1983

Session Law 83-069

Florida Senate & House of Representatives

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Florida Legislature

History of Legislation
1983 Regular Session
1983 Special Sessions A, B, C
1982 Special Session H

prepared by:

Joint Legislative Management Committee
Legislative Information Division
Capitol Building, Room 826—488-4371
H 0881 GENERAL BILL /CS BY HEALTH & REHABILITATIVE SERVICES, OGDEN, ABAMS
CONTINUED ON NEXT PAGE

H 0882 GENERAL BILL BY BOROUGH AND OTHERS

H 0883 GENERAL BILL BY MORRIS (IDENTICAL S 0450)

H 0884 GENERAL BILL/C/S BY NATURAL RESOURCES, WARD (IDENTICAL S 0436, COMPARE H 0227, CS/H 1129, H 132a, H 132c, S 0489, CS/S 0783)

H 0885 GENERAL BILL/C/S BY HEALTH & REHABILITATIVE SERVICES, OGDEN, GRANDE, GRANDE, ROSE, ROSE, CONTINUED ON NEXT PAGE
MOTOR VEHICLE WARRANTIES: CREATES "MOTOR VEHICLE WARRANTY ENFORCEMENT ACT" PROVIDES LEGISLATIVE INTERPRETATIONS OF REQUIREMENTS FOR NEW MOTOR VEHICLES TO CONFORM TO ALL APPLICABLE EXPRESS WARRANTIES: PROVIDES REQUIREMENTS FOR REMEDIES WHEN A NEW MOTOR VEHICLE DOES NOT CONFORM, ETC. EFFECTIVE DATE: 10/01/83.

04/06/83 HOUSE FILED
04/11/83 HOUSE INTRODUCED, REFERRED TO JUDICIARY - HJ 00144

04/14/83 HOUSE SUBREFERRED TO SUBCOMMITTEE ON CONSUMER, PROBATE AND FAMILY LAW

04/15/83 HOUSE ON COMMITTEE AGENDA—SUBCOMM., JUDICIARY, C12 HOB, 8:40 AM, 04/20/83

04/22/83 HOUSE ON COMMITTEE AGENDA—SUBCOMM., JUDICIARY, C12 H, AFTER FULL COMMITTEE

04/29/83 HOUSE ON COMMITTEE AGENDA—JUDICIARY, 317 C, 9:13 AM, 05/07/83

05/11/83 HOUSE COMM. REP. C/S PLACED ON CALENDAR BY JUDICIARY -HJ 00383
05/19/83 HOUSE PLACED ON SPECIAL ORDER CALENDAR
05/20/83 HOUSE C/S READ FIRST AND SECOND TIMES - HJ 00527
05/24/83 HOUSE READ THIRD TIME; C/S PASSED; YEAS 110 NAYS 0 - HJ 00556.

05/24/83 SENATE IN MESSAGES
05/25/83 SENATE RECEIVED, REFERRED TO COMMERCE, TRANSPORTATION; - SJ 00347; WITHDREW FROM COMMERCE, TRANSPORTATION; SUBSTITUTED FOR CS/30 4625; PASSED; YEAS 50 NAYS 0 - SJ 006402.

05/25/83 SENATE ON SPECIAL ORDER CALENDAR
05/30/83 HOUSE READ SECOND TIMES; READ THIRD TIME; PASSED; YEAS 112 NAYS 0 - HJ 00860
05/30/83 HOUSE FILED
06/03/83 SENATE FILED

H 0889 GENERAL BILL BY MITCHELL (IDENTICAL S 0091)
PUBLIC OFFICERS, EMPLOYEES: REVISED TRAVEL TIMES ON WHICH MEAL ALLOWANCES ARE BASED & REIMBURSEMENT RATES FOR CERTAIN TRAVEL WITHIN STATES; REVISES PER DiEM MEAL & MILEAGE ALLOWANCES, CORRECTS CROSS REFERENCE & REVISES TRAVEL ALLOWANCES. AMENDS 112.005, 14.071.
EFFECTIVE DATE: 07/01/83.
04/07/83 HOUSE FILED
04/11/83 HOUSE INTRODUCED, REFERRED TO RETIREMENT, PERSONNEL & COLLECTIVE BARGAINING, APPROPRIATIONS - HJ 00445
04/18/83 HOUSE ON COMMITTEE AGENDA—SUBCOMM., RETIREMENT, 317C, AFTER FULL COMMITTEE

04/25/83 HOUSE ON COMMITTEE AGENDA—RETIREMENT, 317 C, 2:30PM, 04/27
05/02/83 HOUSE COMM. REP. FAVORABLE: REFERRABLE TO RETIREMENT, PERSONNEL & COLLECTIVE BARGAINING — HJ 00303; NOW IN APPROPRIATIONS
05/09/83 HOUSE WITHDREW FROM APPROPRIATIONS — HJ 00355; PLACED ON CALENDAR
05/25/83 HOUSE PLACED ON SPECIAL ORDER CALENDAR
05/30/83 HOUSE READ SECOND TIMES; READ THIRD TIME; PASSED; YEAS 112, NAYS 2 — HJ 00800
05/30/83 SENATE IN MESSAGES
05/31/83 SENATE RECEIVED, REFERRED TO PERSONNEL, RETIREMENT AND COLLECTIVE BARGAINING, APPROPRIATIONS — SJ 00532
06/03/83 SENATE INDEFINITELY POSTPONED & W/D (SCR 1209); WAS IN COMMITTEE ON PERSONNEL, RETIREMENT AND COLLECTIVE BARGAINING

H 0890 GENERAL BILL BY SELPH, HUDGES (IDENTICAL S 0797)
AD VALOREM TAXATION: CONSTITUTIONAL AMENDMENT TO PROVIDE THAT FARMLAND, EXCEPT MOTOR VEHICLES, USED EXCLUSIVELY BY A FARMER MAY BE VALUED FOR AD VALOREM TAXATION AT SPECIFIED PERCENT OF ITS VALUE, CLASSIFIED FOR TAX PURPOSES, OR EXEMPT FROM TAXATION. AMENDS S. 4, ART. VII.
04/07/83 HOUSE FILED
04/11/83 HOUSE INTRODUCED, REFERRED TO FINANCE & TAXATION, APPROPRIATIONS - HJ 00415
04/18/83 HOUSE SUBREFERRED TO SUBCOMMITTEE ON TAXATION
04/20/83 HOUSE UN COMMITTEE AGENDA—FOR SUBREFERAL, C 210, 230PM
05/09/83 HOUSE SUBREFERRED TO SUBCOMMITTEE ON AD VALOREM TAX AND LOCAL GOVERNMENT
06/03/83 HOUSE INDEFINITELY POSTPONED & W/D (SCR 1209); WAS IN COMMITTEE ON FINANCE & TAXATION

H 0891 GENERAL BILL BY PACICIG, CARPENTER, EASLEY, GUSTAFSON (COMPARE H 0555, ENG 8/067, CS/5 8357, CS/S 0784, S 0966)
SCHOOLS: PROVIDES IDENTIFICATION OF STUDENTS THAT MAY BE TRANSPORTED; PROVIDES FOR BUS INSPECTION ON CALENDAR MONTHS; AUTHORIZES SCHOOL BOARDS TO PROVIDE BY RULE FOR DESIGNATION OF NONTRANSPORTATION ZONES & SCHOOL BUS ROUTES, ETC. AMENDS CHS. 234, 236, 237I REPEALS 234.071.
APPROPRIATIONS: EFFECTIVE DATE: 07/01/83.
04/07/83 HOUSE FILED
04/11/83 HOUSE INTRODUCED, REFERRED TO EDUCATION, K — 12, APPROPRIATIONS — HJ 00415
05/05/83 HOUSE ON COMMITTEE AGENDA—EDUCATION X-12, C 214, 11:45 PM, 05/09/83
06/03/83 HOUSE INDEFINITELY POSTPONED & W/D (SCR 1209); WAS IN COMMITTEE ON EDUCATION, K — 12
06/24/83 REFER TO SB 6-8 (CH. 83-324)

H 0892 GENERAL BILL BY PACICIG (IDENTICAL S 0923, S 1052)
ASSISTANT STATE ATTORNEYS: SPECIFIES BENEFITS FOR CERTAIN ASSISTANT STATE ATTORNEYS WITHIN DEFINITION OF "SPECIAL RISK MEMBER" FOR PURPOSES OF P.R.S.I.; INCLUDES ASSISTANT STATE ATTORNEYS WITHIN SPECIAL RISK CLASS OF P.R.S.I., ETC. AMENDS 27.259, 121.231, 055.
APPROPRIATIONS: EFFECTIVE DATE: 10/01/83.
04/07/83 HOUSE FILED
04/11/83 HOUSE INTRODUCED, REFERRED TO RETIREMENT, PERSONNEL & COLLECTIVE BARGAINING, APPROPRIATIONS — HJ 00445
04/18/83 HOUSE FILED
04/07/83 HOUSE FILED
04/11/83 HOUSE INTRODUCED, REFERRED TO RETIREMENT, PERSONNEL & COLLECTIVE BARGAINING, APPROPRIATIONS — HJ 00445
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S 4661 GENERAL BILL/LS BY EDUCATION, MAXWELL (SIMILAR H 1273), COMPARE S 1069)
POST-SECONDARY EDUCATION; REVISES ELIGIBILITY REQUIREMENTS FOR TUITION VOUCHERS AWARDED TO STUDENTS AT INDEPENDENT COLLEGES AND UNIVERSITIES; REVISES PROVISIONS RE AWARDS FROM FLA. ACADEMIC SCHOLARS' FUND; REQUIRES REPORT ON EFFECTIVENESS OF THE FUND, ETC. AMENDS CH. 240, 143.0575, EFFECTIVE DATE: 07/01/83.

