

LEASED VEHICLE LEMON LAW

House Bill 5000 (Substitute H-6) First Analysis (4-21-98)

Sponsor: Rep. Ted Wallace
Committee: Consumer Protection

THE APPARENT PROBLEM:

Public Act 87 of 1986 created what is commonly referred to as the auto lemon law, making Michigan the forty-fourth state to establish such a law. The auto lemon law act provides that if a new motor vehicle has any defect or condition that impairs its use or value, the manufacturer has a duty to repair the defect or condition. If a reported defect or condition is not corrected after a reasonable number of repairs, a manufacturer has the option to either replace the new motor vehicle or accept return of the vehicle and refund the full purchase price (less certain deductions provided in the act). Although the act has provided purchasers of new vehicles with a clearly defined way of pressing claims for defective vehicles, there are those that say some changes in the act are warranted. For example, increasing numbers of consumers choose to lease vehicles rather than purchase them. As a result, many other states have lemon laws that cover leased vehicles, but Michigan's law still specifically excludes leased vehicles from the act's provisions. In addition, the act provides that a vehicle is defective if four or more attempts are made to repair a problem with the vehicle without success. However, there is no restriction on how much time can pass between these repair attempts. This allows the possibility that a purchaser could let years pass between the third and fourth attempts to repair the problem and still have the vehicle declared defective under the act. There are also many who suggest that the act could be improved by changing the formula for calculating the amount of money to be deducted from the refund for the consumer's use of the vehicle. Legislation representing an agreement between consumer groups and the automobile manufacturers and dealers has been introduced to resolve these issues.

THE CONTENT OF THE BILL:

House Bill 5000 would amend Public Act 87 of 1986, the "auto lemon law," to remove the language specifically excluding leased vehicles and would provide for leased vehicles to be subject to the provisions of the auto lemon law in the same fashion

as are purchased vehicles. Under current law, if a vehicle is defective and cannot be repaired within a reasonable time or number of attempts, the manufacturer has the option of either replacing the vehicle or accepting return of the vehicle and refunding the consumer the full purchase price minus a reasonable allowance for the consumer's use. Under the bill, a vehicle owner or lessee (a person who acquires the rights of use and possession through a lease of a new motor vehicle) would have the right to choose his or her remedy -- either a comparable replacement vehicle or a refund. If a lessee chose to accept a replacement vehicle, the lease agreement could not be altered except for the vehicle identification. If a lessee demanded a refund, the lessor (a person who transfers the rights of use and possession of a motor vehicle to someone else through a lease) would be notified, but would be prohibited from assessing a fee for early termination of the lease.

Calculation of refunds. Under current law, the purchase price minus a reasonable allowance for use of the vehicle is refunded to the purchaser. A reasonable allowance for use may not exceed 10 cents for each mile that the vehicle had been driven prior to the first report of the defect or 10 percent of the purchase price of the vehicle, whichever is less. Any damage not attributable to normal use or to the defect or condition that brought the vehicle under the act would also be subtracted from the refunded amount. The bill would provide new definitions of "purchase price," "lease price" and "reasonable allowance for use;" however, the provisions regarding damage to the vehicle would not be changed.

Under the bill, the "lease price" of a vehicle would mean the actual sales price paid by the lessor including any cash payment made by the consumer and any allowance for trade-in. Any sales tax, license and registration fees, or similar government charges that were paid by the lessor on the lessee's behalf would also be included in the lease price. The "purchase price" of a vehicle would be the actual sales price of

the vehicle as listed on the buyer's order, including any cash payment and the amount for trade-in. Any sales tax, license and registration fees, and similar government charges paid by the consumer would also be included in the purchase price. The purchase or lease price would not include any debt from other transactions or manufacturer to consumer discounts, rebates, or incentives that were included in the contract or agreement.

