

56:8-67

LEGISLATIVE HISTORY CHECKLIST
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("Lemon law"--used motor vehicles)

LSA: 56:8-67

LAWS OF: 1995 CHAPTER: 373

BILL NO: A2404

SPONSOR(S): Moran and others

DATE INTRODUCED: December 12, 1994

COMMITTEE: ASSEMBLY Commerce

SENATE: ---

AMENDED DURING PASSAGE: Yes Amendments during
Assembly Committee substitute passage denoted by
(2R/CC) superscript numbers

DATE OF PASSAGE: ASSEMBLY: May 1, 1995

SENATE: December 18, 1995

DATE OF APPROVAL: January 5, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: No

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clippings--attached:
Bill providing warranties for used cars passes..., " 12-19-95, Asbury Park
Press.

KBP:pp

[CORRECTED COPY]
[SECOND REPRINT]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2404 and 589

STATE OF NEW JERSEY

ADOPTED JANUARY 26, 1995

Sponsored by Assemblymen MORAN, DORIA, IMPREVEDUTO,
CONNORS, ZANGARI, GEIST, AZZOLINA, COTTRELL,
Assemblywoman CRECCO, Assemblymen HOLZAPFEL,
MIKULAK, WARSH and Assemblywoman TURNER

1 **AN ACT** concerning the sale and warranty of certain used motor
2 vehicles and supplementing P.L.1960, c.39 (C.56:8-1, et seq.).

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. As used in this act:

7 "As is" means a used motor vehicle sold by a dealer to a
8 consumer without any warranty, either express or implied, and
9 with the consumer being solely responsible for the cost of any
10 repairs to that motor vehicle.

11 "Consumer" means the purchaser or prospective purchaser,
12 other than for the purpose of resale, of a used motor vehicle
13 normally used for personal, family or household purposes.

14 "Covered item" means and includes the following components
15 of a used motor vehicle: Engine - all internal lubricated parts,
16 timing chains, gears and cover, timing belt, pulleys and cover, oil
17 pump and gears, water pump, valve covers, oil pan, manifolds,
18 flywheel, harmonic balancer, engine mounts, seals and gaskets,
19 and turbo-charger housing; however, housing, engine block and
20 cylinder heads are covered items only if damaged by the failure
21 of an internal lubricated part. Transmission Automatic/Transfer
22 Case - all internal lubricated parts, torque converter, vacuum
23 modulator, transmission mounts, seals and gaskets. Transmission
24 Manual/Transfer Case - all internal lubricated parts, transmission
25 mounts, seals and gaskets, but excluding a manual clutch,
26 pressure plate, throw-out bearings, clutch master or slave
27 cylinders. Front-Wheel Drive - all internal lubricated parts, axle
28 shafts, constant velocity joints, front hub bearings, seals and
29 gaskets. Rear-Wheel Drive - all internal lubricated parts,
30 propeller shafts, supports and U-joints, axle shafts and bearings,
31 seals and gaskets.

32 "Dealer" means any person or business which sells or offers for
33 sale a used motor vehicle after selling or offering for sale three
34 or more used motor vehicles in the previous 12-month period.

35 "Deduction for personal use" means the mileage allowance set
36 by the federal Internal Revenue Service for business usage of a
37 motor vehicle in effect on the date a used motor vehicle is
38 repurchased by a dealer in accordance with section 5 of this act,
39 multiplied by the total number of miles a used motor vehicle is

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted February 6, 1995.

² Assembly floor amendments adopted March 13, 1995.

1 driven by a consumer from the date of purchase of that vehicle
2 until the time of its repurchase.

3 "Director" means the Director of the Division of Consumer
4 Affairs in the Department of Law and Public Safety.

5 "Excessive wear and tear" means wear or damage to a used
6 motor vehicle beyond that expected to be incurred in normal
7 circumstances.

8 "Material defect" means a malfunction of a used motor
9 vehicle, subject to a warranty, which substantially impairs its
10 use, value or safety.

11 "Repair insurance" means a contract in writing to refund,
12 repair, replace, maintain or take other action with respect to a
13 used motor vehicle for any period of time or any specified
14 mileage and provided at an extra charge beyond the price of the
15 used motor vehicle.

16 "Service contract" means a contract in writing to refund,
17 repair, replace, maintain or take other action with respect to a
18 used motor vehicle for any period of time or any specific mileage
19 or provided at an extra charge beyond the price of the used motor
20 vehicle.

21 "Used motor vehicle" means a passenger motor vehicle,
22 excluding motorcycles, motor homes and off-road vehicles, title
23 to, or possession of which has been transferred from the person
24 who first acquired it from the manufacturer or dealer, and so
25 used as to become what is commonly known as "secondhand,"
26 within the ordinary meaning thereof.

27 "Warranty" means any undertaking, in writing and in
28 connection with the sale by a dealer of a used motor vehicle, to
29 refund, repair, replace, maintain or take other action with
30 respect to the used motor vehicle, and which is provided at no
31 extra charge beyond the price of the used motor vehicle.

