bill makes the manufacturer's refusal or failure to fulfill its warranty duties an unfair trade practice under AS 45.50.471. AS 45.50.471, which is enforced by the Consumer Protection Section of the Department of Law, already covers warranties and repairs in a more general manner. The specific legal standards of CSSB 286 should not cause additional fiscal impact on Consumer Protection because CSSB 286 merely gives a better definition and therefore a better enforcement tool in the auto warranty area.

AS 45.50.471 also provides for the vehicle owner's private enforcement lawsuit, so some of CSSB 286's impact will be in the private legal sector.

APRIL 18, 19[illegible]

TO: JOHN

FROM: KEN

RE: SB 286 RELATING TO MOTOR VEHICLE WARRANTIES

WE BEFORE US AGAIN TODAY SB 286 RELATING TO MOTOR VEHICLE WARRANTIES, BETTER KNOWN AS THE "LEMON LAW." I DO NOT BELIEVE THE SUB COMMITTEE APPOINTED AT OUR LAST HEARING HAS MET MET. I HAVE HOWEVER DISCUSSED THIS BILL AT GREAT LENGTH WITH THE APPOINTED CHAIRMAN OF THAT SUB COMMITTEE AND WITH THE ORIGINAL SPONSOR OF THE BILL, SENATOR RAY. IT IS MY INTENTION TODAY TO GO OVER THE CONCERNS THAT THE COMMITTEE MEMBERS HAVE WITH THIS LEGISLATION, AND FROM THIS WORK FORMULATE A COMMITTEE SUBSTITUTE THE MEMBERS CAN APPROVE AND ONE THAT CAN BE SUPPORTED BY BOTH THE MEMBERS OF THE HOUSE AND THE SENATE.

APRIL 10, 1984

TO: JOHN

FROM: KEN

RE: CSSB 286 RELATING TO MOTOR VEHICLE WARRANTIES

WE HAVE BEFORE US COMMITTEE SUBSTITUTE FOR SENATE BILL 286, RELATING TO MOTOR VEHICLE WARRANTIES, BETTER KNOWN AS THE "LEMON LAW". THE INTENTION OF THIS LEGISLATION IS TO PROVIDE PROTECTION, IN ALASKA STATUTES, FOR CONSUMERS WHO PURCHASE MOTOR VEHICLES THAT FAIL TO PERFORM TO MANUFACTURERS STANDARDS, AND FAIL TO PERFORM TO THOSE STANDARDS AFTER NUMEROUS REPAIR ATTEMPTS ARE MADE.

THE OTHER BODY OF THIS LEGISLATURE HAS SPENT MANY HOURS WORKING WITH REPRESENTATIVES OF AUTOMOBILE MANUFACTURERS, AUTO DEALERS, AND CONSUMER PROTECTION. MANY OF THE ROADBLOCKS WHICH PREVENTED MOVEMENT OF THIS LEGISLATION HAVE BEEN REMOVED. STILL, SOME SNAGS REMAIN. IT IS THE INTENTION OF THIS COMMITTEE WORK OUT THOSE PROBLEMS THAT REMAIN AND FINISH WORK ON THIS BILL IN AN EXPEDIENT MANNER.

QUESTIONS:

1. ON PAGE THREE LINE ONE IT STATES A VEHICLE IS SUBJECT TO REPAIR THREE OR MORE TIMES. WHY THREE TIMES WHEN THE MAJORITY OF LAWS OF THIS NATURE IN OTHER STATES REQUIRES A VEHICLE BE REPAIRED FOUR TIMES ?

2. WHY IS IT THE MANUFACTURER OR DEALER HAS BEEN GIVEN THE RESPONSIBILITY FOR EXPLAINING THE PROCEDURE FOR REFUND UNDER THIS SECTION ?

3. SHOULD A MANUFACTURER OR DEALER BE LIABLE FOR REFUND OF FINANCE CHARGES ON A MOTOR VEHICLE RETURNED UNDER THIS LAW ? WHY ? WHY NOT ?

4. (FOLLOW UP) WHY SHOULDN'T THE FINANCIAL INSTITUTION WHICH SUPPLIED FINANCING FOR A VEHICLE RETURNED TO THE MANUFACTURER BE RESPONSIBLE FOR PAYING BACK THIS FINANCE CHARGE ? WHY SHOULD THIS INSTITUTION BE EXEMPT ?

AMENDMENTS MADE TO CSSB 286 BY THE HOUSE LABOR AND COMMERCE COMMITTEE SUB-COMMITTEE

1. Page 1, Line 29:
Insert the word "certified" following "by".

2. Page 2, Line 1:
Insert the words "dealer or" following "its".

3. Page 2, Line 11:
Delete "30 days or more" and in its place insert "within 60 days".

4. Page 2, Line 12:
A new sentence is added to paragraph (4) which reads "Within 30 days after receiving the notice required by this subsection the manufacturer may make a final attempt to conform the vehicle before a refund is made under (b) of this section."

5. Page 2, Line 13:
Delete paragraph (d).

6. Page 2, Line 23:
Insert the words "dealer or" before the word "repairing".

7. Page 2, Line 26:
Insert the words "dealer or" before the word "repairing".

8. Page 3, Line 6:
A new paragraph (2) is added which reads " the nonconformity makes the vehicle unsafe to operate and the same nonconformity has been subject to repair at least twice by the manufacturer, distributor, dealer, or repairing agent during the express warranty term or the one-year period referred to in (1) of this section, whichever period terminates first, but the nonconformity continues to exist; or"

9. Page 3, Line 6:
The original paragraph (2) is re-titled (3) and is inserted following the new paragraph (2).

10. Page 3, Line 20:
Insert the word "full" following "the".

11. Page 3, Line 25:
Insert the word "or" following manufacturer, delete "or repairing agent" and insert the words "in the state" following distributor. Both commas on this line are also deleted.

12. Page 4, Line 4:
Delete "sold in the state shall maintain repair facilities or authorize repairing agents" and insert "who authorize the sale of the manufacturer's or distributor's motor vehicles in the state shall maintain authorized dealership facilities".

