

56:12-19 to 56:12-28

LEGISLATIVE HISTORY CHECKLIST

NJSA: 56:12-19 to 56:12-28

(Automobile warranties - set standards)

LAWS OF: 1983

CHAPTER: 215

Bill No: S1738

Sponsor(s): O'Connor and DiFrancesco

Date Introduced: September 23~~rd~~, 1982

Committee: Assembly: Commerce and Industry

Senate: Labor, Industry and Professions

Amended during passage: YES

Senate Committee Substitute (3rd OCR) enacted. Amendments denoted by asterisks. Substituted for A1910, Assembly Committee Substitute (OCR), original & Assembly Committee statement attached.

Date of Passage: Assembly: April 11, 1983

Senate: December 6, 1982

Date of Approval: June 20, 1983

Following statements are attached if available:

Sponsor statement:

YES

Also attached: Senate Amendments, adopted 4/29/82, 12/6/82 and Assembly Amendment 4/25/83 (with statements)

Committee statement:

Assembly

YES

Senate

YES

Fiscal Note:

NO

Veto Message:

NO

Message on Signing:

YES

Following were printed:

Reports:

NO

Hearings:

NO

See clipping file "N.J. - Consumer Protection - 1983" in New Jersey Reference Section of the State Library.

[THIRD OFFICIAL COPY REPRINT]  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 1738 and 1759**  
**STATE OF NEW JERSEY**

ADOPTED NOVEMBER 23, 1982

Sponsored by Senators O'CONNOR and DiFRANCESCO

AN ACT concerning certain automobile warranties.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. As used in this act:

2 a. "Consumer" means the purchaser, other than for purposes of  
3 resale, of an automobile; a person to whom an automobile is trans-  
4 ferred during the duration of an express warranty applicable to the  
5 automobile; or any other person entitled by the terms of the  
6 warranty to enforce the obligations of the warranty.

7 b. "Dealer" means a person actively engaged in the business of  
8 buying, selling or exchanging automobiles at retail and who has an  
9 established place of business.

10 c. "Manufacturer" means a person engaged in the business of  
11 manufacturing, assembling or distributing automobiles, who will,  
12 under normal business conditions during the year, manufacture,  
13 assemble or distribute to dealers at least 10 new automobiles.

14 d. "Manufacturer's express warranty" or "warranty" means the  
15 written warranty of the manufacturer of a new automobile of its  
16 condition and fitness for use, including any terms or conditions  
17 precedent to the enforcement of obligations under that warranty.

18 e. "Automobile" means any passenger automobile as defined in  
19 R. S. 39:1-1 which is registered by the Division of Motor Vehicles  
20 in the Department of Law and Public Safety\*\*\*, *except the living*  
20A *facilities of motor homes\*\*\*.*

21 f. "Nonconformity" means a defect or condition which sub-  
22 stantially impairs the use, value, or safety of an automobile.

**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 printed in italics thus is new matter.**

**Matter enclosed in asterisks or stars has been adopted as follows:**

\*—Senate amendments adopted November 29, 1982.

\*\*—Senate amendments adopted December 6, 1982.

\*\*\*—Assembly committee amendments adopted January 31, 1983.

\*\*\*\*—Assembly amendments adopted February 14, 1983.

\*\*\*\*\*—Senate amendments adopted April 25, 1983.

23 \*\*\*\*g. "Lien" means a security interest in an automobile."

24 h. "Lienholder" means a person with a security interest in an  
25 automobile pursuant to a lien.\*\*\*\*

1 2. If a new automobile does not conform to the manufacturer's  
2 express warranty, and the consumer reports the nonconformity to  
3 the manufacturer *\*or its agent or dealer\** during the term of the  
4 warranty or during the period of one year following the date of  
5 original delivery of an automobile to the consumer, whichever is  
6 earlier, the manufacturer shall make, or arrange with its dealer or  
7 agent to make, *\*\*\*within a reasonable period of time,\*\*\** all repairs  
8 necessary to conform the new automobile to the warranty, notwith-  
9 standing that the repairs or corrections are made after the expira-  
10 tion of the term of the warranty or the one-year period.

1 3. If the manufacturer is unable to conform the new automobile  
2 to the warranty by repairing or correcting a defect or condition  
3 which substantially impairs the use, value or safety of the new  
4 automobile to the consumer after a reasonable number of attempts,  
5 the manufacturer shall accept return of the automobile from the  
6 consumer and either:

7 a. Replace the automobile with a comparable new automobile and  
8 the consumer shall pay the manufacturer a reasonable allowance for  
9 his use of the automobile being returned and shall not pay, on the  
10 new replacement automobile, the taxes, preparation fees or any  
11 other charges or fees usually paid by a consumer; or

12 b. Refund to the consumer the full purchase price of the original  
13 automobile, including all taxes, preparation fees and any other  
14 charges or fees paid by the consumer, less a reasonable allowance  
15 for the consumer's use of the original automobile. \*\*\*\***[**Refunds  
16 shall be made to the consumer and lienholder, if any, as their  
17 interests appear on the records of ownership kept by the Director  
18 of the Division of Motor Vehicles.**]**\*\*\*\* *\*\*\*\*Refunds shall be made  
19 to the consumer and lienholder, if any, as their interests appear  
20 on the records of ownership kept by the Director of the Division  
21 of Motor Vehicles.\*\*\*\**

22 \*\*\*\***[**\*\*\*\*c. The provisions of this section shall not affect the  
23 interests of a lienholder, unless the lienholder consents to the re-  
24 placement of the lien with a corresponding lien on the automobile  
25 accepted by the consumer in exchange for the automobile having a  
26 nonconformity, the lienholder shall be paid in full the amount due  
27 on the lien, including interest and other charges, before an exchange  
28 of automobiles or a refund to the consumer is made.\*\*\*\***]**\*\*\*\*

1 4. It shall be presumed that a reasonable number of attempts  
2 have been undertaken to conform a new automobile to the manu-

3 factorer's express warranty if, within the warranty term or during  
 4 the period of one year following the date of original delivery of the  
 5 motor vehicle to a consumer, whichever is the earlier date:

6 a. The same nonconformity has been subject to repair or correc-  
 7 tion four or more times by the manufacturer, its agents or its  
 8 **\*\*[authorized]\*\*** dealers and the nonconformity continues to  
 8A exist; or

9 b. The automobile is out of service by reason of *\*\*\*waiting for*  
 10 *the dealer to begin or complete\*\*\** repair or correction of a non-  
 11 conformity by the manufacturer, its agents or its **\*\*[authorized]\*\***  
 12 dealers for a cumulative total of more than 30 business days since  
 13 the original delivery of the motor vehicle to the consumer. *\*\*\*\*This*  
 14 *30-day limit shall commence with the first day on which the con-*  
 15 *sumer \*\*\*\*[presents]\*\*\*\* \*\*\*\*makes\*\*\*\* the automobile*  
 16 *\*\*\*\*available\*\*\*\* to the manufacturer, its agent or dealer for*  
 16A *service of the nonconformity \*\*\*\*[and a written document de-*  
 16B *scribing the nonconformity is prepared by the manufacturer, its*  
 16C *agent, or dealer]\*\*\*\*.\*\*\*\** The 30-day limit shall be extended only  
 16D if repairs cannot be performed due to conditions beyond the control  
 16E of the manufacturer, its agents or its **\*\*[authorized]\*\*** dealers  
 16F including war, invasion, strike, fire, flood or other natural disaster.

17 \*c.\* The presumption provided in this section shall not apply  
 18 against a manufacturer unless the manufacturer has received prior  
 19 direct written notification from or on behalf of the consumer and  
 20 has had an opportunity to repair or correct the nonconformity\*;  
 21 *provided, however, that if the manufacturer does not directly*  
 21A *attempt \*\*or arrange with its dealer or agent\*\* to repair or correct*  
 22 *the nonconformity, the manufacturer may not defend a claim by a*  
 23 *consumer under this act **\*\*[or assert a claim against the manufac-***  
 24 *turer's agent or dealer]\*\* on the ground that the agent or dealer*  
 25 *failed to properly repair or correct the nonconformity or that the*  
 26 *repairs or corrections made by the agent or dealer caused or*  
 27 *contributed to the nonconformity\*.*

1 5. A reasonable allowance for use shall be the total amount  
 2 directly attributable to the use of the new automobile by the con-  
 3 sumer and any previous consumer, prior to the first report of the  
 4 nonconformity to the manufacturer by the consumer or any pre-  
 5 vious consumer of the new automobile and during any subsequent  
 6 period when the vehicle is not out of service by reason of repair or  
 7 correction of the nonconformity so reported.

1 6. It shall be an affirmative defense to a claim under this act that  
 2 the alleged nonconformity does not substantially impair the use,  
 3 value, or safety of the new automobile or that the nonconformity

4 is the result of abuse or neglect or of unauthorized modifications or  
 5 alterations of the new automobile by anyone other than the manu-  
 6 facturer, its agent or **\*\*[authorized]\*\*** dealer.

1 7. If a manufacturer has established a qualified informal dispute  
 2 settlement procedure pursuant to section 110 of Pub. L. 93-637 (15  
 3 U. S. C. § 2310) and the rules promulgated thereunder, the remedies  
 4 provided by this act shall not be available to a consumer who has  
 5 not first **\*\*\*[restored]\*\*\*** **\*\*\*resorted\*\*\*** to that procedure.

1 **\*\*\*8. The Division of Consumer Affairs in the Department of**  
 2 **Law and Public Safety shall periodically make known to the public**  
 3 **\*\*\*\*[the determinations of the Federal Trade Commission]\*\*\*\*** **as**  
 4 **to whether or not the dispute settlement procedure of each manu-**  
 5 **facturer doing business in this State complies with \*\*\*\*[the re-**  
 5A **quirement of]\*\*\*\*** **\*\*\*\*procedures pursuant to\*\*\*\*** **section 110**  
 6 **of Pub. L. 93-637 (15 U. S. C. § 2310) and the rules promulgated**  
 7 **thereunder.\*\*\***

1 **\*\*\*[8.]\*\*\*** **\*\*\*9.\*\*\*** Nothing in this act shall in any way limit the  
 2 rights or remedies for breach of warranty otherwise available to a  
 3 consumer.

1 **\*\*\*[9.]\*\*\*** **\*\*\*10.\*\*\*** Nothing in this act shall be construed as im-  
 2 posing any liability on a dealer or creating a cause of action by a  
 3 consumer against a dealer under section 3 of this act.

1 **\*\*\*[10.]\*\*\*** **\*\*\*11.\*\*\*** This act shall take effect immediately, but  
 2 shall apply only to new automobiles purchased after its effective  
 3 date.

SENATE, No. 1738

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 23, 1982

By Senators O'CONNOR and RODGERS

Referred to Committee on Labor, Industry and Professions

AN ACT concerning new automobile warranties.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. As used in this act:

2 a. "Consumer" means the purchaser, other than for the purposes  
3 of resale, of a new automobile or other person entitled to enforce  
4 the obligations of a manufacturer's express warranty.

5 b. "Manufacturer's express warranty" or "warranty" means the  
6 written warranty of the manufacturer of a new automobile of its  
7 condition and fitness for use, including any terms or conditions  
8 precedent to the enforcement of obligations under that warranty.

9 c. "New automobile" means a vehicle propelled otherwise than  
10 by muscular power excepting a vehicle run only upon rails or  
11 tracks, a motorized bicycle or motorcycle, which is expressly war-  
12 ranted as to its condition and fitness for use by its manufacturer.

1 2. If a new automobile does not conform to any manufacturer's  
2 express warranty, and the consumer reports the nonconformity  
3 to the manufacturer, its agent or authorized dealer during the  
4 term of the warranty or during the period of one year following  
5 the date of delivery to the consumer, whichever is earlier, the  
6 manufacturer, its agent or authorized dealer shall make all repairs  
7 necessary to conform the new automobile to the warranty, not-  
8 withstanding that the repairs are made after the expiration of  
9 the term of the warranty or the one-year period.

1 3. If the manufacturer, its agent or authorized dealer is unable  
2 to conform the new automobile to any warranty by repairing or  
3 correcting a defect or condition which substantially impairs the  
4 use or value of the new automobile to the consumer after a reason-  
5 able number of attempts, the manufacturer shall accept return of

6 the new automobile from the consumer and refund to the con-  
7 sumer the full purchase price of the new automobile, including all  
8 taxes, preparation fees and any other charges or fees paid by the  
9 consumer, less a reasonable allowance for the consumer's use of  
10 the vehicle. Refunds shall be made to the consumer and lienholder,  
11 if any, as their interests appear on the records of ownership kept  
12 by the Director of the Division of Motor Vehicles.

