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Reps. Mottley, Bateman, Netzley, Vesper, Bender, Pringle, Boyd, Patton, Mead, Corbin, Buchy, Lucas, Perz, Sulzer, Opfer, Roberts, Allen, D. Miller, Ogg, Thomas, Core, Terwilleger, Britton, Jolivette, Roman, Healy, Jones, Householder, Krupinski, Salerno, Evans, Calvert, Carey, Haines, Oلمان, Clancy, Jacobson, Metelsky, Sutton, Damschroder, Padgett, Jerse, Willamowski, Schuring, Hollister, Beatty, Barnes, Brading, Hoops, Krebs

Sens. Oelslager, Watts, Drake, Spada, Mumper, Wachtmann, Ray

Effective date: *

ACT SUMMARY

- Makes the Nonconforming New Motor Vehicle law applicable to motor vehicles leased for a period of 30 days or more.
- Changes the period of time within which a consumer must bring a civil action under that law from two years of the expiration of the express warranty term to five years of the date of original delivery of the motor vehicle.
- Requires the certificate of title and all subsequent certificates of title to a motor vehicle that is bought back by a manufacturer under the Nonconforming New Motor Vehicle law to be marked thereafter with words indicating it is a buyback vehicle, returned to the manufacturer because it may not have conformed to its warranty.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

TABLE OF CONTENTS

Definitions.....	2
"Consumer"	2
"Nonconformity"	3
"Full purchase price"	3
"Buyback"	3
Duty to repair a vehicle to conform it to an express warranty; remedy for failure to achieve conformity.....	4
Reasonable number of attempts to repair.....	5
Written statements of rights and work performed.....	6
Civil action for loss due to noncompliance.....	6
Resale of a returned vehicle	7
Current law.....	7
Operation of the act.....	8
Buyback certificate of title	9
Relation of the Nonconforming New Motor Vehicle law to the Consumer Sales Practices Act.....	10

CONTENT AND OPERATION

The act makes changes in the Nonconforming New Motor Vehicle law (current R.C. sections 1345.71 to 1345.77), which is commonly known as the "Lemon Law."

Definitions

The Nonconforming New Motor Vehicle law contains a number of definitions for terms that are used in that law; the act amends three of these definitions and enacts two new definitions.

"Consumer"

Prior law defined "consumer" as "the purchaser, other than for purposes of resale, of a motor vehicle, any person to whom the motor vehicle is transferred during the duration of the express warranty that is applicable to the motor vehicle, and any other person who is entitled by the terms of the warranty to enforce the warranty." The act expands the definition of "consumer" to also include any lessee of a motor vehicle in a contractual arrangement under which a charge is made for the use of the vehicle at a periodic rate for a term of 30 days or more, and title to the vehicle is in the name of a person other than the user. This definitional change

makes vehicles leased for 30 or more days subject to the Lemon Law. (Sec. 1345.71(A).)

"Nonconformity"

Prior law defined "nonconformity" as "any defect or condition which substantially impairs the use, value, or safety of a motor vehicle and does not conform to the express warranty of the manufacturer or distributor." The act amends this definition to specify that a nonconformity is "any defect or condition that substantially impairs the use, value, or safety of a motor vehicle *to the consumer . . .*" (Sec. 1345.71(E).)

"Full purchase price"

"Full purchase price" currently was defined as "the contract price for the motor vehicle, including charges for transportation, dealer-installed accessories, dealer services, dealer preparation and delivery and collateral charges; all finance, credit insurance, warranty and service contract charges incurred by the buyer; and all sales tax, license and registration fees, and other government charges."

Under the act, "full purchase price" means both of the following (sec. 1345.71(F)):

(1) *In the case of a sale*, the contract price for the motor vehicle, including charges for transportation, *undercoating*, dealer-installed *options and* accessories, dealer services, dealer preparation, and delivery charges; all finance, credit insurance, warranty, and service contract charges incurred by the consumer; and all sales tax, license and registration fees, and other government charges.