32 2. It shall be an unlawful practice for a dealer:

33 a. To misrepresent the mechanical condition of a used motor
34 vehicle;

35 b. To fail to disclose, prior to sale, any material defect in the
36 mechanical condition of the used motor vehicle which is known
37 to the dealer;

38 c. To represent that a used motor vehicle, or any component
39 thereof, is free from material defects in mechanical condition at
40 the time of sale, unless the dealer has a reasonable basis for this
41 representation at the time it is made;

42 d. To fail to disclose, prior to sale, the existence and terms of
43 any written warranty, service contract or repair insurance
44 currently in effect on a used motor vehicle provided by a person
45 other than the dealer, and subject to transfer to a consumer, if
46 known to the dealer;

47 e. To misrepresent the terms of any written warranty, service
48 contract or repair insurance currently in effect on a used motor
49 vehicle provided by a person other than the dealer, and subject to
50 transfer to a consumer;

51 f. To fail to disclose, prior to sale, the existence and terms of
52 any written warranty, service contract or repair insurance
53 offered by the dealer in connection with the sale of a used motor
54 vehicle;

- 1 g. To misrepresent the terms of any warranty, service
2 contract or repair insurance offered by the dealer in connection
3 with the sale of a used motor vehicle;
- 4 h. To represent, prior to sale, that a used motor vehicle is sold
5 with a warranty, service contract or repair insurance when the
6 vehicle is sold without any warranty, service contract or repair
7 insurance;
- 8 i. To fail to disclose, prior to sale, that a used motor vehicle is
9 sold without any warranty, service contract, or repair insurance;
10 and
- 11 j. To fail to provide a clear written explanation, prior to sale,
12 of what is meant by the term "as is," if the used motor vehicle is
13 sold "as is."
- 14 3. It shall be an unlawful practice for a dealer to sell a used
15 motor vehicle to a consumer without giving the consumer a
16 written warranty which shall at least have the following minimum
17 durations:
- 18 a. If the used motor vehicle has 24,000 miles or less, the
19 warranty shall be, at a minimum, 90 days or 3,000 miles,
20 whichever comes first;
- 21 b. If the used motor vehicle has more than 24,000 miles but
22 less than 60,000 miles, the warranty shall be, at a minimum, 60
23 days or 2,000 miles, whichever comes first; or
- 24 c. If the used motor vehicle has 60,000 miles or more, the
25 warranty shall be, at a minimum, 30 days or 1,000 miles,
26 whichever comes first, except that a consumer may waive his
27 right to a warranty as provided under section 7 of this act.
- 28 4. The written warranty shall require the dealer, upon failure
29 or malfunction of a covered item during the term of the
30 warranty, to correct the malfunction or defect, provided the used
31 motor vehicle is delivered to the dealer, at his regular place of
32 business, and subject to a deductible amount of \$50 to be paid by
33 the consumer for each repair of a covered item. This written
34 warranty shall exclude repairs covered by any manufacturer's
35 warranty, or recall program, as well as repairs of a covered item
36 required because of collision, abuse, or the consumer's failure to
37 properly maintain such used motor vehicle in accordance with the
38 manufacturer's recommended maintenance schedule, or from
39 damage of a covered item caused as a result of any commercial
40 use of the used motor vehicle, or operation of such vehicle
41 without proper lubrication or coolant, or as a result of any
42 misuse, negligence or alteration of such vehicle by someone other
43 than the dealer.
- 44 5. a. If, within the periods specified in section 3 of this act,
45 the dealer or his agent fails to correct a material defect of the
46 used motor vehicle, after a reasonable opportunity to repair the
47 used motor vehicle, the dealer shall repurchase the used motor
48 vehicle and refund to the consumer the full purchase price,
49 excluding all sales taxes, title and registration fees, or any
50 similar governmental charges, and less a reasonable allowance for
51 excessive wear and tear and less a deduction for personal use of
52 such vehicle. Refunds shall be made to the consumer and
53 lienholder, if any, as their interests appear on the records of
54 ownership kept by the Director of the Division of Motor Vehicles.

1 b. It shall be an affirmative defense to any claim under this
2 section that:

3 (1) The ¹alleged¹ material defect does not substantially impair
4 the use, value or safety of the used motor vehicle; or

5 (2) The ¹[malfunction or]¹ material defect is the result of
6 abuse, neglect or unauthorized modification or alteration of the
7 used motor vehicle by anyone other than the dealer or his agent.

8 c. It shall be presumed that a dealer has a reasonable
9 opportunity to correct or repair a material defect in a used motor
10 vehicle, if:

11 (1) The same material defect has been subject to repair three
12 or more times by the dealer or his agent within the warranty
13 period, but the material defect continues to exist; or

14 (2) The used motor vehicle is out of service by reason of
15 waiting for the dealer to begin or complete repair of the material
16 defect for a cumulative total of 20 or more days during the
17 warranty period.

18 6. The term of any written warranty offered by a dealer in
19 connection with the sale of a used motor vehicle shall be
20 extended by any time period during which the used motor vehicle
21 is waiting for the dealer or his agent to begin or complete repairs
22 of a material defect of the used motor vehicle.

23 7. Notwithstanding any provision of this act to the contrary, a
24 consumer, as a result of a price negotiation for the purchase of a
25 used motor vehicle with over 60,000 miles, may elect to waive
26 the dealer's obligation to provide a warranty on the used motor
27 vehicle. The waiver shall be in writing and separately stated in
28 the agreement of retail sale or in an attachment thereto and
29 separately signed by the consumer. The waiver shall state the
30 dealer's obligation to provide a warranty on used motor vehicles
31 offered for sale, as set forth in sections 3 and 4 of this act. The
32 waiver shall indicate that the consumer, having negotiated the
33 purchase price of the used motor vehicle and obtained a price
34 adjustment, is electing to waive the dealer's obligation to
35 provide a warranty on the used motor vehicle and is buying the
36 used motor vehicle "as is."