05/30/83 SENATE PREFERRED.
06/03/83 SENATE IN TRODUCED, REFERRED TO EDUCATION, APPOINTMENTS.
06/19/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE EDUCATION.
05/05/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE EDUCATION.
05/06/83 SENATE COMMITTEE AGENDA - EDUCATION; TEMPORARILY POSTPONED.
05/10/83 SENATE COMM. REPORT: C/S BY EDUCATION - SJ 00255; C/S READ FIRST TIME 05/13/83 - SJ 00257.
05/11/83 SENATE NOW IN APPROPRIATIONS - SJ 00257.
05/16/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE APPOINTMENTS.
05/20/83 SENATE COMMITTEE AGENDA - APPOINTMENTS; 05/24/83, 2:10 PM, RM. A.
05/24/83 SENATE COMM. REPORTS FAVORABLE WITH AMENDS., PLACED ON CALENDAR BY APPOINTMENTS - SJ 00403.
06/03/83 SENATE PLACED ON SPECIAL ORDER CALENDAR; C/S PASSED AS AMENDED; YEAS 72 NAYS 0 - SJ 00503.
06/02/83 HOUSE RECEIVED, PLACED ON CALENDAR - MJ 00869.
06/03/83 HOUSE PLACED ON SPECIAL ORDER CALENDAR; SUBSTITUTED FOR HB 1273; READ SECOND TIME - MJ 01087; AMENDMENTS ADOPTED; READ THIRD TIME; PASSED AS AMENDED; YEAS 97 NAYS 15 - MJ 01094.
06/03/83 SENATE COMM. CONCURRED C/S PASSED AS AMENDED; YEAS 25 NAYS 11 UNDERSIGNED ENGROSSED, THEN ENROLLED - SJ 00829.
06/14/83 SENATE SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR.
06/29/83 APPROVED BY GOVERNOR. CHAPTER NO. 38-291.

S 4662 GENERAL BILL/LS BY COMMERCE, GORDON, LANGLEY AND OTHERS (SIMILAR L 0865), S 0794, COMPARE H 0294)
MOTOR VEHICLE WARRANTIES; CREATES MOTOR VEHICLE WARRANTY ENFORCEMENT ACT; PROVIDES DEFINITIONS; REQUIRES NEW MOTOR VEHICLES TO COMPLY WITH ALL APPLICABLE EXPRESS WARRANTIES; PROVIDES REQUIREMENTS FOR THE MANUFACTURE WHEN NEW VEHICLE DOES NOT CONFORM TO APPLICABLE EXPRESS WARRANTIES. ETC. EFFECTIVE DATE: 10/01/83.

03/30/83 SENATE PREFERRED.
04/05/83 SENATE INTRODUCED, REFERRED TO COMMERCE, ECONOMIC, COMMUNITY AND CONSUMER AFFAIRS - SJ 00044.
04/19/83 SENATE ON COMMITTEE AGENDA - COMMERCE, TEMPORARILY POSTPONED.
04/20/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE COMMERCE.
04/25/83 SENATE ON COMMITTEE AGENDA - COMMERCE. 04/28/83, 2:10 PM, RM. A.
04/28/83 SENATE C/S COMBINES THIS BILL AND SB 7941; COMM. REPORT: C/S BY COMMERCE - SJ 00182.
05/06/83 SENATE NOW IN ECONOMIC, COMMUNITY AND CONSUMER AFFAIRS.
06/07/83 SENATE WITHDRAWN FROM ECONOMIC, COMMUNITY AND CONSUMER AFFAIRS; TRANSPORTATION - SJ 00204; PLACED ON CALENDAR; C/S READ FIRST TIME - SJ 00199.
CONTINUED ON NEXT PAGE.
GENERAL BILL BY LANGLEY C. SIMILAR CS/H 0797

Motor vehicle warranty enforcement act; provides legislative intent & definitions; requires new motor vehicles to conform to all applicable express warranties; provides requirements for manufacturers when a new motor vehicle does not conform, etc. Effective date: 10/01/83.

GENERAL BILL BY LANGLEY C. SIMILAR CS/H 0797

Motor vehicle warranty enforcement act; provides legislative intent & definitions; requires new motor vehicles to conform to all applicable express warranties; provides requirements for manufacturers when a new motor vehicle does not conform, etc. Effective date: 10/01/83.

GENERAL BILL BY CRAWFORD (COMPARE S 0925)

Motor vehicle warranty enforcement act; provides legislative intent & definitions; requires new motor vehicles to conform to all applicable express warranties; provides requirements for manufacturers when a new motor vehicle does not conform, etc. Effective date: 10/01/83.

GENERAL BILL BY CRAWFORD (COMPARE S 0925)

Motor vehicle warranty enforcement act; provides legislative intent & definitions; requires new motor vehicles to conform to all applicable express warranties; provides requirements for manufacturers when a new motor vehicle does not conform, etc. Effective date: 10/01/83.

GENERAL BILL BY CRAWFORD (COMPARE S 0925)

Motor vehicle warranty enforcement act; provides legislative intent & definitions; requires new motor vehicles to conform to all applicable express warranties; provides requirements for manufacturers when a new motor vehicle does not conform, etc. Effective date: 10/01/83.
A bill to be entitled
An act relating to motor vehicle warranties;
creating the "Motor Vehicle Warranty
Enforcement Act"; providing legislative intent;
providing definitions; requiring new motor
vehicles to conform to all applicable express
warranties; providing requirements for the
manufacturer when a new motor vehicle does not
conform to applicable express warranties;
providing penalties for bad faith claims;
providing for an informal dispute settlement
procedure; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Short title.--This act shall be known and
may be cited as the "Motor Vehicle Warranty Enforcement Act."

Section 2. Legislative intent.--The Legislature
recognizes that a motor vehicle is a major consumer purchase,
and there is no doubt that a defective motor vehicle creates a
hardship for the consumer. The Legislature further recognizes
that a duly franchised motor vehicle dealer is an agent of the
manufacturer. It is the intent of the Legislature that a good
faith motor vehicle warranty complaint by a consumer should be
resolved by the manufacturer, or its agent, within a specified
period of time. It is further the intent of the Legislature to provide the statutory procedures whereby a consumer may
receive a replacement motor vehicle, or a full refund, for a
motor vehicle which cannot be brought into conformity with the
express warranty issued by the manufacturer. However, nothing
in this act shall in any way limit the rights or remedies
which are otherwise available to a consumer under any other law.

Section 5. Definitions—As used in this act, the following terms shall have the following meanings:

(1) "Consumer" means the purchaser, other than for purposes of re-sale, of a motor vehicle, any person to whom such motor vehicle is transferred for the same purpose during the duration of an express warranty applicable to such motor vehicle, and an owner or Lessee, or a person entitled by the terms of such warranty to enforce the obligations of the warranty.

(2) "Motor vehicle" means a passenger motor vehicle or a commercial motor vehicle which is sold in this state and is operated over the public streets and highways of this state and is used as a means of transporting persons or property.

Motor vehicle as defined in this act shall include only those vehicles propelled by power other than muscular power, but the term shall not include vehicles run only upon tracks, off-road vehicles, or mopeds. Motor vehicle shall include demonstration or lease-purchase vehicles as long as a manufacturer's warranty was issued as a condition of sale.

(3) "Manufacturer" means a manufacturer, importer, or distributor as defined in s. 320.50(3), (4), and (41), Florida Statutes.

(4) "Purchased price" means the cash price as defined in s. 520.41(3), Florida Statutes.

(5) "Express warranty" means any written affirmation of fact or promise made in connection with the sale of a motor vehicle by a supplier to a consumer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is free from defects or will meet a specified level of performance over a specified period of time.

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time. For the purposes of this act, express warranties do not include implied warranties.

(6) "Collateral charges" means those additional charges to a consumer not directly attributable to the manufacturer's sticker price of the motor vehicle. For the purposes of this act, collateral charges shall include, but not be limited to, dealer preparation charges, undercoating charges, transportation charges, towing charges, replacement car rental costs, and title charges.

Section 4. Conformity to all applicable express warranties.--If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, or its agent, during the term of such express warranties, or during the period of 1 year following the date of original delivery of the motor vehicle to the consumer, whichever period expires earlier, the manufacturer, or its agent, shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such 1-year period.

Section 5. Nonconformity of motor vehicles.--

(1) If the manufacturer, or its agent, cannot conform the motor vehicle to any applicable express warranty by repairing or correcting any default or condition which impairs the use, market value, or safety of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer, at its option, shall either replace the motor vehicle with a comparable motor vehicle acceptable to the consumer, or take title of the vehicle from the consumer and refund to the consumer the full purchase price, including all reasonably incurred collateral charges, less a reasonable
allowance for the consumer's use of the vehicle. A reasonable
allowance for use shall be that sum of money arrived at by:
(a) Multiplying the number of months, or major
fraction thereof, that the consumer has had use of the motor
vehicle from the date that the manufacturer, or its agent, is
first notified by the consumer of the problem complained of by
1 percent; or
(b) Multiplying the number of miles, in increments of
1,000 or fraction thereof, the consumer has driven the motor
vehicle from said date of 1 percent,
whichever is less, provided that in no event shall the
allowance for use exceed 15 percent of the purchase price of
the motor vehicle.
Refunds shall be made to the consumer and
lienholder, if any, in their interests may appear.
It shall be an affirmative defense to any claim
under this act that:
(a) An alleged nonconformity does not impair the use,
market value, or safety of the motor vehicle;
(b) A nonconformity is the result of abuse, neglect,
or unauthorized modifications or alterations of a motor
vehicle by a consumer;
(c) A claim by a consumer was not filed in good faith;
(d) Any other affirmative defense allowed by law.
It shall be presumed that a reasonable number of
attempts have been undertaken to conform a motor vehicle to
the applicable express warranties if within the terms,
condition, or limitation of the express warranty, or during
the period of 1 year following the date of original delivery.
of the motor vehicle to a consumer, whichever expires earlier, either:

(a) Substantially the same nonconformity has been subject to repair three or more times by the manufacturer, or its agents, and such nonconformity continues to exist; or

(b) The vehicle is out of service by reason of repair by the manufacturer, or its agents, for a cumulative total of

15 or more calendar days since delivery of the vehicle to the consumer. The 15-day period may be extended by any period of time during which repair services are not available to the consumer because of conditions beyond the control of the manufacturer or its agents.