(2) *In the case of a lease*, the *capitalized cost reduction, security deposit, taxes, title fees, all monthly lease payments, the residual value of the vehicle, and all finance, credit insurance, warranty, and service contract charges incurred by the consumer.*

"Buyback"

The act defines a "buyback" motor vehicle as "a motor vehicle that has been replaced or repurchased by a manufacturer as the result of a court judgment, a determination of an informal dispute settlement mechanism, or a settlement agreed to by a consumer regardless of whether it is in the context of a court, an informal dispute settlement mechanism, or otherwise, in this or any other state, in which the consumer has asserted that the motor vehicle does not conform to the warranty, has presented documentation to establish that a nonconformity exists as required by the

Nonconforming New Motor Vehicle law, and has requested replacement or repurchase of the vehicle." (Sec. 1345.71(G).)

Duty to repair a vehicle to conform it to an express warranty; remedy for failure to achieve conformity

Continuing law provides that upon report by a consumer within the earlier of the period of one year following the date of original delivery or during the first 18,000 miles of operation that a motor vehicle does not conform to any express warranty, the manufacturer of a new motor vehicle, its agent, or its authorized dealer must make any repairs that are necessary to conform the vehicle to the express warranty (sec. 1345.72(A)).

If the manufacturer, its agent, or its authorized dealer is unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition that substantially impairs the use, safety, or value of the motor vehicle to the consumer after a reasonable number of repair attempts, the manufacturer, at the consumer's option but subject to safeguards to protect a secured creditor, is required to replace the motor vehicle with a new motor vehicle acceptable to the consumer or accept return of the vehicle from the consumer and refund each of the following (sec. 1345.72(B)):

- (1) The full purchase price, including, but not limited to, charges for undercoating, transportation, and installed options;
- (2) All collateral charges, including, but not limited to, sales tax, license and registration fees, and similar government charges;
- (3) All finance charges incurred by the consumer;
- (4) All incidental damages, including any reasonable fees charged by the lender for making or canceling the loan.

The act relocates several of the provisions discussed above to the definitional section of the chapter and requires the manufacturer under the above conditions to refund the "full purchase price" (see expanded definition above) and all incidental damages. In regard to recovery of "incidental damages," the act extends recovery to lease situations and adds any expenses incurred by the consumer as a result of the nonconformity, including, but not limited to, charges for towing, vehicle rental, meals, and lodging. (Sec. 1345.72(B).)

The Nonconforming New Motor Vehicle law does not affect the obligation of a consumer under a loan or retail installment sales contract or the interest of any secured party, except as follows (sec. 1345.72(D)):

(1) If the consumer elects to take a refund, the manufacturer is required to forward the total sum described in this portion of this analysis by an instrument jointly payable to the consumer and any lienholder that appears on the face of the certificate of title. Prior to disbursing the funds to the consumer, the lienholder may deduct the balance owing to it, including any reasonable fees charged for canceling the loan and refunded, and immediately must remit the balance if any to the consumer and cancel the lien.

(2) If the consumer elects to take a new motor vehicle, the manufacturer must notify any lienholder noted on the certificate of title. If both the lienholder and the consumer consent to finance the consumer's new motor vehicle obtained through the vehicle exchange, the lienholder is required to release the lien on the nonconforming motor vehicle after it has obtained a lien on the new motor vehicle. If the existing lienholder does not finance the new motor vehicle, it has no obligation to discharge the note or cancel the lien on the nonconforming motor vehicle until the original indebtedness is satisfied.

The act revises this provision so that the protections currently afforded to lienholders are extended to lessors in situations involving leased vehicles. It also allows the lienholder under (1), above, to deduct any fees charged for canceling the loan.

Reasonable number of attempts to repair

Under the Nonconforming New Motor Vehicle law, it is presumed that a reasonable number of attempts have been undertaken by the manufacturer of a new motor vehicle, its dealer, or its authorized agent to conform it to any applicable express warranty if, during the applicable period, any of the following apply (sec. 1345.73):

(1) Substantially the same nonconformity has been subject to repair three or more times and continues to exist;

(2) The vehicle is out of service by reason of repair for a cumulative total of 30 or more calendar days;

(3) There have been eight or more attempts to repair any nonconformity that substantially impairs the use and value of the motor vehicle to the consumer;

(4) There has been at least one attempt to repair a nonconformity that results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven, and the nonconformity continues to exist.