37 8. If a dealer fails to give a written warranty required by this
38 act, the dealer nevertheless shall be deemed to have given the
39 warranty as a matter of law, unless a waiver has been signed by
40 the consumer in accordance with section 7 of this act.

41 9. Nothing in this act shall in any way limit the rights or
42 remedies which are otherwise available to a consumer under any
43 other law.

44 10. The provisions of sections 3, 4, and 5 shall not apply to:
45 any used motor vehicle sold for less than \$3,000; any used motor
46 vehicle over 7 or more model years old; ²any used motor vehicle
47 which has been declared a total loss by an insurance company and
48 with respect to which the consumer, at or prior to the time of
49 sale, has been advised in writing that the used motor vehicle has
50 been declared a total loss by an insurance company;² or, any used
51 motor vehicle with more than 100,000 miles.

52 11. To assure compliance with the requirements of this act, a
53 dealer shall provide a bond in favor of the State of New Jersey in
54 the amount of \$10,000, executed by a surety company authorized

1 to transact business in the State of New Jersey by the
2 Department of Insurance and to be conditioned on the faithful
3 performance of the provisions of this act. This bond shall be for
4 the term of 12 months and shall be renewed at each expiration
5 for a similar period. The Director of the Division of Motor
6 Vehicles shall not issue a dealer's license and shall not renew a
7 license of any dealer who has not furnished proof of the existence
8 of the bond required by this act.

9 12. The Director shall adopt rules and regulations pursuant to
10 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
11 et seq.) to effectuate the purposes of this act.

12 13. The director shall implement a consumer awareness
13 program which shall advise consumers of the requirements,
14 protections and benefits provided by this act, within 120 days
15 following enactment of this act.

16 ¹14. The director may establish an administrative fee, to be
17 paid by the consumer, in order to implement the provisions of this
18 act, which fee shall be fixed at a level not to exceed the cost for
19 the administration and enforcement of this act.¹

20 ¹[14.] 15.¹ This act shall take effect on the 180th day
21 following enactment and shall apply to used motor vehicles sold
22 on or after that date.

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Establishes a "lemon law" for certain used motor vehicles.

ASSEMBLY, No. 2404
STATE OF NEW JERSEY

INTRODUCED DECEMBER 12, 1994

By Assemblymen MORAN, IMPREVEDUTO, Connors, Wolfe,
Malone, Holzapfel, Romano and Cottrell

1 **AN ACT** concerning the sale and warranty of certain used motor
2 vehicles and supplementing P.L.1960, c.39 (C.56:8-1, et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the
5 *State of New Jersey*:

6 1. As used in this act:

7 "As is" means a used motor vehicle sold by a dealer to a
8 consumer without any warranty, either express or implied, and
9 with the consumer being solely responsible for the cost of any
10 repairs to that motor vehicle.

11 "Consumer" means the purchaser or prospective purchaser,
12 other than for the purpose of resale, of a used motor vehicle
13 normally used for personal, family or household purposes.

14 "Covered item" means and includes the following components
15 of a used motor vehicle: Engine - all internal lubricated parts,
16 timing chains, gears and cover, timing belt, pulleys and cover, oil
17 pump and gears, water pump, valve covers, oil pan, manifolds,
18 flywheel, harmonic balancer, engine mounts, seals and gaskets,
19 and turbo-charger housing; however, housing, engine block and
20 cylinder heads are covered items only if damaged by the failure
21 of an internal lubricated part. Transmission Automatic/Transfer
22 Case - all internal lubricated parts, torque converter, vacuum
23 modulator, transmission mounts, seals and gaskets. Transmission
24 Manual/Transfer Case - all internal lubricated parts, transmission
25 mounts, seals and gaskets, but excluding a manual clutch,
26 pressure plate, throw-out bearings, clutch master or slave
27 cylinders. Front-Wheel Drive - all internal lubricated parts, axle
28 shafts, constant velocity joints, front hub bearings, seals and
29 gaskets. Rear-Wheel Drive - all internal lubricated parts,
30 propeller shafts, supports and U-joints, axle shafts and bearings,
31 seals and gaskets.

32 "Dealer" means any person or business which sells or offers for
33 sale a used motor vehicle after selling or offering for sale three
34 or more used motor vehicles in the previous 12-month period.

35 "Deduction for personal use" means the mileage allowance set
36 by the federal Internal Revenue Service for business usage of a
37 motor vehicle in effect on the date a used motor vehicle is
38 repurchased by a dealer in accordance with section 5 of this act,
39 multiplied by the total number of miles a used motor vehicle is
40 driven by a consumer from the date of purchase of that vehicle
41 until the time of its repurchase.

42 "Director" means the Director of the Division of Consumer
43 Affairs in the Department of Law and Public Safety.

44 "Excessive wear and tear" means wear or damage to a used

1 motor vehicle beyond that expected to be incurred in normal
2 circumstances.

3 "Material defect" means a malfunction of a used motor
4 vehicle, subject to a warranty, which substantially impairs its
5 use, value or safety.