13 a. It shall be presumed that a reasonable number of attempts  
14 have been undertaken to conform a new automobile to the manu-  
15 facturer's express warranty if:

16 (1) The same nonconformity has been the subject of repair or  
17 correction four or more times by the manufacturer, its agent or  
18 authorized dealer, within the term of the warranty or the period  
19 of one year following the date of delivery of the new automobile  
20 to the consumer, whichever is earlier, and the nonconformity con-  
21 tinues to exist; or

22 (2) The new automobile is out of service by reason of repair  
23 for a cumulative total of 30 days in that term or during that year.

24 Any warranty, any one year period or any 30 day period shall  
25 not include any period of time during which repair services are  
26 not available due to war, invasion, strike, fire, flood or other  
27 disaster.

28 b. A reasonable allowance for use shall be the total amount  
29 directly attributable to the use of the new automobile by the con-  
30 sumer and any previous consumer, prior to the first report of the  
31 nonconformity to the manufacturer, its agent or authorized dealer  
32 by the consumer or any previous consumer of the new automobile  
33 and during any subsequent period when the vehicle is not out of  
34 service by reason of repair of the nonconformity so reported.

35 c. It shall be an affirmative defense to any claim under this act  
36 that the alleged nonconformity does not substantially impair the  
37 use or value of the new automobile or that the nonconformity is  
38 the result of abuse or neglect or of unauthorized modifications or  
39 alterations of the new automobile by anyone other than the manu-  
40 facturer, its agent or authorized dealer.

1 4. If a manufacturer has established an informal dispute settle-  
2 ment procedure pursuant to section 110 of Pub. L. 93-637 (15  
3 U. S. C. § 2310) and the rules promulgated thereunder, the remedies  
4 provided by this act shall not be available to a consumer who has  
5 not first resorted to that procedure.

1 5. Nothing in this act shall in any way limit the rights or  
2 remedies for breach of warranty otherwise available to a consumer.

1 6. This act shall take effect immediately, but shall apply only  
2 to new automobiles purchased after its effective date.

**STATEMENT**

This bill, based upon the recently enacted Connecticut "Lemon Law," is designed to protect buyers of new automobiles when repeated attempts to have them repaired pursuant to a manufacturer's warranty are unsuccessful.

The bill would require a refund of the full purchase price of the automobile, less an allowance for use, when a nonconformity with the warranty has not been corrected after four attempts or the automobile is out of service for 30 days as a result of the corrections or repair attempts.

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SENATE LABOR, INDUSTRY AND PROFESSIONS  
COMMITTEE

STATEMENT TO  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 1738 and 1759**

**STATE OF NEW JERSEY**

DATED: NOVEMBER 23, 1982

This bill requires a manufacturer of a new automobile to repair all defects covered by a written warranty if reported by the consumer during the warranty period or within one year of the automobile's delivery date to the consumer, whichever is earlier. If the manufacturer is unable to repair a defect which substantially impairs the automobile's use, value or safety after a reasonable number of attempts, the bill requires the manufacturer to either replace the automobile with the manufacturer paying collateral charges and the consumer paying an allowance for the use of the returned automobile or to refund the full purchase price and collateral charges, less an allowance for the consumer's use of the returned automobile. A refund would be made to the consumer and to anyone holding a lien on the automobile.

If a manufacturer has established an informal dispute settlement mechanism that complies in all respects with relevant Federal Trade Commission regulations, the bill requires a consumer to attempt to settle the dispute through that mechanism before the bill's provisions requiring a replacement or refund would apply.

The bill specifies that a "reasonable number of attempts" have been taken when:

a. The same problem has been subject to repair four or more times during the warranty period or within one year of the automobile's delivery date, whichever is earlier; or

b. The automobile has been out of service for repairs for a cumulative total of 30 business days during the same period. The 30-day period is extended if the repairs cannot be performed because of war, invasion, strike, fire, flood or other natural disaster.

The bill specifies that the manufacturer has the following affirmative defenses in any suit to obtain a new replacement automobile or to recover the cost of an automobile:

a. The defect does not substantially impair the automobile's use, value or safety.

b. The defect was caused by the consumer's abuse or neglect or by an unauthorized modification or alteration of the automobile by anyone other than the manufacturer or its agent or dealer.

In addition, because the provisions in the original bills affecting dealers were eliminated and because the dealers in this committee substitute were provided with immunity as to their possible liability under section 3 of the bill, the substitute provides that the presumption provided in the bill does not apply against a manufacturer unless the manufacturer has received prior direct written notification from the consumer and has an opportunity to repair the defect.

The bill does not limit other rights or remedies available to a consumer under any other law.

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SENATE COMMITTEE SUBSTITUTE FOR  
SENATE, Nos. 1738 and 1759

STATE OF NEW JERSEY

ADOPTED NOVEMBER 23, 1982

Sponsored by Senators O'CONNOR and DiFRANCESCO

AN ACT concerning certain automobile warranties.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. As used in this act:

2 a. "Consumer" means the purchaser, other than for purposes of  
3 resale, of an automobile; a person to whom an automobile is trans-  
4 ferred during the duration of an express warranty applicable to the  
5 automobile; or any other person entitled by the terms of the  
6 warranty to enforce the obligations of the warranty.

7 b. "Dealer" means a person actively engaged in the business of  
8 buying, selling or exchanging automobiles at retail and who has an  
9 established place of business.

10 c. "Manufacturer" means a person engaged in the business of  
11 manufacturing, assembling or distributing automobiles, who will,  
12 under normal business conditions during the year, manufacture,  
13 assemble or distribute to dealers at least 10 new automobiles.

14 d. "Manufacturer's express warranty" or "warranty" means the  
15 written warranty of the manufacturer of a new automobile of its  
16 condition and fitness for use, including any terms or conditions  
17 precedent to the enforcement of obligations under that warranty.

18 e. "Automobile" means any passenger automobile as defined in  
19 R. S. 39:1-1 which is registered by the Division of Motor Vehicles  
20 in the Department of Law and Public Safety.

21 f. "Nonconformity" means a defect or condition which sub-  
22 stantially impairs the use, value, or safety of an automobile.

1 2. If a new automobile does not conform to the manufacturer's  
2 express warranty, and the consumer reports the nonconformity to

3 the manufacturer during the term of the warranty or during the  
 4 period of one year following the date of original delivery of an  
 5 automobile to the consumer, whichever is earlier, the manufacturer  
 6 shall make, or arrange with its dealer or agent to make, all repairs  
 7 necessary to conform the new automobile to the warranty, notwith-  
 8 standing that the repairs or corrections are made after the expira-  
 9 tion of the term of the warranty or the one-year period.

1 3. If the manufacturer is unable to conform the new automobile  
 2 to the warranty by repairing or correcting a defect or condition  
 3 which substantially impairs the use, value or safety of the new  
 4 automobile to the consumer after a reasonable number of attempts,  
 5 the manufacturer shall accept return of the automobile from the  
 6 consumer and either:

7 a. Replace the automobile with a comparable new automobile and  
 8 the consumer shall pay the manufacturer a reasonable allowance for  
 9 his use of the automobile being returned and shall not pay, on the  
 10 new replacement automobile, the taxes, preparation fees or any  
 11 other charges or fees usually paid by a consumer; or

12 b. Refund to the consumer the full purchase price of the original  
 13 automobile, including all taxes, preparation fees and any other  
 14 charges or fees paid by the consumer, less a reasonable allowance  
 15 for the consumer's use of the original automobile. Refunds shall  
 16 be made to the consumer and lienholder, if any, as their interests  
 17 appear on the records of ownership kept by the Director of the  
 18 Division of Motor Vehicles.

1 4. It shall be presumed that a reasonable number of attempts  
 2 have been undertaken to conform a new automobile to the manu-  
 3 facturer's express warranty if, within the warranty term or during  
 4 the period of one year following the date of original delivery of the  
 5 motor vehicle to a consumer, whichever is the earlier date:

6 a. The same nonconformity has been subject to repair or correc-  
 7 tion four or more times by the manufacturer, its agents or its  
 8 authorized dealers and the nonconformity continues to exist; or

9 b. The automobile is out of service by reason of repair or correc-  
 10 tion of a nonconformity by the manufacturer, its agents or its  
 11 authorized dealers for a cumulative total of more than 30 business  
 12 days since the original delivery of the motor vehicle to the con-  
 13 sumer. The 30-day limit shall be extended only if repairs cannot  
 14 be performed due to conditions beyond the control of the manu-  
 15 facturer, its agents or its authorized dealers including war, in-  
 16 vasion, strike, fire, flood or other natural disaster.

17 The presumption provided in this section shall not apply against  
 18 a manufacturer unless the manufacturer has received prior direct

19 written notification from or on behalf of the consumer and has had  
20 an opportunity to repair or correct the nonconformity.

1 5. A reasonable allowance for use shall be the total amount  
2 directly attributable to the use of the new automobile by the con-  
3 sumer and any previous consumer, prior to the first report of the  
4 nonconformity to the manufacturer by the consumer or any pre-  
5 vious consumer of the new automobile and during any subsequent  
6 period when the vehicle is not out of service by reason of repair or  
7 correction of the nonconformity so reported.

1 6. It shall be an affirmative defense to a claim under this act that  
2 the alleged nonconformity does not substantially impair the use,  
3 value, or safety of the new automobile or that the nonconformity  
4 is the result of abuse or neglect or of unauthorized modifications or  
5 alterations of the new automobile by anyone other than the manu-  
6 facturer, its agent or authorized dealer.

1 7. If a manufacturer has established a qualified informal dispute  
2 settlement procedure pursuant to section 110 of Pub. L. 93-637 (15  
3 U. S. C. § 2310) and the rules promulgated thereunder, the remedies  
4 provided by this act shall not be available to a consumer who has  
5 not first restored to that procedure.

1 8. Nothing in this act shall in any way limit the rights or remedies  
2 for breach of warranty otherwise available to a consumer.

1 9. Nothing in this act shall be construed as imposing any  
2 liability on a dealer or creating a cause of action by a consumer  
3 against a dealer under section 3 of this act.

1 10. This act shall take effect immediately, but shall apply only  
2 to new automobiles purchased after its effective date.

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ADOPTED  
NOV 29 1982

11/29/82

Senate Amendments

SPONSORED BY SENATOR O'CONNOR

to

Senate Committee Substitute for  
Senate Bill No. 1738 and

Senate Bill No. 1759 (Typed and)

Amend:

Page	Sec.	Line	
2	2	3	After "manufacturer" insert "or its agent or dealer"
3	4	20	Before "The" insert "c."
3	4	24	After "nonconformity" insert "; provided, however, that if the manufacturer does not directly attempt to repair or correct the nonconformity, the manufacturer may not defend a claim by a consumer under this act or assert a claim against the manufacturer's agent or dealer on the ground that the agent or dealer failed to properly repair or correct the nonconformity or that the repairs or corrections made by the agent or dealer caused or contributed to the nonconformity"

STATEMENT

These amendments provide that, if a manufacturer has received notification of a nonconformity and does not directly attempt to repair the nonconformity of the consumer's automobile, the manufacturer may not defend a claim by the consumer for a new automobile or a refund under the act or may not assert a claim against its agents or dealers on the ground either that the agent or dealer failed to properly repair the nonconformity or that the repairs made caused or contributed to the nonconformity.

[OFFICIAL COPY REPRINT]  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 1738 and 1759**  
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AN ACT concerning certain automobile warranties.

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2 *of New Jersey:*

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4 ferred during the duration of an express warranty applicable to the  
5 automobile; or any other person entitled by the terms of the  
6 warranty to enforce the obligations of the warranty.

7 b. "Dealer" means a person actively engaged in the business of  
8 buying, selling or exchanging automobiles at retail and who has an  
9 established place of business.

10 c. "Manufacturer" means a person engaged in the business of  
11 manufacturing, assembling or distributing automobiles, who will,  
12 under normal business conditions during the year, manufacture,  
13 assemble or distribute to dealers at least 10 new automobiles.

14 d. "Manufacturer's express warranty" or "warranty" means the  
15 written warranty of the manufacturer of a new automobile of its  
16 condition and fitness for use, including any terms or conditions  
17 precedent to the enforcement of obligations under that warranty.

18 e. "Automobile" means any passenger automobile as defined in  
19 R. S. 39:1-1 which is registered by the Division of Motor Vehicles  
20 in the Department of Law and Public Safety.

21 f. "Nonconformity" means a defect or condition which sub-  
22 stantially impairs the use, value, or safety of an automobile.