13. Page 5, Line 1:
Insert the word "warranty" following "and".

14. Page 6, Line 8:
Delete the words "includes a dealer or other person" and insert the words "means a person".

APRIL 24, 1984

TO: JOHN

FROM: KEN

RE: CSSB 286 RELATING TO MOTOR VEHICLE WARRANTIES

THIS MORNING THE COMMITTEE IS AGAIN ADDRESSING COMMITTEE SUBSTITUTE FOR SENATE BILL 286 "RELATING TO MOTOR VEHICLE WARRANTIES. THE SUB-COMMITTEE APPOINTED TO REVIEW THIS LEGISLATION MET LAST THURSDAY. THE MEMBERS OF THAT SUB-COMMITTEE CONSIDERED AMENDMENTS TO THE BILL THAT WERE PROPOSED BY AUTOMOBILE MANUFACTURERS, AUTO DEALERS, CONSUMERS, AND BY OTHER MEMBERS OF THE LEGISLATIVE BODY. A HOUSE LABOR AND COMMERCE COMMITTEE SUBSTITUTE FOR SB 286 WAS ADOPTED BY THE SUB-COMMITTEE AND WILL BE PRESENTED TO THE FULL COMMITTEE THIS MORNING FOR CONSIDERATION. AT THIS TIME I WOULD LIKE ASK REP. FURNACE, WHO CHAIRED THE SUB-COMMITTEE, TO GO OVER THE CHANGES MADE IN THE PROPOSED COMMITTEE SUBSTITUTE.

APRIL 10, 1984

TO: JOHN

FROM: KEN

RE: CSSB 286 RELATING TO MOTOR VEHICLE WARRANTIES

#1

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STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

February 28, 1984

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

Re: Committee Substitute for
House Bill 286

Dear Senator Eliason:

My testimony before this Committee this day can be concise and to the point: namely, that on behalf of the consuming public in the State of Alaska, I urge you to now pass out, with "do-pass" recommendations, the Committee Substitute for House Bill 286, known as the "Lemon Law".

I thank the Committee, and especially the Committee Chair, for the significant effort and time which has been spent studying this bill. It is worthy of note how much time this Committee gave to the important task of hearing public testimony, from industry representatives and from consumers all over the state.

In the final draft of this Committee Substitute it is also clear that the Committee has succeeded in its endeavor to refine the concepts of this bill to Alaskan needs; both the needs of our consumers and of our automobile dealers. The Committee has made reasonable accommodation to the interests of the manufacturers, attempting at all times to balance the interests of consumers, dealers and manufacturers. The balance reflected in this bill will further the underlying intent of this bill, to provide a strong new protection to the consumers of our State when they make the second largest financial investment of their lives, the purchase of a new automobile.

Nationwide, forty states are expected to have lemon laws by the end of the 1984 legislative sessions. Alaskans need this bill passed into law now. I would urge the Committee and all members of the Legislature to remember that should this bill be delayed from passage for another year, over 20,000 Alaskan consumers will purchase new vehicles in this state, without the much needed protections offered by the Lemon Law. Therefore, I urge the Committee to pass this bill out, and for each Committee member to voice strong support for its passage on the floor of the Senate.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:vrb

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*

March 30, 1984

The Honorable John Cowdery
Chairman, House Labor & Commerce Committee
Pouch V, Room 210, Behrends Building
Juneau AK 99811

Re: Senate Bill 286, dated 2/29/84

#3

Dear Representative Cowdery:

The Motor Vehicle Manufacturers Association would like to advise the House Labor & Commerce Committee that we are in opposition to SB 286. We do not find ourselves opposing the general concept of the "lemon car" provisions in the bill which provides for a mechanism by which the consumer can have a problem with his vehicle remedied in an expeditious manner. We do, however, find ourselves in opposition with sections of the bill which relate to the internal industry relationships between the dealers and manufacturers.

In particular, I am referring to page 3, section (g) which basically centers around the possibility of altering the industry-related Sales and Service Agreement between the manufacturer and dealer. Under this paragraph as written, a dealer would be encouraged to invest in little or no parts inventory and any parts could be ordered VIP air freight as they are needed. Obviously the shipping expense would end up in the new vehicle purchase price in Alaska.

This will not provide for a better "lemon law" statute in Alaska. The manufacturer does have the responsibility and liability under the proposed statute for buying the car back if the four times or 30 days provision were not met for the same nonconforming defect, but having the Legislature dictate in statute the contractual relationships goes far beyond the intent of this type of legislation.

In addition, section (j) on page 4, for all intents and purposes exempts the dealer or repairing agent from any responsibility for repairs under the express warranty. We feel this section either should be deleted, or additional language inserted. The manufacturer would be held totally responsible for the actions of the repairer or dealer. The manufacturer might as well do his own repairing rather than trust an independent franchiser if this language were to be left in the statute. The suggested

language could include, on page 4, line 3, after the word "section:"

> "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."

These, along with several other areas, are provisions in the bill with which we have serious concerns. It is our understanding there will be further hearings on this issue and some proposed amendments will be considered from the committee and others. We would like to keep in touch with you and participate in these future hearings in Juneau.

Thank you very much for your consideration and we look forward to working with the Committee on this issue.

Sincerely,

James W. Austin
Public Affairs Manager
Pacific Coast Region

JWA/eb

Enclosure: SB 286, dated 2/29/84

cc: Members, House Labor & Commerce Committee

Lemon law: Automakers feel squeezed by Senate plan

By K.C. MOON
Daily News reporter

Legislators agree chances are good that Alaska will have a so-called "lemon law" this year, but some fear the bite of the consumer bill will be compromised before it becomes law.

"Lemon" is slang for a car that would have been better off not built. Attempts at repair are fruitless.

No one — not even the most quality-conscious carmaker — denies such miscarriages occasionally end up in the hands of a not-so-proud owner.

If SB 286 becomes law, auto manufacturers will be forced to give refunds to customers who unwittingly bought a new car gone sour.