1. The terms, conditions, or limitations of the express warranty, or the period of 1 year following the date of original delivery of the motor vehicle to a consumer, whichever expires earlier, may be extended if the motor vehicle warranty problem has been reported but has not been repaired by the manufacturer, or its agent, by the expiration of the applicable time period.

2. When the manufacturer has clearly and conspicuously disclosed to the consumer with the warranty or owner's manual the provisions of this act, it shall be the responsibility of the consumer, or his representative, prior to availing himself of the provisions of this section, to give written notification to the manufacturer of the need for the repair of the nonconformity, in order to allow the manufacturer an opportunity to cure the alleged defect. If the consumer has notified the manufacturer after the occurrence of the events described in either paragraph (a) or paragraph (b), the manufacturer shall have 7 days to conform the motor vehicle to the express warranty. It shall be the responsibility of the

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manufacturer, upon receipt of the notification from the 2.19
consumer, to inform the consumer if an informal dispute 2.20
settlement procedure has been established by the manufacturer 2.21
in accordance with section 7. If the manufacturer fails to 2.22
notify the consumer of the availability of this informal 2.23
dispute settlement procedure, the requirements of section 7 2.24
shall not apply.

(5) Any action brought under this act shall be 2.25
commenced within 6 months following expiration of the terms, 2.26
conditions, or limitations of the express warranty, or within 2.27
18 months following the date of original delivery of the motor 2.28
vehicle to a consumer, whichever is earlier, or, in the event 2.29
that a consumer resorts to an informal dispute settlement 2.30
procedure as provided in this act, within 90 days following 2.31
the final action of the panel.

(6) If a consumer finally prevails in any action 2.32
brought under this act, he may be allowed by the court to 2.33
recover as part of the judgment a sum equal to the aggregate 2.34
amount of costs and expenses, including attorney's fees based 2.35
on actual time expended, determined by the court to have been 2.36
reasonably incurred by the plaintiff for or in connection with 2.37
the commencement and prosecution of such action.

Section 9. Bad faith claim.—Any claim by a consumer 2.38
which is found by the court to have been filed in bad faith, 2.39
or solely for the purpose of harassment, or in complete 2.40
absence of any justifiable basis of either law or fact raised by 2.41
the consumer, shall result in the consumer being liable for 2.42
all costs and reasonable attorney's fees incurred by the 2.43
manufacturer, or its agent, as a direct result of the bad 2.44
faith claim.
Section 7. Informal dispute settlement procedure.--If

a manufacturer has established an informal dispute settlement
procedure which complies in all respects with the provisions
of 16 C.F.R. part 703, the provisions of section 5 concerning
refunds shall not apply to any consumer who has not first
resorted to such procedure. For the purposes of this section,
at least one member of the informal dispute settlement panel
shall be designated by the Florida Division of Consumer
Services of the Department of Agriculture and Consumer
Services.

Section 8. This act shall take effect October 1, 1983.

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HOUSE SUMMARY

Creates the "Motor Vehicle Warranty Enforcement Act." Provides that where a new motor vehicle does not conform
to all applicable express warranties and the consumer
reports the nonconformity to the manufacturer during the
term of such warranties or during the year immediately
following delivery of the vehicle, whichever period expires earlier, the dealer must repair the vehicle even
though the repair may occur after the warranty or 1-year
period has expired. Provides that where the manufacturer
cannot conform the motor vehicle to the warranty, he must
either replace the motor vehicle or take title to the
motor vehicle and refund to the consumer the full
purchase price. Provides a procedure for computing a reasonable allowance for the consumer's use of the
vehicle. Provides liability for bad faith claims.
Provides an informal dispute settlement procedure. See
bill for details.

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By Committee on Judiciary and Representatives Drage, Friedman, Grindle, Liberti, Young and others

A bill to be entitled
An act relating to motor vehicle warranties;
creating the "Motor Vehicle Warranty
Enforcement Act"; providing legislative intent;
providing definitions; requiring new motor
vehicles to conform to all applicable express
warranties; providing requirements for the
manufacturer when a new motor vehicle does not
conform to applicable express warranties;
providing penalties for bad faith claims;
providing for an informal dispute settlement
procedure; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Short title.--This act shall be known and
may be cited as the "Motor Vehicle Warranty Enforcement Act."

Section 2. Legislative intent.--The Legislature recognizes that a motor vehicle is a major consumer purchase,
and there is no doubt that a defective motor vehicle creates a
hardship for the consumer. The Legislature further recognizes
that a duly franchised motor vehicle dealer is an agent of the
manufacturer. It is the intent of the Legislature that a good
faith motor vehicle warranty complaint by a consumer should be
resolved by the manufacturer, or its agent, within a specified
period of time. It is further the intent of the Legislature
to provide the statutory procedures whereby a consumer may
receive a replacement motor vehicle, or a full refund, for a
motor vehicle which cannot be brought into conformity with the
express warranty issued by the manufacturer. However, nothing
in this act shall in any way limit the rights or remedies

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which are otherwise available to a consumer under any other law.

Section 3. Definitions.--As used in this act, the following terms shall have the following meanings:

(1) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle, primarily used for personal, family, or household purposes, and any person to whom such motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

(2) "Motor vehicle" means a motor vehicle which is sold in this state and is operated over the public streets and highways of this state and is used as a means of transporting persons or property. Motor vehicle as defined in this act shall include only those vehicles propelled by power other than muscular power, but the term shall not include vehicles run only upon tracks, off-road vehicles, or mopeds. Motor vehicle shall include demonstrators or lease-purchase vehicles as long as a manufacturer's warranty was issued as a condition of sale.

(3) "Manufacturer" means a manufacturer, importer, or distributor as defined in s. 320.60(1), (2), and (4), Florida Statutes.

(4) "Purchase price" means the cash price as defined in s. 520.31(9), Florida Statutes.

(5) "Express warranty" means any written affirmation of fact or promise made in connection with the sale of a motor vehicle by a supplier to a consumer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect-free or will meet

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a specified level of performance over a specified period of

time. For the purposes of this act, express warranties do not
include implied warranties.

(6) "Collateral charges" means those additional
charges to a consumer not directly attributable to the
manufacturer's suggested retail price label for the motor
vehicle. For the purposes of this act, collateral charges
shall include, but not be limited to, dealer preparation
charges, undercoating charges, transportation charges, towing
charges, replacement car rental costs, and title charges.

(7) "Comparable motor vehicle" means an identical or
reasonably equivalent motor vehicle.

Section 4. Conformity to all applicable express
warranties.--For the purposes of this act, if a new motor
vehicle does not conform to all applicable express warranties,
and the consumer reports the nonconformity to the
manufacturer, or its agent, during the term of such express
warranties, or during the period of 1 year following the date
of original delivery of the motor vehicle to the consumer,
whichever period expires earlier, the manufacturer, or its
agent, shall make such repairs as are necessary to conform the
vehicle to such express warranties, notwithstanding the fact
that such repairs are made after the expiration of such term
or such 1-year period.

Section 5. Nonconformity of motor vehicles.--
(1) If the manufacturer, or its agent, cannot conform
the motor vehicle to any applicable express warranty by
repairing or correcting any default or condition which impairs
the use, market value, or safety of the motor vehicle to the
consumer after a reasonable number of attempts, the
manufacturer shall give the consumer the option of having the 3
manufacturer either replace the motor vehicle with a comparable motor vehicle acceptable to the consumer, or take title of the vehicle from the consumer and refund to the consumer the full purchase price, including all reasonably incurred collateral charges, less a reasonable allowance for the consumer's use of the vehicle. The subtraction of a reasonable allowance for use shall apply when either a replacement or refund of the motor vehicle occurs. A reasonable allowance for use shall be that sum of money arrived at by multiplying the number of miles the motor vehicle has been driven by the consumer by 20 cents per mile.

(2) Refunds shall be made to the consumer and lienholder of record, if any, as their interests may appear.

(3) It shall be an affirmative defense to any claim under this act that:

(a) An alleged nonconformity does not impair the use, market value, or safety of the motor vehicle;

(b) A nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by a consumer;

(c) A claim by a consumer was not filed in good faith; or

(d) Any other affirmative defense allowed by law.

(4) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if within the terms, conditions, or limitations of the express warranty, or during the period of 1 year following the date of original delivery of the motor vehicle to a consumer, whichever expires earlier, either:

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(a) Substantially the same nonconformity has been subject to repair three or more times by the manufacturer, or its agents, and such nonconformity continues to exist; or

(b) The vehicle is out of service by reason of repair of the nonconformity by the manufacturer, or its agents, for a cumulative total of 15 or more working days, exclusive of down time for routine maintenance as prescribed by the owner's manual, since delivery of the vehicle to the consumer. The 15-day period may be extended by any period of time during which repair services are not available to the consumer because of conditions beyond the control of the manufacturer or its agents.