The act deletes language in (3), above, concerning the use and value of the vehicle to the consumer that is already covered in the definitional section of the chapter. Additionally, a reasonable number of attempts to repair a nonconformity may be established if the nonconformity *recurs* (new) or continues to exist (continuing law) after three or more repairs or after one attempt to repair a nonconformity that results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven, and the nonconformity either continues to exist or recurs. (Sec. 1345.73(D).)

Written statements of rights and work performed

The Nonconforming New Motor Vehicle law provides that at the time of purchase, the manufacturer, either directly or through its agent or its authorized dealer, must provide to the consumer a written statement on a separate piece of paper, in ten-point capital letters, that is in substantially the following form: "IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER STATE LAW TO A REPLACEMENT OR TO COMPENSATION." (Sec. 1345.74(A).) A manufacturer or authorized dealer must provide to the consumer, each time the consumer's motor vehicle is returned from being serviced or repaired, a fully itemized written statement indicating all work performed on the vehicle, including, but not limited to, parts and labor (existing sec. 1345.74(B)--division (C) in the act).

The act retains the provision that requires a separate statement be provided to a consumer at the time of purchase of a new motor vehicle but provides that in the case of a leased motor vehicle, the same written statement must be provided to the consumer by the manufacturer, either directly or through the lessor, at the time of execution of the lease agreement. (Sec. 1345.74(A).)

Civil action for loss due to noncompliance

A purchaser who suffers any loss due to nonconformity of a new motor vehicle as a result of failure by the manufacturer, its agent, or its authorized dealer to comply with the repair, replace, or refund requirements may bring a civil action in a court of common pleas or other court of competent jurisdiction and, in addition to other relief, is entitled to recover reasonable attorney's fees and all court costs (sec. 1345.75(A)). Such an action must be commenced within two years of the expiration of the express warranty term (sec. 1345.75(C)).

Under the act, any consumer may bring a civil action in a court of common pleas or other court of competent jurisdiction against any manufacturer of a motor vehicle who fails to comply with the repair, replace, or refund requirements and, in addition to the relief to which the consumer is entitled under those requirements, is

entitled to recover reasonable attorney's fees and all court costs. The act also modifies the statute of limitations by requiring that any action be commenced within five years of the date of original delivery of the motor vehicle. (Sec. 1345.75(A) and (C).)

Resale of a returned vehicle

Prior law

If a motor vehicle was returned under the Nonconforming New Motor Vehicle law or a similar law of another state, whether as a result of legal action or of an informal dispute settlement proceeding, the vehicle could not be resold in this state unless each of the following applied:

(1) The manufacturer provided the same express warranty that was provided to the original purchaser, except that the term of the warranty had to be only for 12,000 miles or 12 months after the date of resale, whichever is earlier (sec. 1345.76(A)(1));

(2) The manufacturer provided to the consumer, either directly or through its agent or its authorized dealer, and prior to obtaining the signature of the consumer on any document, a written statement on a separate piece of paper, in ten-point type, all capital letters, in substantially the following form (sec. 1345.76(A)(2)):

"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 AMOUNT OF TIME AS PROVIDED BY OHIO LAW.

DATE

BUYER'S SIGNATURE"

Notwithstanding the two provisions described immediately above, if a new motor vehicle was returned under the Nonconforming New Motor Vehicle law or a similar law of another state because of a nonconformity likely to cause death or serious bodily injury if the vehicle is driven, the motor vehicle could not be sold in this state (sec. 1345.76(B)).

Operation of the act

Under the act, a "buyback" (see "Definitions" above) may not be resold or leased in this state unless each of the following applies:

(1) The manufacturer provides the same express warranty that was provided to the original consumer, except that the term of the warranty shall be the greater of (a) 12,000 miles or 12 months after the date of resale, whichever is earlier, or (b) the remaining term of any manufacturer's original warranty (sec. 1345.76(A)(1));

(2) The manufacturer provides to the consumer, either directly or through its agent or its authorized dealer, and prior to obtaining the signature of the consumer on any document, a written statement on a separate piece of paper, in ten-point type, all capital letters, in substantially the following form (sec. 1345.76(A)(2)):

"WARNING: THIS VEHICLE PREVIOUSLY WAS SOLD AS NEW. IT WAS RETURNED TO THE MANUFACTURER OR ITS AGENT IN EXCHANGE FOR A REPLACEMENT VEHICLE OR REFUND AS A RESULT OF THE FOLLOWING DEFECTS OR CONDITIONS:

- (1) _____.
- (2) _____.
- (3) _____.
- (4) _____.
- (5) _____.