Under the bill, a new car is labeled a lemon if it has spent 30 or more business days in the shop for repair of serious defects, or if mechanics are unable to fix the same defect after three tries.

The law would cover only those cars under warranty or less than a year old, whichever period ends first.

Those definitions are part of the bill passed unanimously last month by the Senate, which for months worked to reach a compromise between consumer and auto interests.

Now the bill faces more molding in the House Labor and Commerce Committee.

The prime issue isn't whether a refund should be issued for lemon cars, but how much of a refund.

The Senate decided a lemon buyer should be able to get back the sale price of the car — plus the expense of financing the purchase.

Auto manufacturers, represented by lobbyist Jim Austin of the Motor Vehicle Manufacturers Association, do not feel that would be fair.

"I've never seen a situation where people don't have to pay for the use of money," Austin said. A refund including interest charges would mean a consumer paid nothing to borrow the money to buy a car, he said.

Henry Pratt, lobbyist for the newly formed Alaska Auto Dealers Association, also would like to scratch finance charges from refunds. "When you buy something on credit from Sears and turn it in for a refund, they don't give you back the interest you paid on it."

The consumer protection section of the Attorney General's office, which has vigorously pushed the bill, maintains Alaska's lemon law would be gutless if finance charges were not included in a lemon car refund.

Scotty Dawkins, auto investigator for the office, said, "If interest costs are not refunded, we'd just as soon not have the bill."

He said a consumer who financed the purchase of a $12,000 lemon car would lose more than $3,000 if his interest payment were not refunded. "How's that consumer supposed to turn around and buy another car to replace the lemon?" he asked.

Dawkins also said about 80 percent of new cars sold in Alaska are financed by automakers' own financing programs. "If the auto interests have their way, they would still make money by selling lemons to people."

Rep. Mike Miller, D-Juneau, the sponsor of the origional lemon-law bill, said deletion of interest for the price refunded would be "debilitating."

Sen. Richard Eliason, whose Senate Labor and Commerce Committee worked much of the compromises into the bill, doubts the Senate would accept a law without privisions for a full refund. "We wanted a strong consumer advocacy bill."

Rep. John Cowdery, chairman of the House Labor and Commerce Committee which now is considering the bill, said he has no philosophical objection to returning interest.

But he added: "If we decide to return (interest), I can forsee a tie-up as to how much interest we should refund. And I want this bill to make it through."

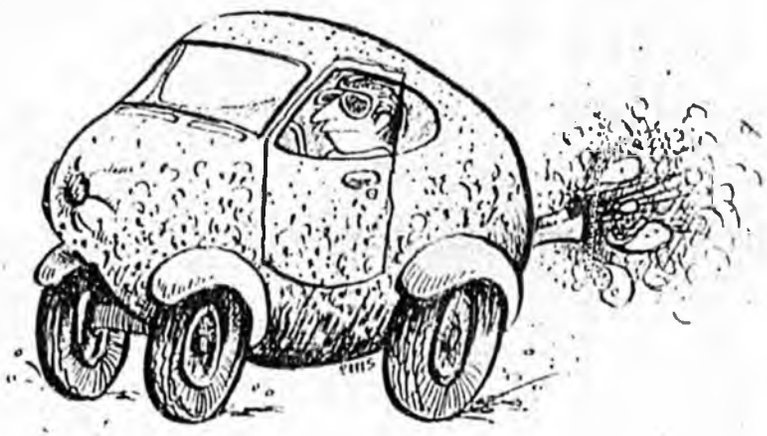
Manufacturers and dealers are at odds over a provision that would require automakers to air-freight parts to Alaska dealers for warranty-related repairs.

It was Alaska dealers who asked legislators to add the air-freight requirement. They say without the provision they would have little leverage to convince automakers to expedite shipment of parts.

Austin said, "This is something to be worked out between us and the dealers. It doesn't have to involve the legislature.

"We'd have to air-freight the parts anyway," he said. "The 30-day repair clock is running against us, not the dealers. We're the ones who have to sign the refund check."

Dawkins said the air-freight requirement should stay. "Most manufacturers air-freight parts to every other state in the union, including Hawaii," he said. "I can see no reason Alaskans shouldn't get the same treatment."



Another part of the bill under dispute is the three repair-attempt cutoff for defining a lemon. Auto interests maintain that should be increased to four attempts.

Auto interests also oppose a requirement that they notify car buyers of rights under the lemon law.

Cowdery's committee now is faced with the challenge of completing a compromise agreeable to three interests — that of consumers, dealers and automakers.

"I'd expect we'll pass it out of committee within 10 days," he said. "But I want to make sure it's in a form where it won't get tied up on down the line."

If Cowdery's committee does pass the bill out, it would go to House Rules Committee for scheduling a vote on the House floor.

If the House amends the bill, the law would be considered by a joint conference committee of House and Senate members before going to the governor's desk.

Perhaps the last public hearing on the bill will be held Wednesday morning by House Labor and Commerce.

Automakers, dealers disagree on 'lemon law' shipping provision

By K.C. MOON
Daily News reporter

4/11/84

Alaska auto dealers are at odds with carmakers over who should pay for fast shipping of parts needed for warranty repair work.

The conflict surfaced Tuesday during a statewide teleconference on a proposed "lemon law." The law would require auto manufacturers to buy back new cars that defy repair.

The bill is the subject of a series of hearings by the House Labor and Commerce Committee. A provision of it would force automakers to pay air freight on parts dealers need to fix a car under warranty.

Jim Austin, lobbyist for the Motor Vehicle Manufacturers Association, asked the committee to delete the provision. He said the air freight issue should be worked out between the dealers and manufacturers — not by the legislature.

Alaska dealers want the provision in the bill. Without it, they say, dealers or their customers would be forced to pay the extra costs of air freight, or wait two to six weeks for land or sea shipment.

Under the bill, a new car that spends six weeks of its first year in the shop is a "lemon" and must be bought back by the manufacturer.

The bill unanimously passed the Senate last month.