6 "Repair insurance" means a contract in writing to refund,
7 repair, replace, maintain or take other action with respect to a
8 used motor vehicle for any period of time or any specified
9 mileage and provided at an extra charge beyond the price of the
10 used motor vehicle.

11 "Service contract" means a contract in writing to refund,
12 repair, replace, maintain or take other action with respect to a
13 used motor vehicle for any period of time or any specific mileage
14 or provided at an extra charge beyond the price of the used motor
15 vehicle.

16 "Used motor vehicle" means a passenger motor vehicle,
17 excluding motorcycles, motor homes and off-road vehicles, title
18 to, or possession of which has been transferred from the person
19 who first acquired it from the manufacturer or dealer, and so
20 used as to become what is commonly known as "secondhand,"
21 within the ordinary meaning thereof.

22 "Warranty" means any undertaking, in writing and in
23 connection with the sale by a dealer of a used motor vehicle, to
24 refund, repair, replace, maintain or take other action with
25 respect to the used motor vehicle, and which is provided at no
26 extra charge beyond the price of the used motor vehicle.

27 2. It shall be an unlawful practice for a dealer:

28 a. To misrepresent the mechanical condition of a used motor
29 vehicle;

30 b. To fail to disclose, prior to sale, any material defect in the
31 mechanical condition of the used motor vehicle which is known
32 to the dealer;

33 c. To represent that a used motor vehicle, or any component
34 thereof, is free from material defects in mechanical condition at
35 the time of sale, unless the dealer has a reasonable basis for this
36 representation at the time it is made;

37 d. To fail to disclose, prior to sale, the existence and terms of
38 any written warranty, service contract or repair insurance
39 currently in effect on a used motor vehicle provided by a person
40 other than the dealer, and subject to transfer to a consumer, if
41 known to the dealer;

42 e. To misrepresent the terms of any written warranty, service
43 contract or repair insurance currently in effect on a used motor
44 vehicle provided by a person other than the dealer, and subject to
45 transfer to a consumer;

46 f. To fail to disclose, prior to sale, the existence and terms of
47 any written warranty, service contract or repair insurance
48 offered by the dealer in connection with the sale of a used motor
49 vehicle;

50 g. To misrepresent the terms of any warranty, service
51 contract or repair insurance offered by the dealer in connection
52 with the sale of a used motor vehicle;

53 h. To represent, prior to sale, that a used motor vehicle is sold
54 with a warranty, service contract or repair insurance when the

1 vehicle is sold without any warranty, service contract or repair
2 insurance;

3 i. To fail to disclose, prior to sale, that a used motor vehicle is
4 sold without any warranty, service contract, or repair insurance;
5 and

6 j. To fail to provide a clear written explanation, prior to sale,
7 of what is meant by the term "as is," if the used motor vehicle is
8 sold "as is."

9 3. It shall be an unlawful practice for a dealer to sell a used
10 motor vehicle to a consumer without giving the consumer a
11 written warranty which shall at least have the following minimum
12 durations:

13 a. If the used motor vehicle has 24,000 miles or less, the
14 warranty shall be, at a minimum, 90 days or 3,000 miles,
15 whichever comes first;

16 b. If the used motor vehicle has more than 24,000 miles but
17 less than 60,000 miles, the warranty shall be, at a minimum, 60
18 days or 2,000 miles, whichever comes first; or

19 c. If the used motor vehicle has 60,000 miles or more, the
20 warranty shall be, at a minimum, 30 days or 1,000 miles,
21 whichever comes first, except that a consumer may waive his
22 right to a warranty as provided under section 7 of this act.

23 4. The written warranty shall require the dealer, upon failure
24 or malfunction of a covered item during the term of the
25 warranty, to correct the malfunction or defect, provided the used
26 motor vehicle is delivered to the dealer, at his regular place of
27 business, and subject to a deductible amount of \$50 to be paid by
28 the consumer for each repair of a covered item. This written
29 warranty shall exclude repairs covered by any manufacturer's
30 warranty, or recall program, as well as repairs of a covered item
31 required because of collision, abuse, or the consumer's failure to
32 properly maintain such used motor vehicle in accordance with the
33 manufacturer's recommended maintenance schedule, or from
34 damage of a covered item caused as a result of any commercial
35 use of the used motor vehicle, or operation of such vehicle
36 without proper lubrication or coolant, or as a result of any
37 misuse, negligence or alteration of such vehicle by someone other
38 than the dealer.

39 5. a. If, within the periods specified in section 3 of this act,
40 the dealer or his agent fails to correct a material defect of the
41 used motor vehicle, after a reasonable opportunity to repair the
42 used motor vehicle, the dealer shall repurchase the used motor
43 vehicle and refund to the consumer the full purchase price,
44 excluding all sales taxes, title and registration fees, or any
45 similar governmental charges, and less a reasonable allowance for
46 excessive wear and tear and less a deduction for personal use of
47 such vehicle. Refunds shall be made to the consumer and
48 lienholder, if any, as their interests appear on the records of
49 ownership kept by the Director of the Division of Motor Vehicles.

50 b. It shall be an affirmative defense to any claim under this
51 section that:

52 (1) The material defect does not substantially impair the use,
53 value or safety of the used motor vehicle; or

54 (2) The malfunction or material defect is the result of abuse,

1 neglect or unauthorized modification or alteration of the used
2 motor vehicle by anyone other than the dealer or his agent.

