

LEGISLATIVE BILL 155

Approved by the Governor April 18, 1983

Introduced by DeCamp, 40; Goll, 16; Pappas, 42;
Chronister, 18; R. Peterson, 21; Clark, 47;
Beyer, 3; Barrett, 39; Doyle, 14; Hefner, 13;
Morehead, 30; Von Minden, 17; Wiitala, 31
Wesely, 26; H. Peterson, 35; Laudis, 46;
Haberman, 44; Lundy, 36

AN ACT relating to certain motor vehicles; to define terms; to provide duties for certain motor vehicle manufacturers; to provide procedures and limitations; and to declare an emergency.
Be it enacted by the people of the State of Nebraska,

Section 1. As used in this act, unless the context otherwise requires:

(1) Consumer shall mean the purchaser, other than for purposes of resale, of a motor vehicle normally used for personal, family, household, or business purposes, any person to whom such motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty;

(2) Motor vehicle shall mean a new motor vehicle as defined in subdivision (7) of section 60-1401.02, which is sold in this state, excluding self-propelled mobile homes as defined in section 60-301; and

(3) Manufacturer's express warranty shall mean the written warranty, so labeled, of the manufacturer of a new motor vehicle.

Sec. 2. If a motor vehicle 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 such express warranties 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, the manufacturer, its agent, or its authorized dealer shall make such repairs as are necessary to conform the

vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

Sec. 3. If the manufacturer, its agents, or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all sales taxes, license fees, and registration fees and any similar governmental charges, less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use by the consumer and any previous owner prior to his or her first report of the nonconformity to the manufacturer, agent, or dealer and during any subsequent period when the vehicle is not out of service by reason of repair. It shall be an affirmative defense to any claim under this act (1) that an alleged nonconformity does not substantially impair such use and market value or (2) that a nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by a consumer.

Sec. 4. It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if (1) the same nonconformity has been subject to repair four or more times by the manufacturer, its agents, or 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 a consumer, whichever is the earlier date, but such nonconformity continues to exist or (2) the vehicle is out of service by reason of repair for a cumulative total of forty or more days during such term or during such period, whichever is the earlier date. The term of an express warranty, such one-year period, and such forty-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, or strike, or fire, flood, or other natural disaster. In no event shall the presumption provided in this section apply against a manufacturer unless the manufacturer has received prior written direct notification by certified mail from or on behalf of the consumer and an opportunity to cure the defect alleged.

Sec. 5. The Director of Motor Vehicles shall adopt standards for an informal dispute settlement procedure which substantially comply with the provisions of Title 16, Code of Federal Regulations, Part 703, in existence as of February 22, 1983.

If a manufacturer has established or participates in a dispute settlement procedure certified by the Director of Motor Vehicles within the guidelines of such standards, the provisions of section 3 of this act concerning refunds or replacement shall not apply to any consumer who has not first resorted to such a procedure.

Sec. 6. Any action brought under this act shall be commenced within (1) one year following the expiration of the express warranty term or (2) two years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date.

Sec. 7. In any action brought under this act the court shall award reasonable attorney's fees to the prevailing party if the prevailing party is the consumer.

Sec. 8. Nothing in this act shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

Sec. 9. This act shall apply to motor vehicles beginning with the manufacturer's 1984 model year.

Sec. 10. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.