The arguments by auto interests took up most of the two-hour committee hearing. Only one consumer group testified before the hearing ended. It will continue today.

One Anchorage car dealer said that without the air freight requirement, automakers would not have to expedite the shipment of parts. If a lack of parts lengthened repair time, it could cause the buy-back provision to be invoked.

If forced to buy back a lemon, manufacturers and dealers said, they should not have to refund interest paid by consumers who borrowed money to make the purchase. They said they should only have to repay the sale price.

Consumer interests, led by the consumer protection section of the attorney general's office, disagreed. They say interest charges are a big portion of car payments in the first year and should be included in the refund.

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

February 28, 1984

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

Re: Committee Substitute for
House Bill 286

Dear Senator Eliason:

My testimony before this Committee this day can be concise and to the point: namely, that on behalf of the consuming public in the State of Alaska, I urge you to now pass out, with "do-pass" recommendations, the Committee Substitute for House Bill 286, known as the "Lemon Law".

I thank the Committee, and especially the Committee Chair, for the significant effort and time which has been spent studying this bill. It is worthy of note how much time this Committee gave to the important task of hearing public testimony, from industry representatives and from consumers all over the state.

In the final draft of this Committee Substitute it is also clear that the Committee has succeeded in its endeavor to refine the concepts of this bill to Alaskan needs; both the needs of our consumers and of our automobile dealers. The Committee has made reasonable accommodation to the interests of the manufacturers, attempting at all times to balance the interests of consumers, dealers and manufacturers. The balance reflected in thi bill will further the underlying intent of this bill, tc provide a strong new protection to the consumers of our State when they make the second largest financial investment of their lives, the purchase of a new automobile.

Nationwide, forty states are expected to have lemon laws by the end of the 1984 legislative sessions. Alaskans need this bill passed into law now. I would urge the Committee and all members of the Legislature to remember that should this bill be delayed from passage for another year, over 20,000 Alaskan consumers will purchase new vehicles in this state, without the much needed protections offered by the Lemon Law. Therefore, I urge the Committee to pass this bill out, and for each Committee member to voice strong support for its passage on the floor of the Senate.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:vrb

FORD MERCURY LINCOLN

SEEKINS FORD-LINCOLN-MERCURY, INC.

1625 Old Steese Highway Telephone (907) 452-1991
FAIRBANKS, ALASKA 99701

April 3, 1984

John Ringstad
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear John:

#2

The Fairbanks dealers of the Alaska Automobile Dealers Association recently met and considered Senate Bill No. 286, as passed through the Labor and Commerce Committee and adopted by the entire Senate (The Lemon Law).

Although we had opportunity to give some input into the Committee we still have changes we would like made before it passes the House. Since you are on the Labor and Commerce Committee, I have been deligated to explain to you what changes we would like to see and our supporting rationale on an item by item basis. I hope to be able to do so in such a way that it's obvious we are not trying to water down the bill but rather to make it even better.

In order to show you exactly what we suggest, I have prepared a draft, enclosed with this letter, and also have enclosed a marked copy of the Senate Bill showing those areas we have addressed.

We specifically object to any statement or inference which might mislead anyone into believing that dealerships are "agents" of manufacturers or distributors. We absolutely are not "agents" of the manufacturer or distributor. We have sales and service agreements (contracts) with manufacturers or distributors which specifically outline our respective relationships. I have enclosed a copy of page 14 of the Ford Sales and Service Agreement under which this dealership operates. Notice that paragraph 14 specifically addresses this concern and absolutely supports our arguement. Therefore, we feel it necessary to make a distinct difference between "dealers" and "repairing agents", which will be evident in our suggested changes.

With that out of the way, let me address each concern on an item by item basis.

Page 2, line 1...add "<u>dealer or</u>" just prior to "repairing agent". This request results from our earlier discussion.

Page 2, lines 11 & 12...remove (30 days or more) and add "within 30 days". We feel there should be a time certain under which this process should begin. In it's present form, the customer could wait for months or even years before claiming the refund. To leave it open-ended would be unfair to the manufacturer.

Page 2, lines 13, 14. 15 & 16...Delete this entire section. We can not find any other industry, in any other state, which is required to give the purchasers of it's merchandise a notice that explains how that buyer can bring legal action against it.

Page 2, line 23...add "dealer or" just prior to "repairing agent".

Page 2, line 25...add "dealer or" just prior to "repairing agent".

Page 3, line 1...delete (three) and substitute "four". This is the number used in ALL other similar legislation nation-wide.

Page 3, line 25...delete (or repairing agent) and add, in it's place, "in the state". We do not believe "repairing agents" should be in the sales business and we would just as soon see the vehicle leave the state.

Page 4, lines 4 & 5...delete (sold in the state shall maintain repair facilities or authorize repairing agents) and replace it with "who authorizes the sale of their motor vehicles in the state shall maintain authorized dealership facilities". First, we don't feel any manufacturer or distributor should be required by law to supply repair facilities in the state, either through dealerships or repairing agents, unless their vehicles are authorized for sale in the state. Secondly, we don't want legislation which would infer that any manufacturer or distributor was either required by or allowed by state law to step around the normal dealer/manufacturer relationship and maintain their own repair facilities in Alaska, either in lieu of or in addition to those which we are required to maintain in order to be authorized dealers. We feel the wording presently in the Senate version would open that door.

Page 4, line 28...Insert "or entity" between "person" and "who". Most of us operate as corporations and would feel

more comfortable with this insertion.

Page 5, line 1...Insert "warranty" just prior to "repair". This is for obvious reasons since this is a bill referencing just that, warranty repair.

Page 5, line 3...Insert "or entity" between "person" and "who". Same reasoning as above.

Page 5, line 12...Delete (and accrued finance charges;). The owner has enjoyed the use of the vehicle for a specific time, chose to finance the vehicle rather than pay in full for it at the time of purchase, has probably written these charges off on his income taxes and, for these and other sound reasons, we feel would not fairly expect to have them refunded.

Page 5, line 13...Insert "or entity" between "person" and "who".