1. The terms, conditions, or limitations of the express warranty, or the period of 1 year following the date of original delivery of the motor vehicle to a consumer, whichever expires earlier, may be extended if the motor vehicle warranty problem has been reported but has not been repaired by the manufacturer, or its agent, by the expiration of the applicable time period.

2. The manufacturer shall provide a list of the manufacturer's zone or regional service office addresses in the owner's manual provided with the motor vehicle. It shall be the responsibility of the consumer, or his representative, prior to availing himself of the provisions of this section, to give written notification to the manufacturer of the need for the repair of the nonconformity, in order to allow the manufacturer an opportunity to cure the alleged defect. The manufacturer shall immediately notify the consumer of a reasonably accessible repair facility to conform the vehicle to the express warranty. After delivery of the vehicle to the designated repair facility by the consumer, the manufacturer...
shall have 10 working days to conform the motor vehicle to the express warranty. Upon notification from the consumer that the vehicle has not been conformed to the express warranty, the manufacturer shall inform the consumer if an informal dispute settlement procedure has been established by the manufacturer in accordance with section 7, and provide the consumer with a copy of the provisions of this act. However, if prior notice by the manufacturer of an informal dispute settlement procedure has been given, no further notice is required. If the manufacturer fails to notify the consumer of the availability of this informal dispute settlement procedure, the requirements of section 7 shall not apply.

(5) Any action brought under this act shall be commenced within 6 months following expiration of the terms, conditions, or limitations of the express warranty, or within 18 months following the date of original delivery of the motor vehicle to a consumer, whichever is earlier, or, in the event that a consumer resorts to an informal dispute settlement procedure as provided in this act, within 90 days following the final action of the panel.

(6) If a consumer finally prevails in any action brought under this act, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action.

Section 6. Bad faith claims.--Any claim by a consumer which is found by the court to have been filed in bad faith, or solely for the purpose of harassment, or in complete absence of a justiciable issue of either law or fact raised by...

CODING Words in struck through type are deletions from existing law, words underlined are additions.
the consumer, shall result in the consumer being liable for all costs and reasonable attorney's fees incurred by the manufacturer, or its agent, as a direct result of the bad faith claim.

Section 7. Informal dispute settlement procedure.--If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of 16 C.F.R. part 703, the provisions of section 5 concerning refunds or replacements shall not apply to any consumer who has not first resorted to such procedure. For the purposes of this section, at least one member of the informal dispute settlement panel shall be designated by the Florida Division of Consumer Services of the Department of Agriculture and Consumer Services.

Section 8. This act shall take effect October 1, 1983.
House Bill 885
MOTOR VEHICLE WARRANTY ENFORCEMENT ACT

This legislation provides procedures for a consumer to follow if the motor vehicle the consumer purchased has express warranty nonconformity problems which impair the use, market value or safety of the motor vehicle.

Not included in this legislation is any defect caused by the consumer's abuse, neglect or unauthorized modifications of the motor vehicle.

Motor vehicles, for the purposes of this legislation include motor vehicles sold in this state and used as a means of transporting persons or property. Motor vehicle includes all vehicles propelled by power other than muscular power with the exception of vehicles run only on tracks, off-road vehicles or mopeds. Even demonstrators and lease-purchase vehicles are included as long as a manufacturer's warranty was issued as a condition of sale.

Other terms defined in this act include "Consumer", "Manufacturer", "Purchase Price", "Express Warranty", "Collateral Charges", and "Comparable Motor Vehicle.

The motor vehicle nonconformity problem must occur during the terms, conditions or limitations of the express warranty OR during the period of one-year following the date of the original delivery of the motor vehicle to the consumer WHICHEVER IS THE EARLIER DATE. The applicable period can be extended, however, if the nonconformity problem has been reported but has not been repaired by the manufacturer or its agent.

The legislation provides that a motor vehicle nonconformity exists if either:

1. Substantially the same nonconformity has been subject to repair 3 or more times, or

2. The motor vehicle is out of service by reason of repair by the manufacturer or its agent for a cumulative total of 15 or more working days since delivery of the motor vehicle to the consumer. This 15 day period, however, may be extended because of conditions beyond the control of the manufacturer or its agent.

The legislation provides that the manufacturer shall provide a list of the manufacturer's zone or regional service office address in the owner's manual provided with the motor vehicle. Further, it is the responsibility of the consumer to notify the manufacturer of the nonconformity which exists because of either (1) or (2) above. Notification must be in writing.

After notification by the consumer to the manufacturer, the manufacturer shall notify the consumer of a reasonably accessible repair facility. After delivery of the motor vehicle to that facility, the manufacturer shall have 10 days to conform the motor vehicle to the express warranty.
If the consumer notifies the manufacturer that the nonconformity has not been repaired, the manufacturer shall inform the consumer if an informal dispute settlement procedure has been established, and provide the consumer with a copy of the provisions of this act. However, if prior notice of the informal dispute settlement procedure has been given by the manufacturer, additional notice is not required. If the manufacturer fails to do these two things, then the requirements of section 7 (mandatory review by the informal dispute settlement procedure) shall NOT apply.

When a nonconformity is not repaired by the manufacturer or its agents, the manufacturer shall either replace the motor vehicle with a comparable motor vehicle, acceptable to the consumer, or take title of the vehicle from the consumer and refund the full purchase price including all reasonably incurred collateral charges. It shall be the consumer who decides if the motor vehicle is replaced or if a refund is given. The legislation does provide for the subtraction of a reasonable allowance for use of the motor vehicle by the consumer if a refund or replacement occurs.

A reasonable allowance for use shall be that sum of money arrived at by multiplying the number of miles the motor vehicle has been driven by the consumer by 20 cents per mile.

Before a refund or replacement motor vehicle can apply, however, the consumer MUST resort to a manufacturer's informal dispute settlement procedure as long as:

1. The manufacturer has notified the consumer of the existence of such a procedure, and the provisions of this act, and

2. The informal dispute settlement procedure complies in ALL respects with the provisions of Title 16 Code of Federal Regulation Part 703, and

3. At least one member of the informal dispute settlement panel is designated by the Florida Division of Consumer Services of the Department of Agriculture.

Under this legislation action must be commenced:

1. Within 6 months following the expiration of the terms, conditions and limitations of the express warranty term, OR

2. Within 18 months following the date of original delivery of the motor vehicle to the consumer.

WHICEVER OF (1) or (2) ABOVE IS THE EARLIER DATE, OR

3. Within 90 days following the final action of an informal settlement dispute panel.

The legislation provides that the court may award costs and attorney's fees as part of the judgment if the consumer prevails in the action.

On the other hand, however, the consumer shall be liable for costs and reasonable attorney's fees incurred by the manufacturer or its agent if the court finds that the claim:

1. Is filed in bad faith, or

2. Is filed solely for the purpose of harassment, or

3. There is a complete absence of a justiciable issue of either law or fact raised by the consumer.

The effective date of this legislation is October 1, 1980.
I. SUMMARY

A. Present Situation:

The Magnuson-Moss Warranty Act provides that a warrantor of consumer goods must, at a minimum, remedy defects, malfunctions or failures to conform with the warranty within a reasonable time and without charge. After a reasonable number of attempts by the warrantor to remedy, the warrantor must permit the consumer to elect either a refund or replacement of the product without charge. The act specifies that the Federal Trade Commission may specify what constitutes a reasonable number of attempts to remedy. To date the Commission has not promulgated such a rule; therefore it is a matter of interpretation by the courts or other dispute settlement mechanisms that are employed.

B. Probable Effect of Proposed Changes:

HB 885 relates specifically to motor vehicle warranties for which a manufacturer's warranty was issued as a condition of sale. It requires that:

1. The manufacturer shall make repairs that are necessary to conform the vehicle to the express warranties if the consumer reports a nonconformity during the term of the warranty or 1 year after original delivery, whichever period expires earlier.

2. The manufacturer, at its option, shall either replace the motor vehicle or refund the purchase price. A formula is provided to determine the amount of refund [(full purchase price) + (reasonably incurred collateral charges) - (no. of months the vehicle was used x 1%) or (no. of 1,000 miles driven x 1%), whichever is less].

Collateral charges are defined to include dealer preparation charges, undercoating charges, transportation charges, towing charges, replacement car rental costs, and title charges.

Section 5 of HB 885 creates a presumption that a reasonable number of attempts to remedy a defect have transpired if, within the terms of the express warranty or during 1 year from original delivery, whichever expires first, either the same nonconformity has been subject to repair at least 3 times and the nonconformity continues to exist, or the vehicle is out of service for 15 or more days since original delivery.

The consumer shall be responsible for notifying the manufacturer prior to availing himself of the right to have the vehicle replaced or his money refunded.
Costs and attorneys fees may be awarded to a consumer who prevails in an action brought under this act. Costs and attorney's fees may be awarded to the manufacturer where a claim is brought in bad faith or where there is an absence of a justiciable issue of law or fact raised by the consumer.

HB 885 provides that where a manufacturer has established an informal dispute settlement procedure pursuant to 16 C.F.R. part 703, the consumer is required to use this mechanism and the Florida Division of Consumer Services shall be permitted to designate at least one member of the panel.

II. FISCAL IMPACT: None
Committee Information Record

Committee on Judiciary

Date of meeting May 4, 1983
Time 9:30 a.m.
Place Room 317C

Final Action: 

FAVORABLE
FAVORABLE WITH AMENDMENTS
FAVORABLE WITH SUBSTITUTE
UNFAVORABLE

Vote:

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Total Yeas 18 Total Nays

Committee Appearance Record

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

Name Representing Address

NOTE: Please indicate by an "X" any State employee appearing at the request of Committee Chairman.