DATE

BUYER'S SIGNATURE"

The manufacturer is required to list each defect or condition on a separate line of the written statement provided to the consumer.

Notwithstanding the two provisions described immediately above, if a new motor vehicle has been returned under the Nonconforming New Motor Vehicle law or a similar law of another state because of a nonconformity likely to cause



death or serious bodily injury if the vehicle is driven, the motor vehicle may not be sold, leased, or operated in this state (sec. 1345.76(B)).

Buyback certificate of title

The act creates a buyback certificate of title and requires a manufacturer that takes possession of a buyback to obtain the certificate of title for the buyback from the consumer, lienholder, or the lessor. The manufacturer and any subsequent transferee, within 30 days and prior to transferring title to the buyback, is required to deliver the certificate of title to the clerk of the court of common pleas, and to make application for a certificate of title for the buyback. The clerk must issue a buyback certificate of title for the vehicle on a form, prescribed by the Registrar of Motor Vehicles.

This buyback certificate of title also must bear or have stamped on its face the words "BUYBACK: this vehicle was returned to the manufacturer because it may not have conformed to its warranty" in black boldface letters in an appropriate location determined by the Registrar. The buyback certificate of title must be assigned upon transfer of the buyback, for use as evidence of ownership of the buyback, and is transferable to any person. Every subsequent certificate of title, memorandum certificate of title, or duplicate copy of a memorandum certificate of title issued for the buyback also must bear or have stamped on its face the words "BUYBACK: this vehicle was returned to the manufacturer because it may not have conformed to its warranty" in black boldface letters in the appropriate location.

The fee for each buyback certificate of title, duplicate copy of a buyback certificate of title, memorandum buyback certificate of title, and notation of any lien on a buyback certificate of title is \$5. The clerk retains \$2.25 of the fee charged for each buyback certificate of title, \$4.75 of the fee charged for each duplicate copy of a buyback certificate of title, the entire \$5 charged for each memorandum buyback certificate, and \$4.25 of the fee charged for each notation of a lien.

The remaining \$2.75 charged for a buyback certificate of title, 75¢ charged for each duplicate copy of a buyback certificate of title, and 75¢ of the fee charged for the notation of any lien on a buyback certificate of title is paid to the Registrar, who must deposit it into certain accounts specified in law unaffected by the act. (Sec. 1345.76(C).)

The act prohibits any manufacturer that applies for a certificate of title for a buyback from failing to clearly and unequivocally inform the clerk of the court of common pleas to whom application for a buyback certificate of title for the motor

vehicle is submitted that the motor vehicle for which application for a buyback certificate of title is being made is a buyback and that the manufacturer, its agent, or its authorized dealer is applying for a buyback certificate of title for the motor vehicle and not a certificate of title (sec. 1345.76(D)). A violation of this prohibition is punishable by a fine of not more than \$1,000 (sec. 1345.99(B)).

The act specifically provides that a certificate of title to a motor vehicle that is a buyback motor vehicle as defined in the act must be issued in accordance with the provisions of the act that specify the procedures for such issuance, rather than in accordance with the provisions of law unaffected by the act that govern the issuance of certificates of title in general (sec. 4505.112).

Relation of the Nonconforming New Motor Vehicle law to the Consumer Sales Practices Act

The act provides that failure to comply with the provisions of the act reviewed under the heading "**Resale of a returned vehicle**," in connection with a consumer transaction as defined in continuing law, is an unfair and deceptive act or practice in violation of the Consumer Sales Practices Act (sec. 1345.78(A)).

The Attorney General is required to investigate any alleged violation of the prohibition against a manufacturer, when applying for a certificate of title for a buyback, from failing to clearly and unequivocally inform the clerk of the court of common pleas that the motor vehicle for which application for a buyback certificate of title is being made is a buyback. In an appropriate case, the Attorney General may bring an appropriate action in a court of competent jurisdiction, charging a manufacturer with a violation of that prohibition. (Sec. 1345.78(B).)

HISTORY

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Reported, S. Highways & Transportation	04-28-99	p. 345
Passed Senate (20-13)	05-11-99	pp. 407-408
Concurrence (88-9)	05-19-99	pp. 683-685

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