"Reasonable allowance for use" would be determined by multiplying the purchase or lease price of the vehicle by a fraction. The fraction used would be determined by taking the number of miles of use directly attributable to the consumer and any previous consumer prior to the first report of the defect plus all miles beyond 25,000 as a numerator over 100,000 miles as a denominator. However, if a court or an alternative dispute settlement proceeding determined that the consumer provided sufficient evidence that the vehicle did not provide reliable transportation for ordinary personal or household use for any period beyond the first 25,000 miles, the court or settlement procedure could reduce the usage deduction for mileage beyond 25,000 miles for the period that it determined that the vehicle had not provided useful transportation. In order to determine whether a vehicle had provided useful transportation for ordinary and household use, the court or alternative dispute resolution procedure would have to consider the number and cost of repairs, the number of days that the vehicle was out of service, and whether the need for repair significantly affected the consumer's ability to use the vehicle.

Provision of information. Between the effective date of the act and December 31, 1999, the secretary of state would be required to include a written statement in 10-point boldfaced type with any title for a new motor vehicle. The statement would have to be in substantially the following form:

"Important: If this vehicle is defective you may be entitled under state law to replacement of it or a refund of its purchase price. To obtain replacement or a refund, you must first report the defect in writing to the manufacturer and you may be required to first arbitrate the dispute. In order to protect your rights under this law, you should:

1. Keep copies of all correspondence to and from the manufacturer and the dealer.

2. Keep copies of all work orders from repairs on the vehicle including the date(s) the work was performed and the mileage on the vehicle at the time of the repair.

3. Follow all requirements of the warranty, including any requirement that the repairs must be done by an authorized dealer specified by the manufacturer. If you have any questions regarding your rights under this law, consult an attorney or other qualified individual."

Beginning January 1, 2000, the statement provided by the secretary of state would have to be included with documentation for both purchased and leased vehicles. The statement would provide the same information but would include language indicating that it applied to leased vehicles as well as purchased vehicles. In addition, the secretary of state would also be required to include a summary of the provisions of the lemon law on a database that was accessible to the public through the Internet (meaning a worldwide interconnection of individual computers and computer networks and the facilities and equipment used to access those interconnected networks).

Other Provisions. Currently, if the manufacturer or new car dealer has attempted to repair the same defect or condition a total of four or more times without success, the vehicle is considered a lemon and is eligible for refund or replacement under the act. The bill would require that the four or more attempts to repair the vehicle be performed within two years of the first attempt to repair the defect or condition in order to be presumed defective. The bill would also require that repairs that are a continuation of the original attempt to repair the defect or condition that subjected the vehicle to the act would have to be made even if the repairs must be performed after the expiration of the manufacturer's express warranty. Finally, the bill would specifically include sport utility vehicles under the act's definition of a motor vehicle.

Application. The bill's provisions would apply to all new motor vehicles purchased or leased by an original consumer on or after the date that the bill took effect.

MCL 257.1401 et al.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:**For:**

The bill's provisions represent a compromise between consumer groups and the automobile manufacturers and sellers. The lemon law provides consumers who purchase vehicles with a legal remedy if the vehicle is determined to be defective. On the one hand, the bill would make certain that consumers who choose to lease a vehicle rather than purchase are also protected under the lemon law from being stuck with a defective vehicle and provide that consumers would have the right to decide whether they want a new vehicle or a refund. Further, if a refund were given, the bill would provide that the refund would include any sales tax, license fee or registration fees for leased or purchased vehicles.

On the other hand, the bill would provide manufacturers with better protection by putting a time restriction on when a vehicle could be determined to be a lemon under the act. In addition, the formula used to reduce the amount of the refund for use of the vehicle would potentially be increased and would no longer be capped at 10 percent of the vehicle price. However, the bill would also provide for the mileage offset to be reduced or eliminated where a court or dispute resolution mechanism decided that the vehicle had not provided reasonably useful transportation.

POSITIONS:

The Michigan Consumer Federation supports the bill.
(4-14-98)

The American Automobile Manufacturers Association supports the bill. (4-15-98)

The Michigan Trial Lawyers Association supports the bill. (4-14-98)

The Consumer Law Section of the State Bar of Michigan supports the bill. (4-14-98)

The Office of the Attorney General supports the bill.
(4-14-98)

The Department of State supports the concept of the bill. (4-14-98)

The Department of Consumer and Industry Services has no position on the bill. (4-14-98)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.