3 c. It shall be presumed that a dealer has a reasonable
4 opportunity to correct or repair a material defect in a used motor
5 vehicle, if:

6 (1) The same material defect has been subject to repair three
7 or more times by the dealer or his agent within the warranty
8 period, but the material defect continues to exist; or

9 (2) The used motor vehicle is out of service by reason of
10 waiting for the dealer to begin or complete repair of the material
11 defect for a cumulative total of 20 or more days during the
12 warranty period.

13 6. The term of any written warranty offered by a dealer in
14 connection with the sale of a used motor vehicle shall be
15 extended by any time period during which the used motor vehicle
16 is waiting for the dealer or his agent to begin or complete repairs
17 of a material defect of the used motor vehicle.

18 7. Notwithstanding any provision of this act to the contrary, a
19 consumer, as a result of a price negotiation for the purchase of a
20 used motor vehicle with over 60,000 miles, may elect to waive
21 the dealer's obligation to provide a warranty on the used motor
22 vehicle. The waiver shall be in writing and separately stated in
23 the agreement of retail sale or in an attachment thereto and
24 separately signed by the consumer. The waiver shall state the
25 dealer's obligation to provide a warranty on used motor vehicles
26 offered for sale, as set forth in sections 3 and 4 of this act. The
27 waiver shall indicate that the consumer, having negotiated the
28 purchase price of the used motor vehicle and obtained a price
29 adjustment, is electing to waive the dealer's obligation to
30 provide a warranty on the used motor vehicle and is buying the
31 used motor vehicle "as is."

32 8. If a dealer fails to give a written warranty required by this
33 act, the dealer nevertheless shall be deemed to have given the
34 warranty as a matter of law, unless a waiver has been signed by
35 the consumer in accordance with section 7 of this act.

36 9. Nothing in this act shall in any way limit the rights or
37 remedies which are otherwise available to a consumer under any
38 other law.

39 10. The provisions of sections 3, 4, and 5 shall not apply to:
40 any used motor vehicle sold for less than \$3,000; any used motor
41 vehicle over 7 or more model years old; or, any used motor
42 vehicle with more than 100,000 miles.

43 11. To assure compliance with the requirements of this act, a
44 dealer shall provide a bond in favor of the State of New Jersey in
45 the amount of \$10,000, executed by a surety company authorized
46 to transact business in the State of New Jersey by the
47 Department of Insurance and to be conditioned on the faithful
48 performance of the provisions of this act. This bond shall be for
49 the term of 12 months and shall be renewed at each expiration
50 for a similar period. The Director of the Division of Motor
51 Vehicles shall not issue a dealer's license and shall not renew a
52 license of any dealer who has not furnished proof of the existence
53 of the bond required by this act.

54 12. The Director shall adopt rules and regulations pursuant to

1 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
2 et seq.) to effectuate the purposes of this act.

3 13. The director shall implement a consumer awareness
4 program which shall advise consumers of the requirements,
5 protections and benefits provided by this act, within 120 days
6 following enactment of this act.

7 14. This act shall take effect on the 180th day following
8 enactment and shall apply to used motor vehicles sold on or after
9 that date.

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Spencer
STATEMENT

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This bill provides that it shall be an unlawful practice for a dealer of used motor vehicles to engage in certain conduct. The conduct prohibited by the bill includes misrepresenting the mechanical condition of a used motor vehicle, failing to disclose, prior to sale, a mechanical defect in the vehicle which is known to the dealer, failing to disclose or misrepresenting the terms of any written warranty, service contract or repair insurance in effect and other pertinent information.

The bill also prohibits dealers from selling certain used motor vehicles unless they give a written warranty. The warranty would be for: (a) a minimum of 90 days or 3,000 miles, whichever comes first, if the used vehicle has 24,000 miles or less; (b) a minimum of 60 days or 2,000 miles, whichever comes first, if the used vehicle has between 24,000 and 60,000 miles; and (c) a minimum of 30 days or 1,000 miles, whichever comes first, if the used vehicle has over 60,000 miles.

During the warranty period the dealer shall, under certain conditions, be required to correct a malfunction or defect, provided the used motor vehicle is delivered to the dealer at his regular place of business, and subject to a deductible amount of \$50 to be paid by the consumer for each repair of a covered item. If the dealer or his agent fails to correct a material defect of the used motor vehicle, after a reasonable opportunity to repair the used motor vehicle, the dealer shall repurchase the used motor vehicle and refund to the consumer the full purchase price, excluding all sales taxes, title and registration fees, or any similar governmental charges, and less a deduction for personal use of the vehicle. In regard to warranties, the bill permits a consumer purchasing a used motor vehicle with over 60,000 miles to waive the dealer's obligation to provide a warranty on that vehicle. Also, the bill exempts from the warranty requirements any used motor vehicle sold for less than \$3,000, any used motor vehicle over 7 model years old, and any used motor vehicle with more than 100,000 miles.

The bill further stipulates that every dealer provide a bond in favor of the State of New Jersey in the amount of \$10,000. In addition, this bill directs the Director of the Division of Consumer Affairs to implement a consumer awareness program which shall advise consumers of the requirements, protections and benefits of this act.

- 1 _____
- 2
- 3 Establishes a "lemon law" for certain used motor vehicles.