1 2. If a new automobile does not conform to the manufacturer's  
2 express warranty, and the consumer reports the nonconformity to

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Matter enclosed in asterisks or stars has been adopted as follows:  
\*—Senate amendments adopted November 29, 1982.

3 the manufacturer *\*or its agent or dealer\** during the term of the  
4 warranty or during the period of one year following the date of  
5 original delivery of an automobile to the consumer, whichever is  
6 earlier, the manufacturer shall make, or arrange with its dealer or  
7 agent to make, all repairs necessary to conform the new automobile  
8 to the warranty, notwithstanding that the repairs or corrections  
9 are made after the expiration of the term of the warranty or the  
10 one-year period.

1 3. If the manufacturer is unable to conform the new automobile  
2 to the warranty by repairing or correcting a defect or condition  
3 which substantially impairs the use, value or safety of the new  
4 automobile to the consumer after a reasonable number of attempts,  
5 the manufacturer shall accept return of the automobile from the  
6 consumer and either:

7 a. Replace the automobile with a comparable new automobile and  
8 the consumer shall pay the manufacturer a reasonable allowance for  
9 his use of the automobile being returned and shall not pay, on the  
10 new replacement automobile, the taxes, preparation fees or any  
11 other charges or fees usually paid by a consumer; or

12 b. Refund to the consumer the full purchase price of the original  
13 automobile, including all taxes, preparation fees and any other  
14 charges or fees paid by the consumer, less a reasonable allowance  
15 for the consumer's use of the original automobile. Refunds shall  
16 be made to the consumer and lienholder, if any, as their interests  
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18 Division of Motor Vehicles.

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2 have been undertaken to conform a new automobile to the manu-  
3 facturer's express warranty if, within the warranty term or during  
4 the period of one year following the date of original delivery of the  
5 motor vehicle to a consumer, whichever is the earlier date:

6 a. The same nonconformity has been subject to repair or correc-  
7 tion four or more times by the manufacturer, its agents or its  
8 authorized dealers and the nonconformity continues to exist; or

9 b. The automobile is out of service by reason of repair or correc-  
10 tion of a nonconformity by the manufacturer, its agents or its  
11 authorized dealers for a cumulative total of more than 30 business  
12 days since the original delivery of the motor vehicle to the con-  
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14 be performed due to conditions beyond the control of the manu-  
15 facturer, its agents or its authorized dealers including war, in-  
16 vasion, strike, fire, flood or other natural disaster.

17     \*c.\* The presumption provided in this section shall not apply  
18 against a manufacturer unless the manufacturer has received prior  
19 direct written notification from or on behalf of the consumer and  
20 has had an opportunity to repair or correct the nonconformity\*;  
21 *provided, however, that if the manufacturer does not directly*  
22 *attempt to repair or correct the nonconformity, the manufacturer*  
23 *may not defend a claim by a consumer under this act or assert a*  
24 *claim against the manufacturer's agent or dealer on the ground*  
25 *that the agent or dealer failed to properly repair or correct the*  
26 *nonconformity or that the repairs or corrections made by the*  
27 *agent or dealer caused or contributed to the nonconformity\*.*

1     5. A reasonable allowance for use shall be the total amount  
2 directly attributable to the use of the new automobile by the con-  
3 sumer and any previous consumer, prior to the first report of the  
4 nonconformity to the manufacturer by the consumer or any pre-  
5 vious consumer of the new automobile and during any subsequent  
6 period when the vehicle is not out of service by reason of repair or  
7 correction of the nonconformity so reported.

1     6. It shall be an affirmative defense to a claim under this act that  
2 the alleged nonconformity does not substantially impair the use,  
3 value, or safety of the new automobile or that the nonconformity  
4 is the result of abuse or neglect or of unauthorized modifications or  
5 alterations of the new automobile by anyone other than the manu-  
6 facturer, its agent or authorized dealer.

1     7. If a manufacturer has established a qualified informal dispute  
2 settlement procedure pursuant to section 110 of Pub. L. 93-637 (15  
3 U. S. C. § 2310) and the rules promulgated thereunder, the remedies  
4 provided by this act shall not be available to a consumer who has  
5 not first restored to that procedure.

1     8. Nothing in this act shall in any way limit the rights or remedies  
2 for breach of warranty otherwise available to a consumer.

1     9. Nothing in this act shall be construed as imposing any  
2 liability on a dealer or creating a cause of action by a consumer  
3 against a dealer under section 3 of this act.

1     10. This act shall take effect immediately, but shall apply only  
2 to new automobiles purchased after its effective date.

---

ADOPTED  
DEC 6 1982

12/3/82

Senate Amendments

to  
Senate Committee Substitutes for  
Senate Bill No. 1738 and  
Senate Bill No. 1759 (OCR)

Amend:

Page	Sec.	Line	
2	4	8	Omit "authorized"
2	4	11	Omit "authorized"
2	4	15	Omit "authorized"
3	4	22	After "attempt" insert "or arrange with its dealer or agent"
3	4	23-24	Omit "or assert a claim against the manufacturer's agent or dealer" <i>on line 23 and omit on line 24</i>
3	6	6	Omit "authorized"

STATEMENT

This subsection of the bill with these amendments will now provide that, if a manufacturer has received notification of a nonconformity and does not directly attempt or arrange with its dealer or agent to repair the nonconformity of the consumer's automobile, the manufacturer may not defend a claim by the consumer for a new automobile or a refund under the act on the ground either that the agent or dealer failed to properly repair the nonconformity or that the repairs made caused or contributed to the nonconformity.

[SECOND OFFICIAL COPY REPRINT]  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 1738 and 1759**

**STATE OF NEW JERSEY**

ADOPTED NOVEMBER 23, 1982

Sponsored by Senators O'CONNOR and DiFRANCESCO

AN ACT concerning certain automobile warranties.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. As used in this act:

2 a. "Consumer" means the purchaser, other than for purposes of  
3 resale, of an automobile; a person to whom an automobile is trans-  
4 ferred during the duration of an express warranty applicable to the  
5 automobile; or any other person entitled by the terms of the  
6 warranty to enforce the obligations of the warranty.

7 b. "Dealer" means a person actively engaged in the business of  
8 buying, selling or exchanging automobiles at retail and who has an  
9 established place of business.

10 c. "Manufacturer" means a person engaged in the business of  
11 manufacturing, assembling or distributing automobiles, who will,  
12 under normal business conditions during the year, manufacture,  
13 assemble or distribute to dealers at least 10 new automobiles.

14 d. "Manufacturer's express warranty" or "warranty" means the  
15 written warranty of the manufacturer of a new automobile of its  
16 condition and fitness for use, including any terms or conditions  
17 precedent to the enforcement of obligations under that warranty.

18 e. "Automobile" means any passenger automobile as defined in  
19 R. S. 39:1-1 which is registered by the Division of Motor Vehicles  
20 in the Department of Law and Public Safety.

21 f. "Nonconformity" means a defect or condition which sub-  
22 stantially impairs the use, value, or safety of an automobile.

1 2. If a new automobile does not conform to the manufacturer's  
2 express warranty, and the consumer reports the nonconformity to

**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 printed in italics thus is new matter.**

**Matter enclosed in asterisks or stars has been adopted as follows:**

\*—Senate amendments adopted November 29, 1982.

\*\*—Senate amendments adopted December 6, 1982.

3 the manufacturer *\*or its agent or dealer\** during the term of the  
4 warranty or during the period of one year following the date of  
5 original delivery of an automobile to the consumer, whichever is  
6 earlier, the manufacturer shall make, or arrange with its dealer or  
7 agent to make, all repairs necessary to conform the new automobile  
8 to the warranty, notwithstanding that the repairs or corrections  
9 are made after the expiration of the term of the warranty or the  
10 one-year period.

1 3. If the manufacturer is unable to conform the new automobile  
2 to the warranty by repairing or correcting a defect or condition  
3 which substantially impairs the use, value or safety of the new  
4 automobile to the consumer after a reasonable number of attempts,  
5 the manufacturer shall accept return of the automobile from the  
6 consumer and either:

7 a. Replace the automobile with a comparable new automobile and  
8 the consumer shall pay the manufacturer a reasonable allowance for  
9 his use of the automobile being returned and shall not pay, on the  
10 new replacement automobile, the taxes, preparation fees or any  
11 other charges or fees usually paid by a consumer; or

12 b. Refund to the consumer the full purchase price of the original  
13 automobile, including all taxes, preparation fees and any other  
14 charges or fees paid by the consumer, less a reasonable allowance  
15 for the consumer's use of the original automobile. Refunds shall  
16 be made to the consumer and lienholder, if any, as their interests  
17 appear on the records of ownership kept by the Director of the  
18 Division of Motor Vehicles.

1 4. It shall be presumed that a reasonable number of attempts  
2 have been undertaken to conform a new automobile to the manu-  
3 facturer's express warranty if, within the warranty term or during  
4 the period of one year following the date of original delivery of the  
5 motor vehicle to a consumer, whichever is the earlier date:

6 a. The same nonconformity has been subject to repair or correc-  
7 tion four or more times by the manufacturer, its agents or its  
8 **\*\*[authorized]\*\*** dealers and the nonconformity continues to  
8a exist; or

9 b. The automobile is out of service by reason of repair or correc-  
10 tion of a nonconformity by the manufacturer, its agents or its  
11 **\*\*[authorized]\*\*** dealers for a cumulative total of more than 30  
12 business days since the original delivery of the motor vehicle to the  
13 consumer. The 30-day limit shall be extended only if repairs cannot  
14 be performed due to conditions beyond the control of the manu-  
15 facturer, its agents or its **\*\*[authorized]\*\*** dealers including war,  
16 invasion, strike, fire, flood or other natural disaster.

17    \*c.\* The presumption provided in this section shall not apply  
18 against a manufacturer unless the manufacturer has received prior  
19 direct written notification from or on behalf of the consumer and  
20 has had an opportunity to repair or correct the nonconformity\*;  
21 *provided, however, that if the manufacturer does not directly*  
21A *attempt \*\*or arrange with its dealer or agent\*\* to repair or correct*  
22 *the nonconformity, the manufacturer may not defend a claim by a*  
23 *consumer under this act \*\*[or assert a claim against the manufac-*  
24 *turer's agent or dealer]\*\* on the ground that the agent or dealer*  
25 *failed to properly repair or correct the nonconformity or that the*  
26 *repairs or corrections made by the agent or dealer caused or*  
27 *contributed to the nonconformity\*.*

1     5. A reasonable allowance for use shall be the total amount  
2 directly attributable to the use of the new automobile by the con-  
3 sumer and any previous consumer, prior to the first report of the  
4 nonconformity to the manufacturer by the consumer or any pre-  
5 vious consumer of the new automobile and during any subsequent  
6 period when the vehicle is not out of service by reason of repair or  
7 correction of the nonconformity so reported.

1     6. It shall be an affirmative defense to a claim under this act that  
2 the alleged nonconformity does not substantially impair the use,  
3 value, or safety of the new automobile or that the nonconformity  
4 is the result of abuse or neglect or of unauthorized modifications or  
5 alterations of the new automobile by anyone other than the manu-  
6 facturer, its agent or **\*\*[authorized]\*\*** dealer.

1     7. If a manufacturer has established a qualified informal dispute  
2 settlement procedure pursuant to section 110 of Pub. L. 93-637 (15  
3 U. S. C. § 2310) and the rules promulgated thereunder, the remedies  
4 provided by this act shall not be available to a consumer who has  
5 not first restored to that procedure.

1     8. Nothing in this act shall in any way limit the rights or remedies  
2 for breach of warranty otherwise available to a consumer.

1     9. Nothing in this act shall be construed as imposing any  
2 liability on a dealer or creating a cause of action by a consumer  
3 against a dealer under section 3 of this act.

1     10. This act shall take effect immediately, but shall apply only  
2 to new automobiles purchased after its effective date.

---

ASSEMBLY COMMERCE AND INDUSTRY COMMITTEE  
STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 1738 and 1759**

[SECOND OFFICIAL COPY REPRINT]

with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: JANUARY 31, 1983

The Assembly Commerce and Industry Committee favorably reports this bill intended to provide consumers with an additional means of obtaining redress for automobile "lemons".

This amended bill requires a manufacturer of a new automobile to repair all defects covered by a written warranty if reported by the consumer during the warranty period or within one year of the automobile's delivery date to the consumer, whichever is earlier. If the manufacturer is unable to repair a defect which substantially impairs the automobile's use, value or safety after a "reasonable number of attempts," the bill requires the manufacturer to either replace the automobile (with the manufacturer paying collateral charges such as taxes, preparation and destination fees, and the consumer paying an allowance for the use of the returned automobile) or to refund the full purchase price and collateral charges, less an allowance for the consumer's use of the returned automobile. A refund would be made to the consumer and to anyone holding a lien on the automobile.