Page 6, line 3...Substitute "five" for (seven). We believe a seven year straight line depreciation unfairly burdens the manufacturer. Standard depreciation within the industry for the first year of ownership is 2.5% per month. We feel five years on a straight line basis is more than fair to the owner and urge you to adopt this shorter period of time.

Page 6, line 8...Delete (includes a dealer or other person) and substitute "means a person or entity, other than a dealer,". This change in definition helps accomplish the differentiation between dealers and repairing agents and is consistent with the contractual relationships we have with our manufacturers or distributors.

Additionally, we have, in our enclosed draft, re-arranged the definition section in a more logical and sequential order. This was done simply for easier comparison in our local discussions but may be something which you may wish to consider.

The one portion we do NOT want changed in any manner is section (g) on page 3. We definitely believe this section alone will do much to mitigate current problems experienced by Fairbanks dealerships in administering warranty repairs and will avoid many future problems. This section will do the most for the owner by keeping us dealers from being caught between the manufacturers or distributors and the owners.

With these changes, we feel we can whole-heartedly support this bill as a dealer body.

We look foreward to your positive actions regarding our requests and carrying this legislation into action. The Fairbanks dealer body is willing to discuss any portion of this legislation with you at any time and would like to do so if you are in Fairbanks any time in the near future.

I am sending an identical letter to Niilo Koponen since he is on the committee with you.

Thank you for your time and consideration.

Sincerely,

SEEKINS FORD-LINCOLN-MERCURY, INC.

Ralph C. Seekins
President

cc: Fairbanks Dealer Body

enclosures

April 4, 1984

The Honorable John J. Cowdery
Chairman, House Labor & Commerce Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear John,

Regarding our phone conversation of April 2 regarding Senate Bill 286 offered on February 29, the following are requested changes that the Dealer's Association would like to see. I feel confident that with these changes the Association would give you their full support for the passage of the bill.

#4

* Page 1 line 12 should read "it and the owner of the vehicle reports in writing the defect or condition to the....."

* Page 2 should have lines 13, 14, 15 & 16 deleted in their entirety.

* Page 3 line 1 should read "(1) the same nonconformity has been subject to repair four....."

* Page 4 line 23 should read "of (b) of this section concerning refund or (1) of this section..."

* Page 5 line 11 should read "fees, transportation fees, dealer preparation, and dealer installed options." PLEASE NOTE WE DELETED THE PHRASE "and accrued finance charges;"

* Page 5 line 20 we would like to change to read "tractor, farm vehicle, motor home or a vehicle designed....." (John, we're open on this one.)

We have indicated any word or phrase changes by underlining for clarification. John, if you need any additional information or clarification I would be pleased to discuss it with you personally, or you may wish to speak with Doug Hulen or Henry Pratt. I'm sure Henry will be in touch with you in the near future.

Appreciate any assistance you may provide.

Sincerely,
UNIVERSAL MOTORS, INC.

Richard L. Silberer
President

RLS:db

821 East 5th Avenue • Anchorage, Alaska 99501 • (907) 279-8506

1

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) - "resonable 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.

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3500

January 31, 1984

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

Re: Committee Substitute for
SB 286 "Lemon Law"

Dear Senator Eliason:

The Office of the Attorney General takes the position that it supports and urges the Legislature to adopt the proposed "Lemon Law" before it.

My decision to support this bill is based on the realities of the automotive industry. Today a consumer's purchase of an automobile is the second largest purchase, next to a home, made throughout the consumer's lifetime. In Alaska, where consumers pay the highest retail prices for automobiles of anywhere in the United States, new, basic automobile prices start at $7,000, and quickly mount to $12,000 or $15,000. Consumers reasonably expect to be able to use and enjoy these automobiles for five to ten years after their purchase, and if sold earlier, to be able to recoup a reasonable portion of their purchase price upon resale.

The Lemon Law before you merely addresses how the manufacturers are required to perform upon the express warranties that they themselves offer to consumers as part of the inducement to buy their vehicles. The mass-marketing of automobiles puts heavy emphasis on warranties. We can estimate that the cost of a new car warranty, which is rolled into the sale price of a vehicle, is as much as $500 to $1,000 on every new car.

Across the nation, numerous states have recognized the need to address this problem of consumer warranties. Within a year after the first lemon laws were passed in Connecticut and California, 16 states had passed similar statutes. By the end of this legislative session there may be 25 states with lemon laws. This indicates national recognition of a problem, namely, con-

sumers' inability to obtain adequate redress under the warranties that they purchase as part of their vehicles, and a need to restore consumer confidence and manufacturer responsiveness in the new car market.

I support the "lemon law," not only for these general reasons, but as a fitting answer to problems in the Alaskan new car market. For many Alaskans, as soon as they take a new vehicle, wherever purchased, more than a few miles from the four major cities, they have rendered the warranty portion of their vehicle purchase useless. Very few Alaskans living outside major cities ever receive any benefit for the warranties that they purchase.

Even those Alaskans who can get their ailing vehicle to a manufacturer's authorized repair facility (dealership) are often met with inordinate delays due to the nonavailability of parts, the shortage of repair personnel or facilities, and at times, additional expenses incurred through the need to supply their own alternative transportation while their vehicle is being repaired or parts are being shipped.

Alaskans have more reason to complain against the manufacturers than anyone else in the country, since it is apparent through the experience of the staff in my consumer protection office, that the major manufacturers consistently discriminate against Alaskan consumers and dealers. They provide less backup to our dealers and service to our customers on their warranties than to residents of other states. This discriminatory treatment is especially grievous in light of the huge volume of sales made by these manufacturers in our state. This type of discrimination by manufacturers against Alaskans can be seen in these facts:

A. Despite the fact that many of the highest volume-selling dealerships in the country are in Alaska, until a few months ago not a single manufacturer authorized even one service representative employee to be stationed in the state of Alaska, nor travel here more than once every six to eight weeks in order for a service representative to review consumer warranty disputes and to authorize major warranty repairs. (Without this authorization dealers cannot satisfy their own customers, or else run the risk of not being compensated for their warranty work.) These same manufacturers have numerous employees in the state to deal with the financing and selling of these vehicles but none to deal with the warranties.

