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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984



ENROLLED

Com. Sub. for
HOUSE BILL No. 1183

(By ~~Mr.~~ *Del. Kelly & Del. Diven*)



Passed March 10, 1984

In Effect From Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1183

(By DELEGATE KELLY and DELEGATE GIVENS)

[Passed March 10, 1984; in effect from passage.]

AN ACT to amend chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-a, relating to new motor vehicles warranties; setting forth legislative declarations; defining words, terms and phrases; establishing manufacturer's duty to repair or replace new motor vehicles; providing for a cause of action by a consumer; setting forth defenses; limitation of action; establishing presumptions; when warranty term deemed extended; requiring that a written statement be furnished to a consumer; setting forth information to be included in such statement; providing for the resale of a returned motor vehicle; requiring that a consumer who purchases a returned motor vehicle be provided a written statement; providing for the contents of such statement; prohibiting the manufacturer from requiring a dealer to accept such vehicle for resale; providing for a third party dispute resolution process; requiring the attorney general to promulgate rules and regulations; setting forth minimum requirements of third party dispute mechanisms; utilization of such mechanisms; extension of limitation of actions; and availability of other remedies.

Be it enacted by the Legislature of West Virginia:

That chapter forty-six-a of the code of West Virginia, one thou-

sand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article six-a, to read as follows:

ARTICLE 6A. CONSUMER PROTECTION—NEW MOTOR VEHICLE WARRANTIES.

§46A-6A-1. Legislative declarations.

1 (1) The Legislature hereby finds and declares as a matter
2 of public policy that the purpose of this article is to place
3 upon the manufacturers of motor vehicles the duty to meet
4 their obligations and responsibilities under the terms of the
5 express warranties extended to the consumers in this state.
6 The Legislature further finds as a matter of public policy that
7 the manufacturer shall bear the total cost of performing any
8 duty or responsibility imposed by their warranties and the
9 provisions of this article.

10 (2) The Legislature further finds that any agreement under
11 the provisions of article six-a, chapter seventeen-a of this
12 code, or any agreement hereinafter amended or entered into
13 between a dealer and manufacturer which would transfer to
14 the dealer any duty, or all or any part of the cost of perform-
15 ing any duty imposed on the manufacturer by the provisions
16 of this article, or which would directly or indirectly charge
17 the dealer for or reduce the payment or reimbursement due
18 the dealer for performing work or furnishing parts required
19 by this article to be provided by either the dealer or manu-
20 facturer, so as to shift to the dealer all or any part of the cost
21 of the manufacturer's compliance with this article, to be
22 against public policy, void and unenforceable.

§46A-6A-2. Definitions.

1 When used in this article, the following words, terms and
2 phrases shall have the meaning ascribed to them, except
3 where the context indicates a different meaning:

4 (1) "Consumer" means the purchaser, other than for pur-
5 poses of resale, of a new motor vehicle purchased in this
6 state, used primarily for personal, family or household pur-
7 poses, a person to whom the new motor vehicle is transferred
8 for the same purposes during the duration of an express war-
9 ranty applicable to the motor vehicle and any other person

10 entitled by the terms of the warranty to enforce the obligations
11 of the warranty:

12 (2) "Manufacturer" means a person engaged in the busi-
13 ness of manufacturing, assembling or distributing motor ve-
14 hicles, who will, under normal business conditions during the
15 year, manufacture, assemble or distribute to dealers at least
16 ten new motor vehicles;

17 (3) "Manufacturer's express warranty" and "warranty"
18 mean the written warranty of the manufacturer of a new motor
19 vehicle of its condition and fitness for use, including any terms
20 or conditions precedent to the enforcement of obligations
21 under that warranty; and

22 (4) "Motor vehicle" means any passenger automobile sold
23 in this state, including pickup trucks and vans subject to regis-
24 tration as a Class A motor vehicle under the provisions of
25 article ten, chapter seventeen-a of this code, and any self-
26 propelled motor vehicle chassis of motor homes sold in this
27 state subject to registration as a Class A or Class B motor ve-
28 hicle under the provisions of article ten, chapter seventeen-a
29 of this code.

§46A-6A-3. Manufacturer's duty to repair or replace new motor vehicles.