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ASSEMBLY, No. 589
STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Assemblymen DORIA and LANCE

1 AN ACT concerning the sale and warranty of certain used motor
2 vehicles and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. As used in this act:

7 "Consumer" means the purchaser or prospective purchaser,
8 other than for the purpose of resale, of a used motor vehicle
9 normally used for personal, family or household purposes and
10 subject to a warranty, any person to whom that motor vehicle is
11 transferred during the duration of the warranty applicable to
12 that motor vehicle, and any other person entitled by the terms
13 of the warranty to enforce the obligations of the warranty;

14 "Dealer" means any person or business which sells or offers
15 for sale a used motor vehicle after selling or offering for sale
16 three or more used motor vehicles in the previous 12-month
17 period, but does not include a bank or other financial institution,
18 a business selling a used motor vehicle to an employee of that
19 business, or a lessor selling a leased motor vehicle to that motor
20 vehicle's lessee or an employee of the lessee;

21 "Director" means the Director of the Division of Consumer
22 Affairs in the Department of Law and Public Safety;

23 "Repair insurance" means a contract in writing to refund,
24 repair, replace, maintain or take other action with respect to a
25 used motor vehicle for any period of time or any specified
26 mileage and provided at an extra charge beyond the price of the
27 used motor vehicle;

28 "Service contract" means a contract in writing to refund,
29 repair, replace, maintain or take other action with respect to a
30 used motor vehicle for any period of time or any specific
31 mileage or provided at an extra charge beyond the price of the
32 used motor vehicle;

33 "Used motor vehicle" means a passenger motor vehicle,
34 excluding motorcycles, motor homes and off-road vehicles,
35 which has been driven more than the limited use necessary in
36 moving or road testing a new motor vehicle prior to delivery;

37 "Warranty" means any undertaking in writing in connection
38 with the sale by a dealer of a used motor vehicle to refund,
39 repair, replace, maintain or take other action with respect to
40 the used motor vehicle and provided at no extra charge beyond
41 the price of the used motor vehicle.

42 2. It shall be an unlawful practice for a dealer to fail to
43 display conspicuously on each used motor vehicle which he is
44 offering for sale a sign which states:

45 a. The name, address and telephone number of the dealer;

- 1 b. The address and telephone number of the Division of
2 Consumer Affairs or the address and telephone number of the
3 certified county or municipal office of consumer affairs nearest
4 the dealer;
- 5 c. Any material defects in the mechanical condition of the
6 used motor vehicle which are known to the dealer in a section of
7 the sign entitled "Major Known Defects" and stating that "a
8 dealer must tell you (the purchaser or consumer) on this sign if
9 he knows about any material defects in the mechanical condition
10 of the used motor vehicle" or similar words approved by the
11 director;
- 12 d. The terms of any warranty offered in connection with the
13 sale of the used motor vehicles in a section of the sign entitled
14 "Warranty Offered;"
- 15 e. The terms of any service contract or repair insurance
16 offered in connection with the sale of the used motor vehicle;
17 and
- 18 f. If the used motor vehicle is offered for sale for less than
19 \$1,000.00 and the dealer is not offering a warranty on that
20 vehicle, that the used motor vehicle is being sold "as is" and
21 that "this means you (the purchaser or consumer) will pay all
22 costs for any repairs needed when you buy this used motor
23 vehicle or after the time of sale" or similar words approved by
24 the director.
- 25 The director shall determine the size, the type styles and
26 sizes, and the format of the sign, except that the sign shall be at
27 least 12 inches high by 7¼ inches wide.
- 28 3. It shall be an unlawful practice for a dealer:
- 29 a. To misrepresent the mechanical condition of a used motor
30 vehicle;
- 31 b. To fail to disclose, prior to sale, any material defect in the
32 mechanical condition of the used motor vehicle which is known
33 to the dealer;
- 34 c. To represent that a used motor vehicle, or any component
35 thereof, is free from material defects in mechanical condition
36 at the time of sale unless the dealer has a reasonable basis for
37 this representation at the time it is made;
- 38 d. To fail to disclose, prior to sale, the existence and the
39 terms of any written warranty, service contract or repair
40 insurance offered in connection with the sale of a used motor
41 vehicle;
- 42 e. To misrepresent the terms of any warranty, service
43 contract or repair insurance offered in connection with the sale
44 of a used motor vehicle;
- 45 f. To represent, prior to sale, that a used motor vehicle is
46 sold with a warranty, service contract or repair insurance when
47 the vehicle is sold without any warranty, service contract or
48 repair insurance;
- 49 g. To fail to disclose, prior to sale, that a used motor vehicle
50 is sold without any warranty, service contract or repair
51 insurance; and
- 52 h. To fail to provide a clear explanation, prior to sale, of
53 what is meant by the term "as is" if the motor vehicle is sold
54 "as is."

1 4. It shall be an unlawful practice for a dealer to sell a used
2 motor vehicle to a consumer without giving the consumer a
3 written warranty which shall at least have the following
4 minimum terms:

5 a. If the used motor vehicle has 24,000 miles or less, the
6 warranty shall be, at a minimum, 90 days or 3,000 miles,
7 whichever comes first.

8 b. If the used motor vehicle has more than 24,000 miles but
9 less than 60,000 miles, the warranty shall be, at a minimum, 60
10 days or 2,000 miles, whichever comes first.

11 c. If the used motor vehicle has 60,000 miles or more, the
12 warranty shall be, at a minimum, 30 days or 1,000 miles,
13 whichever comes first.

