

10 JUL -7 P5:01

SENATE

Senate Bill No. 769

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INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

Consumer welfare is a primary concern in commerce, as protection of the consuming public raises quality standards of products and services, naturally boosting the economy.

There are few properties that are as important, both symbolically and in practical application, as a motor vehicle. For an average family, the purchase of such requires large savings made possible by blood, sweat and tears exhausted in one's occupation. Needless to say, there must be a certain level of guarantee in the vehicle's investment. The warranties available for vehicles do not allow the return of a defective vehicle with recurring problems, but only continued repairs, that is, until the warranty period expires.

Buyers are at risk of being left with a hunk of junk, or a "lemon," while car manufacturers and dealers find business elsewhere, perhaps from another unwitting victim. If only these automakers and dealers would willingly guarantee a return of a defective vehicle within a specified time. This would make perfect business sense, as buyers would be less hesitant to spend their hard-earned money on a product that will break down prematurely. But this is not the reality. As long as the auto companies are able to make their millions without guarantees to customers, they will continue to do so. This is what this bill hopes to rectify, in the pursuit of fair business practice.

This measure proposes a one (1) year period in which buyers of brand-new vehicles can avail of the provisions of this "Lemon Law," and also allowing up to four repairs on the same defect before a replacement or refund of the vehicle can be claimed. This would ensure that the investment on a vehicle is money well-spent.

In view of the foregoing, approval of this bill is earnestly sought.



JINGGOY EJERCITO ESTRADA
Senator

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AN ACT
STRENGTHENING CONSUMER PROTECTION IN THE PURCHASE OF
BRAND NEW MOTOR VEHICLES AND FOR OTHER PURPOSES

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

SECTION 1. Short Title. - This Act shall be known as the "**Lemon Law of 2010.**"

SEC. 2. Declaration of Policy. - 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 sales and trade practices which are deceptive, unfair or otherwise inimical to the consumers and the public interest.

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

SEC. 3. Definition of Terms. - For purposes of this Act, the following terms shall mean:

(a) "**Brand new motor vehicle**" refers to a vehicle constructed entirely from new parts that has never been sold or registered with the Department of Transportation and Communications or an appropriate agency or authority and operated on the highway of the Philippines, or in a foreign state or country.

(b) "**Collateral Charges**" refer to the fees paid to the Land Transportation Office for the registration of a brand new motor vehicle.

(c) "**Comparable Motor Vehicle**" refers to a motor vehicle that is identical or reasonably equivalent to the motor vehicle to be replaced, in terms of specifications and values subject to availability, as the motor vehicle existed at the time of purchase; *Provided*, That there shall be an offset from this value for reasonable allowance for its use.

(d) "**Consumer**" refers to any person, natural or juridical, who is a purchaser, either by cash or credit of a brand new motor vehicle.

(e) "**Dealer**" or "**Seller**" refers to any person other than a manufacturer which sells motor vehicles to the public.

(f) "*Distributor*" refers to any person or entity other than a manufacturer who sells brand new motor vehicles to their duly authorized dealers or retailers.

(g) "*Implementing Agency*" refers to the Department of Trade and Industry (DTI).

(h) "*Lemon Law Rights Period*" refers to the period ending twelve (12) months after the date of the original delivery of a brand new motor vehicle to a consumer or the first twenty thousand (20,000) kilometers of operation after such delivery, whichever comes first. This shall be the period during which the consumer can report any non-conformity to the manufacturer, distributor, authorized dealer or retailer, and pursue any right provided for under this Act.

(i) "*Manufacturer*" refers to a person, partnership, association, corporation or entity engaged in the business of manufacturing or assembling motor vehicles, or of distributing motor vehicles to motor vehicle dealers.

(j) "*Motor Vehicle*" refers to any self-propelled four-wheeled road vehicle designed to carry passengers including, but not limited to, sedans, coupes, station wagons, convertibles, pickups, vans, sport utility vehicles (SUVs) and Asian utility vehicles (AUVs) but excepting motorcycles, delivery trucks, dump trucks, buses, road rollers, trolley cars, street sweepers, sprinklers, lawn mowers and heavy equipment, such as, but not limited to bulldozers, payloaders, graders, forklifts, amphibian trucks, cranes, and vehicles which run only on rails or tracks, and tractors, trailers and traction engines of all kinds used exclusively for agricultural purposes.

