

SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)



'16 JAN 26 P2 55

SENATE
S. No. 3136

RECEIVED BY: J.

Introduced by Senator Miriam Defensor Santiago

AN ACT
REQUIRING USED CAR DEALERS TO PROVIDE CONSUMERS WITH A
WRITTEN WARRANTY AGAINST DEFECTS AND REQUIRING PRIVATE
SELLERS TO DISCLOSE ANY KNOWN USE OR SAFETY DEFECTS

EXPLANATORY NOTE

The Constitution, Article 16, Section 9 states that:

The State shall protect consumers from trade malpractices and from substandard or hazardous products.

The recently passed Philippine Lemon Law¹ declares as policy that:

It is hereby declared the policy of the State to promote full protection to the rights of consumers in the sale of motor vehicles against business and trade practices which are deceptive, unfair or otherwise inimical to consumers and the public interest.

The State recognizes that a motor vehicle is a major consumer purchase or investment. Hence, the rights of consumers should be clearly defined, including the means for redress for violations thereof.

In the Philippines, the purchase of a new car usually carries a manufacturer's warranty. On the other hand, vendors of used cars do not usually issue any express warranty. While the new Philippine Lemon Law protects buyers of brand new cars, it's far more common for used-car buyers to get stuck with used-cars with defects. A "used car", also known as a pre-owned vehicle and second hand car, is a vehicle that previously had one or more owners. Used cars are usually sold through car dealers, leasing companies, auctions and private party sales.

¹ Republic Act No. 10642, Section 2.

Since brand new cars are still considered prohibitive for the middle class, many resort to purchasing used cars. Unfortunately, without mechanical expertise, buyers cannot easily distinguish which used cars have defects. Vendors are not required to disclose the history of the cars they sell. Thus, many used cars though seemingly in good running condition, could have been improperly maintained or poorly repaired, been unprofessionally rebuilt after a collision or tampered with in some manner to conceal high mileage, mechanical defects, corrosion or other damage. Some of these used lemons are even sold fraudulently, preying on the most vulnerable, low-income car purchasers of the population.

This bill seeks to protect consumers who buy used vehicles from a dealer or private party. It requires dealers to provide consumers with a written warranty against defects that impair the vehicle's use or safety, and requires private parties to disclose any known use or safety defects.

Dealer warranties cannot be waived under any circumstances. The dealer must give a signed, dated, correct copy of the limited used vehicle warranty at the time you purchase the vehicle. The warranty requires the dealer to repair any defect that impairs the vehicle's use or safety. The coverage depends on the mileage of the vehicle at the time of purchase as outlined below:

Mileage	Warranty Period
Less than 64,500 km.	90 days or 6,035 km., whichever comes first
64,500 to 128,746 km.	60 days or 4,023 km., whichever comes first
128,747 to 201,167 km	30 days or 2,012 km., whichever comes first
201,168 km. or over	No express warranty

If the true mileage of the vehicle is unknown at the time of the sale, the warranty period is calculated according to the age of the vehicle as outlined below:

Age of Vehicle	Warranty Period
3 years old or less	90 days or 6,035 km., whichever comes first
More than 3 and less than 6 years old	60 days or 4,023 km., whichever comes first
More than 6 years old	30 days or 2,012 km., whichever comes first

Though our country allows private enterprises and individuals to enter into contracts freely, the state should come in when necessary to protect the interests of the consumer, promote his general welfare and establish standards of conduct for business and industry.²


MIRIAM DEFENSOR SANTIAGO
RP

² This bill was originally filed during the Fifteenth Congress, First Regular Session.



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Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

1 SECTION 1. *Short Title.* – This Act shall be known as the “Used Car Lemon Act.”

2 SECTION. 2. *Declaration of Policy.* – It is hereby declared the policy of the State
3 to promote full protection to the rights of consumers in the sale of motor vehicles against
4 sales and trade practices which are deceptive, unfair or otherwise inimical to the
5 consumers and the public interest.

6 The State recognizes that a motor vehicle, including a second-hand one, is a major
7 consumer purchase or investment. The consumer rights should thus be clearly defined
8 including the means for redress for violations thereof.