If a manufacturer has established an informal dispute settlement mechanism that complies in all respects with relevant Federal Trade Commission regulations, the bill requires a consumer to attempt to settle the dispute through that mechanism before the bill's provisions requiring a replacement or refund would apply.

The bill specifies that a "reasonable number of attempts" have been taken when:

a. The same problem has been subject to repair four or more times during the warranty period or within one year of the automobile's delivery date, whichever is earlier; or

b. The automobile has been out of service for repairs for a cumulative total of 30 business days during the same period. The 30-day period is extended if the repairs cannot be performed because of war, invasion, strike, fire, flood or other natural disaster.

The bill specifies that the manufacturer has the following affirmative

defenses in any suit to obtain a new replacement automobile or to recover the cost of an automobile:

a. The defect does not substantially impair the automobile's use, value or safety.

b. The defect was caused by the consumer's abuse or neglect or by an unauthorized modification or alteration of the automobile by anyone other than the manufacturer or its agent or dealer.

In addition, because the provisions in the original Senate legislation affecting dealers were eliminated and because the dealers in the Senate committee substitute were provided with immunity as to their possible liability under section 3 of the bill, the bill states that the presumption provided does not apply against a manufacturer unless the manufacturer has received prior direct written notification from the consumer and has an opportunity to repair the defect. Furthermore, as a result of Senate floor amendments, the bill now provides that, if a manufacturer has received notification of a nonconformity and does not directly attempt or arrange with its dealer or agent to repair the nonconformity of the consumer's automobile, the manufacturer may not defend a claim by the consumer for a new automobile or a refund under the act on the ground either that the agent or dealer failed to properly repair the nonconformity or that the repairs made caused or contributed to the nonconformity.

It is understood that if a qualified third party dispute resolution process does not exist, or if the consumer is dissatisfied with the third party decision, or if the manufacturer, or any of its agents or dealers neglects to promptly fulfill the terms of the third party decision, that the consumer may still assert the presumption provided in subsection d. of section 1 in an action to enforce his rights under the bill.

The committee amended the bill:

1) To exempt the living facilities of motor homes from the bill's provisions;

2) To require that when a manufacturer, his agent or dealer, has been notified that a customer's automobile does not conform to the manufacturer's warranty, the manufacturer (or his dealer or agent) must make the necessary repairs *within a reasonable period of time* to conform the automobile to the warranty.

3) To qualify for the bill's remedies, the automobile must be out of service at any location and *waiting for the dealer to begin or complete repairs* for a cumulative period of 30 business days. It is presumed, in this case, pursuant to section 2 of the bill, that for the consumer to qualify, he will have had to make a reasonable effort to bring his automobile's nonconformity to the attention of the manufacturer, dealer or agent; and

4) For the purpose of making the public more aware of which manufacturers' dispute settlement procedures are qualified under federal regulations, the Division of Consumer Affairs would be required to periodically make known the determinations of the Federal Trade Commission in these matters. This is designed to encourage the manufacturers to comply with the federal standards in New Jersey, and at the same time, to provide consumers with the knowledge necessary to determine whether a civil remedy may be pursued directly, without resorting to the manufacturer's informal dispute settlement procedure.

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[ASSEMBLY REPRINT]  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 1738 and 1759**  
[SECOND OFFICIAL COPY REPRINT]

**STATE OF NEW JERSEY**

ADOPTED NOVEMBER 23, 1982

Sponsored by Senators O'CONNOR and DiFRANCESCO

AN ACT concerning certain automobile warranties.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. As used in this act:

2 a. "Consumer" means the purchaser, other than for purposes of  
3 resale, of an automobile; a person to whom an automobile is trans-  
4 ferred during the duration of an express warranty applicable to the  
5 automobile; or any other person entitled by the terms of the  
6 warranty to enforce the obligations of the warranty.

7 b. "Dealer" means a person actively engaged in the business of  
8 buying, selling or exchanging automobiles at retail and who has an  
9 established place of business.

10 c. "Manufacturer" means a person engaged in the business of  
11 manufacturing, assembling or distributing automobiles, who will,  
12 under normal business conditions during the year, manufacture,  
13 assemble or distribute to dealers at least 10 new automobiles.

14 d. "Manufacturer's express warranty" or "warranty" means the  
15 written warranty of the manufacturer of a new automobile of its  
16 condition and fitness for use, including any terms or conditions  
17 precedent to the enforcement of obligations under that warranty.

18 e. "Automobile" means any passenger automobile as defined in  
19 R. S. 39:1-1 which is registered by the Division of Motor Vehicles  
20 in the Department of Law and Public Safety\*\*\*, *except the living*  
20A *facilities of motor homes\*\*\*.*

21 f. "Nonconformity" means a defect or condition which sub-  
22 stantially impairs the use, value, or safety of an automobile.

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Senate amendments adopted November 29, 1982.

\*\*—Senate amendments adopted December 6, 1982.

\*\*\*—Assembly committee amendments adopted January 31, 1983.

1 2. If a new automobile does not conform to the manufacturer's  
2 express warranty, and the consumer reports the nonconformity to  
3 the manufacturer *\*or its agent or dealer\** during the term of the  
4 warranty or during the period of one year following the date of  
5 original delivery of an automobile to the consumer, whichever is  
6 earlier, the manufacturer shall make, or arrange with its dealer or  
7 agent to make, *\*\*\*within a reasonable period of time,\*\*\** all repairs  
8 necessary to conform the new automobile to the warranty, notwith-  
9 standing that the repairs or corrections are made after the expira-  
10 tion of the term of the warranty or the one-year period.

1 3. If the manufacturer is unable to conform the new automobile  
2 to the warranty by repairing or correcting a defect or condition  
3 which substantially impairs the use, value or safety of the new  
4 automobile to the consumer after a reasonable number of attempts,  
5 the manufacturer shall accept return of the automobile from the  
6 consumer and either:

7 a. Replace the automobile with a comparable new automobile and  
8 the consumer shall pay the manufacturer a reasonable allowance for  
9 his use of the automobile being returned and shall not pay, on the  
10 new replacement automobile, the taxes, preparation fees or any  
11 other charges or fees usually paid by a consumer; or

12 b. Refund to the consumer the full purchase price of the original  
13 automobile, including all taxes, preparation fees and any other  
14 charges or fees paid by the consumer, less a reasonable allowance  
15 for the consumer's use of the original automobile. Refunds shall  
16 be made to the consumer and lienholder, if any, as their interests  
17 appear on the records of ownership kept by the Director of the  
18 Division of Motor Vehicles.

1 4. It shall be presumed that a reasonable number of attempts  
2 have been undertaken to conform a new automobile to the manu-  
3 facturer's express warranty if, within the warranty term or during  
4 the period of one year following the date of original delivery of the  
5 motor vehicle to a consumer, whichever is the earlier date:

6 a. The same nonconformity has been subject to repair or correc-  
7 tion four or more times by the manufacturer, its agents or its  
8 **\*\*[authorized]\*\*** dealers and the nonconformity continues to  
8A exist; or

9 b. The automobile is out of service by reason of *\*\*\*waiting for*  
10 *the dealer to begin or complete\*\*\** repair or correction of a non-  
11 conformity by the manufacturer, its agents or its **\*\*[authorized]\*\***  
12 dealers for a cumulative total of more than 30 business days since  
13 the original delivery of the motor vehicle to the consumer. The  
14 30-day limit shall be extended only if repairs cannot be performed

15 due to conditions beyond the control of the manufacturer, its agents  
 16 or its **\*\*[authorized]\*\*** dealers including war, invasion, strike, fire,  
 16A flood or other natural disaster.

17 *\*c.\** The presumption provided in this section shall not apply  
 18 against a manufacturer unless the manufacturer has received prior  
 19 direct written notification from or on behalf of the consumer and  
 20 has had an opportunity to repair or correct the nonconformity\*;  
 21 *provided, however, that if the manufacturer does not directly*  
 21A *attempt **\*\*or arrange with its dealer or agent\*\*** to repair or correct*  
 22 *the nonconformity, the manufacturer may not defend a claim by a*  
 23 *consumer under this act **\*\*[or assert a claim against the manufac-***  
 24 *turer's agent or dealer]\*\** on the ground that the agent or dealer  
 25 failed to properly repair or correct the nonconformity or that the  
 26 repairs or corrections made by the agent or dealer caused or  
 27 contributed to the nonconformity\*.

1 5. A reasonable allowance for use shall be the total amount  
 2 directly attributable to the use of the new automobile by the con-  
 3 sumer and any previous consumer, prior to the first report of the  
 4 nonconformity to the manufacturer by the consumer or any pre-  
 5 vious consumer of the new automobile and during any subsequent  
 6 period when the vehicle is not out of service by reason of repair or  
 7 correction of the nonconformity so reported.

1 6. It shall be an affirmative defense to a claim under this act that  
 2 the alleged nonconformity does not substantially impair the use,  
 3 value, or safety of the new automobile or that the nonconformity  
 4 is the result of abuse or neglect or of unauthorized modifications or  
 5 alterations of the new automobile by anyone other than the manu-  
 6 facturer, its agent or **\*\*[authorized]\*\*** dealer.

1 7. If a manufacturer has established a qualified informal dispute  
 2 settlement procedure pursuant to section 110 of Pub. L. 93-637 (15  
 3 U. S. C. § 2310) and the rules promulgated thereunder, the remedies  
 4 provided by this act shall not be available to a consumer who has  
 5 not first **\*\*\*[restored]\*\*\*** *\*\*\*resorted\*\*\** to that procedure.

1 **\*\*\*8.** *The Division of Consumer Affairs in the Department of*  
 2 *Law and Public Safety shall periodically make known to the public*  
 3 *the determinations of the Federal Trade Commission as to whether*  
 4 *or not the dispute settlement procedure of each manufacturer doing*  
 5 *business in this State complies with the requirement of section 110*  
 6 *of Pub. L. 93-637 (15 U. S. C. § 2310) and the rules promulgated*  
 7 *thereunder.\*\*\**

1 **\*\*\*[8.]\*\*\*** **\*\*\*9.\*\*\*** Nothing in this act shall in any way limit the  
 2 rights or remedies for breach of warranty otherwise available to a  
 3 consumer.

1     \*\*\*[9.]\*\*\* \*\*\*10.\*\*\* Nothing in this act shall be construed as im-  
2     posing any liability on a dealer or creating a cause of action by a  
3     consumer against a dealer under section 3 of this act.

1     \*\*\*[10.]\*\*\* \*\*\*11.\*\*\* This act shall take effect immediately, but  
2     shall apply only to new automobiles purchased after its effective  
3     date.

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ADOPTED  
APR 25 1983

ASSEMBLY AMENDMENTS

to  
SENATE COMMITTEE SUBSTITUTE FOR  
Senate Bill Nos. 1738/1759 (2005)  
(2AR)

Amend:

Page	Sec.	Line	
2	3	<del>18</del> <del>25</del>	After "Vehicle," *** " Insert "Refunds shall be made to the consumer and lienholder, if any, as their interests appear on the records of ownership kept by the Director of the Division of Motor Vehicles."
2	3	19-25	Omit
3	4	15	Omit "presents" insert "makes"; After "automobile insert "available"
3	4	16-	After "nonconformity" omit remainder of line on.
<del>3</del>	<del>4</del>	<del>16A</del>	Omit line 16 A and
3	<del>4</del>	<del>16B</del>	Omit "agent, or dealer" on line 16B.

STATEMENT

These amendments would restore and clarify the intent of the Assembly committee which report the bill, by ensuring that a consumer could qualify for the bill's 30 business day remedy once his automobile is made available to the manufacturer, its agent, or dealer for the servicing of its nonconformity. The amendments also restore the intent of the Senate sponsors' with respect to lienholder rights.

[SECOND ASSEMBLY REPRINT]  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 1738 and 1759**  
[SECOND OFFICIAL COPY REPRINT]

**STATE OF NEW JERSEY**

ADOPTED NOVEMBER 23, 1982

Sponsored by Senators O'CONNOR and DiFRANCESCO

AN ACT concerning certain automobile warranties.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. As used in this act:

2 a. "Consumer" means the purchaser, other than for purposes of  
3 resale, of an automobile; a person to whom an automobile is trans-  
4 ferred during the duration of an express warranty applicable to the  
5 automobile; or any other person entitled by the terms of the  
6 warranty to enforce the obligations of the warranty.

