ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672
2646 SLC SB 286 (FILE 2)
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STATE OF ALASKA

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.

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

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

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

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

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

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

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

II.
SUBSTANTIVE PROVISIONS OF THE BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and for any lemon condition caused by the original manufacturer or by the authorized repairing dealer. However, I can contemplate some situations 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.

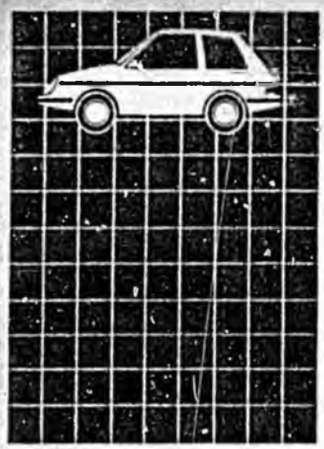
I believe the manufacturers' representatives and the dealers' association would not support this additional amendment, but I wanted to be sure we all understood the intent of the committee.

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



Average Age of Cars Continues 10-Year Rise

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

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

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

PASSENGER CARS IN USE BY AGE

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

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

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

NOTE: Data as of July 1 of each year.

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

PASSENGER CARS BY AGE GROUPS

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

Year	Years Old	Year	Years Old
1980	6.6	1963	6.0
1979	6.4	1962	6.0
1978	6.3	1961	6.0
1977	6.2	1960	5.9
1976	6.2	1959	5.8
1975	6.0	1958	5.6
1974	5.7	1957	5.5
1973	5.7	1956	5.6
1972	5.7	1955	5.9
1971	5.7	1954	6.2
1970	5.5	1953	6.5
1969	5.5	1952	6.8
1968	5.6	1950	7.8
1967	5.6	1948	8.8
1966	5.7	1946	9.0
1965	5.9	1944	7.3
1964	6.0	1941	5.5

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

Age of Car

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

TO: ALL LEGISLATORS

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

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

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

TO: ALL LEGISLATORS

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

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

MSG 04-00015693 PRTY 1 03/01/84 14:33:45 ORIG: LA94 IN= 0004 OUT= 0138
FROM: DAVE/AMC LIO TO: FOX - 3RD LIO
TARGET: LJHK SUBJ: POM

TO: ALL LEGISLATORS.

FROM: MONTE PARISH
P.O.B 773528
EAGLE RIVER, AK 99577
688-9700

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

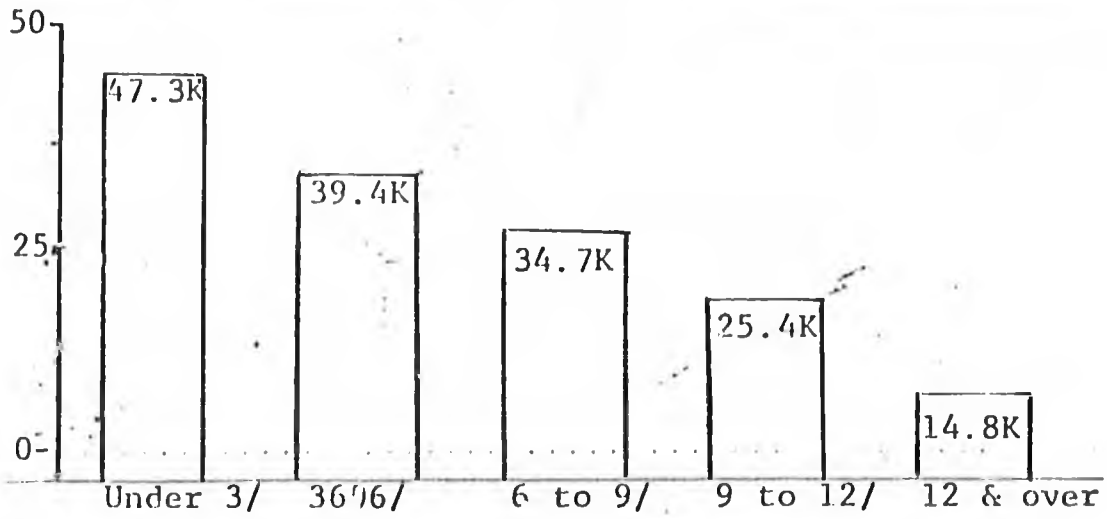
EOM/**********

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

Model Year	Age in Years	No. of Vehicles	% of Fleet
1983	Under 1	9,788	5.9
1982	1 - 2	16,859	10.1
1981	2 - 3	17,125	10.3
1980	3 - 4	14,004	7.4
1979	4 - 5	11,956	7.2
1978	5 - 6	13,425	8.1
1977	6 - 7	12,425	7.5
1976	7 - 8	12,252	7.4
1975	8 - 9	10,024	6.0
1974	9 - 10	10,548	6.0
1973	10 - 11	8,091	4.9
1972	11 - 12	6,790	4.1
1971	12 - 13	4,935	3.0
1970	13 - 14	4,037	2.4
1969	14 - 15	3,313	2.0
1968	15 - 16	2,609	1.6
Prior	16 or older	8,435	5.2
		166,606	*100.9