9 SECTION 3. *Definitions.* – For the purposes of this Act, the terms:

10 A. “Consumer” refers to a buyer, other than for purposes of resale, of a motor
11 vehicle, any person to whom such motor vehicle is transferred during the period of any
12 express or statutory warranty under this Act applicable to such motor vehicle, and any
13 other person entitled by the terms of such warranty to enforce its obligations;

14 B. “Dealer” refers to any person engaged in the business of selling, offering
15 for sale, or negotiating the retail sale of used motor vehicles or selling motor vehicles as

1 broker or agent for another, including the officers, agents and employees of such person
2 and any combination or association of dealers, but not including a bank or other financial
3 institution, or the commonwealth, its agencies, bureaus, boards, commissions, authorities,
4 nor any of its political subdivisions. A person shall be deemed to be engaged in the
5 business of selling used motor vehicles if such person has sold more than three used
6 motor vehicles in the preceding twelve months;

7 C. "DTI" refers to the Department of Trade and Industry;

8 D. "Motor vehicle" refers to any self-propelled four (4)-wheeled road vehicle
9 designed to carry passengers including, but not limited to, sedans, coupes, station
10 wagons, convertibles, pickups, vans, sport utility vehicles (SUVs) and Asian utility
11 vehicles (AUVs) but excepting motorcycles, delivery trucks, dump trucks, buses, road
12 rollers, trolley cars, street sweepers, sprinklers, lawn mowers and heavy equipment, such
13 as, but not limited to, bulldozers, payloaders, graders, forklifts, amphibian trucks, cranes
14 and vehicles which run only on rails or tracks, and tractors, trailers and traction engines
15 of all kinds used exclusively for agricultural purposes. Trailers having any number of
16 wheels, when propelled or intended by attachment to a motor vehicle, shall be classified
17 as separate motor vehicle with no power rating;

18 E. "Private seller" refers to any person who is not a dealer and who offers to
19 sell or sells a used motor vehicle to a consumer;

20 F. "Purchase price" refers to the invoice price or the amount of money which
21 the dealer or retailer actually received for the used motor vehicle, in consideration of the
22 sale of such brand new motor vehicle;

23 G. "Repurchase price", the purchase price, as defined above, less any cash
24 award that was made by the dealer in an attempt to resolve the dispute and was accepted
25 by the consumer, and less any refunds or rebates to which the consumer is entitled, plus
26 any incidental damages not previously reimbursed, including but not limited to the

1 reasonable costs of towing from point of breakdown to obtain required repairs or to return
2 the vehicle under this section, and the reasonable costs of obtaining alternative
3 transportation during the applicable warranty period after the second day following each
4 such breakdown not to exceed five hundred pesos (P500.00) vehicle rental charges for
5 each day in which the cost of such alternative transportation is reimbursable;

6 H. "Secretary" refers to the Secretary of the Department of Trade and Industry;

7 I. "Used motor vehicle" or "used vehicle", any motor vehicle as defined
8 above, previously owned by anyone other than the consumer, which has been driven
9 more than the limited use necessary in moving or road testing a new vehicle prior to
10 delivery to a consumer.

11 SECTION 4. *Sales accompanied by written warranty.* —

12 A. No used motor vehicle shall be sold by a dealer to a consumer unless
13 accompanied by an express written warranty covering the full cost of both parts and labor
14 necessary to repair a defect existing at the point of sale that impairs the said used motor
15 vehicle's safety or use;

16 B. Dealer warranties cannot be waived under any circumstances;

17 C. Defects that affect only appearance shall not be deemed to impair safety or
18 use for the purposes of this section. For the purposes of this section, defect shall include
19 defect, malfunction or any combination or defects or malfunctions;

20 D. Defects or malfunctions which involve parts or components that are
21 covered or are warranted under an express warranty issued by the dealer of the used
22 motor vehicle shall be excluded from this Section if the following conditions have been
23 met:

24 i. the manufacturer's warranty has been duly assigned or transferred to the
25 buyer;

26 ii. the manufacturer's warranty is enforceable according to its terms;

- 1 iii. the manufacturer's warranty is not inconsistent with this section; and,
2 iv. the seller has assured that the repair authorized by such manufacturer's
3 express warranty was made;

4 E. The terms of the seller's warranty shall be tolled for any period of time the
5 used motor vehicle is out of service by reason of repair under the manufacturer's
6 warranty.