7 b. "Dealer" means a person actively engaged in the business of  
8 buying, selling or exchanging automobiles at retail and who has an  
9 established place of business.

10 c. "Manufacturer" means a person engaged in the business of  
11 manufacturing, assembling or distributing automobiles, who will,  
12 under normal business conditions during the year, manufacture,  
13 assemble or distribute to dealers at least 10 new automobiles.

14 d. "Manufacturer's express warranty" or "warranty" means the  
15 written warranty of the manufacturer of a new automobile of its  
16 condition and fitness for use, including any terms or conditions  
17 precedent to the enforcement of obligations under that warranty.

18 e. "Automobile" means any passenger automobile as defined in  
19 R. S. 39:1-1 which is registered by the Division of Motor Vehicles  
20 in the Department of Law and Public Safety\*\*\*, *except the living*  
20A *facilities of motor homes\*\*\*.*

21 f. "Nonconformity" means a defect or condition which sub-  
22 stantially impairs the use, value, or safety of an automobile.

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Senate amendments adopted November 29, 1982.

\*\*—Senate amendments adopted December 6, 1982.

\*\*\*—Assembly committee amendments adopted January 31, 1983.

\*\*\*\*—Assembly amendments adopted February 14, 1983.

23 \*\*\*\*g. "Lien" means a security interest in an automobile."

24 h. "Lienholder" means a person with a security interest in an  
25 automobile pursuant to a lien.\*\*\*\*

1 2. If a new automobile does not conform to the manufacturer's  
2 express warranty, and the consumer reports the nonconformity to  
3 the manufacturer \*or its agent or dealer\* during the term of the  
4 warranty or during the period of one year following the date of  
5 original delivery of an automobile to the consumer, whichever is  
6 earlier, the manufacturer shall make, or arrange with its dealer or  
7 agent to make, \*\*\*within a reasonable period of time,\*\*\* all repairs  
8 necessary to conform the new automobile to the warranty, notwith-  
9 standing that the repairs or corrections are made after the expira-  
10 tion of the term of the warranty or the one-year period.

1 3. If the manufacturer is unable to conform the new automobile  
2 to the warranty by repairing or correcting a defect or condition  
3 which substantially impairs the use, value or safety of the new  
4 automobile to the consumer after a reasonable number of attempts,  
5 the manufacturer shall accept return of the automobile from the  
6 consumer and either:

7 a. Replace the automobile with a comparable new automobile and  
8 the consumer shall pay the manufacturer a reasonable allowance for  
9 his use of the automobile being returned and shall not pay, on the  
10 new replacement automobile, the taxes, preparation fees or any  
11 other charges or fees usually paid by a consumer; or

12 b. Refund to the consumer the full purchase price of the original  
13 automobile, including all taxes, preparation fees and any other  
14 charges or fees paid by the consumer, less a reasonable allowance  
15 for the consumer's use of the original automobile. \*\*\*\*[Refunds  
16 shall be made to the consumer and lienholder, if any, as their  
17 interests appear on the records of ownership kept by the Director  
18 of the Division of Motor Vehicles.]\*\*\*\*

19 \*\*\*\*c. The provisions of this section shall not affect the interests  
20 of a lienholder, unless the lienholder consents to the replacement of  
21 the lien with a corresponding lien on the automobile accepted by the  
22 consumer in exchange for the automobile having a nonconformity,  
23 the lienholder shall be paid in full the amount due on the lien, in-  
24 cluding interest and other charges, before an exchange of auto-  
25 mobiles or a refund to the consumer is made.\*\*\*\*

1 4. It shall be presumed that a reasonable number of attempts  
2 have been undertaken to conform a new automobile to the manu-  
3 facturer's express warranty if, within the warranty term or during  
4 the period of one year following the date of original delivery of the  
5 motor vehicle to a consumer, whichever is the earlier date:

6 a. The same nonconformity has been subject to repair or correc-  
7 tion four or more times by the manufacturer, its agents or its  
8 **\*\*[authorized]\*\*** dealers and the nonconformity continues to  
8A exist; or

9 b. The automobile is out of service by reason of *\*\*\*waiting for*  
10 *the dealer to begin or complete\*\*\** repair or correction of a non-  
11 conformity by the manufacturer, its agents or its **\*\*[authorized]\*\***  
12 dealers for a cumulative total of more than 30 business days since  
13 the original delivery of the motor vehicle to the consumer. *\*\*\*\*This*  
14 *30-day limit shall commence with the first day on which the con-*  
15 *sumer presents the automobile to the manufacturer, its agent or*  
16 *dealer for service of the nonconformity and a written document*  
16A *describing the nonconformity is prepared by the manufacturer, its*  
16B *agent, or dealer.\*\*\*\** The 30-day limit shall be extended only if  
16C repairs cannot be performed due to conditions beyond the control  
16D of the manufacturer, its agents or its **\*\*[authorized]\*\*** dealers  
16E including war, invasion, strike, fire, flood or other natural disaster.

17 *\*c.\** The presumption provided in this section shall not apply  
18 against a manufacturer unless the manufacturer has received prior  
19 direct written notification from or on behalf of the consumer and  
20 has had an opportunity to repair or correct the nonconformity\*;  
21 *provided, however, that if the manufacturer does not directly*  
21A *attempt \*\*or arrange with its dealer or agent\*\* to repair or correct*  
22 *the nonconformity, the manufacturer may not defend a claim by a*  
23 *consumer under this act **\*\*[or assert a claim against the manufac-***  
24 *turer's agent or dealer]\*\* on the ground that the agent or dealer*  
25 *failed to properly repair or correct the nonconformity or that the*  
26 *repairs or corrections made by the agent or dealer caused or*  
27 *contributed to the nonconformity\*.*

1 5. A reasonable allowance for use shall be the total amount  
2 directly attributable to the use of the new automobile by the con-  
3 sumer and any previous consumer, prior to the first report of the  
4 nonconformity to the manufacturer by the consumer or any pre-  
5 vious consumer of the new automobile and during any subsequent  
6 period when the vehicle is not out of service by reason of repair or  
7 correction of the nonconformity so reported.

1 6. It shall be an affirmative defense to a claim under this act that  
2 the alleged nonconformity does not substantially impair the use,  
3 value, or safety of the new automobile or that the nonconformity  
4 is the result of abuse or neglect or of unauthorized modifications or  
5 alterations of the new automobile by anyone other than the manu-  
6 facturer, its agent or **\*\*[authorized]\*\*** dealer.

1 7. If a manufacturer has established a qualified informal dispute

2 settlement procedure pursuant to section 110 of Pub. L. 93-637 (15  
3 U. S. C. § 2310) and the rules promulgated thereunder, the remedies  
4 provided by this act shall not be available to a consumer who has  
5 not first **\*\*\*[restored]\*\*\*** **\*\*\*resorted\*\*\*** to that procedure.

1 **\*\*\*8. The Division of Consumer Affairs in the Department of**  
2 **Law and Public Safety shall periodically make known to the public**  
3 **\*\*\*\*[the determinations of the Federal Trade Commission]\*\*\*\*** **as**  
4 **to whether or not the dispute settlement procedure of each manu-**  
5 **facturer doing business in this State complies with \*\*\*\*[the re-**  
5A **quirement of]\*\*\*\*** **\*\*\*\*procedures pursuant to\*\*\*\*** **section 110**  
6 **of Pub. L. 93-637 (15 U. S. C. § 2310) and the rules promulgated**  
7 **thereunder.\*\*\***

1 **\*\*\*[8.]\*\*\*** **\*\*\*9.\*\*\*** Nothing in this act shall in any way limit the  
2 rights or remedies for breach of warranty otherwise available to a  
3 consumer.

1 **\*\*\*[9.]\*\*\*** **\*\*\*10.\*\*\*** Nothing in this act shall be construed as im-  
2 posing any liability on a dealer or creating a cause of action by a  
3 consumer against a dealer under section 3 of this act.

1 **\*\*\*[10.]\*\*\*** **\*\*\*11.\*\*\*** This act shall take effect immediately, but  
2 shall apply only to new automobiles purchased after its effective  
3 date.

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SENATE REPRINT  
TO  
[SECOND ASSEMBLY REPRINT]  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 1738 and 1759**  
[SECOND OFFICIAL COPY REPRINT]

**STATE OF NEW JERSEY**

ADOPTED NOVEMBER 23, 1982

Sponsored by Senators O'CONNOR and DiFRANCESCO

AN ACT concerning certain automobile warranties.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. As used in this act:

2 a. "Consumer" means the purchaser, other than for purposes of  
3 resale, of an automobile; a person to whom an automobile is trans-  
4 ferred during the duration of an express warranty applicable to the  
5 automobile; or any other person entitled by the terms of the  
6 warranty to enforce the obligations of the warranty.

7 b. "Dealer" means a person actively engaged in the business of  
8 buying, selling or exchanging automobiles at retail and who has an  
9 established place of business.

10 c. "Manufacturer" means a person engaged in the business of  
11 manufacturing, assembling or distributing automobiles, who will,  
12 under normal business conditions during the year, manufacture,  
13 assemble or distribute to dealers at least 10 new automobiles.

14 d. "Manufacturer's express warranty" or "warranty" means the  
15 written warranty of the manufacturer of a new automobile of its  
16 condition and fitness for use, including any terms or conditions  
17 precedent to the enforcement of obligations under that warranty.

18 e. "Automobile" means any passenger automobile as defined in  
19 R. S. 39:1-1 which is registered by the Division of Motor Vehicles  
20 in the Department of Law and Public Safety\*\*\*, *except the living*  
20A *facilities of motor homes\*\*\*.*

21 f. "Nonconformity" means a defect or condition which sub-  
22 stantially impairs the use, value, or safety of an automobile.

**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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Senate amendments adopted November 29, 1982.

\*\*—Senate amendments adopted December 6, 1982.

\*\*\*—Assembly committee amendments adopted January 31, 1983.

\*\*\*\*—Assembly amendments adopted February 14, 1983.

\*\*\*\*\*—Senate amendments adopted April 25, 1983.

23 \*\*\*\*g. "Lien" means a security interest in an automobile."

24 h. "Lienholder" means a person with a security interest in an  
25 automobile pursuant to a lien.\*\*\*\*

1 2. If a new automobile does not conform to the manufacturer's  
2 express warranty, and the consumer reports the nonconformity to  
3 the manufacturer \*or its agent or dealer\* during the term of the  
4 warranty or during the period of one year following the date of  
5 original delivery of an automobile to the consumer, whichever is  
6 earlier, the manufacturer shall make, or arrange with its dealer or  
7 agent to make, \*\*\*within a reasonable period of time,\*\*\* all repairs  
8 necessary to conform the new automobile to the warranty, notwith-  
9 standing that the repairs or corrections are made after the expira-  
10 tion of the term of the warranty or the one-year period.

1 3. If the manufacturer is unable to conform the new automobile  
2 to the warranty by repairing or correcting a defect or condition  
3 which substantially impairs the use, value or safety of the new  
4 automobile to the consumer after a reasonable number of attempts,  
5 the manufacturer shall accept return of the automobile from the  
6 consumer and either:

7 a. Replace the automobile with a comparable new automobile and  
8 the consumer shall pay the manufacturer a reasonable allowance for  
9 his use of the automobile being returned and shall not pay, on the  
10 new replacement automobile, the taxes, preparation fees or any  
11 other charges or fees usually paid by a consumer; or

12 b. Refund to the consumer the full purchase price of the original  
13 automobile, including all taxes, preparation fees and any other  
14 charges or fees paid by the consumer, less a reasonable allowance  
15 for the consumer's use of the original automobile. \*\*\*\*[Refunds  
16 shall be made to the consumer and lienholder, if any, as their  
17 interests appear on the records of ownership kept by the Director  
18 of the Division of Motor Vehicles.]\*\*\*\* \*\*\*\*\*Refunds shall be made  
19 to the consumer and lienholder, if any, as their interests appear  
20 on the records of ownership kept by the Director of the Division  
21 of Motor Vehicles.\*\*\*\*\*

22 \*\*\*\*\*[\*\*\*\*c. The provisions of this section shall not affect the  
23 interests of a lienholder, unless the lienholder consents to the re-  
24 placement of the lien with a corresponding lien on the automobile  
25 accepted by the consumer in exchange for the automobile having a  
26 nonconformity, the lienholder shall be paid in full the amount due  
27 on the lien, including interest and other charges, before an exchange  
28 of automobiles or a refund to the consumer is made.\*\*\*\*]\*\*\*\*\*

1 4. It shall be presumed that a reasonable number of attempts  
2 have been undertaken to conform a new automobile to the manu-

3 manufacturer's express warranty if, within the warranty term or during  
4 the period of one year following the date of original delivery of the  
5 motor vehicle to a consumer, whichever is the earlier date:

6 a. The same nonconformity has been subject to repair or correc-  
7 tion four or more times by the manufacturer, its agents or its  
8 **\*\*[authorized]\*\*** dealers and the nonconformity continues to  
8A exist; or

9 b. The automobile is out of service by reason of *\*\*\*waiting for*  
10 *the dealer to begin or complete\*\*\** repair or correction of a non-  
11 conformity by the manufacturer, its agents or its **\*\*[authorized]\*\***  
12 dealers for a cumulative total of more than 30 business days since  
13 the original delivery of the motor vehicle to the consumer. *\*\*\*\*This*  
14 *30-day limit shall commence with the first day on which the con-*  
15 *sumer \*\*\*\*\*[presents]\*\*\*\*\* \*\*\*\*\*makes\*\*\*\*\* the automobile*  
16 *\*\*\*\*\*available\*\*\*\*\* to the manufacturer, its agent or dealer for*  
16A *service of the nonconformity \*\*\*\*\*[and a written document de-*  
16B *scribing the nonconformity is prepared by the manufacturer, its*  
16C *agent, or dealer]\*\*\*\*\*.\*\*\*\** The 30-day limit shall be extended only  
16D if repairs cannot be performed due to conditions beyond the control  
16E of the manufacturer, its agents or its **\*\*[authorized]\*\*** dealers  
16F including war, invasion, strike, fire, flood or other natural disaster.