Trailers having any number of wheels, when propelled or intended by attachment to a motor vehicle, shall be classified as separate motor vehicle with no power rating.

(k) "*Non-Conformity*" refers to any condition of a brand new motor vehicle which prevents it from conforming to the manufacturer's or distributor's standards or specifications, which cannot be repaired, but excluding conditions resulting from accident, *force majeure*, abuse, neglect, or unauthorized modification or alteration of the brand new motor vehicle.

(l) "*Purchase Price*" refers to the invoice price or the amount of money which the dealer or retailer actually received for the brand new motor vehicle in consideration of the sale of such brand new motor vehicle.

(m) "*Warranty*" refers to the written assurance, so labeled, of the manufacturer of a brand new motor vehicle, including any term or condition precedent to the enforcement of obligations under the warranty;

(n) "*Warranty Rights Period*" refers to the period provided for under the contract of sale when the manufacturer would guarantee the materials used, workmanship and fitness of a brand new motor vehicle for ordinary use or reasonable intended purposes.

SEC. 4. Coverage. - This Act shall cover brand new motor vehicles with nonconformity reported by the consumer within twelve (12) months from date of original delivery to the consumer or twenty thousand (20,000) kilometers of operation after such delivery, whichever comes first. The following causes of non-conformity shall be excluded:

a. noncompliance by the consumer of his obligations under the warranty;

- b. modifications not authorized by the manufacturer or distributor;
- c. abuse or neglect of the brand new motor vehicle; and
- d. damage to the vehicle due to an accident or *force majeure*.

SEC. 5. Repair Attempts. - At any time within the lemon law rights period, and after at least four (4) separate repair attempts by the same dealer-manufacturer for the same complaint, the consumer, if still unsatisfied with the results of the said repairs, may invoke his rights under this Act.

SEC. 6. Notice of Availment of Lemon Law Rights. - Before availing of any remedy under this Act and subject to compliance with the provisions of Section 5 hereof, the consumer shall, in writing, notify the manufacturer, distributor, authorized dealer or retailer of the unresolved complaint, and the consumer's intention to invoke his rights under the Act within the lemon law rights period.

The warranty booklet issued by the manufacturer, distributor, authorized dealer or retailer shall clearly state the responsibility of the consumer under this section. It shall likewise provide the manner and form of such notice to constitute a valid and legal notice to the manufacturer, distributor, authorized dealer or retailer.

SEC. 7. Availment of Lemon Law Rights. - Subsequent to filing the notice of availment referred to in the preceding section, the consumer shall bring the vehicle to the dealer from which the vehicle was purchased for a final attempt to address the consumer's complaints to his satisfaction.

It shall be the duty of the manufacturer, distributor, authorized dealer or retailer, upon receipt of the motor vehicle and the notice of availment referred to in Section 6 hereof, to attend to the complaint of the consumer including, as may be necessary, making such repairs and undertaking such actions as to make the vehicle conform to the standards or specifications of the manufacturer or distributor for such vehicle.

In case the consumer remains unsatisfied with the dealer-manufacturer's efforts to repair the vehicle, pursuant to the consumer's availment of his lemon law rights, the consumer may file a complaint before the DTI as provided under this Act, *Provided, however,* That if the vehicle is not returned for repair for the same complaint within thirty (30) calendar days from the date of notice of release of the motor vehicle to the consumer following this repair attempt under the availment of lemon law rights period, the repair is deemed successful; *Provided, finally,* That in the event that the consumer still remains unsatisfied after the thirty (30) day period, but is still within the lemon law rights period, the consumer may still avail of the same remedies under Sections 5 and 6 hereof.

To compensate for the non-usage of the vehicle while under repair and during the period of availment of lemon law rights, the consumer shall be provided a reasonable daily transportation allowance equivalent to first class taxi, in such amount to be agreed upon by the parties, or a service vehicle at the option of manufacturer, distributor, authorized dealer or retailer. Any disagreement on this matter shall be resolved by the implementing agency provided for under this Act.