7 SECTION 5. *Duration of warranty.* – The express warranties required by this
8 section shall be of the following durations:

9 A. For a used motor vehicle which, at the time of sale, has been operated less
10 than 64,500 kilometers, the warranty shall be for ninety days or 6,035 kilometers,
11 whichever occurs first;

12 B. For a used motor vehicle which, at the time of sale, has been operated sixty-
13 four thousand five hundred kilometers (64,500 km) or more, but less than one hundred
14 twenty-eight thousand and seven hundred forty-seven kilometers (128,747 km.), the
15 warranty shall be for sixty days or, four thousand and twenty-three kilometers (4,023
16 km.), whichever occurs first;

17 C. For a used motor vehicle which, at the time of sale, has been operated one
18 hundred twenty-eight thousand and seven hundred forty-seven kilometers (128,747 km.),
19 or more, but less than two hundred one thousand and one hundred sixty-eight kilometers
20 (201,168 km.), thirty days or two thousand and twelve kilometers (2,012 km.),
21 whichever occurs first;

22 D. If the used motor vehicle's true mileage is not known, such warranty period
23 shall be determined by the age of said used motor vehicle in the following manner: a used
24 motor vehicle three years old or less shall have a warranty as provided in paragraph (A);
25 a used motor vehicle more than three, but less than six years old, shall have a warranty as
26 provided in paragraph (B); and a used motor vehicle six years old or more shall have a

1 warranty as provided in paragraph (C). A used motor vehicle's age shall be determined
2 by subtracting its model year from the year in which the warranty holder purchased said
3 used vehicle;

4 E. The warranty periods established by this section shall be tolled during any
5 period in which the used motor vehicle is out of service as a result of any repair attempt
6 pursuant to any warranty created by this section. The applicable warranty period shall be
7 extended thirty days from the date of completion of any repair required by this section as
8 to the defect repaired if the warranty would otherwise have expired during such period.

9 SECTION 6. *Repair of defect.* –

10 A. A dealer may repair, within the meaning of this section, either by
11 performing the repair himself or by arranging and making payment for prompt repair by
12 another;

13 B. A consumer shall return a vehicle for repair under this section by presenting
14 it to the dealer no later than five business days after the expiration of the applicable
15 warranty period and informing him of the defect. Said return period shall be tolled during
16 any time period in which the consumer has notified the dealer of the defect but cannot
17 reasonably present the vehicle to the dealer; including, but not limited to, the reason that
18 a used motor vehicle is inoperable and the dealer refuses to pay the charge to tow said
19 vehicle. The dealer shall immediately accept return of a vehicle when it is so presented.
20 Said used motor vehicle shall be deemed out of service commencing the day it is so
21 presented, notwithstanding any dealer's failure to accept its return on said day. During
22 the applicable warranty period and the aforesaid return period, the dealer shall pay the
23 reasonable costs of towing from point of breakdown up to forty-eight kilometers (48 km.)
24 to obtain required repairs or to return the vehicle to the dealer;

25 C. Upon return of the used motor vehicle to the consumer after repair, the
26 dealer shall provide the consumer with a warranty repair receipt describing:

1 (1) the defect complained of;

2 (2) the work performed in an attempt to correct such defect and the identity of the
3 repairer if it is not the dealer; and

4 (3) the parts replaced in performing such work.

5 For the dealer to toll the ten business day period as provided in paragraph (D) of
6 this section said dealer shall attach to each such warranty repair receipt copies of
7 such order forms, invoices, receipts or other evidence of a parts order and its
8 receipt to evidence his compliance with this paragraph;

9 D. If the dealer fails to repair the same defect within three attempts, or if the
10 used motor vehicle is out of service for more than a cumulative total of ten business days
11 after the consumer has returned it to the dealer for repair of the same, then the dealer shall
12 accept return of the vehicle from the consumer and refund the full repurchase price, less a
13 reasonable allowance for use. A reasonable allowance for use shall ten pesos (P10.00) per
14 kilometer the motor vehicle has been operated between its sale and the dealer's
15 repurchase;

16 E. A consumer shall have the option of retaining the use of any vehicle
17 returned under the provisions of this section until such time as said consumer has been
18 tendered a full refund. The use of any vehicle retained by a consumer after its return to a
19 manufacturer under the provisions of this section, shall, in instances in which a refund is
20 tendered, be reflected in the above-mentioned reasonable allowance for use;

21 F. A used motor vehicle shall not be considered out of service for purposes of
22 the ten business-day period described hereinabove for any day in which a part necessary
23 to repair a defect complained of is not in the dealer's possession; provided, however, that
24 the dealer has ordered the part by reasonable means on the same day on which he knew
25 or should have known that the part was necessary, except that in no event shall a part's
26 unavailability operate to toll the ten business-day period for more than twenty-one days.