17 \*c.\* The presumption provided in this section shall not apply  
18 against a manufacturer unless the manufacturer has received prior  
19 direct written notification from or on behalf of the consumer and  
20 has had an opportunity to repair or correct the nonconformity\*;  
21 *provided, however, that if the manufacturer does not directly*  
21A *attempt \*\*or arrange with its dealer or agent\*\* to repair or correct*  
22 *the nonconformity, the manufacturer may not defend a claim by a*  
23 *consumer under this act **\*\*[or assert a claim against the manufac-***  
24 *turer's agent or dealer]\*\* on the ground that the agent or dealer*  
25 *failed to properly repair or correct the nonconformity or that the*  
26 *repairs or corrections made by the agent or dealer caused or*  
27 *contributed to the nonconformity\*.*

1 5. A reasonable allowance for use shall be the total amount  
2 directly attributable to the use of the new automobile by the con-  
3 sumer and any previous consumer, prior to the first report of the  
4 nonconformity to the manufacturer by the consumer or any pre-  
5 vious consumer of the new automobile and during any subsequent  
6 period when the vehicle is not out of service by reason of repair or  
7 correction of the nonconformity so reported.

1 6. It shall be an affirmative defense to a claim under this act that  
2 the alleged nonconformity does not substantially impair the use,  
3 value, or safety of the new automobile or that the nonconformity

4 is the result of abuse or neglect or of unauthorized modifications or  
 5 alterations of the new automobile by anyone other than the manu-  
 6 facturer, its agent or **\*\*[authorized]\*\*** dealer.

1 7. If a manufacturer has established a qualified informal dispute  
 2 settlement procedure pursuant to section 110 of Pub. L. 93-637 (15  
 3 U. S. C. § 2310) and the rules promulgated thereunder, the remedies  
 4 provided by this act shall not be available to a consumer who has  
 5 not first **\*\*\*[restored]\*\*\*** **\*\*\*resorted\*\*\*** to that procedure.

1 **\*\*\*8. The Division of Consumer Affairs in the Department of**  
 2 **Law and Public Safety shall periodically make known to the public**  
 3 **\*\*\*\*[the determinations of the Federal Trade Commission]\*\*\*\*** as  
 4 **to whether or not the dispute settlement procedure of each manu-**  
 5 **facturer doing business in this State complies with \*\*\*\*[the re-**  
 5A **quirement of]\*\*\*\*** **\*\*\*\*procedures pursuant to\*\*\*\*** section 110  
 6 **of Pub. L. 93-637 (15 U. S. C. § 2310) and the rules promulgated**  
 7 **thereunder.\*\*\***

1 **\*\*\*[8.]\*\*\*** **\*\*\*9.\*\*\*** Nothing in this act shall in any way limit the  
 2 rights or remedies for breach of warranty otherwise available to a  
 3 consumer.

1 **\*\*\*[9.]\*\*\*** **\*\*\*10.\*\*\*** Nothing in this act shall be construed as im-  
 2 posing any liability on a dealer or creating a cause of action by a  
 3 consumer against a dealer under section 3 of this act.

1 **\*\*\*[10.]\*\*\*** **\*\*\*11.\*\*\*** This act shall take effect immediately, but  
 2 shall apply only to new automobiles purchased after its effective  
 3 date.

SENATE, No. 1759

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 23, 1982

By Senator DiFRANCESCO

Referred to Committee on Labor, Industry and Professions

AN ACT concerning certain automobile warranties and supplementing chapter 2 of Title 12A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. a. As used in this act:

2 "Consumer" means the purchaser, other than for purposes of  
3 resale, of a motor vehicle; any person to whom a motor vehicle  
4 is transferred during the duration of an express warranty applica-  
5 ble to the motor vehicle; or any other person entitled by the terms  
6 of such warranty to enforce the obligations of the warranty.

7 "Dealer" means any person actively engaged in the business of  
8 buying, selling or exchanging motor vehicles and who has an  
9 established place of business.

10 "Manufacturer" means a person engaged in the business of  
11 manufacturing or assembling motor vehicles, who will, under nor-  
12 mal business conditions during the year, manufacture or assemble  
13 at least 10 new motor vehicles.

14 "Motor vehicle" means any passenger automobile as defined in  
15 R. S. 39:1-1.

16 "Nonconformity" means a defect or condition which substan-  
17 tially impairs the use, value, or safety of a motor vehicle.

18 b. If a new motor vehicle does not conform to all applicable  
19 express warranties, and the consumer reports the nonconformity  
20 to the manufacturer, any of its agents or any of its authorized  
21 dealers during the term of such express warranties or during the  
22 period of one year following the date of original delivery of the

23 motor vehicle to a consumer, whichever is the later date, the manu-  
24 facturer, any of its agents or any of its authorized dealers shall  
25 make such repairs as are necessary to conform the motor vehicle  
26 to such express warranties, notwithstanding the fact that such  
27 repairs are made after the expiration of such term or such one-  
28 year period.

29 c. If the manufacturer, any of its agents or any of its authorized  
30 dealers is unable to repair or correct a nonconformity affecting a  
31 consumer's motor vehicle after a reasonable number of attempts  
32 to conform the motor vehicle to applicable express warranties, the  
33 manufacturer shall either replace the motor vehicle with a new  
34 motor vehicle or accept return of the vehicle from the consumer  
35 and refund to the consumer the full purchase price including all  
36 collateral charges paid by the consumer, less that amount directly  
37 attributable to use by the consumer prior to the discovery of the  
38 nonconformity. Refunds shall be made to the consumer, and lien-  
39 holder if any, as their interests may appear.

40 d. It shall be presumed that a reasonable number of attempts  
41 has been made to conform a new motor vehicle to the applicable  
42 express warranties if, within the express warranty term or during  
43 the period of one year following the date of original delivery of  
44 the motor vehicle to a consumer, whichever is the later date:

45 (1) the same nonconformity has been subject to repair four or  
46 more times by the manufacturer, any of its agents or any of its  
47 authorized dealers and the nonconformity continues to exist; or

48 (2) the vehicle is out of service by reason of repair of a non-  
49 conformity by the manufacturer, any of its agents or any of its  
50 authorized dealers for a cumulative total of more than 30 calendar  
51 days since delivery of the motor vehicle to the consumer. The 30-  
52 day limit shall be extended only if repairs cannot be performed  
53 due to conditions beyond the control of the manufacturer, any of  
54 its agents or any of its authorized dealers including war, invasion,  
55 strike, or fire, flood or other natural disaster.

56 This presumption shall be a rebuttable presumption affecting  
57 the burden of proof in any action to enforce the consumer's rights  
58 under subsection c. of this section and shall not be construed to  
59 limit those rights.

1 2. a. If the manufacturer has established a qualified third party  
2 dispute resolution process and the consumer receives timely notifi-  
3 cation in writing of the availability of a third party process with

4 a description of its operation and effect, the provisions of section 1  
5 of this act shall not apply to any consumer who has not first re-  
6 sorted to the third party process. Notification of the availability  
7 of the third party process is not timely if the consumer suffers  
8 any prejudice resulting from any delay in giving the notification.  
9 If a qualified third party dispute resolution process does not exist,  
10 or if the consumer is dissatisfied with the third party decision, or  
11 if the manufacturer, or any of its agents or any of its authorized  
12 dealers neglects to promptly fulfill the terms of such third party  
14 decision, the consumer may assert the presumption provided in  
15 subsection d. of section 1 of this act in an action to enforce the  
16 consumer's rights under subsection b. of section 1. The findings  
17 and decision of the third party shall be admissible in evidence in  
18 the action without further foundation. Any period of limitation  
19 of actions under any federal or New Jersey laws with respect to  
20 any person shall be extended for a period equal to the number of  
21 days between the date a complaint is filed with a third party dis-  
22 pute resolution process and the date of its decision or the date  
23 before which the manufacturer, any of its agents or any of its au-  
24 thorized dealers is required by the decision to fulfill its terms,  
25 whichever occurs later.

26 b. Nothing in this act shall in any way limit the rights or reme-  
27 dies which are otherwise available to a consumer under any other  
28 law.

29 c. A qualified third party dispute resolution process shall be  
30 one that complies with the Federal Trade Commission's minimum  
31 requirements for informal dispute settlement procedures as set  
32 forth in the Federal Trade Commission's regulations at 16 Code  
33 of Federal Regulations, Part 703, as from time to time amended;  
34 that renders decisions which are binding on the manufacturer, any  
35 of its agents or any of its authorized dealers if the consumer elects  
36 to accept the decision; that prescribes a reasonable time not to  
37 exceed 30 days, within which the manufacturer, any of its agents  
38 or any of its authorized dealers, shall fulfill the terms of those  
39 decisions; and that each year provides to the Division of Motor  
40 Vehicles a report of its annual audit required by the Federal Trade  
41 Commission's regulations on informal dispute resolution proce-  
42 dures.

1 3. This act shall take effect immediately.

## STATEMENT

During the past decade, increasing attention has been given to the problem of new cars which turn out to be substantially defective. The problem seems to be particularly acute for new model cars which often have many defects during the first year or two of production and during the first few months of a year in which a factory has been shut down for style changes to an existing car model.

It is estimated that 10,000 defective cars are manufactured each year and sold to unsuspecting consumers. At an average cost of \$6,000.00 per car, consumers pay 60 million dollars each year for defective cars. Since consumers frequently complain that the auto industry is unresponsive to the problem of defective cars, it is apparent that an effective practical remedy is needed for the average consumer.

This bill would require the manufacturer to replace a defective car with a new car or to refund the purchase price minus a reasonable allowance for the consumer's use of the car if, within the express warranty term or during the period of one year following the date of original delivery of the vehicle to a consumer, whichever is the later date, either of the following occurs:

- (1) four or more attempts have been made by the manufacturer, any of its agents or authorized dealers to repair or correct a defect and the defect continues to exist; or
- (2) the car has been out of service because of repair of a defect by the manufacturer, any of its agents or authorized dealers, for a cumulative total of 30 or more days.

This bill would require that any consumer who has received timely notification in writing of a qualified third party dispute resolution process established by the manufacturer must first resort to the third party process before seeking a refund or replacement.

The bill further provides that the manufacturer shall be bound by a decision of the third party process if the consumer elects to accept it, and that if the consumer is dissatisfied with the third party decision, he may assert his rights to seek replacement of a defective car or refund of his purchase price.

**ASSEMBLY, No. 1910**

**STATE OF NEW JERSEY**

INTRODUCED SEPTEMBER 30, 1982

By Assemblymen DORIA, PELLY, CHARLES, ADUBATO,  
T. GALLO and COWAN

AN ACT concerning certain automobile warranties and supplement-  
ing chapter 2 of Title 12A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. a. As used in this act:

2 "Consumer" means the purchaser, other than for purposes of  
3 resale, of a motor vehicle; any person to whom a motor vehicle  
4 is transferred during the duration of an express warranty appli-  
5 cable to the motor vehicle; or any other person entitled by the  
6 terms of such warranty to enforce the obligations of the warranty.

7 "Dealer" means any person actively engaged in the business  
8 of buying, selling or exchanging motor vehicles and who has an  
9 established place of business.

