ENROLLED

Conv. Sub. for
HOUSE BILL No. 1183

(By Del. Kelly - Del. 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 of public policy that the purpose of this article is to place upon the manufacturers of motor vehicles the duty to meet their obligations and responsibilities under the terms of the express warranties extended to the consumers in this state. The Legislature further finds as a matter of public policy that the manufacturer shall bear the total cost of performing any duty or responsibility imposed by their warranties and the provisions of this article.

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


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

2 (1) "Consumer" means the purchaser, other than for purposes of resale, of a new motor vehicle purchased in this state, used primarily for personal, family or household purposes, a person to whom the new motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the motor vehicle and any other person
entitled by the terms of the warranty to enforce the obligations of the warranty:

(2) "Manufacturer" means a person engaged in the business of manufacturing, assembling or distributing motor vehicles, who will, under normal business conditions during the year, manufacture, assemble or distribute to dealers at least ten new motor vehicles;

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

(4) "Motor vehicle" means any passenger automobile sold in this state, including pickup trucks and vans subject to registration as a Class A motor vehicle under the provisions of article ten, chapter seventeen-a of this code, and any self-propelled motor vehicle chassis of motor homes sold in this state subject to registration as a Class A or Class B motor vehicle under the provisions of article ten, chapter seventeen-a of this code.

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

(a) If a new motor vehicle purchased in this state on or after January 1, 1984 does not conform to all applicable express warranties and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of the express warranties or during the period of one year following the date of original delivery of the new motor vehicle to a consumer, whichever is the later date, the manufacturer, its agent or its authorized dealer shall make the repairs necessary to conform the vehicle to the express warranties, notwithstanding the fact that the repairs are made after the expiration of the warranty term.

(b) If the manufacturer, its agents or its authorized dealer are unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use or market
value of the motor vehicle to the consumer after a reasonable
number of attempts, the manufacturer shall, replace the new
motor vehicle with a comparable new motor vehicle which
does conform to the warranties.

§46A-6A-4. Civil action by consumer.

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

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

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

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

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

(4) Reasonable attorney fees.

(c) It is an affirmative defense to any claim under this
section (i) that an alleged nonconformity does not substan-
tially impair the use or market value or (ii) that a noncon-
formity is the result of abuse, neglect or unauthorized modi-
fications or alterations of a motor vehicle by anyone other than the manufacturer, its agent or its authorized dealer.

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

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

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

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

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

(c) The presumption that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties applies against a manufacturer only if the manufacturer has received prior written notifica-
(d) The term of an express warranty, the one-year period and the thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike or fire, flood or other natural disaster.

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

At the time of purchase, the manufacturer, either directly or through its agent or its authorized dealer, must provide the consumer a written statement on a separate piece of paper, in ten point all capital type, in substantially the following form: "IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER STATE LAW TO A REPLACEMENT OR TO COMPENSATION. HOWEVER, TO BE ENTITLED TO A REPLACEMENT OR TO COMPENSATION, YOU MUST FIRST NOTIFY THE MANUFACTURER OF THE PROBLEM IN WRITING AND PROVIDE THE MANUFACTURER AN OPPORTUNITY TO REPAIR THE VEHICLE."


If a new motor vehicle has been returned under section three of this article or a similar statute of another state, it may not be resold in this state unless the manufacturer corrects the nonconformity and provides the consumer with a written statement on a separate piece of paper in ten point all capital type, in substantially the following form: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTY AND THE NONCONFORMITY WAS NOT CURED WITHIN A REASONABLE TIME AS PROVIDED BY WEST VIRGINIA LAW.": Provided, That no manufacturer shall require by agreement or otherwise, either directly or indirectly, that any of its authorized dealers in this state accept such a motor vehicle for resale.
§46A-6A-8. Third party dispute resolution process; attorney general to promulgate rules and regulations.

(a) The attorney general of the state of West Virginia shall promulgate rules and regulations for the establishment and qualification of a third party dispute mechanism or mechanisms for the resolution of warranty disputes between the consumer and the manufacturer, its agent or its authorized dealer. Such mechanisms shall be under the supervision of the division of consumer protection in the office of the attorney general, and shall meet or exceed the minimum requirements of the informal dispute settlement mechanism as provided by the Magnuson-Moss Warranty Federal Trade Commission Improvement Act (Public Law 93-637) and rules and regulations lawfully promulgated thereunder effective the first day of January, one thousand nine hundred eighty-four.

(b) If a qualified third party dispute resolution process exists and the consumer receives timely notification in writing of the availability of the third party process with a description of its operation and effect, the cause of action under section four of this article may not be asserted by the consumer until after the consumer has initially resorted to the third party process. Notification of the availability of the third party process must be timely to the consumer. 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, its agent or its authorized dealer fails to promptly fulfill the terms of the third party decision, the consumer may assert a cause of action under section four of this article.

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

1. Nothing in this article shall be construed to limit any right or remedy which is otherwise available to a consumer or authorized dealer of a manufacturer under any other law.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 30th day of May, 1984.

Governor