B. Several of the major manufacturers are willing to airfreight, at their own expense, necessary parts for warranty repairs to 49 of the 50 states including Hawaii, when the dealer does not have a part readily available. The one state where the manufacturer insists that the consumer must pay to have a part airfreighted if he/she does not wish to wait for surface freight is Alaska.

C. Despite the fact that many of the vehicles sold to Alaskans are used in remote parts of the state where the residents do not have access to the few dealerships, and despite the fact that the manufacturers have programs on their corporate books for designating independent repair shops as authorized repair facilities, as they do all over Europe, no manufacturer has ever authorized a shop anywhere in Alaska to be designated as an authorized repair facility for those consumers who cannot reach a dealership.

D. Many of our dealerships have often complained that the manufacturer does not adequately reimburse the dealers for their labor on doing warranty work, refusing to take into account the higher cost of doing business in Alaska and therefore a need for a higher reimbursement level.

E. In many other parts of the country manufacturers have set up "Autolines" or other types of consumer complaint handling programs, but despite the fact that several major manufacturers state in their warranty booklets that such programs are available to Alaskans, to this date not a single manufacturer has set up a consumer complaint handling program in the state of Alaska.

I wish to emphasize that I understand that our Alaskan dealers are often caught in the middle between their unhappy consumers and their manufacturers. We know that the Alaskan dealers do not always sell all the cars that they are being asked to service, and we also understand that dealers do not wish to jeopardize their relationship with the manufacturer. However, we know that every franchise dealership takes on both the benefits inherent therein and the burdens, such as the requirement to honor the manufacturer's national warranties for all vehicles which come to their facility. In addition, we know that if prodding a recalcitrant manufacturer to fix a problem car is difficult for the dealer, that difficulty is magnified ten-fold for the consumer. This bill should help our local dealers, not hurt them, as it should help them to better service and satisfy their own customers.

It is my understanding that the National Automobile Manufacturers Association does not oppose the passage of a lemon law in our state and in other states. Many consumers appeared last year at public teleconferences to testify to the need for a lemon law. Alaskan consumers continue to have numerous problems with manufacturers. For example, since late December when a Federal Trade Commission consent judgment with General Motors over several major defects was settled, over 350 Alaskan consumers have contacted my consumer protection office to say that they have suffered economic harm due to one of these defects and would like to seek redress.

The concept of a lemon law is one my office supports because whether or not we have lemon law statutes, consumers and their attorneys are bringing "lemon" lawsuits against the manufacturers over what they allege to be defective autos. With the lemon law in place, the manufacturers, the consumers, and the courts have clear standards to apply as to what is a "lemon", what 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. A lemon law clearly places the obligation to provide a refund or replacement upon the manufacturer, but only based upon the express warranties written by the manufacturer itself.

A lemon law actually saves the public time and money, as consumers are required to go to informal mediation and arbitration procedures before they run into court. Statistics around the country show that 95 to 98 percent of the cases get settled at these levels and will never reach the courts. The clear guidelines of the lemon law provide a backdrop for the settlement and arbitration proceedings. Without these guidelines, consumer willingness to settle in mediation or arbitration would be greatly diminished, as the consumer and manufacturer would both jockey for the "best" position.

Eighteen other states have enacted a lemon law. It is clear that Alaskans pay more than any other residents in the United States for their new automobiles, receive in many instances less value from their warranties, and are probably most deserving of a well thought out lemon law establishing clearly their rights and responsibilities vis-a-vis the manufacturer.

30225

Therefore I urge this committee and the rest of the Legislature to duly pass out the lemon law.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:CJS:vrb

BILL SHEFFIELD, GOVERNOR

REPLY TO
XX 1031 W. 4th SUITE 110
ANCHORAGE, ALASKA 99501
PHONE (907) 279-0428

1st NATIONAL CENTER
100 CUSHMAN SUITE 400
FAIRBANKS, ALASKA 99701
PHONE (907) 456-8588

S S FULLER BLDG
4th & HARRIS, SUITE 214
POUCH K
JUNEAU, ALASKA 99811
PHONE (907) 465-3692

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

DEPARTMENT 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.

(Changed! IMPORTANT) "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,), 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
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

THE NEW LEMON LAWS—DO THEY WORK?

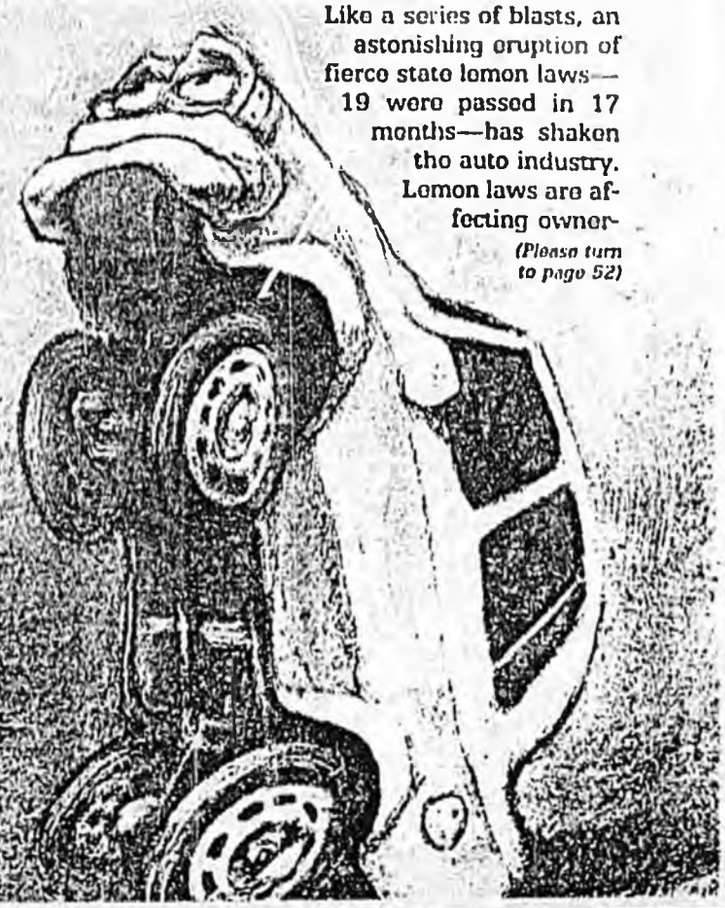
New laws in 19 states promise a fair shake for new car buyers. They are a last-resort alternative to lawsuits.