10 "Manufacturer" means a person engaged in the business of  
11 manufacturing or assembling motor vehicles, who will, under  
12 normal business conditions during the year, manufacture or assem-  
13 ble at least 10 new motor vehicles.

14 "Motor vehicle" means any passenger automobile as defined in  
15 R. S. 39:1-1.

16 "Nonconformity" means a defect or condition which substan-  
17 tially impairs the use, value, or safety of a motor vehicle.

18 b. If a new motor vehicle does not conform to all applicable  
19 express warranties, and the consumer reports the nonconformity  
20 to the manufacturer, any of its agents or any of its authorized  
21 dealers during the term of such express warranties or during the

22 period of one year following the date of original delivery of the  
23 motor vehicle to a consumer, whichever is the later date, the manu-  
24 facturer, any of its agents or any of its authorized dealers shall  
25 make such repairs as are necessary to conform the motor vehicle  
26 to such express warranties, notwithstanding the fact that such  
27 repairs are made after the expiration of such term or such one-year  
28 period.

29 c. If the manufacturer, any of its agents or any of its authorized  
30 dealers is unable to repair or correct a nonconformity affecting a  
31 consumer's motor vehicle after a reasonable number of attempts  
32 to conform the motor vehicle to applicable express warranties,  
33 the manufacturer shall either replace the motor vehicle with a  
34 new motor vehicle or accept return of the vehicle from the con-  
35 sumer and refund to the consumer the full purchase price including  
36 all collateral charges paid by the consumer, less that amount  
37 directly attributable to use by the consumer prior to the discovery  
38 of the nonconformity. Refunds shall be made to the consumer,  
39 and lienholder if any, as their interests may appear.

40 d. It shall be presumed that a reasonable number of attempts  
41 has been made to conform a new motor vehicle to the applicable  
42 express warranties if, within the express warranty term or during  
43 the period of one year following the date of original delivery of  
44 the motor vehicle to a consumer, whichever is the later date:

45 (1) The same nonconformity has been subject to repair four  
46 or more times by the manufacturer, any of its agents or any of  
47 its authorized dealers and the nonconformity continues to exist; or

48 (2) The vehicle is out of service by reason of repair of a non-  
49 conformity by the manufacturer, any of its agents or any of its  
50 authorized dealers for a cumulative total of more than 30 calendar  
51 days since delivery of the motor vehicle to the consumer. The  
52 30-day limit shall be extended only if repairs cannot be performed  
53 due to conditions beyond the control of the manufacturer, any of  
54 its agents or any of its authorized dealers including war, invasion,  
55 strike, or fire, flood or other natural disaster.

56 This presumption shall be a rebuttable presumption affecting  
57 the burden of proof in any action to enforce the consumer's rights  
58 under subsection c. of this section and shall not be construed to  
59 limit those rights.

1 2. a. If the manufacturer has established a qualified third party  
2 dispute resolution process and the consumer receives timely noti-  
3 fication in writing of the availability of a third party process with  
4 a description of its operation and effect, the provisions of section 1  
5 of this act shall not apply to any consumer who has not first

6 resorted to the third party process. Notification of the availability  
7 of the third party process is not timely if the consumer suffers  
8 any prejudice resulting from any delay in giving the notification.  
9 If a qualified third party dispute resolution process does not exist,  
10 or if the consumer is dissatisfied with the third party decision, or  
11 if the manufacturer, or any of its agents or any of its authorized  
12 dealers neglects to promptly fulfill the terms of such third party  
13 decision, the consumer may assert the presumption provided in  
14 subsection d. of section 1 of this act in an action to enforce the  
15 consumer's rights under subsection b. of section 1. The findings  
16 and decision of the third party shall be admissible in evidence in  
17 the action without further foundation. Any period of limitation  
18 of actions under any federal or New Jersey laws with respect to  
19 any person shall be extended for a period equal to the number  
20 of days between the date a complaint is filed with a third party  
21 dispute resolution process and the date of its decisions or the date  
22 before which the manufacturer, any of its agents or any of its  
23 authorized dealers is required by the decision to fulfill its terms,  
24 whichever occurs later.

25 b. Nothing in this act shall in any way limit the rights or remedies  
26 which are otherwise available to a consumer under any other law.

27 c. A qualified third party dispute resolution process shall be one  
28 that complies with the Federal Trade Commission's minimum  
29 requirements for informal dispute settlement procedures as set  
30 forth in the Federal Trade Commission's regulations at 16 Code of  
31 Federal Regulations, Part 703, as from time to time amended;  
32 that renders decisions which are binding on the manufacturer,  
33 any of its agents or any of its authorized dealers if the consumer  
34 elects to accept the decision; that prescribes a reasonable time  
35 not to exceed 30 days, within which the manufacturer, any of its  
36 agents or any of its authorized dealers, shall fulfill the terms of  
37 those decisions; and that each year provides to the Division of  
38 Motor Vehicles a report of its annual audit required by the Federal  
39 Trade Commission's regulations on informal dispute resolution  
40 procedures.

1 3. This act shall take effect immediately.

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#### STATEMENT

During the past decade, increasing attention has been given to the problem of new cars which turn out to be substantially defective. The problem seems to be particularly acute for new model cars which often have many defects during the first year or two of

production and during the first few months of a year in which a factory has been shut down for style changes to an existing car model.

It is estimated that 10,000 defective cars are manufactured each year and sold to unsuspecting consumers. At an average cost of \$6,000.00 per car, consumers pay 60 million dollars each year for defective cars. Since consumers frequently complain that the auto industry is unresponsive to the problem of defective cars, it is apparent that an effective practical remedy is needed for the average consumer.

This bill would require the manufacturer to replace a defective car with a new car or to refund the purchase price minus a reasonable allowance for the consumer's use of the car if, within the express warranty term or during the period of one year following the date of original delivery of the vehicle to a consumer, whichever is the later date, either of the following occurs:

(1) Four or more attempts have been made by the manufacturer, any of its agents or authorized dealers to repair or correct a defect and the defect continues to exist; or

(2) The car has been out of service because of repair of a defect by the manufacturer, any of its agents or authorized dealers, for a cumulative total of 30 or more days.

This bill would require that any consumer who has received timely notification in writing of a qualified third party dispute resolution process established by the manufacturer must first resort to the third party process before seeking a refund or replacement.

The bill further provides that the manufacturer shall be bound by a decision of the third party process if the consumer elects to accept it, and that if the consumer is dissatisfied with the third party decision, he may assert his rights to seek replacement of a defective car or refund of his purchase price.

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**ASSEMBLY COMMERCE AND INDUSTRY COMMITTEE**

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

**ASSEMBLY, No. 1910**

**STATE OF NEW JERSEY**

DATED: JANUARY 31, 1983

The Assembly Commerce and Industry Committee favorably reports this bill intended to provide consumers with an additional means of obtaining redress for automobile "lemons".

This substitute bill requires a manufacturer of a new automobile to repair all defects covered by a written warranty if reported by the consumer during the warranty period or within one year of the automobile's delivery date to the consumer, whichever is earlier. If the manufacturer is unable to repair a defect which substantially impairs the automobile's use, value or safety after a "reasonable number of attempts," the bill requires the manufacturer to either replace the automobile (with the manufacturer paying collateral charges such as taxes, preparation and destination fees, and the consumer paying an allowance for the use of the returned automobile) or to refund the full purchase price and collateral charges, less an allowance for the consumer's use of the returned automobile. A refund would be made to the consumer and to anyone holding a lien on the automobile.

If a manufacturer has established an informal dispute settlement mechanism that complies in all respects with relevant Federal Trade Commission regulations, the bill requires a consumer to attempt to settle the dispute through that mechanism before the bill's provisions requiring a replacement or refund would apply.

The bill specifies that a "reasonable number of attempts" have been taken when:

a. The same problem has been subject to repair four or more times during the warranty period or within one year of the automobile's delivery date, whichever is earlier; or

b. The automobile has been out of service for repairs for a cumulative total of 30 business days during the same period. The 30-day period is extended if the repairs cannot be performed because of war, invasion, strike, fire, flood or other natural disaster.

The bill specifies that the manufacturer has the following affirmative defenses in any suit to obtain a new replacement automobile or to recover the cost of an automobile:

a. The defect does not substantially impair the automobile's use, value or safety.

b. The defect was caused by the consumer's abuse or neglect or by an unauthorized modification or alteration of the automobile by anyone other than the manufacturer or its agent or dealer.

In addition, because the provisions in the original Senate legislation affecting dealers were eliminated and because the dealers in the Senate committee substitute were provided with immunity as to their possible liability under section 3 of the bill, the bill states that the presumption provided does not apply against a manufacturer unless the manufacturer has received prior direct written notification from the consumer and has an opportunity to repair the defect. Furthermore, as a result of Senate floor amendments, the bill now provides that, if a manufacturer has received notification of a nonconformity and does not directly attempt or arrange with its dealer or agent to repair the nonconformity of the consumer's automobile, the manufacturer may not defend a claim by the consumer for a new automobile or a refund under the act on the ground either that the agent or dealer failed to properly repair the nonconformity or that the repairs made caused or contributed to the nonconformity.

It is understood that if a qualified third party dispute resolution process does not exist, or if the consumer is dissatisfied with the third party decision, or if the manufacturer, or any of its agents or dealers neglects to promptly fulfill the terms of the third party decision, that the consumer may still assert the presumption provided in subsection d. of section 1 in an action to enforce his rights under the bill.

The committee amended the bill:

1) To exempt the living facilities of motor homes from the bill's provisions;

2) To require that when a manufacturer, his agent or dealer, has been notified that a customer's automobile does not conform to the manufacturer's warranty, the manufacturer (or his dealer or agent) must make the necessary repairs *within a reasonable period of time* to conform the automobile to the warranty.

3) To qualify for the bill's remedies, the automobile must be out of service at any location and *waiting for the dealer to begin or complete repairs* for a cumulative period of 30 business days. It is presumed, in this case, pursuant to section 2 of the bill, that for the consumer to qualify, he will have had to make a reasonable effort to bring his automobile's nonconformity to the attention of the manufacturer, dealer or agent; and

4) For the purpose of making the public more aware of which manufacturers' dispute settlement procedures are qualified under

federal regulations, the Division of Consumer Affairs would be required to periodically make known the determinations of the Federal Trade Commission in these matters. This is designed to encourage the manufacturers to comply with the federal standards in New Jersey, and at the same time, to provide consumers with the knowledge necessary to determine whether a civil remedy may be pursued directly, without resorting to the manufacturer's informal dispute settlement procedure.

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ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 1910**

**STATE OF NEW JERSEY**

ADOPTED JANUARY 31, 1983

By Assemblyman DORIA

AN ACT concerning certain automobile warranties.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. As used in this act:

2 a. "Consumer" means the purchaser, other than for purposes of  
3 resale, of an automobile; a person to whom an automobile is trans-  
4 ferred during the duration of an express warranty applicable to the  
5 automobile; or any other person entitled by the terms of the  
6 warranty to enforce the obligations of the warranty.

7 b. "Dealer" means a person actively engaged in the business of  
8 buying, selling or exchanging automobiles at retail and who has an  
9 established place of business.

10 c. "Manufacturer" means a person engaged in the business of  
11 manufacturing, assembling or distributing automobiles, who will,  
12 under normal business conditions during the year, manufacture,  
13 assemble or distribute to dealers at least 10 new automobiles.

14 d. "Manufacturer's express warranty" or "warranty" means  
15 the written warranty of the manufacturer of a new automobile of  
16 its condition and fitness for use, including any terms or conditions  
17 precedent to the enforcement of obligations under that warranty.

18 e. "Automobile" means any passenger automobile as defined in  
19 R. S. 39:1-1 which is registered by the Division of Motor Vehicles  
20 in the Department of Law and Public Safety, except the living  
21 facilities of motor homes.

22 f. "Nonconformity" means a defect or condition which sub-  
23 stantially impairs the use, value, or safety of an automobile.

1 2. If a new automobile does not conform to the manufacturer's

2 express warranty, and the consumer reports the nonconformity to  
 3 the manufacturer or its agent or dealer during the term of the  
 4 warranty or during the period of one year following the date of  
 5 original delivery of an automobile to the consumer, whichever is  
 6 earlier, the manufacturer shall make, or arrange with its dealer  
 7 or agent to make, within a reasonable period of time, all repairs  
 8 necessary to conform the new automobile to the warranty, not-  
 9 withstanding that the repairs or corrections are made after the  
 10 expiration of the term of the warranty or the one-year period.