Average age of Alaskan Passenger Car is 6.5 years.

* Due to rounding



Average age of Alaskan Passenger Car is 6.5 years.

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

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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.

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

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

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

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

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

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

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

II.
SUBSTANTIVE PROVISIONS OF THE BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV.
REMAINING AREA OF POSSIBLE AMBIGUITY

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

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

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

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

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

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

/aw
Attachment
cc Senator Bill Ray
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LEE A. IACOCCA, *Chairman*
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THOMAS H. HANNA, *Senior Vice President*

June 17, 1983

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

Re: SB 286

Dear Laura:

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

The following, though, are priority issues:

1. Manufacturer Notification - includes the provision that manufacturers are liable only if they have received direct notification from the consumer and are given an opportunity to repair.

2. Nonconformity Definition - includes a statement that the nonconformity substantially impairs the use and market value of the vehicle.

3. Miscellaneous - excludes unique and unusual provisions (e.g., statements which absolve dealers of any responsibility, extend the manufacturer's express warranty, identify components and systems which impair use and value, etc.).

4. Prerequisite - includes the prerequisite that the consumer must use an informal dispute mechanism meeting Federal Trade Commission regulations under Part 703 if available from the manufacturer (Ford Consumer Appeals Boards, i.e., Better Business Bureau, Chrysler Consumer Satisfaction Board).

5. Replacement Criteria - allows the manufacturer to deduct a reasonable allowance for use prior to first report and time not out of service for repair of the nonconformity.

6. Repair Attempts - defines reasonable as four or more repair attempts or vehicle out of service for 30 business days. This may create serious complications due to uniqueness of Alaska.

7. Timeframe - includes a provision that the law is applicable during the express warranty or 12,000 miles or for one year, whichever comes first after delivery date.

8. Affirmative Defense - includes a statement that it is an affirmative defense that the nonconformity does not impair use and market value or is caused by neglect, abuse, unauthorized modifications of alterations by the consumer.

9. Affected Vehicles - applies to passenger motor vehicles as defined by state statutes, purchased for other than resale and normally used for personal, family or household purposes (should exclude motorcycles, motor homes, off-road vehicles). Also, in the event the manufacturer must refund the purchase price or replace the vehicle, the replaced vehicle must be returned to the manufacturer or dealer.

10. Effective Date - this act applies to those vehicles purchased subsequent to the implementation of this act.

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

Sincerely,

James W. Austin
Public Affairs Manager
Pacific Coast Region

JWA/eb

opinion

3/4/83

Senate passes 'lemon law' bill

Associated Press

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

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

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

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

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

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

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

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

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

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

Anchorage Daily News

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'Lemon law' gives car-buyers a break

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

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

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

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

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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 equation, they represent the front line of automobile responsibility to consumers. They are the people who sell the cars; they must shoulder the responsibility to stand behind the cars they sell.

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

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

Anchorage Daily News Wednesday, February 15, 1984

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

Dear Senator Eliason:

Reference the Lemon Law

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

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

Page 5; (6) "Reasonable Attempts"

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

Page 5; (7) "Time period of Repairs"
(A) Manufacturer, Dealer/Seler shall work to complete repairs as time is of the essence.

Page 5; (8) "Not an affirmative Defense"
(A) Repairs of a vehicle which has left driver/owner stranded.
(B) Repairs of a vehicle that has created or will create a life - health hazzard.
(C) Repair of a vehicle which is beyond a pre-set distance from manufacturers, Dealer/Seler representative or authorized repair station.
(D) Oil, Gas, Fuel, Air Filters and oil changes when done by owner or repair service facility.

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

Alaska State Attorney Generals Office:

(A) Has the responsibility and authority to monitor any and or all abritration procedures and results thereof.

(B) Has the responsibility and authority to issue an injuction against a Manufacturer, Dealer/Sales outlet, which attempts to sell and or service motor vehicles which do not conform to advertisements or statements made to consumers, which vehicles may be classified by law as "Lemons".