14 5. The written warranty shall require the dealer, upon notice
15 by the consumer of any malfunction or defect during the term of
16 the warranty, to either correct the malfunction or defect, or, at
17 the dealer's option, reimburse the consumer for the cost
18 incurred in repairing the malfunction or defect, notwithstanding
19 the fact that the repairs are made after the expiration of the
20 warranty period.

21 6. a. If, within the periods specified in sections 4 and 5 of
22 this act, the dealer or his agent fails to correct a malfunction or
23 defect which substantially impairs the use, value or safety of
24 the used motor vehicle to the consumer after a reasonable
25 period of time, the dealer, at the option of the consumer, shall
26 replace the used motor vehicle with a comparable motor
27 vehicle, or accept return of the used motor vehicle from the
28 consumer and refund to the consumer the full purchase price,
29 including all sales taxes, license fees, registration fees, and any
30 similar governmental charges, less a reasonable allowance for
31 any damage not attributable to normal wear or improvements.
32 Refunds shall be made to the consumer and lienholder, if any, as
33 their interests appear on the records of ownership kept by the
34 Director of the Division of Motor Vehicles. In the case of the
35 replacement of the used motor vehicle, the replacement vehicle
36 shall be subject to the lien of the lienholder in the same priority
37 the lien had on the used motor vehicle being returned.

38 b. It shall be an affirmative defense to any claim under this
39 section that:

40 (1) The malfunction or defect does not substantially impair
41 the use, value or safety of the used motor vehicle; or

42 (2) The malfunction or defect is the result of abuse, neglect
43 or unauthorized modification or alterations of the used motor
44 vehicle by anyone other than the dealer or his agent.

45 c. It shall be presumed that a dealer has had a reasonable
46 opportunity to correct or repair a malfunction or defect in a
47 used motor vehicle, if:

48 (1) The same malfunction or defect has been subject to repair
49 three or more times by the dealer or his agent within the
50 warranty period, but the malfunction or defect continues to
51 exist; or

52 (2) The motor vehicle is out of service by reason of waiting
53 for the dealer to begin or complete repair of the malfunction or
54 defect for a cumulative total of 15 or more days during the

1 warranty period.

2 7. The term of any warranty, service contract or repair
3 insurance shall be extended by any time period during which the
4 used motor vehicle is waiting for the dealer or his agent to begin
5 or complete the repairing of the used motor vehicle under the
6 terms and obligations of the warranty, service contract or repair
7 insurance.

8 8. The term of any warranty, service contract or repair
9 insurance, and the 15-day out-of-service period, shall be
10 extended by any time during which repair services are not
11 available to the consumer because of a war, invasion, strike,
12 fire, flood or other natural disaster.

13 9. a. Any agreement entered into by a consumer for the
14 purchase of a used motor vehicle which waives, limits or
15 disclaims the rights set forth in this act shall be void is contrary
16 to public policy.

17 b. If a dealer fails to give the written warranty required by
18 this act, the dealer nevertheless shall be deemed to have given
19 the warranty as a matter of law.

20 c. All rights under this act shall inure to a subsequent
21 transferee of a used motor vehicle during the warranty period.

22 10. Nothing in this act shall in any way limit the rights or
23 remedies which are otherwise available to a consumer under any
24 other law.

25 11. The provisions of sections 4, 5 and 6 shall not apply to
26 used motor vehicles sold for less than \$1,000.00.

27 12. The director shall adopt rules and regulations pursuant to
28 the "Administrative Procedure Act," P.L.1968, c.410
29 (C.52:14B-1 et seq.) to effectuate the purposes of this act.

30 13. This act shall take effect on the 180th day following
31 enactment and shall apply to used motor vehicles sold on or
32 after the date.

33 *Sponsor*

34 STATEMENT

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36
37 This bill requires a used motor vehicle dealer to display
38 conspicuously on each used motor vehicle he offers for sale a
39 sign stating any known major defects of the vehicle, terms of
40 any warranty, service contract or repair insurance offered, and
41 other pertinent information. The bill also prohibits certain
42 unscrupulous acts or misrepresentations in the sale of used
43 motor vehicles by a dealer.

44 The bill further prohibits dealers from selling certain used
45 motor vehicles unless they give a written warranty. The
46 warranty would be for: (a) a minimum of 90 days or 3,000 miles,
47 whichever comes first, if the used vehicle has 24,000 miles or
48 less; (b) a minimum of 60 days or 2,000 miles, whichever comes
49 first, if the used vehicle has between 24,000 and 60,000 miles;
50 and (c) a minimum of 30 days or 1,000 miles, whichever comes
51 first, if the used vehicle has over 60,000 miles. During the
52 warranty period the dealer must either correct the defect or
53 reimburse the consumer for the repairs. If a defect which
54 substantially impairs the use, value or safety of the used motor

1 vehicle cannot be repaired after three attempts have been made
2 or after the vehicle has been out of service for 15 days or more,
3 the consumer has the option of getting a comparable vehicle
4 from the dealer, or a refund. In regard to the required
5 warranties, the bill exempts used motor vehicles sold for less
6 than \$1,000.00.

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Regulates the sale and warranty of certain used motor vehicles.

ASSEMBLY COMMERCE AND REGULATED
PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 2404 and 589

STATE OF NEW JERSEY

DATED: JANUARY 26, 1995

The Assembly Commerce and Regulated Professions Committee reports favorably Assembly Committee Substitute for Assembly, Nos. 2404 and 589.