(If additional persons, enter on reverse side and check here)

File 2 copies with Clerk

H-22(1976)
House of Representatives

SUBCOMMITTEE REPORT

To: Chairman, Committee on Judiciary

The Subcommittee on Consumer, Probate and Family Law

met at 8:00 a.m. o'clock on April 26, 1983,
in Room 212, HOB, and considered HB 885.

On motion to report the bill FAVORABLE
FAVORABLE WITH PROPOSED AMENDMENTS
the vote was:

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<td>WALLACE</td>
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<td>X</td>
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Total Yeas 7
Total Nays 0

Subcommittee Chairman

SUBCOMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the subcommittee during consideration of this bill:

<table>
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<tr>
<td>Neal Friedman</td>
<td>FPIRG</td>
<td>226-W. Pensacola, Tallahassee</td>
</tr>
<tr>
<td>David Jeffries</td>
<td>Fla. Auto Dealers Assoc.</td>
<td>505 N. Miles, Orlando</td>
</tr>
</tbody>
</table>

(If additional persons, enter on reverse side and check here )

Received by Parent Committee:

Date

Received by
I. SUMMARY:

A. Present Situation:

New car warranties usually guarantee against certain defects for a specified period of time or a specified number of miles, whichever occurs first. According to the Department of Agriculture, Division of Consumer Services, approximately 4,000 complaints regarding first-time titled cars were made in Florida in 1982. Of these complaints, 649 were in written form. For the first three months of 1983, complaints have numbered approximately 50 per month. While some of the complaints relate to cars which are still under warranty, some relate to problems which consumers feel arose during the warranty period and still exist during the post-warranty period. According to the division, the latter are not classified as new car complaints. If a consumer complains to the division, he is asked to complete a complaint form, provide the bill of sale for the motor vehicle and any repair documents. The division then contacts the dealer and the manufacturer's regional office. If no repair is done or no price adjustment made, the consumer then usually proceeds to small claims court.

The Magnuson-Moss Warranty Act, a federal law, provides certain remedies for consumers of goods under warranty, including refund or replacement if certain criteria are met. Title 16 of the Code of Federal Regulations, s. 703, provides for informal dispute settlement procedures under the Magnuson-Moss Act. Currently, Chrysler Corporation has a dispute-resolving organization in every state. These were set up under the act and the Florida organization has met once a month in Clearwater for the past year.

In recognition of consumer dissatisfactions, some states have enacted legislation to allow a person who has experienced a problem which exists in spite of repeated attempts at repair, and which substantially impairs the use or value of the new car to obtain a full refund of the purchase price or a new car to replace the defective one.

B. Effect of Proposed Changes:

The bill provides a number of definitions. It specifies that "motor vehicle" includes passenger and commercial vehicles used for certain purposes, and demonstrators and lease-purchase vehicles if a warranty is issued as a condition of sale.
The bill provides that if a new car does not conform to all express warranties and the consumer reports this to the manufacturer or its agent, during the express warranty period or within 1 year following the date of original delivery, whichever is earlier, the manufacturer, or its agent must make the repairs to conform the automobile to the express warranties, in spite of the fact that repairs are made after the expiration of the warranty term or the 1-year period.

The bill requires the manufacturer or its agent, to provide a comparable automobile, or to refund the full purchase price including all collateral charges, less a reasonable allowance for use, if the automobile's use, market value or safety is impaired after a reasonable number of attempts have been made to conform it to the warranty. Refunds must be made to the consumer and the lienholder, if any. The bill provides a formula for determining a reasonable allowance for use.

Affirmative defenses include abuse, neglect or alterations to the new car by the consumer, and that nonconformity does not result in impairment of use, market value or safety. The bill provides that a reasonable number of attempts to conform have been undertaken if substantially the same nonconformity has been subject to repair three or more times by the manufacturer, or its agent within the express warranty term or within 1 year from the date of original delivery to a consumer, whichever is earlier, and the nonconformity still exists, or if the car is out of service for repair for a total of 15 or more working days, excluding down time for routine maintenance as prescribed by the owner's manual, since delivery to the consumer. The 15 day period must be extended if repair services are not available because of events beyond the manufacturer's control.

The bill provides for extension of the warranty period on certain conditions, requires the consumer to give written notice to the manufacturer of the need for repair if the manufacturer has met disclosure provisions, gives the manufacturer 10 days to conform the vehicle to the express warranty, and then requires the manufacturer, after such notification, to inform the consumer of the informal dispute settlement procedure authorized by 16 CFR s. 703, and provide the consumer with a copy of the provisions of the act. If the prior notice has been given, no further notice is required. If the manufacturer fails to inform of this, the consumer may proceed directly against the manufacturer for either refund or for replacement of the vehicle.

The bill requires that actions be brought within specified periods of time, and that a prevailing consumer may be allowed to recover costs and expenses, including attorneys fees. If a claim is brought in bad faith, or there is a complete absence of a justiciable issue of law or fact, the consumer shall be liable for the manufacturer's costs and attorneys fees.

The bill provides that if a manufacturer has established an informal dispute settlement procedure which completely complies with 16 CFR, part 703, as subsequently amended, the consumer must resort to this procedure before he can qualify for refunds or for replacement of the vehicle. At least one member of the panel shall be appointed by the Florida Division of Agriculture and Consumer Services.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

This bill will be of benefit to consumers who can show that their new cars have a nonconformity which impairs the use,
market value, or safety and which has survived three or more repair attempts or which has deprived them of use of the car for 15 or more cumulative working days, excluding routine maintenance time, during the express warranty period or 1 year term. It is not known how many consumers might qualify for refund or replacement.

Manufacturers and their agents will be required to make refunds or provide new cars if the appropriate criteria are met. It is believed that manufacturer's will be thus encouraged to set up dispute-resolving mechanisms. It is not possible to project the financial impact.

B. Government:

None.

III. COMMENTS:
Connecticut, California, Wyoming and New Hampshire have passed laws which are similar to this bill, and lemon bills are now pending in about 30 states.

IV. AMENDMENTS:
A bill to be entitled

An act relating to motor vehicle warranties;
creating the "Motor Vehicle Warranty
Enforcement Act"; providing legislative intent,
providing definitions; requiring new motor
vehicles to conform to all applicable express
warranties; providing requirements for the
manufacturer when a new motor vehicle does not
conform to applicable express warranties;
providing penalties for bad faith claims;
providing for an informal dispute settlement
procedure; providing for attorneys fees;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Short title.--This act shall be known and
may be cited as the "Motor Vehicle Warranty Enforcement Act."

Section 2. Legislative intent.--The Legislature
recognizes that a motor vehicle is a major consumer purchase,
and there is no doubt that a defective motor vehicle creates a
hardship for the consumer. The Legislature further recognizes
that a duly franchised motor vehicle dealer is an agent of the
manufacturer. It is the intent of the Legislature that a good
faith motor vehicle warranty complaint by a consumer should be
resolved by the manufacturer, or its agent, within a specified
period of time. It is further the intent of the Legislature
to provide the statutory procedures whereby a consumer may
receive a replacement motor vehicle, or a full refund, for a
motor vehicle which cannot be brought into conformity with the
express warranty issued by the manufacturer. However, nothing

in this act shall in any way limit the rights or remedies
which are otherwise available to a consumer under any other
law.

Section 3. Definitions.--As used in this act, the
following terms shall have the following meanings:

(1) "Consumer" means the purchaser, other than for
purposes of resale, of a motor vehicle, any person to whom
such motor vehicle is transferred for the same purposes during
the duration of an express warranty applicable to such motor
vehicle, and any other person entitled by the terms of such
warranty to enforce the obligations of the warranty.

(2) "Motor vehicle" means a passenger motor vehicle or
a commercial motor vehicle which is sold in this state and is
operated over the public streets and highways of this state
and is used as a means of transporting persons or property.
Motor vehicle as defined in this act shall include only those
vehicles propelled by power other than muscular power, but the
term shall not include vehicles run only upon tracks, off-road
vehicles, or mopeds. Motor vehicle shall include
demonstrators or lease-purchase vehicles as long as a
manufacturer's warranty was issued as a condition of sale.

(3) "Manufacturer" means a manufacturer, importer, or
distributor as defined in s. 320.60(1), (2), and (4), Florida
Statutes.

(4) "Purchase price" means the cash price as defined
in s. 520.31(9), Florida Statutes.

(5) "Express warranty" means any written affirmation
of fact or promise made in connection with the sale of a motor
vehicle by a supplier to a consumer which relates to the
nature of the material or workmanship and affirms or promises
that such material or workmanship is defect-free or will meet
a specified level of performance over a specified period of
time. For the purposes of this act, express warranties do not
include implied warranties.

(6) "Collateral charges" means those additional
charges to a consumer not directly attributable to the
manufacturer's suggested retail price label for the motor
vehicle. For the purposes of this act, collateral charges
shall include, but not be limited to, dealer preparation
charges, undercoating charges, transportation charges, towing
charges, replacement car rental costs, and title charges.

(7) "Comparable motor vehicle" means an identical or
reasonably equivalent motor vehicle.

Section 4. Conformity to all applicable express
warranties.--For the purposes of this act, if a new motor
vehicle does not conform to all applicable express warranties,
and the consumer reports the nonconformity to the
manufacturer, or its agent, during the term of such express
warranties, or during the period of 1 year following the date
of original delivery of the motor vehicle to the consumer,
whichever period expires earlier, the manufacturer, or its
agent, shall make such repairs as are necessary to conform the
vehicle to such express warranties, notwithstanding the fact
that such repairs are made after the expiration of such term
or such 1-year period.