(C) Has the responsibility and authority to cancel Business Licenses of natural and foreign corporations, which are found guilty of doing business against Public Policy, Public Safety and against Public Economic good.

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

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

Sincerly Yours;

Robert A Byers

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

Automotive News

May 30, 1983

58th year—$40 per year, $1.00 per copy

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

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

Subsection (a)

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

Subsection (b)

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

Subsection (c)

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

Subsection (d)

This section, following the lemon laws in the states of Massachuesetts 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.

TELECOPY COVER SHEET

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

FROM: Sue Eliason PHONE: _____

INSTRUCTIONS: please give to Tim Austin

RECEIVED: DATE _____ TIME _____

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

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

NUMBER OF PAGES: 10 (NOT COUNTING THIS COVER SHEET)

Version #3
Law
2/21/84

Original sponsor: Ray by request

IN THE SENATE

BY THE LABOR & COMMERCE COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

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

ARTICLE 6. MOTOR VEHICLE WARRANTIES.

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

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

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

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

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

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

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

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

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

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

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

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

warranty is established if:

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

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

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

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

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

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

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

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

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

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

(m) In this section,

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

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

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

(4) "full purchase price" means the total price paid for the vehicle by the original owner, including but not limited to all 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, as defined in AS 01.10.060, which by labor transforms raw materials and component parts into motor vehicles for wholesale or retail sale;

(6) "motor vehicle" or "vehicle" means a motor land vehicle, having four or more wheels, which is self-propelled by a mechanical motor, that is purchased primarily for personal, family, or household purposes, and which is required to be registered under AS 28.10; but not including mopeds, scooters, motorcycles, tractors, farm vehicles or vehicles 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 dealer which 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 years.

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

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

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

Law
2/21/84

Original sponsor: Ray by request

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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 [GIVES A REASONABLE NOTICE OF] the nonconformity [IN WRITING] to the manufacturer [OR DISTRIBUTOR] of the vehicle [OR THE AGENT OF THE MANUFACTURER OR DISTRIBUTOR] or [AND] to the manufacturer's [OR DISTRIBUTOR'S] selling dealer, or if not the same, the repairing dealer during the term of the warranty or within one year after the date of delivery of the motor vehicle to the owner, whichever date is earlier, the manufacturer, [DISTRIBUTOR, AGENT] or its dealer or agent shall make the necessary repairs to conform the vehicle under the express warranty.

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

03-038

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

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

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

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

(c) It is an affirmative defense to a claim made under (b) of this section for a new motor vehicle or a refund that the nonconformity complained of

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

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

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

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

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

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

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

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

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

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

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

procedure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Re: CS for SB 286

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

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

[AND THE NONCONFORMITY CONTINUES AFTER THE REPAIR ATTEMPTS,]

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

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

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

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

[Delete (C)]

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

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

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

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

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

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

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

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

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

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

MOTOR VEHICLE MANUFACTURERS ASSOCIATION
of the United States, Inc.

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1107 Ninth Street, Suite 1030, Sacramento CA 95814

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

February 20, 1984

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

Re: Senate Bill 286 Amendments

Dear Dick:

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

1. Page 1, Sec. 45.45.300 (a), lines 10 through 18 does not provide for prior written notification to the manufacturer in order that we may look at the nonconforming defect on the vehicle and possibly have an opportunity to cure it.

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

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

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

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

Manufacturers Response

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

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

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

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

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

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

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

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

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

Sincerely,

James W. Austin
Public Affairs Manager
Pacific Coast Region

To: Connie Sipe

From: Sheila Peterson

Date: 2/10/84

Attached is the wording proposed by Ralph Seakins, Fairbanks.

Paragraph (i) deals with parts situation

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

THANKS !!

other rights and remedies that may [illegible]
motor vehicle under other provisions of law.

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

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

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

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

(l) In this section:

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

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February 7, 1984

TO: Senate Labor and Commerce Committee

RE: New Motor Vehicle Warranty Act

Members of the Labor and Commerce Committee:

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

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

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

1. an addition to subsection (b) ensuring that a replaced automobile transfers lienholder interests;

2. an addition to subsection (d) which mandates that manufacturers and distributors will make diligent efforts to ensure that vehicle parts needed by a dealer to repair a nonconformity will be rapidly delivered to the dealer;

3. an addition to subsection (h) which requires a manufacturer or distributor who accepts the return of a defective motor vehicle to fully reimburse the owner for reasonable costs of shipping the motor vehicle to and from a dealer for repairs of any nonconformity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

HUGHES, THORSNESS, GANTZ,
POWELL & BRUNDIN

Sigurd E. Murphy

SEM/dsr

Attachment
proposed legislative Senate Bill 286

MOTOR VEHICLE MANUFACTURERS ASSOCIATION
of the United States, Inc.