1 (a) If a new motor vehicle purchased in this state on or
2 after January 1, 1984 does not conform to all applicable ex-
3 press warranties and the consumer reports the nonconformity
4 to the manufacturer, its agent or its authorized dealer during
5 the term of the express warranties or during the period of one
6 year following the date of original delivery of the new motor
7 vehicle to a consumer, whichever is the later date, the manu-
8 facturer, its agent or its authorized dealer shall make the re-
9 pairs necessary to conform the vehicle to the express war-
10 ranties, notwithstanding the fact that the repairs are made
11 after the expiration of the warranty term.

12 (b) If the manufacturer, its agents or its authorized dealer
13 are unable to conform the new motor vehicle to any applic-
14 able express warranty by repairing or correcting any defect
15 or condition which substantially impairs the use or market

16 value of the motor vehicle to the consumer after a reasonable
17 number of attempts, the manufacturer shall, replace the new
18 motor vehicle with a comparable new motor vehicle which
19 does conform to the warranties.

§46A-6A-4. Civil action by consumer.

1 (a) If the nonconformity results in substantial impairment
2 to the use or market value of the new motor vehicle and the
3 manufacturer has not replaced the new motor vehicle pur-
4 suant to the provisions of section three of this article, or if
5 the nonconformity exists after a reasonable number of at-
6 tempts to conform the new motor vehicle to the applicable
7 express warranties, the consumer shall have a cause of action
8 against the manufacturer in the circuit court of any county
9 having venue.

10 (b) In any action under this section, the consumer may be
11 awarded all or any portion of the following:

12 (1) Revocation of acceptance and refund of the purchase
13 price, including, but not limited to, sales tax, license and
14 registration fees, and other reasonable expenses incurred for
15 the purchase of the new motor vehicle, or if there be no such
16 revocation of acceptance, damages for diminished value of
17 the motor vehicle;

18 (2) Damages for the cost of repairs reasonably required to
19 conform the motor vehicle to the express warranty;

20 (3) Damages for the loss of use, annoyance, or inconven-
21 ience resulting from the nonconformity, including but not
22 limited to, reasonable expenses incurred for replacement
23 transportation during any period when the vehicle is out of
24 service by reason of the nonconformity or by reason of re-
25 pair; and

26 (4) Reasonable attorney fees.

27 (c) It is an affirmative defense to any claim under this
28 section (i) that an alleged nonconformity does not substan-
29 tially impair the use or market value or (ii) that a noncon-
30 formity is the result of abuse, neglect or unauthorized modi-

31 fications or alterations of a motor vehicle by anyone other
32 than the manufacturer, its agent or its authorized dealer.

33 (d) An action brought under this section by the consumer
34 must be commenced within one year of the expiration of the
35 express warranty term.

36 (e) The cause of action provided for in this section shall
37 be available only against the manufacturer.

§46A-6A-5. Presumption of reasonable number of attempts; extension of warranty term when repair services unavailable.

1 (a) It is presumed that a reasonable number of attempts
2 have been undertaken to conform a new motor vehicle to the
3 applicable express warranties, if the same nonconformity has
4 been subject to repair three or more times by the manufacturer,
5 its agents or its authorized dealers within the express
6 warranty term or during the period of one year following the
7 date of original delivery of the motor vehicle to the consumer,
8 whichever is the earlier date, and the nonconformity continues
9 to exist, or the vehicle is out of service by reason of
10 repair for a cumulative total of thirty or more calendar days
11 during the term or during the one-year period, whichever is
12 the earlier date.

13 (b) If the nonconformity results in a condition which is
14 likely to cause death or serious bodily injury if the vehicle is
15 driven, it is presumed that a reasonable number of attempts
16 have been undertaken to conform the vehicle to the applicable
17 express warranties if the nonconformity has been subject to
18 repair at least once by the manufacturer within the express
19 warranty term or during the period of one year following the
20 date of original delivery of the motor vehicle to a consumer,
21 whichever is the earlier date, and the nonconformity continues
22 to exist.

23 (c) The presumption that a reasonable number of attempts
24 have been undertaken to conform a new motor vehicle to the
25 applicable express warranties applies against a manufacturer
26 only if the manufacturer has received prior written notification

27 tion from or on behalf of the consumer and has had at least
28 one opportunity to cure the defect alleged.

29 (d) The term of an express warranty, the one-year period
30 and the thirty-day period shall be extended by any period of
31 time during which repair services are not available to the
32 consumer because of a war, invasion, strike or fire, flood or
33 other natural disaster.