Section 5. Nonconformity of motor vehicles.--

(1) If the manufacturer, or its agent, cannot conform
the motor vehicle to any applicable express warranty by
repairing or correcting any default or condition which impairs
the use, market value, or safety of the motor vehicle to the
consumer after a reasonable number of attempts, the
manufacturer, shall give the consumer the option of having the
manufacturer either replace the motor vehicle with a comparable motor vehicle acceptable to the consumer, or take title of the vehicle from the consumer and refund to the consumer the full purchase price, including all reasonably incurred collateral charges, less a reasonable allowance for the consumer's use of the vehicle. The subtraction of a reasonable allowance for use shall apply when either a replacement or refund of the motor vehicle occurs. A reasonable allowance for use shall be that sum of money arrived at by multiplying the number of miles the motor vehicle has been driven by the consumer by 20 cents per mile. (2) Refunds shall be made to the consumer and lienholder of record, if any, as their interests may appear. (3) It shall be an affirmative defense to any claim under this act that:
(a) An alleged nonconformity does not impair the use, market value, or safety of the motor vehicle;
(b) A nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by a consumer;
(c) A claim by a consumer was not filed in good faith;
(d) Any other affirmative defense allowed by law.
(4) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if within the terms, conditions, or limitations of the express warranty, or during the period of 1 year following the date of original delivery of the motor vehicle to a consumer, whichever expires earlier, either:
(a) Substantially the same nonconformity has been subject to repair three or more times by the manufacturer, or its agents, and such nonconformity continues to exist; or

(b) The vehicle is out of service by reason of repair of the nonconformity by the manufacturer, or its agents, for a cumulative total of 15 or more working days exclusive of down time for routine maintenance as prescribed by the owner's manual, since delivery of the vehicle to the consumer. The 15-day period may be extended by any period of time during which repair services are not available to the consumer because of conditions beyond the control of the manufacturer or its agents.

1. The terms, conditions, or limitations of the express warranty, or the period of 1 year following the date of original delivery of the motor vehicle to a consumer, whichever expires earlier, may be extended if the motor vehicle warranty problem has been reported but has not been repaired by the manufacturer, or its agent, by the expiration of the applicable time period.

2. The manufacturer shall provide a list of the manufacturer's zone or regional service office address in the owner's manual provided with the motor vehicle. It shall be the responsibility of the consumer, or his representative, prior to availing himself of the provisions of this section, to give written notification to the manufacturer of the need for the repair of the nonconformity, in order to allow the manufacturer an opportunity to cure the alleged defect. The manufacturer shall immediately notify the consumer of a reasonably accessible repair facility to conform the vehicle to the express warranty. After delivery of the vehicle to the designated repair facility by the consumer, the manufacturer
shall have 10 working days to conform the motor vehicle to the express warranty. Upon notification from the consumer that the vehicle has not been conformed to the express warranty, the manufacturer shall inform the consumer if an informal dispute settlement procedure has been established by the manufacturer in accordance with section 7, and provide the consumer with a copy of the provisions of this act. However, if prior notice by the manufacturer of an informal dispute settlement procedure has been given, no further notice is required. If the manufacturer fails to inform the consumer of the availability of this informal dispute settlement procedure, and the provisions of this act, the requirements of section 7 shall not apply.

(5) Any action brought under this act shall be commenced within 6 months following expiration of the terms, conditions, or limitations of the express warranty, or within 18 months following the date of original delivery of the motor vehicle to a consumer, whichever is earlier, or, in the event that a consumer resorts to an informal dispute settlement procedure as provided in this act, within 90 days following the final action of the panel.

(6) If a consumer finally prevails in any action brought under this act, she may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney’s fees based on actual time expended, determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action.

Section 6. Bad faith claims.—Any claim by a consumer which is found by the court to have been filed in bad faith, or solely for the purpose of harassment, or in complete

CODING: Words in small through type are deletions from existing law; words **underlined** are additions.
absence of a justiciable issue of either law or fact raised by
the consumer, shall result in the consumer being liable for
all costs and reasonable attorney's fees incurred by the
manufacturer, or its agent, as a direct result of the bad
faith claim.

Section 7. Informal dispute settlement procedure.--If
a manufacturer has established an informal dispute settlement
procedure which complies in all respects with the provisions
of 16 C.F.R. part 703, the provisions of section 5 concerning
refunds or replacements shall not apply to any consumer who
has not first resorted to such procedure. For the purposes of
this section, at least one member of the informal dispute
settlement panel shall be designated by the Florida Division
of Consumer Services of the Department of Agriculture and
Consumer Services.

Section 8. This act shall take effect October 1, 1983.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR SENATE BILL 462 & 794.

Requires a manufacturer or its agent to provide a
comparable automobile or to refund the full purchase
price less a reasonable allowance for use if the
automobile's use, market value or safety is impaired
after a reasonable number of attempts have been made
to conform it to the warranty.

Provides that a reasonable number of attempts at
conformity have been undertaken if substantially
the same nonconformity has been subject to repair
three or more times and still exists, or if the car
is out of service for repairs, exclusive of routine
maintenance, for a total of 15 or more working days
since delivery to the consumer.

CODING: Words in struck through type are deletions from existing law, words underscored are additions.
I. SUMMARY:

A. Present Situation:

New car warranties usually guarantee against certain defects for a specified period of time or a specified number of miles, whichever occurs first. According to the Department of Agriculture, Division of Consumer Services, approximately 4,000 complaints regarding first time titled cars were made in Florida in 1982. Of these complaints, 649 were in written form. For the first three months of 1983, complaints have numbered approximately 50 per month. While some of the complaints relate to cars which are still under warranty, some relate to problems which consumers feel arose during the warranty period and still exist during the post-warranty period. According to the division, the latter are not classified as new car complaints. If a consumer complains to the division, he is asked to complete a complaint form, provide the bill of sale for the motor vehicle and any repair documents. The division then contacts the dealer and the manufacturer's regional office. If no repair is done or no price adjustment made, the consumer then usually proceeds to small claims court.

The Magnuson-Moss Warranty Act, a federal law, provides certain remedies for consumers of goods under warranty, including refund or replacement if certain criteria are met. Title 16 of the Code of Federal Regulations, s. 703, provides for informal dispute settlement procedures under the Magnuson-Moss Act. Currently, Chrysler Corporation has a dispute-resolving organization in every state. These were set up under the act and the Florida organization has met once a month in Clearwater for the past year.

In recognition of consumer dissatisfaction, some states have enacted legislation to allow a person who has experienced a problem which exists in spite of repeated attempts at repair, and which substantially impairs the use or value of the new car to obtain a full refund of the purchase price or a new car to replace the defective one.

B. Effect of Proposed Changes:

The bill provides a number of definitions. It specifies that "motor vehicle" includes passenger and commercial vehicles used for certain purposes, and demonstrators and lease-purchase vehicles if a warranty is issued as a condition of sale.

The bill provides that if a new car does not conform to all express warranties and the consumer reports this to the manufacturer or its agent, during the express warranty period
or within 1 year following the date of original delivery, whichever is earlier, the manufacturer, or its agent must make the repairs to conform the automobile to the express warranties, in spite of the fact that repairs are made after the expiration of the warranty term or the 1-year period.

The bill requires the manufacturer or its agent, to provide a comparable automobile, or to refund the full purchase price including all collateral charges, less a reasonable allowance for use, if the automobile's use, market value or safety is impaired after a reasonable number of attempts have been made to conform it to the warranty. Refunds must be made to the consumer and the lienholder, if any. The bill provides a formula for determining a reasonable allowance for use.

Affirmative defenses include abuse, neglect or alterations to the new car by the consumer, and that nonconformity does not result in impairment of use, market value or safety. The bill provides that a reasonable number of attempts to conform have been undertaken if substantially the same nonconformity has been subject to repair three or more times by the manufacturer, or its agent within the express warranty term or within 1 year from the date of original delivery to a consumer, whichever is earlier, and the nonconformity still exists, or if the car is out of service for repair for a total of 15 or more working days, excluding down time for routine maintenance as prescribed by the owner's manual, since delivery to the consumer. The 15 day period must be extended if repair services are not available because of events beyond the manufacturer's control.

The bill provides for extension of the warranty period on certain conditions, requires the consumer to give written notice to the manufacturer of the need for repair if the manufacturer has met disclosure provisions, gives the manufacturer 10 days to conform the vehicle to the express warranty, and then requires the manufacturer, after such notification, to inform the consumer of the informal dispute settlement procedure authorized by 16 CFR s. 703, and provide the consumer with a copy of the provisions of the act. If the prior notice has been given, no further notice is required. If the manufacturer fails to inform of this, the consumer may proceed directly against the manufacturer for either refund or for replacement of the vehicle.

The bill requires that actions be brought within specified periods of time, and that a prevailing consumer may be allowed to recover costs and expenses, including attorneys fees. If a claim is brought in bad faith, or there is a complete absence of a justiciable issue of law or fact, the consumer shall be liable for the manufacturer's costs and attorneys fees.

The bill provides that if a manufacturer has established an informal dispute settlement procedure which completely complies with 16 CFR, part 703, as subsequently amended, the consumer must resort to this procedure before he can qualify for refunds or for replacement of the vehicle. At least one member of the panel shall be appointed by the Florida Division of Agriculture and Consumer Services.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

This bill will be of benefit to consumers who can show that their new cars have a nonconformity which impairs the use, market value, or safety and which has survived three or more repair attempts or which has deprived them of use of the car for 15 or more cumulative working days, excluding routine
maintenance time, during the express warranty period or 1 year term. It is not known how many consumers might qualify for refund or replacement.

Manufacturers and their agents will be required to make refunds or provide new cars if the appropriate criteria are met. It is believed that manufacturer's will be thus encouraged to set up dispute-resolving mechanisms. It is not possible to project the financial impact.

B. Government:

None.