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

February 3, 1984

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

Re: Senate Bill 286 Amendments

Dear Dick:

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

James W. Austin
Public Affairs Manager
Pacific Coast Region

JWA/eb

MEMORANDUM

January 31, 1984

TO: Rep. Mike Miller

FROM: Denise Zachary, AA

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

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

(a) Limits the application of bill to the term of the warranty, or one year, whichever comes first. Manufacturer of its dealer is required to make necessary repairs to bring vehicle to conformity under express warranty.

(b) Provides remedy for the owner if the manufacturer, distributer, agent, or dealer is unable to repair vehicle, namely, the defective vehicle is returned to manufacturer or distributer for either a comparable, new replacement vehicle OR a full purchase price refund -- less a reasonable allowance for consumer use.

(c) Gives the manufacturer two affirmative defenses to owner's claim for refund. Manufacturer may not be liable if the defect complained of does not cause substantial impairment to owner's ability to use vehicle or to the value of vehicle OR if defect is not in fact a manufacturers defect but something that resulted from abuse or modifiction of the vehicle by the owner.

(d) Legal definition for "defective" -- defines defective vehicle as a vehicle which has had the same defect worked on four or more times, OR which has been out of service for more than 30 days during the warranty. Such a car is legally presumed to be "a lemon".

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

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

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

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

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

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

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

(k) Definition section.

Alaska State Legislature
House of Representatives

POUCH V
JUNEAU, ALASKA 99811
OFFICIAL BUSINESS

MEMORANDUM

January 21, 1984

TO: Senator Dick Eliason
Chair, Senate Labor & Commerce

FROM: Denise Zachary
Rep. Mike Miller

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

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

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

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

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

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

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

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

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

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

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

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

This legislation has no fiscal impact.

Thank you again for your attention on this legislation.

Version #1
Folta
6/22/83

Original sponsors: Hayes, Barnes, Phillips, et al

IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

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

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

ARTICLE 6. MOTOR VEHICLE WARRANTIES.

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

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

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

(c) It is an affirmative defense to a claim made under (b) of this section for a new motor vehicle or a refund that the nonconformity complained of

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

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

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

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

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

IA, but worded slightly different

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

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

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

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

manufacturer or distributor may comply with the requirements of this subsection by entering into a warranty service contract with an independent service and repair facility that provides for the manufacturer or distributor to reimburse the facility for all service and repairs that are covered by the written independent service contract. In lieu of establishing a repair facility or entering into a warranty service contract with an independent service and repair facility as required by this subsection, a manufacturer or distributor may pay the actual costs of shipping a motor vehicle to and from the nearest authorized facility for warranty service and repairs.

(i) If a manufacturer or distributor has established an informal dispute settlement procedure in the state [that substantially complies] has been approved by A.C. 35 50.651(2)(12)(A) complying with the provisions of 16 C.F.R. Part 703, as that Part may be amended, the provisions of (b) of this section concerning refund or replacement do not apply to an owner who has not first resorted to the informal dispute settlement procedure.

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

(k) In this section No Cause of Action under this section may be filed by an owner more than 18 mon. after the expiration of the express warranty or 6 mon. after a decision by an informal dispute settlement procedure under (i), whichever is later.

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

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

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

during the term of an express warranty applicable to the vehicle, or any other person entitled to enforce an express warranty on the vehicle under the terms of the warranty;

(4) "reasonable allowance" means an amount attributable to a consumer's use of a motor vehicle, but does not include any period after the consumer's first report to the manufacturer, or any of its authorized agents or dealers, of a nonconformity with an express warranty applicable to the motor vehicle during which the motor vehicle is out of service due to the nonconformity; the reasonable allowance shall not exceed the depreciation in value of the vehicle, for the time the vehicle is in service, which depreciation is calculated by a straight-line method over the life expectancy of a new vehicle, which, for purposes of this subsection shall be deemed to be 7 yrs.

(5) "substantially impairs use [and] value" refers to a defect or condition in a vehicle that OR MARKET

(A) prevents it from being operated;

(B) makes it unsafe to operate; or

(C) decreases the economic life of the vehicle.