Nothing herein shall be construed to limit or impair the rights and remedies of a consumer under any other law.

SEC. 8. Remedies for Dispute Resolution. - The DTI shall exercise exclusive and original jurisdiction over disputes arising from the provisions of this Act. All disputes arising from the provisions of this Act shall be settled by the DTI in accordance with the following dispute resolution mechanisms:

8.1 Mediation

(a) The principle of negotiation, conciliation and mediation towards amicable settlement between the manufacturer or distributor and consumer shall be strictly observed;

(b) In the course of its dispute resolution efforts, the DTI shall endeavor to independently establish the validity of the consumer's outstanding complaint. The DTI shall likewise retain the services of other government agencies or independent private entities in the ascertainment of the validity of the consumer's complaint. Any cost incurred in establishing the validity of the consumer's complaint shall be borne jointly by the consumer and the dealer-manufacturer.

(c) The complaint shall be deemed valid if it is independently established that the vehicle does not conform to the standards or specifications set by the manufacturer.

(d) Upon failure of the negotiation or mediation between the manufacturer or distributor and consumer, the parties shall execute a certificate attesting to such failure;

(e) At any time during the dispute resolution period, the manufacturer or distributor shall not be precluded from offering easier remedial terms to the consumer to reach amicable settlement at any stage of the dispute mechanism. All disputes that have been submitted for amicable settlement shall be settled not later than forty five (45) working days from the date of filing of the complaint with the DTI.

8.2 Arbitration

(a) In the event there is a failure to settle the complaint during the mediation proceedings, the parties may voluntarily enter into arbitration proceedings, likewise to be supervised by the DTI. The DTI shall rely on the independent findings as to conformity to standards and specifications established herein.

(b) In case a non-conformity of the vehicle is found by the DTI, it shall rule in favor of the consumer and direct the dealer-manufacturer to grant either of the following remedies to the consumer:

(i) replace the motor vehicle with a similar or comparable motor vehicle in terms of specifications and values, subject to availability; or

(ii) accept the return of the motor vehicle and pay the consumer the purchase price plus collateral charges.

(c) In case a non-conformity of the vehicle is not found by the DTI, it shall rule in favor of the dealer-manufacturer and direct the consumer to reimburse the dealer-manufacturer the costs incurred by the latter in validating the consumer's complaints.

SEC. 9. Disclosure on Re-sale- Should the returned vehicle be made available for resale, the manufacturer or distributor shall, prior to sale, lease, or transfer, disclose to the dealer in writing that:

- (a) the motor vehicle was returned to the manufacturer, distributor, factory or branch;
- (b) the nature of the non-conformity which caused the return; and
- (c) the condition of the motor vehicle at the time of the transfer to the dealer.

It shall be the responsibility of the dealer to make the same disclosure in writing, in turn, to the next purchaser prior to sale. A dealer's responsibility under this section shall cease upon the sale of the affected motor vehicle to the first purchaser.

SEC. 10. Penalty- The manufacturer, distributor or dealer adjudged to have violated the provisions requiring disclosure as mentioned in the preceding section shall be liable to pay a minimum amount of One hundred thousand pesos (Php100,000.00) as damages to the aggrieved party without prejudice to any civil or criminal liability they and/or the responsible officer may incur under existing laws.

SEC. 11. Assistance by Other Agencies.- The Department of Transportation and Communications and other agencies, political subdivisions, local government units, including government-owned and controlled corporations shall render such assistance as required by the DTI in order to effectively implement the provisions of this Act

SEC. 12. Implementing Rules and Regulations.- The Department of Trade and Industry shall promulgate the necessary implementing rules and regulations within ninety days (90) days from the effectivity of this Act.

SEC. 13. Separability Clause.- If, for any reason, any part or provision of this Act is declared invalid, such declaration shall not affect the other provisions of this Act.

SEC. 14. Repealing Clause.- All laws, decrees, executive orders, issuances, rules or regulations or parts thereof, which are inconsistent with the provisions of this Act, are hereby deemed repealed, amended or modified accordingly.

SEC. 15. Effectivity- This Act shall take effect thirty (30) days after its publication in the *Official Gazette* or in two national newspapers of general circulation.

Approved,