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 boltholes 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 know 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)

(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 warranteed 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 unbelievable: 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.
- 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 300—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)

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 40.) 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 motorcyles 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.

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-established 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 get 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. **PM**

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.

Lemon goes back to Buick

By K.C. MOON
Daily News reporter

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/Fran 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 coporations 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 Anchorge 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.

Ketchikan 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. Berstein & 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."

Dealers	Manufacturers	Consumers
ll refund and not replacement Vehicle was at dealer's guest (sec. b) itten notice to dealer at dealer's guest (c) anufacturers must provide rranty parts to dealers as on as possible (sec g) 'arified that dealers do not ve any new legal liability for "lemon" (sec j) ropped service repair facility each population center of 500 as they didn't want to courage new dealerships ealer wanted definition to be ited to franchise dealers (sec n) otorcycles, scooters, ATV excluded ec n) rict def. of "nonconformity" at lers request (sec. n) pairing agent defined to make anufacturer liable for agents thorized warranty work (so dealer held accountable for agent's stakes (sec n)	- Consumer must give written notice to manufacturer at request of manufacturer. (c) - Thirty business days to repair nonconformity was at manufacturer's request (some have 15 days) (Sec f) - Added "nonconformity" parts and as "reasonably" possible to accommodate some of manufacturers concern (sec g) - Dropped service repair facility in each population center of 7,500 (was part sec k) - Manufacturer can require consumer to go to arbitration first before qualifying for a refund (sec m) - Reasonable allowance also to include depreciation due to abuse by owner (at dealers request) (sec. n) - After required consumer notice (sec c) manufacturer has 30 days to make final effort to negotiate settlement with consumer - All consumer warranties are not extended by time in shop for repair	- Manufacturer must make necessary repairs under warranty (sec a) - If a car is a "lemon," manufacturer must refund $ (sec b) - Explanatory to consumer re: lemon law (d) - A full disclosure of a "lemon" must be made when resold (sec i) - Manufacturer must pay transportation cost to repair facilities if it is proven a lemon. (sec l) - Full purchase price includes "finance charges" (Conn. putting in revision to include finance charges (sec n)

MAY 4, 1984

TO: JOHN

FROM: KEN

RE: CSSB 286 RELATING TO MOTOR VEHICLE WARRANTIES

COMMITTEE SUBSTITUTE FOR SENATE BILL 286 IS BEFORE THE COMMITTEE AGAIN THIS MORNING FOR I EXPECT WILL BE THE LAST TIME. AT OUR LAST HEARING ON THIS LEGISLATION, THE COMMITTEE ADOPTED A HOUSE SUBSTITUTE FOR THE SENATE VERSION OF THE BILL. AFTER CAREFUL CONSIDERATION OF THE CHANGES MADE IN THE BILL BY THE APPOINTED SUB-COMMITTEE, I HAVE ASKED LEGAL SERVICES TO PROVIDE A SECOND COMMITTEE SUBSTITUTE WHICH MAKES ONLY TWO CHANGES. SUBSECTION (2) OF PARAGRAPH (e) HAS BEEN DELETED AND THE NUMBER OF YEARS USED IN THE STRAIGHT LINE DEPRECIATION METHOD HAS AGAIN BEEN SET AT 7 YEARS. THE LANGUAGE IN THE PARAGRAPH TWO WAS TOO VAGUE AND DID NOT CLEARLY DEFINE "UNSAFE TO OPERATE." I FELT IT MAY CAUSE PROBLEMS IN THE FUTURE. AFTER CONSIDERING THE DATA AVAILABLE, I BELIEVE THERE ARE VERY FEW CARS IN ALASKA THAT HAVE A LIFE SPAN OF TEN YEARS. I FEEL THE 7 YEAR FIGURE IS MORE FAIR. I WOULD ENTERTAIN MOTIONS TO ADOPT THIS COMMITTEE SUBSTITUTE AND MOVE THE BILL ON TO ITS NEXT COMMITTEE OF REFERAL.

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) - "resonable 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.

Anchorage Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Gerald E. Grilly
Publisher

Howard Weaver
Managing Editor

Steve Lindbeck, Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

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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 equasion, 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

Anchorage Daily News Wednesday, February 15, 1984

1983 sales of $74.58 billion also an alltime high

GM earns a record $3.73 billion

By Kathleen Hamilton
Financial Editor

When General Motors reported its 1983 financial results last week, it was hard to find a performance indicator that didn't set a record.

Sales of $74.58 billion were a record. Fourth-quarter sales of $20.82 billion were an any-quarter high. Profits for both 1983 ($3.73 billion) and the quarter ($1.30 billion) were records. Income per share was a fourth-quarter record.

GM of Canada and GMAC both set revenue and income records. And GM's results no doubt led the U. S. auto industry to a record profit total for 1983.

GM's earnings of $3.73 billion ($11.48 a share) were nearly four times 1982's $963 million ($3.09 a share).

Sales of $74.58 billion were 24 percent more than 1982's $60.03 billion. Unit sales also were up 24 percent — from 6.24 million to 7.77 million.

The old GM profits record was set in 1978, when GM made $3.51 billion — $222 million less than last year — but sold 9.48 million vehicles, 18 percent more than last year's 7.77 million.

Last year's sales value, meanwhile, was 18 percent higher than in 1978, and 12 percent higher than the old GM record of $66.31 billion, set in 1979.

