Joseph G. Aninao *Legislative Service Commission*

Sub. H.B. 21

123rd General Assembly
(As Reported by H. Transportation & Public Safety)

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, Olman, Clancy

BILL 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 four 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 as a "Buyback."
- Affords motor vehicle manufacturers an opportunity to make a final repair attempt on a vehicle just prior to the time that it is presumed that a reasonable number of attempts to conform the vehicle have been undertaken.

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CONTENT AND OPERATION

The bill 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

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

"Consumer"

Under current law, "consumer" means "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 bill 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"

Current law defines "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 bill

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 is 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 bill, "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 bill 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).)

"Reasonably accessible repair facility"

The bill defines a "reasonably accessible repair facility" as "any facility within a twenty-mile radius from the consumer's residence that is authorized to accept and perform warranty work on behalf of the manufacturer of a motor vehicle, provided that, if there is no such repair facility located within twenty miles

of the consumer's residence, "reasonably accessible repair facility" means the authorized repair facility located closest to the consumer's residence." (Sec. 1345.71(H).)

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

Current 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 Nonconforming New Motor Vehicle law requires the manufacturer of a new motor vehicle, its agent, or its authorized dealer to 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 bill 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 bill 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 bill revises this provision so that the protections currently afforded to lienholders are extended to lessors in situations involving leased vehicles.

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 bill 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 (existing 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).)

Manufacturer's opportunity for a final repair attempt

The bill affords a manufacturer the opportunity to make a final repair attempt on a nonconforming vehicle. Initially, a manufacturer must provide notice to the consumer of the manufacturer's opportunity to make a final repair attempt in accordance with rules adopted by the Attorney General governing the content of the notice and the manner for providing the notice. The rules of the Attorney General must be adopted in accordance with the Administrative Procedure Act. A manufacturer's failure to comply with the notice requirements of the bill or the rules constitute a waiver of the manufacturer's opportunity for a final repair attempt to cure the nonconformity. (Sec. 1345.74(B).)

Just prior to the time it is presumed that a reasonable number of attempts to conform a motor vehicle have been undertaken and the vehicle is effectively determined to be a "lemon" (see "***Reasonable number of attempts to repair***," above), the bill requires a consumer to notify the manufacturer of the need to repair a nonconformity. The bill specifies that any of the following situations trigger the need for a consumer to notify the manufacturer (sec. 1345.731(A)):

(1) After a second attempt to repair substantially the same nonconformity that has either continued to exist or recurred;

(2) When the vehicle has been out of service by reason of repair for a cumulative total of 20 or more calendar days;

(3) After a seventh attempt to repair any nonconformity.

Within four business days of receiving such a notice from a consumer, the manufacturer must notify the consumer that the manufacturer will attempt one final repair of the vehicle at a reasonably accessible repair facility designated in the notice to the consumer. The manufacturer must conform the motor vehicle to the warranty within nine business days of delivery of the vehicle to the designated repair facility. When the nonconforming motor vehicle is delivered to the designated repair facility, the manufacturer must offer and make available a motor

vehicle for use by the consumer during the time required by the manufacturer to conform the motor vehicle to the warranty. (Sec. 1345.731(B) and (C).)

The bill establishes three ways in which the manufacturer may waive the opportunity for a final repair attempt. First, the opportunity may be waived if the manufacturer fails to comply with the initial consumer notice requirements concerning the opportunity for the final repair attempt or with the rules of the Attorney General concerning the form and content of the notice (sec. 1345.74(B)). Second, the opportunity may be waived if the manufacturer fails to notify the consumer within four days that the manufacturer will attempt one final repair of the vehicle at a designated reasonably accessible repair facility. Third, the failure of a manufacturer to cure the nonconformity within nine business days is a waiver of the manufacturer's opportunity for a final attempt to cure the nonconformity. (Sec. 1345.731(D).)

The bill specifies that the opportunity afforded a manufacturer for a final attempt to cure the nonconformity does not create a new cause of action for the manufacturer and does not limit the consumer's rights under the Nonconforming New Motor Vehicle Law. Absent a waiver, the actions of a manufacturer in regard to a final repair attempt constitute grounds for an automatic stay of any pending arbitration or court action until such time as the opportunity for the manufacturer's final attempt to cure the nonconformity has been provided. (Sec. 1345.731(E).)

Written statements of rights and work performed

The Nonconforming New Motor Vehicle law currently 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 bill).

The bill 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 bill, 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 bill also extends the statute of limitations by requiring that any action be commenced within four years of the date of original delivery of the motor vehicle. (Sec. 1345.75(A) and (C).)

Resale of a returned vehicle

Current law

If a motor vehicle has been 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 may not be resold in this state unless each of the following applies:

(1) The manufacturer provides the same express warranty that was provided to the original purchaser, except that the term of the warranty shall 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 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)):

"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 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 in this state (sec. 1345.76(B)).

Operation of the bill

Under the bill, 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 for only 12,000 miles or 12 months after the date of resale, whichever is earlier (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 NONCONFORMITY OR NONCONFORMITIES:

(1) _____.

(2) _____.

(3) _____.

(4) _____.

(5) _____.

_____ _____

DATE BUYER'S SIGNATURE"

The manufacturer is required to list each nonconformity 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 bill 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 word "Buyback" 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 word "buyback" 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 current law. (Sec. 1345.76(C).)

The bill 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 bill specifically provides that a certificate of title to a motor vehicle that is a buyback motor vehicle as defined in the bill must be issued in accordance with the provisions of the bill that specify the procedures for such issuance, rather than in accordance with the provisions of law 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 bill provides that failure to comply with the provisions of the bill reviewed under the heading "***Resale of a returned vehicle***," in connection with a consumer transaction as defined in current 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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