1 The applicable warranty period shall be extended by the number of days a part is
2 unavailable;

3 SECTION 7. *Option of vendor to repurchase vehicle.* —

4 At any time within the applicable warranty period and after a consumer has
5 complained of a defect, notwithstanding any objection from the consumer, the dealer
6 shall have the option of repurchasing a used vehicle and refunding the full repurchase
7 price, less a reasonable allowance for use. A reasonable allowance for use shall be fifteen
8 cents for each mile the used motor vehicle had been operated between its sale and the
9 dealer's repurchase.

10 If the dealer is required to or elects to repurchase a vehicle under the terms of this
11 section, the consumer and dealer shall cooperate with each other to execute all necessary
12 documents in order to clear the title of any encumbrances on the repurchased vehicle.

13 SECTION 8. *Private sellers.* — A private seller shall clearly disclose to any
14 prospective buyer, before the sale is completed, all defects the seller knows of which
15 impair the used motor vehicle's safety or substantially impair its use. Failure to so
16 disclose known defects shall entitle the buyer, within thirty days after the sale, to rescind
17 the sale and be entitled to return of all monies paid to the seller less a reasonable amount
18 for use as defined in clause (iv) of paragraph (A) subsection (3). A reasonable allowance
19 for use shall be ten pesos per kilometer the motor vehicle had been operated between its
20 sale and the seller's repurchase.

21 In any subsequent action by a buyer under this section, it shall be an affirmative
22 defense in any such action that an alleged defect does not impair the vehicle's safety, or
23 substantially impair its use, or that it is the result of the buyer's negligence, abuse,
24 damage caused by accident, vandalism or attempt to modify the vehicle.

1 SECTION 9. *Implementing Agency and its duties.* — The DTI Secretary shall,
2 within sixty (60) days from the effectivity of this Act, promulgate rules and regulations,
3 including those of disciplinary nature, to carry out and enforce the provisions of this Act.
4 Further, the DTI shall be the lead agency in carrying out the provisions of this Act.

5 SECTION 10. *Assistance by other agencies.* — The DOTC and other agencies,
6 political subdivisions and local government units, including government-owned and
7 controlled corporations, shall render such assistance as required by the DTI in order to
8 effectively implement the provisions of this Act.

9 SECTION. 11. *Penalties.* — The dealer adjudged to have violated the provisions in
10 this act shall be liable to pay a minimum amount of One hundred thousand pesos
11 (P100,000.00) as damages to the aggrieved party without prejudice to any civil or
12 criminal liability they and/or the responsible officer may incur under existing laws.

13 Any private seller adjudged to have violated the provisions in section 7 shall be
14 liable to pay a minimum amount of Fifty thousand pesos (P50,000.00) as damages to the
15 aggrieved party without prejudice to any civil or criminal liability they and/or the
16 responsible officer may incur under existing laws.

17 SECTION 12. *Other Remedies.* — No provision of this Act shall be construed to
18 limit the remedies available to the dealer or buyer under any other provision of law.

19 SECTION 13. *Separability Clause.* — If any provision or part hereof is held invalid
20 or unconstitutional, the same shall not affect the validity and effectivity of the other
21 provisions hereof.

22 SECTION 14. *Repealing Clause.* — All laws, decrees, orders, and issuances, or
23 portions thereof, which are inconsistent with the provisions of this Act, are hereby
24 repealed, amended or modified accordingly.

1 SECTION 15. *Effectivity Clause.* – This Act shall take effect fifteen (15) days
2 after its publication in the *Official Gazette* or in two (2) newspapers of general
3 circulation.

Approved,

/rapt12January2016