§46A-6A-6. Written statement to be provided to consumer.

1 At the time of purchase, the manufacturer, either directly
2 or through its agent or its authorized dealer, must provide
3 the consumer a written statement on a separate piece of
4 paper, in ten point all capital type, in substantially the follow-
5 ing form: "IMPORTANT: IF THIS VEHICLE IS DEFEC-
6 TIVE, YOU MAY BE ENTITLED UNDER STATE LAW
7 TO A REPLACEMENT OR TO COMPENSATION. HOW-
8 EVER, TO BE ENTITLED TO A REPLACEMENT OR
9 TO COMPENSATION, YOU MUST FIRST NOTIFY THE
10 MANUFACTURER OF THE PROBLEM IN WRITING
11 AND PROVIDE THE MANUFACTURER AN OPPOR-
12 TUNITY TO REPAIR THE VEHICLE."

§46A-6A-7. Resale of returned motor vehicle.

1 If a new motor vehicle has been returned under section
2 three of this article or a similar statute of another state, it
3 may not be resold in this state unless the manufacturer cor-
4 rects the nonconformity and provides the consumer with a
5 written statement on a separate piece of paper in ten point all
6 capital type, in substantially the following form: "IMPOR-
7 TANT: THIS VEHICLE WAS RETURNED TO THE
8 MANUFACTURER BECAUSE IT DID NOT CONFORM
9 TO THE MANUFACTURER'S EXPRESS WARRANTY
10 AND THE NONCONFORMITY WAS NOT CURED
11 WITHIN A REASONABLE TIME AS PROVIDED BY
12 WEST VIRGINIA LAW.": *Provided*, That no manufacturer
13 shall require by agreement or otherwise, either directly or
14 indirectly, that any of its authorized dealers in this state ac-
15 cept such a motor vehicle for resale.

§46A-6A-8. Third party dispute resolution process; attorney general to promulgate rules and regulations.

1 (a) The attorney general of the state of West Virginia shall
2 promulgate rules and regulations for the establishment and
3 qualification of a third party dispute mechanism or mecha-
4 nisms for the resolution of warranty disputes between the
5 consumer and the manufacturer, its agent or its authorized
6 dealer. Such mechanisms shall be under the supervision of
7 the division of consumer protection in the office of the at-
8 torney general, and shall meet or exceed the minimum re-
9 quirements of the informal dispute settlement mechanism
10 as provided by the Magnuson-Moss Warranty Federal Trade
11 Commission Improvement Act (Public Law 93-637) and
12 rules and regulations lawfully promulgated thereunder effec-
13 tive the first day of January, one thousand nine hundred
14 eighty-four.

15 (b) If a qualified third party dispute resolution process
16 exists and the consumer receives timely notification in writ-
17 ing of the availability of the third party process with a de-
18 scription of its operation and effect, the cause of action under
19 section four of this article may not be asserted by the con-
20 sumer until after the consumer has initially resorted to the
21 third party process. Notification of the availability of the
22 third party process must be timely to the consumer. If a quali-
23 fied third party dispute resolution process does not exist, or
24 if the consumer is dissatisfied with the third party decision,
25 or if the manufacturer, its agent or its authorized dealer fails
26 to promptly fulfill the terms of the third party decision, the
27 consumer may assert a cause of action under section four of
28 this article.

29 (c) Any period of limitation of actions under any federal
30 or West Virginia laws with respect to any consumer shall be
31 tolled for the period between the date a complaint is filed
32 with a third party dispute resolution process and the date of
33 its decision or the date before which the manufacturer, its
34 agent or its authorized dealer is required by the decision to
35 fulfill its terms, whichever occurs later.

§46A-6A-9. Other remedies available.

1 Nothing in this article shall be construed to limit any right
2 or remedy which is otherwise available to a consumer or
3 authorized dealer of a manufacturer under any other law.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Harrell Colburn
Chairman Senate Committee

Donald Anells
Chairman House Committee

Originating in the House.

Takes effect from passage.

Todd C. Willes
Clerk of the Senate

Daniel L. Blopp
Clerk of the House of Delegates

Walter H. Brown
President of the Senate

W. M. See, Jr.
Speaker House of Delegates

The within *is approved* this the *30*
day of *March*, 1984.

John R. Rhymer
Governor

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