1 3. If the manufacturer is unable to conform the new automobile  
 2 to the warranty by repairing or correcting a defect or condition  
 3 which substantially impairs the use, value or safety of the new  
 4 automobile to the consumer after a reasonable number of attempts,  
 5 the manufacturer shall accept return of the automobile from the  
 6 consumer and either :

7 a. Replace the automobile with a comparable new automobile and  
 8 the consumer shall pay the manufacturer a reasonable allowance for  
 9 his use of the automobile being returned and shall not pay, on the  
 10 new replacement automobile, the taxes, preparation fees or any  
 11 other charges or fees usually paid by a consumer ; or

12 b. Refund to the consumer the full purchase price of the original  
 13 automobile, including all taxes, preparation fees and any other  
 14 charges or fees paid by the consumer, less a reasonable allowance  
 15 for the consumer's use of the original automobile. Refunds shall  
 16 be made to the consumer and lienholder, if any, as their interests  
 17 appear on the records of ownership kept by the Director of the  
 18 Division of Motor Vehicles.

1 4. It shall be presumed that a reasonable number of attempts  
 2 have been undertaken to conform a new automobile to the manu-  
 3 facturer's express warranty if, within the warranty term or during  
 4 the period of one year following the date of original delivery of the  
 5 motor vehicle to a consumer, whichever is the earlier date:

6 a. The same nonconformity has been subject to repair or correc-  
 7 tion four or more times by the manufacturer, its agents or its  
 8 dealers and the nonconformity continues to exist ; or

9 b. The automobile is out of service by reason of waiting for the  
 10 dealer to begin or complete repair or correction of a nonconformity  
 11 by the manufacturer, its agents or its dealers for a cumulative  
 12 total of more than 30 business days since the original delivery of  
 13 the motor vehicle to the consumer. The 30-day limit shall be ex-  
 14 tended only if repairs cannot be performed due to conditions  
 15 beyond the control of the manufacturer, its agents or its dealers  
 16 including war, invasion, strike, fire, flood or other natural disaster.

17 c. The presumption provided in this section shall not apply  
18 against a manufacturer unless the manufacturer has received prior  
19 direct written notification from or on behalf of the consumer and  
20 has had an opportunity to repair or correct the nonconformity;  
21 provided, however, that if the manufacturer does not directly  
22 attempt or arrange with its dealer or agent to repair or correct the  
23 nonconformity, the manufacturer may not defend a claim by a con-  
24 sumer under this act on the ground that the agent or dealer failed  
25 to properly repair or correct the nonconformity or that the repairs  
26 or corrections made by the agent or dealer caused or contributed  
27 to the nonconformity.

1 5. A reasonable allowance for use shall be the total amount  
2 directly attributable to the use of the new automobile by the con-  
3 sumer and any previous consumer, prior to the first report of the  
4 nonconformity to the manufacturer by the consumer or any pre-  
5 vious consumer of the new automobile and during any subsequent  
6 period when the vehicle is not out of service by reason of repair or  
7 correction of the nonconformity so reported.

1 6. It shall be an affirmative defense to a claim under this act that  
2 the alleged nonconformity does not substantially impair the use,  
3 value, or safety of the new automobile or that the nonconformity  
4 is the result of abuse or neglect or of unauthorized modifications or  
5 alterations of the new automobile by anyone other than the manu-  
6 facturer, its agent or dealer.

1 7. If a manufacturer has established a qualified informal dispute  
2 settlement procedure pursuant to section 110 of Pub. L. 93-637 (15  
3 U. S. C. § 2310) and the rules promulgated thereunder, the remedies  
4 provided by this act shall not be available to a consumer who has  
5 not first resorted to that procedure.

1 8. The Division of Consumer Affairs in the Department of Law  
2 and Public Safety shall periodically make known to the public the  
3 determinations of the Federal Trade Commission as to whether  
4 or not the dispute settlement procedure of each manufacturer  
5 doing business in this State complies with the requirement of sec-  
6 tion 110 of Pub. L. 93-637 (15 U. S. C. § 2310) and the rules  
7 promulgated thereunder.

1 9. Nothing in this act shall in any way limit the rights or remedies  
2 for breach of warranty otherwise available to a consumer.

1 10. Nothing in this act shall be construed as imposing any  
2 liability on a dealer or creating a cause of action by a consumer  
3 against a dealer under section 3 of this act.

1 11. This act shall take effect immediately, but shall apply only  
2 to new automobiles purchased after its effective date.

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[OFFICIAL COPY REPRINT]  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, No. 1910

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ADOPTED JANUARY 31, 1983

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5 automobile; or any other person entitled by the terms of the  
6 warranty to enforce the obligations of the warranty.

7 b. "Dealer" means a person actively engaged in the business of  
8 buying, selling or exchanging automobiles at retail and who has an  
9 established place of business.

10 c. "Manufacturer" means a person engaged in the business of  
11 manufacturing, assembling or distributing automobiles, who will,  
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14 d. "Manufacturer's express warranty" or "warranty" means  
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18 e. "Automobile" means any passenger automobile as defined in  
19 R. S. 39:1-1 which is registered by the Division of Motor Vehicles  
20 in the Department of Law and Public Safety, except the living  
21 facilities of motor homes.

22 f. "Nonconformity" means a defect or condition which sub-  
23 stantially impairs the use, value, or safety of an automobile.

24 \*g. "*Lien*" means a security interest in an automobile.

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Assembly amendments adopted February 14, 1983.

25     *h. "Lienholder" means a person with a security interest in an*  
26 *automobile pursuant to a lien.\**

1     2. If a new automobile does not conform to the manufacturer's  
2 express warranty, and the consumer reports the nonconformity to  
3 the manufacturer or its agent or dealer during the term of the  
4 warranty or during the period of one year following the date of  
5 original delivery of an automobile to the consumer, whichever is  
6 earlier, the manufacturer shall make, or arrange with its dealer  
7 or agent to make, within a reasonable period of time, all repairs  
8 necessary to conform the new automobile to the warranty, not-  
9 withstanding that the repairs or corrections are made after the  
10 expiration of the term of the warranty or the one-year period.

1     3. If the manufacturer is unable to conform the new automobile  
2 to the warranty by repairing or correcting a defect or condition  
3 which substantially impairs the use, value or safety of the new  
4 automobile to the consumer after a reasonable number of attempts,  
5 the manufacturer shall accept return of the automobile from the  
6 consumer and either:

7     a. Replace the automobile with a comparable new automobile and  
8 the consumer shall pay the manufacturer a reasonable allowance for  
9 his use of the automobile being returned and shall not pay, on the  
10 new replacement automobile, the taxes, preparation fees or any  
11 other charges or fees usually paid by a consumer; or

12     b. Refund to the consumer the full purchase price of the original  
13 automobile, including all taxes, preparation fees and any other  
14 charges or fees paid by the consumer, less a reasonable allowance  
15 for the consumer's use of the original automobile. \***[Refunds shall**  
16 **be made to the consumer and lienholder, if any, as their interests**  
17 **appear on the records of ownership kept by the Director of the**  
18 **Division of Motor Vehicles.]\***

18A     *\*c. The provisions of this section shall not affect the interests of*  
19 *a lienholder, unless the lienholder consents to the replacement of*  
20 *the lien with a corresponding lien on the automobile accepted by*  
21 *the consumer in exchange for the automobile having a noncon-*  
22 *formity, the lienholder shall be paid in full the amount due on the*  
23 *lien, including interest and other charges, before an exchange of*  
24 *automobiles or a refund to the consumer is made.\**

1     4. It shall be presumed that a reasonable number of attempts  
2 have been undertaken to conform a new automobile to the manu-  
3 facturer's express warranty if, within the warranty term or during  
4 the period of one year following the date of original delivery of the  
5 motor vehicle to a consumer, whichever is the earlier date:

6     a. The same nonconformity has been subject to repair or correc-

7 tion four or more times by the manufacturer, its agents or its  
8 dealers and the nonconformity continues to exist; or

9 b. The automobile is out of service by reason of waiting for the  
10 dealer to begin or complete repair or correction of a nonconformity  
11 by the manufacturer, its agents or its dealers for a cumulative  
12 total of more than 30 business days since the original delivery of  
13 the motor vehicle to the consumer. *\*This 30-day limit shall com-*  
14 *mence with the first day on which the consumer presents the auto-*  
15 *mobile to the manufacturer, its agent or dealer for service of the*  
16 *nonconformity and a written document describing the noncon-*  
17 *formity is prepared by the manufacturer, its agent, or dealer.\**  
18 The 30-day limit shall be extended only if repairs cannot be per-  
19 formed due to conditions beyond the control of the manufacturer,  
20 its agents or its dealers including war, invasion, strike, fire, flood  
21 or other natural disaster.

22 c. The presumption provided in this section shall not apply  
23 against a manufacturer unless the manufacturer has received prior  
24 direct written notification from or on behalf of the consumer and  
25 has had an opportunity to repair or correct the nonconformity;  
26 provided, however, that if the manufacturer does not directly  
27 attempt or arrange with its dealer or agent to repair or correct the  
28 nonconformity, the manufacturer may not defend a claim by a con-  
29 sumer under this act on the ground that the agent or dealer failed  
30 to properly repair or correct the nonconformity or that the repairs  
31 or corrections made by the agent or dealer caused or contributed  
32 to the nonconformity.

1 5. A reasonable allowance for use shall be the total amount  
2 directly attributable to the use of the new automobile by the con-  
3 sumer and any previous consumer, prior to the first report of the  
4 nonconformity to the manufacturer by the consumer or any pre-  
5 vious consumer of the new automobile and during any subsequent  
6 period when the vehicle is not out of service by reason of repair or  
7 correction of the nonconformity so reported.

1 6. It shall be an affirmative defense to a claim under this act that  
2 the alleged nonconformity does not substantially impair the use,  
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4 is the result of abuse or neglect or of unauthorized modifications or  
5 alterations of the new automobile by anyone other than the manu-  
6 facturer, its agent or dealer.

1 7. If a manufacturer has established a qualified informal dispute  
2 settlement procedure pursuant to section 110 of Pub. L. 93-637 (15  
3 U. S. C. § 2310) and the rules promulgated thereunder, the remedies

4 provided by this act shall not be available to a consumer who has  
5 not first resorted to that procedure.

1 8. The Division of Consumer Affairs in the Department of Law  
2 and Public Safety shall periodically make known to the public \***the**  
3 **determinations of the Federal Trade Commission**\* as to whether  
4 or not the dispute settlement procedure of each manufacturer  
5 doing business in this State complies with \***the requirement of**\*  
6 *\*procedures pursuant to\** section 110 of Pub. L. 93-637 (15 U. S. C.  
7 § 2310) and the rules promulgated thereunder.

1 9. Nothing in this act shall in any way limit the rights or remedies  
2 for breach of warranty otherwise available to a consumer.

1 10. Nothing in this act shall be construed as imposing any  
2 liability on a dealer or creating a cause of action by a consumer  
3 against a dealer under section 3 of this act.

1 11. This act shall take effect immediately, but shall apply only  
2 to new automobiles purchased after its effective date.

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OFFICE OF THE GOVERNOR

RELEASE: IMMEDIATE

CONTACT: PAUL WOLCOTT

MONDAY, JUNE 20, 1983

Governor Thomas H. Kean today signed legislation that will force new car dealers and manufacturers to back up their warranties with a replacement car or a refund if the original vehicle turns out to be a "lemon."

The bill, S-1738, sponsored by State Senators Edward T. O'Connor, Jr., D-Hudson, and Donald T. DiFrancesco, R-Union, is designed to protect consumers from cars that are so faulty in construction that they cannot be repaired properly.

"This is an extremely important piece of consumer legislation," Kean said. "All of us have heard stories of people who have purchased a new car, only to find that it won't work properly and that it cannot be fixed. I believe this bill protects the rights of those people without imposing an unfair burden on automobile dealers or manufacturers.

"New Jersey motorists will no longer face the prospect of committing to a lengthy and substantial financial obligation, only to find themselves forced to pay for a car they cannot use," the Governor added.

The key provisions of the bill require the manufacturer or dealer to make all repairs necessary to conform with its express warranty, provided that the consumer reports the defects within the warranty period or one year of the date of delivery, whichever is earlier.

Should the dealer or manufacturer be unable to conform the car to the express warranty within a reasonable number of attempts, the purchaser is entitled to either a comparable replacement vehicle, or to a refund. In either case, the manufacturer is entitled to a reasonable allowance for the purchaser's use of the vehicle.

- more -

S-1738

Page Two

Monday, June 20, 1983

The bill defines "reasonable number of attempts" as four or more attempts to make the same repair, or a total of 30 days in which the vehicle is out of service for repairs of defects covered by the warranty.

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