III. COMMENTS:

Connecticut, California, Wyoming and New Hampshire have passed laws which are similar to this bill, and lemon bills are now pending in about 30 states.

IV. AMENDMENTS:
Requires a manufacturer or its agent to provide a comparable automobile or to refund the full purchase price less a reasonable allowance for use if the automobile's use, market value or safety is impaired after a reasonable number of attempts have been made to conform it to the warranty.

Provides that a reasonable number of attempts at conformity have been undertaken if substantially the same nonconformity has been subject to repair three or more times and still exists, or if the car is out of service for repairs, exclusive of routine maintenance, for a total of 15 or more working days since delivery to the consumer.
BILL ACTION REPORT

CJ-75: File with Secretary of Senate)

(S)(H)X BILL NO. 462 & 794

COMMITTEE ON Commerce

DATE April 26, 1983

TIME 2:00 - 5:00 p.m.

PLACE Room "A", Senate Office Bldg.

OTHER COMMITTEE REFERENCES:
(In order shown)
Economic, Community & Consumer Affairs
Transportation

THE VOTE WAS:
Senator Childers moved the bill.

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(BILL VOTE

<p>| BILL NO. 462 &amp; 794 (combined) |</p>
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(Final Action:
___ Favorably with ___ amendments
___ Favorably with Committee Substitute
___ Unfavorably

OTHER: ___ Temporarily Passed
___ Reconsidered
___ Not Considered

Please Complete: The key sponsor appeared (XX)
A Senator appeared ( )
Sponsor’s aide appeared ( )
Other appearance ( )
automobile to a consumer, whichever is the earlier date, but 
such nonconformity continues to exist, or

(b) The automobile is out of service by reason of 
repair for a cumulative total of 30 or more calendar days 
during such term or during such period, whichever is the 
earlier date. The term of an express warranty, such 1-year 
period and such 30-day period shall be extended by any period 
of time during which repair services are not available to the 
consumer because of a war, invasion, strike, fire, flood, or 
other natural disaster.

(5) Nothing in this section in any way limits the 
rights or remedies which are otherwise available to a consumer 
under any other law.

(6) If a manufacturer has established an informal 
dispute settlement procedure which complies in all respects 
with the provisions of 16 C.F.R. part 703, as from time to 
time amended, the provisions of subsection (3) concerning 
refunds or replacement shall not apply to any consumer who has 
not first resorted to such procedure.

Section 2. This act shall take effect October 1, 1983.

SENATE SUMMARY
Prescribes circumstances and time limits in which the 
purchaser of a private automobile that does not conform 
to applicable express warranties may receive from the 
manufacturer repairs, replacement, or a refund.
I. SUMMARY:

A. Present Situation:

New car warranties usually guarantee against certain defects for a specified period of time or a specified number of miles, whichever occurs first. According to the Department of Agriculture, Division of Consumer Services, approximately 4,000 complaints regarding first-time titled cars were made in Florida in 1982. Of these complaints, 649 were in written form. For the first three months of 1983, complaints have numbered approximately 50 per month. While some of the complaints relate to cars which are still under warranty, some relate to problems which consumers feel arose during the warranty period and still exist during the post-warranty period. According to the division, the latter are not classified as new car complaints. If the consumer complains to the division, he is asked to complete a complaint form, provide the bill of sale for the motor vehicle and any repair documents. The division then contacts the dealer and the manufacturer's regional office. If no repair is done or no price adjustment made, the consumer then usually proceeds to small claims court.

The Magnuson-Moss Warranty Act, a federal law, provides certain remedies for consumers of goods under warranty, including refund or replacement if certain criteria are met. Title 16 of the Code of Federal Regulations, s. 703, provides for informal dispute settlement procedures under the Magnuson-Moss Warranty Act. Currently, Chrysler Corporation has a dispute-resolving organization in every state. These were set up under the act and the Florida organization has met once a month in Clearwater for the past year.

In recognition of consumer dissatisfaction, some states have enacted legislation to allow a person who has experienced a problem which exists in spite of repeated attempts at repair, and which substantially impairs the use and value of the new car to obtain a full refund of the purchase price or a new car to replace the defective one.

B. Effect of Proposed Changes:

The bill provides a definition of consumer to mean a purchaser, other than for purposes of resale, of an automobile for private use (i.e., not classified as a for-hire vehicle), any person to whom the vehicle is transferred during the express warranty period, or any person entitled by the warranty to enforce the warranty.

The bill provides that if a new car does not conform to all express warranties and the consumer reports this to the...
manufacturer, its agent, or its authorized dealer during the express warranty period or within 1 year following the date of original delivery, whichever is earlier, the manufacturer, its agent or dealer must make the repairs to conform the automobile to the express warranties, in spite of the fact that repairs are made after the expiration of the warranty term or the 1-year period.

The bill requires the manufacturer, agent, or dealer to provide a new automobile, or to refund the full purchase price including all collateral charges, less a reasonable allowance for use, if the automobile's use and value is substantially impaired after a reasonable number of attempts have been made to conform it to the warranty. Refunds must be made to the consumer and the lienholder, if any.

The bill provides that a reasonable allowance for use is the amount of use prior to the first report of nonconformity and any subsequent period that the car is not under repair.

Affirmative defenses are abuse, neglect or alterations to the new car by the consumer, and that nonconformity does not result in substantial impairment of use and value. The bill provides that a reasonable number of attempts to conform have been undertaken if the same nonconformity has been subject to repair four or more times by the manufacturer, its agent or dealer within the express warranty term or within 1 year from the date of original delivery to a consumer, whichever is earlier, and the nonconformity still exists, or if the car is out of service for repair for a total of 30 or more calendar days during the express warranty term or the 1 year period, whichever is earlier. The warranty period, 1 year period and 30 day period must be extended if repair services are not available because of war, strike or natural disasters.

The bill provides that if a manufacturer has established an informal dispute procedure which completely complies with 16 CFR, part 703, as subsequently amended, the consumer must resort to this procedure before he can qualify for refunds or for replacement of the vehicle.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

This bill will be of benefit to consumers who can show that their new cars have a nonconformity which has survived four or more repair attempts or which has deprived them of use of the car for 30 or more cumulative calendar days during the express warranty period or 1 year term and which has substantially impaired the car's use and value. It is not known how many consumers might qualify for refund or replacement.

Manufacturers, their agents, and dealers will be required to make refunds or provide new cars if the appropriate criteria are met. It is believed that manufacturers will be thus encouraged to set up dispute-resolving mechanisms. It is not possible to project the financial impact.

B. Government:

None.

III. COMMENTS:

This bill is substantively identical to a law recently passed in Connecticut. In that state 30 cases are now pending under this legislation. California, Wyoming and New Hampshire have passed similar laws, and lemon bills are now pending in about 50 states.
A bill to be entitled
An act relating to motor vehicle warranties,
creating the "Motor Vehicle Warranty
Enforcement Act", providing legislative intent,
providing definitions, requiring new motor
vehicles to conform to all applicable express
warranties, providing requirements for the
manufacturer when a new motor vehicle does not
conform to applicable express warranties,
providing penalties for bad faith claims,
providing for an informal dispute settlement
procedure; providing an effective date.

Be It Enacted by the Legislature of the State of Florida.

Section 1. Short title.--This act shall be known and
may be cited as the "Motor Vehicle Warranty Enforcement Act."

Section 2. Legislative intent --The Legislature
recognizes that a motor vehicle is a major consumer purchase,
and there is no doubt that a defective motor vehicle creates a
hardship for the consumer. The Legislature further recognizes
that a duly franchised motor vehicle dealer is an agent of the
manufacturer. It is the intent of the Legislature that a good
faith motor vehicle warranty complaint by a consumer should be resolved by the manufacturer, or its agent, within a specified period of time. It is further the intent of the Legislature to provide the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the express warranty issued by the manufacturer. However, nothing in this act shall in any way limit the rights or remedies
which are otherwise available to a consumer under any other law.

Section 3 Definitions.—As used in this act, the following terms shall have the following meanings:

(1) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

(2) "Motor vehicle" means a passenger motor vehicle or a commercial motor vehicle which is sold in this state and is operated over the public streets and highways of this state and is used as a means of transporting persons or property. Motor vehicle as defined in this act shall include only those vehicles propelled by power other than muscular power, but the term shall not include vehicles run only upon tracks, off-road vehicles, or mopeds. Motor vehicle shall include demonstrators or lease-purchase vehicles as long as a manufacturer’s warranty was issued as a condition of sale.

(3) "Manufacturer" means a manufacturer, importer, or distributor as defined in s. 320.60(1), (2), and (4), Florida Statutes.

(4) "Purchase price" means the cash price as defined in s. 520.31(9), Florida Statutes.

(5) "Express warranty" means any written affirmation of fact or promise made in connection with the sale of a motor vehicle by a supplier to a consumer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect-free or will meet a specified level of performance over a specified period of
time. For the purposes of this act, express warranties do not include implied warranties

(6) "Collateral charges" means those additional charges to a consumer not directly attributable to the manufacturer's sticker price of the motor vehicle. For the purposes of this act, collateral charges shall include, but not be limited to, dealer preparation charges, undercoating charges, transportation charges, towing charges, replacement car rental costs, and title charges.

Section 4 Conformity to all applicable express warranties.--If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, or its agent, during the term of such express warranties, or during the period of 1 year following the date of original delivery of the motor vehicle to the consumer, whichever period expires earlier, the manufacturer, or its agent, shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such 1-year period.