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

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

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

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

Version #1
Folta
6/22/83

Original sponsors: Hayes, Barnes, Phillips, et al

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. DECLARATION OF PURPOSE. (a) The legislature is concerned over the rising toll of motor vehicle accidents and the suffering and loss inflicted by them. The legislature determines that it is a matter of grave concern that motorists be financially responsible for their negligent acts so that innocent victims of motor vehicle accidents may be recompensed for the injury and financial loss inflicted upon them. The legislature finds and declares that the public interest can best be served by the requirement that the owner of a motor vehicle be required to furnish evidence of the existence of a motor vehicle liability policy issued in conformity with AS 28.22.010 or of a certificate of self-insurance issued under AS 28.20.400 when the vehicle registration is made or renewed as a prerequisite to the exercise of the privilege of registering and operating a motor vehicle in the state.

Starts

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

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

ARTICLE 6. MOTOR VEHICLE WARRANTIES.

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

Last draft considered by committee presented to cmte early 1/84

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

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

(c) It is an affirmative defense to a claim made under (b) of this section for a new motor vehicle or a refund that the nonconformity complained of

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

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

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

if the nonconformity is a defect or condition that makes the vehicle unsafe for the owner to operate or the defect is specified under (a) of this section, the time period for repair, refund, or replacement under (b) of this section is reduced to 14 days.

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

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

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

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

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

manufacturer or distributor may comply with the requirements of this subsection by entering into a warranty service contract with an independent service and repair facility that provides for the manufacturer or distributor to reimburse the facility for all service and repairs that are covered by the written independent service contract. In lieu of establishing a repair facility or entering into a warranty service contract with an independent service and repair facility as required by this subsection, a manufacturer or distributor may pay the actual costs of shipping a motor vehicle to and from the nearest authorized facility for warranty service and repairs.

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

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

(k) In this section

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

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

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

during the term of an express warranty applicable to the vehicle, or any other person entitled to enforce an express warranty on the vehicle under the terms of the warranty;

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

(5) "substantially impairs use [and] value" refers to a defect or condition in a vehicle that

(A) prevents it from being operated;

(B) makes it unsafe to operate; or

(C) decreases the economic life of the vehicle.

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

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

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

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

Asper
6/17/83

Original sponsor: Ray by request

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

ARTICLE 6. MOTOR VEHICLE WARRANTIES.

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

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

(c) It is an affirmative defense to a claim made under (b) of this section for a new motor vehicle or a refund that the nonconformity complained of

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

(2) is the result of abuse, unreasonable neglect, or unauthorized modification or alteration of the motor vehicle by the owner.

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

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

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

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

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

(h) A manufacturer or distributor of motor vehicles sold in the state under manufacturer's or distributor's express warranty shall maintain a repair facility that is able to perform the service and make the repairs required by the warranty and by this section. A manufacturer or distributor may comply with the requirements of this subsection by entering into a warranty service contract with an independent service and repair facility that provides for the manufacturer or distributor to reimburse the facility for all costs of performing warranty service and repairs, including diagnostic costs, telephone expenses, and shipping costs. In lieu of establishing a repair facility or entering into a warranty service contract with an independent service and repair facility as required by this subsection, a manufacturer or distributor may pay the actual costs of shipping a motor vehicle to and from the nearest authorized facility for warranty service and repairs.

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

(j) In this section

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

retail motor vehicle dealers;

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

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

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

(A) prevents it from being operated;

(B) makes it unsafe to operate; or

(C) decreases the economic life of the vehicle.

Representative Mike Miller

MEMORANDUM

October 17, 1983

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

FROM: Rep. Mike Miller

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

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

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

ALASKA STATE LEGISLATURE POUCH V JUNEAU, ALASKA 99811

JAMES W. AUSTIN
Public Affairs Manager
Pacific Coast Region

July 13, 1983

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

Dear Laura:

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

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

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

Sincerely,

James W. Austin

JWA/eb

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

Alaska State Legislature
House of Representatives

POUCH V
JUNEAU, ALASKA 99811
OFFICIAL BUSINESS

MEMORANDUM

January 21, 1984

TO: Senator Dick Eliason
Chair, Senate Labor & Commerce

FROM: Denise Zachary, Aide
Rep. Mike Miller

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

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

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

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

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

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

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

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

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

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

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

This legislation has no fiscal impact.

Thank you again for your attention on this legislation.

Version #1
Folta
6/22/83

Original sponsors: Hayes, Barnes, Phillips, et al

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

Starts

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

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

ARTICLE 6. MOTOR VEHICLE WARRANTIES.

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