This committee substitute provides that it shall be an unlawful practice for a dealer of used motor vehicles to engage in certain conduct. The conduct prohibited by the committee substitute includes misrepresenting the mechanical condition of a used motor vehicle, failing to disclose, prior to sale, a mechanical defect in the vehicle which is known to the dealer, failing to disclose or misrepresenting the terms of any written warranty, service contract or repair insurance in effect and other pertinent information.

The committee substitute also prohibits dealers from selling certain used motor vehicles unless they give a written warranty. The warranty would be for: (a) a minimum of 90 days or 3,000 miles, whichever comes first, if the used vehicle has 24,000 miles or less; (b) a minimum of 60 days or 2,000 miles, whichever comes first, if the used vehicle has between 24,000 and 60,000 miles; and (c) a minimum of 30 days or 1,000 miles, whichever comes first, if the used vehicle has over 60,000 miles.

During the warranty period the dealer shall, under certain conditions, be required to correct a malfunction or defect, provided the used motor vehicle is delivered to the dealer at his regular place of business, and subject to a deductible amount of \$50 to be paid by the consumer for each repair of a covered item. If the dealer or his agent fails to correct a material defect of the used motor vehicle, after a reasonable opportunity to repair the used motor vehicle, the dealer shall repurchase the used motor vehicle and refund to the consumer the full purchase price, excluding all sales taxes, title and registration fees, or any similar governmental charges, and less a deduction for personal use of the vehicle. In regard to warranties, the committee substitute permits a consumer purchasing a used motor vehicle with over 60,000 miles to waive the dealer's obligation to provide a warranty on that vehicle. Also, the committee substitute exempts from the warranty requirements any used motor vehicle sold for less than \$3,000, any used motor vehicle over 7 model years old, and any used motor vehicle with more than 100,000 miles.

The committee substitute further stipulates that every dealer provide a bond in favor of the State of New Jersey in the amount of \$10,000. In addition, this committee substitute directs the Director of the Division of Consumer Affairs to implement a consumer awareness program which shall advise consumers of the requirements, protections and benefits of this act.

LEGISLATIVE FISCAL ESTIMATE TO
[SECOND REPRINT]
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2404 and 589
STATE OF NEW JERSEY

DATED: May 5, 1995

Assembly Committee Substitute for Assembly Bills No. 2404 and 589 (2R) establishes a used car "lemon law" to protect purchasers of malfunctioning or unreparable vehicles.

The bill requires dealers to give a written warranty with each used car sold and requires them to correct certain malfunctions and defects during the warranty period, subject to a \$50 deductible payment by the consumer for each repair. A dealer is defined by the bill as a person or business which sells or offers for sale a used motor vehicle after selling or offering for sale three or more used motor vehicles in the previous 12 months. Motor vehicles sold for less than \$3,000, over seven model years old, declared a total loss by an insurance company or having over 100,000 miles are excluded from the bill's provisions.

The bill also makes certain dealer practices unlawful. These include misrepresentation of a vehicle's mechanical condition, failure to disclose a known mechanical defect, and failure to disclose the terms of a warranty or service contract. If a dealer fails to correct a material defect after having a reasonable opportunity to repair the vehicle, the dealer is required to purchase the motor vehicle and refund to the consumer its full purchase price. Used cars dealers are required to provide a \$10,000 surety bond to ensure their compliance with the act. A dealer is required to furnish proof of this bond to the Division of Motor Vehicles as a condition for receiving a used car dealer's license.

The used car lemon law program would be administered by the Division of Consumer Affairs in the Department of Law and Public Safety. The bill requires the division to mount a consumer awareness campaign to advise consumers of the protections offered by the bill. The division also would be responsible for monitoring the warranty program and responding to consumer inquiries and complaints. The bill authorizes the division to impose a fee on consumers to cover the costs of administering and enforcing the provisions of the bill.

The division has provided an informal estimate of the cost of administering this bill based on its experience in administering the new car lemon law, P.L.1988, c.123 (C.56:12-29 et seq.). The division receives approximately 8,000 inquiries and 3,000 written complaints under this law. It estimates that it would experience a fourfold increase in inquiries and complaints under the used car lemon law program established by this bill.

Based on this projected workload, the division informally estimates the cost of administering this bill at \$600,000 in the first year after enactment. This estimate includes personnel costs of \$522,000 for an executive assistant, six investigators and eight clerical personnel. It also includes \$24,000 for materials and supplies, \$35,000 for services other than personnel, and \$19,000 for equipment. After increasing salaries by five percent and adjusting for certain one-time costs, the division estimates the cost of this bill at \$613,000 and \$645,000 in the second and third years, respectively.

The Office of Legislative Services (OLS) does not concur with this estimate. It does not include fringe benefit costs, which constitute approximately 30 percent of salaries. After adding fringe benefits, the division's cost of administering this bill would be \$756,600, \$777,400 and \$817,500 in the first three years after enactment, respectively.

OLS notes that this bill also would entail additional costs for the Office of Administrative Law (OAL), which would hear disputed lemon law cases referred by the Division of Consumer Affairs. Approximately 75 cases a year are heard by OAL judges, according to the division. OAL was unable to immediately provide information on the cost of conducting these hearings. Additional costs also would be incurred by the Division of Motor Vehicles in ensuring that used car dealers posted the required surety bond.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.