"It's certainly true that we did get a lift from the rising economy, but our improved operating performance was the key," GM Chairman Roger B. Smith said in announcing the 1983 results in a speech at the National Press Club in Washington.

"For example, if we had operated in 1983 at our 1983 volume but at our 1978 performance rates, we would have barely broken even last year," he said.

Smith said GM still "has a long way to go" toward a record performance if its profits are adjusted for inflation.

GM's before-tax income skyrocketed from $22.8 million in 1982 to $4.97 billion last year — a far larger increase than the hefty after-tax increase — because GM paid out 45 percent of its income in taxes last year. In 1982, it garnered a tax credit of $252.2 million. GMAC contributions to GM income aren't included in the pre-tax figures.

In addition, GM said a new accounting procedure for foreign currency translations reduced its 1983 profits $422.5 million.

Almost all the pre-tax earnings increase — $4.22 billion worth — was attributable to domestic income increases, according to the GM figures.

After-tax income generated in the U. S. more than tripled, from $1.08 billion to $3.47 billion, on a sales gain of only 31 percent (from $50.32 billion to $66.16 billion).

Unit sales in the U. S. rose 27 percent, from 4.04 million to 5.12 million.

• In Canada, net income of $592.3 million was a $626 million turnaround from money-losing 1982.

(Those are the consolidated figures reported by GM in Detroit, and don't exactly match the figures issued from GM of Canada because of exchange rates and adjustments for cross-border shipments. GM of Canada reported record sales of $13.8 billion (Canadian) and net income of $675.6 million.)

Results from Europe weren't so rosy. Sales rose 8 percent to $7.97 billion, and GM set a record in market penetration, but it turned in a loss of $228.3 million. The company attributed most of the loss to the change in accounting procedures, but the competitive European market has led all makers to cut their margins there. Using the old accounting methods, GM broke even in Europe in 1982, with profits of $6.2 million.

GM also lost money in 1983 in Latin America ($15 million) and the Australia/Oceania region.

GMAC set another income record, this time $1 billion, compared with its old record of $688 million, in 1982.

GM added more than $3 billion to its cash pot during the year, ending 1983 with a stunning $6.22 billion in cash and marketable securities.

It spent $2.60 billion on R&D, up 20 percent from 1982's $2.18 billion.

Capital spending of $4.01 billion was 35 percent less than 1982's $6.21 billion. Capital spending is expected to be about $6 billion this year, GM said.

• GM contributed $180 million to its executive bonus plan, the first contribution in four years and the maximum allowable under the 1977 formula. As GM promised the UAW, the sum is less than allowed under the 1982 formula, which was approved by stockholders shortly after UAW members granted the company concessions.

Another $26.5 million accrued to the Performance Achievement Plan for 1983, the first such accrual since the plan was approved in 1982. It is the estimate of what will be paid to about 500 top executives for 1983 if they and GM achieve long-term performance objectives. Payouts are scheduled for 1985 and 1987.

Profit-sharing payouts for 1983 to lower-level salaried workers and hourly workers will amount to $322 million. GM paid $892 million in dividends during the year.

Fourth-quarter profits of $1.30 billion ($4.11 a share) were nearly nine times the $145 million (45 cents a share) made in the fourth quarter of 1982. Quarterly sales of $20.82 billion were 50 percent more than the $13.88 billion of a year earlier. Unit sales for the quarter rose 48 percent, from 1.43 million to 2.12 million.

Dealers bullish, cite strong sales prospects

By Al Fleming
Industry Editor

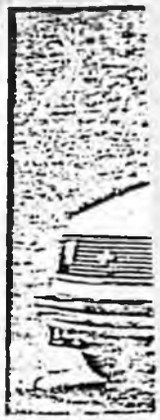
DALLAS. — Richard J. Gillis figures his timing couldn't be better.

Last June, he bought a Ford dealership in Sterling, Va. Its break-even volume was 950 new vehicles a year, but it sold only 256 vehicles in 1982 and was $300,000 in the red.

In the first half of 1983, Sterling Ford ("Home of the Silver Dollar Deal") sold 869 vehicles to wind up with 755 sales for the year.

"I'm excited about the next two, three, four years," gushed Gillis during a respite at the NADA convention last week.

"People are perceiving that now's a good time to buy a car," he said. "They're feeling good about their jobs and the cost of money and are turning in their old clunkers on new ones they've postponed buying."



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AMENDMENTS MADE TO CSSB 286 BY THE HOUSE LABOR AND COMMERCE COMMITTEE SUB-COMMITTEE

1. Page 1, Line 29:
Insert the word "certified" following "by".

2. Page 2, Line 1:
Insert the words "dealer or" following "its".

3. Page 2, Line 11:
Delete "30 days or more" and in its place insert "within 60 days".

4. Page 2, Line 12:
A new sentence is added to paragraph (4) which reads "Within 30 days after receiving the notice required by this subsection the manufacturer may make a final attempt to conform the vehicle before a refund is made under (b) of this section."

5. Page 2, Line 13:
Delete paragraph (d).

6. Page 2, Line 23:
Insert the words "dealer or" before the word "repairing".

7. Page 2, Line 26:
Insert the words "dealer or" before the word "repairing".

8. Page 3, Line 6:
A new paragraph (2) is added which reads " the nonconformity makes the vehicle unsafe to operate and the same nonconformity has been subject to repair at least twice by the manufacturer, distributor, dealer, or repairing agent during the express warranty term or the one-year period referred to in (1) of this section, whichever period terminates first, but the nonconformity continues to exist; or"

9. Page 3, Line 6:
The original paragraph (2) is re-titled (3) and is inserted following the new paragraph (2).

10. Page 3, Line 20:
Insert the word "full" following "the".

11. Page 3, Line 25:
Insert the word "or" following manufacturer, delete "or repairing agent" and insert the words "in the state" following distributor. Both commas on this line are also deleted.

12. Page 4, Line 4:
Delete "sold in the state shall maintain repair facilities or authorize repairing agents" and insert "who authorize the sale of the manufacturer's or distributor's motor vehicles in the state shall maintain authorized dealership facilities".