Section 5 Nonconformity of motor vehicles.--

(1) If the manufacturer, or its agent, cannot conform the motor vehicle to any applicable express warranty by repairing or correcting any default or condition which impairs the use, market value, or safety of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer, at its option, shall either replace the motor vehicle with a comparable motor vehicle acceptable to the consumer, or take title of the vehicle from the consumer and refund to the consumer the full purchase price, including all reasonably incurred collateral charges, less a reasonable

CODING Words in struck through type are deletions from existing law, words underlined are additions.
allowance for the consumer's use of the vehicle. A reasonable allowance for use shall be that sum of money arrived at by:

(a) Multiplying the number of months, or major fraction thereof, that the consumer has had use of the motor vehicle from the date that the manufacturer, or its agent, is first notified by the consumer of the problem complained of by 1 percent; or

(b) Multiplying the number of miles, in increments of 1,000 or fraction thereof, the consumer has driven the motor vehicle from said date by 1 percent,

whichever is less; provided that in no event shall the allowance for use exceed 12 percent of the purchase price of the motor vehicle.

(2) Refunds shall be made to the consumer and lienholder of record, if any, as their interests may appear.

(3) It shall be an affirmative defense to any claim under this act that:

(a) An alleged nonconformity does not impair the use, market value, or safety of the motor vehicle;

(b) A nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by a consumer;

(c) A claim by a consumer was not filed in good faith; or

(d) Any other affirmative defense allowed by law.

(4) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if within the terms, conditions, or limitations of the express warranty, or during the period of 1 year following the date of original delivery.
of the motor vehicle to a consumer, whichever expires earlier, either

(a) Substantially the same nonconformity has been subject to repair three or more times by the manufacturer, or its agents, and such nonconformity continues to exist; or

(b) The vehicle is out of service by reason of repair by the manufacturer, or its agents, for a cumulative total of 15 or more calendar days since delivery of the vehicle to the consumer. The 15-day period may be extended by any period of time during which repair services are not available to the consumer because of conditions beyond the control of the manufacturer or its agents.

1. The terms, conditions, or limitations of the express warranty, or the period of 1 year following the date of original delivery of the motor vehicle to a consumer, whichever expires earlier, may be extended if the motor vehicle warranty problem has been reported but has not been repaired by the manufacturer, or its agent, by the expiration of the applicable time period.

2. When the manufacturer has clearly and conspicuously disclosed to the consumer with the warranty or owner's manual the provisions of this act, it shall be the responsibility of the consumer, or his representative, prior to availing himself of the provisions of this section, to give written notification to the manufacturer of the need for the repair of the nonconformity, in order to allow the manufacturer an opportunity to cure the alleged defect. If the consumer has notified the manufacturer after the occurrence of the events described in either paragraph (a) or paragraph (b), the manufacturer shall have 7 days to conform the motor vehicle to the express warranty. It shall be the responsibility of the

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manufacturer, upon receipt of the notification from the
consumer, to inform the consumer if an informal dispute
settlement procedure has been established by the manufacturer
in accordance with section 7. If the manufacturer fails to
notify the consumer of the availability of this informal
dispute settlement procedure, the requirements of section 7
shall not apply.

(5) Any action brought under this act shall be
commenced within 6 months following expiration of the terms,
conditions, or limitations of the express warranty, or within
18 months following the date of original delivery of the motor
vehicle to a consumer, whichever is earlier, or, in the event
that a consumer resorts to an informal dispute settlement
procedure as provided in this act, within 90 days following
the final action of the panel.

(6) If a consumer finally prevails in any action
brought under this act, he may be allowed by the court to
recover as part of the judgment a sum equal to the aggregate
amount of costs and expenses, including attorney's fees based
on actual time expended, determined by the court to have been
reasonably incurred by the plaintiff for or in connection with
the commencement and prosecution of such action.

Section 6. Bad faith claims.--Any claim by a consumer
which is found by the court to have been filed in bad faith,
or solely for the purpose of harassment, or in complete
absence of a justiciable issue of either law or fact raised by
the consumer, shall result in the consumer being liable for
all costs and reasonable attorney's fees incurred by the
manufacturer, or its agent, as a direct result of the bad
faith claim.
Section 7  Informal dispute settlement procedure --If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of 16 C.F.R. part 703, the provisions of section 5 concerning refunds shall not apply to any consumer who has not first resorted to such procedure. For the purposes of this section, at least one member of the informal dispute settlement panel shall be designated by the Florida Division of Consumer Services of the Department of Agriculture and Consumer Services.

Section 8  This act shall take effect October 1, 1983.

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HOUSE SUMMARY

Creates the "Motor Vehicle Warranty Enforcement Act " Provides that where a new motor vehicle does not conform to all applicable express warranties and the consumer reports the nonconformity to the manufacturer during the term of such warranties or during the year immediately following delivery of the vehicle, whichever period expires earlier, the dealer must repair the vehicle even though the repair may occur after the warranty or 1-year period has expired Provides that where the manufacturer cannot conform the motor vehicle to the warranty, he must either replace the motor vehicle or take title to the motor vehicle and refund to the consumer the full purchase price Provides a procedure for computing a reasonable allowance for the consumer's use of the vehicle. Provides liability for bad faith claims Provides an informal dispute settlement procedure See bill for details.
I. SUMMARY:

A. Present Situation:

New car warranties usually guarantee against certain defects for a specified period of time or a specified number of miles, whichever occurs first. According to the Department of Agriculture, Division of Consumer Services, approximately 4,000 complaints regarding first time titled cars were made in Florida in 1982. Of these complaints, 649 were in written form. For the first three months of 1983, complaints have numbered approximately 50 per month. While some of the complaints relate to cars which are still under warranty, some relate to problems which consumers feel arose during the warranty period and still exist during the post-warranty period. According to the division, the latter are not classified as new car complaints. If a consumer complains to the division, he is asked to complete a complaint form, provide the bill of sale for the motor vehicle and any repair documents. The division then contacts the dealer and the manufacturer's regional office. If no repair is done or no price adjustment made, the consumer then usually proceeds to small claims court.

The Magnusson-Moss Warranty Act, a federal law, provides certain remedies for consumers of goods under warranty, including refund or replacement if certain criteria are met. Title 16 of the Code of Federal Regulations, s. 703, provides for informal dispute settlement procedures under the Magnusson-Moss Act. Currently, Chrysler Corporation has a dispute-resolving organization in every state. These were set up under the act and the Florida organization has met once a month in Clearwater for the past year.

In recognition of consumer dissatisfactions, some states have enacted legislation to allow a person who has experienced a problem which exists in spite of repeated attempts at repair, and which substantially impairs the use and value of the new car to obtain a full refund of the purchase price of a new car to replace the defective one.

B. Effect of Proposed Changes:

The bill provides a number of definitions. It specifies that "motor vehicle" includes passenger and commercial vehicles used for certain purposes, and demonstrators and lease-purchase vehicles if a warranty is issued.

The bill provides that if a new car does not conform to all express warranties and the consumer reports this to the manufacturer or its agent, during the express warranty period or within 1 year following the date of original delivery, whichever is earlier, the manufacturer, or its agent must make
the repairs to conform the automobile to the express warranties, in spite of the fact that repairs are made after the expiration of the warranty term or the 1-year period.

The bill requires the manufacturer or its agent, to provide a new automobile, or to refund the full purchase price including all collateral charges, less a reasonable allowance for use, if the automobile's use, market value or safety is impaired after a reasonable number of attempts have been made to conform it to the warranty. Refunds must be made to the consumer and the lienholder, if any. The bill provides a formula for determining a reasonable allowance for use.

Affirmative defenses are abuse, neglect or alterations to the new car by the consumer, and that nonconformity does not result in impairment of use, market value or safety. The bill provides that a reasonable number of attempts to conform have been undertaken if the same nonconformity has been subject to repair three or more times by the manufacturer, or its agent within the express warranty term or within 1 year from the date of original delivery to a consumer, whichever is earlier, and the nonconformity still exists, or if the car is out of service for repair for a total of 15 or more calendar days during the express warranty term or the 1-year period, whichever is earlier. The 15 day period must be extended if repair services are not available because of events beyond the manufacturer's control.

The bill provides for extension of the warranty period on certain conditions, requires the consumer to give written notice to the manufacturer of the need for repair if the manufacturer has met disclosure provisions, gives the manufacturer 7 days to conform the vehicle to the express warranty, and then requires the manufacturer, after such notification, to inform the consumer of the informal dispute procedure authorized by 16 CFR s. 703. If the manufacturer fails to inform of this, the consumer may proceed directly against the manufacturer for refund or repair.

The bill requires that actions be brought within specified periods of time, and that a prevailing consumer may be allowed to recover costs and expenses, including attorneys fees. If a claim is brought in bad faith, or there is a complete absence of a justiciable issue of law or fact, the consumer shall be liable for the manufacturer's costs and attorneys fees.

The bill provides that if a manufacturer has established an informal dispute procedure which completely complies with 16 CFR, part 703, as subsequently amended, the consumer must resort to this procedure before he can qualify for refunds or for replacement of the vehicle. At least one member of the panel shall be appointed by the Florida Division of Agriculture and Consumer Services.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

This bill will be of benefit to consumers who can show that their new cars have a nonconformity which has survived four or more repair attempts or which has deprived them of use of the car for 15 or more cumulative calendar days during the express warranty period or 1 year term and which has impaired the car's use, market or safety value. It is not known how many consumers might qualify for refund or replacement.

Manufacturers and their agents will be required to make refunds or provide new cars if the appropriate criteria are met. It is believed that manufacturer's will be thus encouraged to set up
dispute-resolving mechanisms. It is not possible to project the financial impact.

B. Government:

None.

III. COMMENTS:

This bill is substantively identical to a law recently passed in Connecticut. In that state, 30 cases are now pending under this legislation. California, Wyoming and New Hampshire have passed similar laws, and lemon laws are now pending in about 30 states.

IV. AMENDMENTS: