

HOUSE BILL NO. 634
INTRODUCED BY C. KAUFMANN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW ON WARRANTIES FOR USED MOTOR VEHICLES; PROVIDING DEFINITIONS; PROHIBITING CERTAIN PRACTICES BY DEALERS; CREATING WARRANTIES ON CERTAIN USED MOTOR VEHICLES; ALLOWING CONSUMERS TO WAIVE THE RIGHT TO A WARRANTY; PROVIDING FOR THE REPAIR OR RETURN OF CERTAIN USED MOTOR VEHICLES; AND PROVIDING FOR REFUNDS TO CONSUMERS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Montana Used Motor Vehicle Warranty Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "As is" means a that used motor vehicle is sold by a dealer to a consumer without any warranty, either express or implied, and with the consumer being solely responsible for the cost of any repairs to that motor vehicle.

(2) "Consumer" means the purchaser or prospective purchaser, other than for the purpose of resale, of a used motor vehicle normally used for personal, family, or household purposes.

(3) "Covered item" means and includes the following components of a used motor vehicle:

(a) engine, including all internal lubricated parts, timing chains, gears and cover, timing belt, pulleys and cover, oil pump and gears, water pump, valve covers, oil pan, manifolds, flywheel, harmonic balancer, engine mounts, seals and gaskets, and turbocharger housing, except that the housing, engine block, and cylinder heads are covered items only if damaged by the failure of an internal lubricated part;

(b) transmission automatic/transfer case, including all internal lubricated parts, torque converter, vacuum modulator, transmission mounts, and seals and gaskets;

(c) transmission manual/transfer case, including all internal lubricated parts, transmission mounts, and seals and gaskets, but excluding a manual clutch, pressure plate, throw-out bearings, and clutch master or slave

cylinders;

(d) front-wheel drive, including all internal lubricated parts, axle shafts, constant velocity joints, front hub bearings, and seals and gaskets;

(e) rear-wheel drive, including all internal lubricated parts, propeller shafts, supports and U-joints, axle shafts and bearings, and seals and gaskets.

(4) "Dealer" means any person or business that sells or offers for sale a used motor vehicle after selling or offering for sale three or more used motor vehicles in the previous 12-month period.

(5) "Deduction for personal use" means the mileage allowance set by the federal internal revenue service for business usage of a motor vehicle in effect on the date a used motor vehicle is repurchased by a dealer in accordance with the provisions of [sections 1 through 10], multiplied by the total number of miles a used motor vehicle is driven by a consumer from the date of purchase of that vehicle until the time of its repurchase.

(6) "Excessive wear and tear" means wear or damage to a used motor vehicle beyond what is expected to be incurred in normal circumstances.

(7) "Material defect" means a malfunction of a used motor vehicle subject to a warranty that substantially impairs its use, value, or safety.

(8) "Repair insurance" means a contract in writing to refund, repair, replace, maintain, or take other action with respect to a used motor vehicle for any period of time or any specified mileage and provided at an extra charge beyond the price of the used motor vehicle.

(9) "Service contract" means a contract in writing to refund, repair, replace, maintain, or take other action with respect to a used motor vehicle for any period of time or any specific mileage or provided at an extra charge beyond the price of the used motor vehicle.

(10) (a) "Used motor vehicle" means a passenger motor vehicle, excluding motorcycles, motor homes, and off-road vehicles, the title to or possession of which has been transferred from the person who first acquired it from the manufacturer or dealer and that has had sufficient use to become what is commonly known as "secondhand" within that term's ordinary meaning.

(b) The term does not mean a passenger motor vehicle that is subject to a motor vehicle lease agreement that was in effect for more than 90 days and that is sold by the lessor to the lessee or to a family member or employee of the lessee upon the termination of the lease agreement.

(11) "Warranty" means any undertaking, in writing and in connection with the sale by a dealer of a used motor vehicle, to refund, repair, replace, maintain, or take other action with respect to the used motor vehicle and that is provided without extra charge beyond the price of the used motor vehicle.

NEW SECTION. Section 3. Unlawful dealer practices. (1) It is an unlawful practice for a dealer to:

- (a) misrepresent the mechanical condition of a used motor vehicle;
- (b) fail to disclose, prior to sale, any material defect in the mechanical condition of the used motor vehicle that is known to the dealer;
- (c) represent that a used motor vehicle or any component of the vehicle is free from material defects in mechanical condition at the time of sale, unless the dealer has a reasonable basis for this representation at the time it is made;
- (d) fail to disclose, prior to sale, the existence and terms of any written warranty, service contract, or repair insurance currently in effect on a used motor vehicle, if known to the dealer, provided by a person other than the dealer and subject to transfer to a consumer;
- (e) misrepresent the terms of any written warranty, service contract, or repair insurance currently in effect on a used motor vehicle provided by a person other than the dealer and subject to transfer to a consumer;
- (f) fail to disclose, prior to sale, the existence and terms of any written warranty, service contract, or repair insurance offered by the dealer in connection with the sale of a used motor vehicle;
- (g) misrepresent the terms of any written warranty, service contract, or repair insurance offered by the dealer in connection with the sale of a used motor vehicle;
- (h) represent, prior to sale, that a used motor vehicle is sold with a warranty, service contract, or repair insurance when the vehicle is sold without any warranty, service contract, or repair insurance;
- (i) fail to disclose, prior to sale, that a used motor vehicle is sold without any warranty, service contract, or repair insurance; and
- (j) fail to provide a clear written explanation, prior to sale, of what is meant by the term "as is", if the used motor vehicle is sold as is.

(2) A dealer who violates a provision of [sections 1 through 10] also violates the provisions of 30-14-103 and is subject to the penalty provisions of Title 30, chapter 14, part 1.

NEW SECTION. Section 4. Written warranty required -- minimum duration. It is an unlawful practice for a dealer to sell a used motor vehicle to a consumer without giving the consumer a written warranty. The warranty must provide at least the following minimum protection:

- (1) if the used motor vehicle has been driven 24,000 miles or less, the warranty must be, at a minimum, 90 days or 3,000 miles, whichever comes first;
- (2) if the used motor vehicle has been driven more than 24,000 miles but less than 60,000 miles, the

warranty must be, at a minimum, 60 days or 2,000 miles, whichever comes first; or

(3) if the used motor vehicle has been driven 60,000 miles or more, the warranty must be, at a minimum, 30 days or 1,000 miles, whichever comes first, except that a consumer may waive the right to a warranty as provided in [section 8].

NEW SECTION. Section 5. Written warranty -- dealer requirements. (1) The written warranty must require the dealer, upon failure or malfunction of a covered item during the term of the warranty, to correct the malfunction or defect provided that the used motor vehicle is delivered to the dealer at the dealer's regular place of business, subject to a deductible amount of \$50 to be paid by the consumer for each repair of a covered item.

(2) The written warranty must exclude repairs:

- (a) covered by any manufacturer's warranty or recall program;
- (b) of a covered item required because of collision, abuse, or the consumer's failure to properly maintain the used motor vehicle in accordance with the manufacturer's recommended maintenance schedule;
- (c) for damage of a covered item caused as a result of any commercial use of the used motor vehicle;
- (d) for damage caused by operation of the vehicle without proper lubrication or coolant;
- (e) needed as a result of any misuse, negligence, or alteration of the vehicle by someone other than the dealer.

NEW SECTION. Section 6. Dealer's failure to correct defect. (1) If, within the applicable warranty period specified in [section 4], the dealer or the dealer's agent fails to correct a material defect of the used motor vehicle after a reasonable opportunity to repair the used motor vehicle, the dealer shall repurchase the used motor vehicle and refund to the consumer the full purchase price, excluding all sales taxes, title and registration fees, or any similar governmental charges and less a reasonable allowance for excessive wear and tear and a deduction for personal use of the vehicle. Refunds must be made to the consumer and lienholder, if any, as those interests appear on the records of ownership kept by the department of justice.

(2) It is an affirmative defense to any claim under this section that:

- (a) the alleged material defect does not substantially impair the use, value, or safety of the used motor vehicle; or
- (b) the material defect is the result of abuse, neglect, or unauthorized modification or alteration of the used motor vehicle by anyone other than the dealer or the dealer's agent.

(3) It must be presumed that a dealer has had a reasonable opportunity to correct or repair a material

defect in a used motor vehicle if:

(a) the same material defect has been subject to repair three or more times by the dealer or the dealer's agent within the warranty period and the material defect continues to exist; or

(b) the used motor vehicle is out of service by reason of waiting for the dealer to begin or complete repair of the material defect for a cumulative total of 20 or more days during the warranty period.

NEW SECTION. Section 7. Extension of warranty period.

The term of any written warranty offered by a dealer in connection with the sale of a used motor vehicle must be extended by any time period during which the used motor vehicle is waiting for the dealer or the dealer's agent to begin or complete repairs of a material defect of the used motor vehicle.

NEW SECTION. Section 8. Waiver of dealer's obligation to provide warranty. (1) A consumer, as a result of a price negotiation for the purchase of a used motor vehicle with over 60,000 miles, may elect to waive the dealer's obligation to provide a warranty on the used motor vehicle. The waiver must be in writing and separately stated in the agreement of retail sale or in an attachment to the agreement and separately signed by the consumer.

(2) The waiver must state the dealer's obligation to provide a warranty on used motor vehicles offered for sale, as set forth in [sections 4 and 5]. The waiver must indicate that the consumer, having negotiated the purchase price of the used motor vehicle and having obtained a price adjustment, is electing to waive the dealer's obligation to provide a warranty on the used motor vehicle and is buying the used motor vehicle as is.

NEW SECTION. Section 9. Exempt sales. The provisions of [sections 1 through 10] do not apply to a used motor vehicle:

(1) sold for less than \$3,000;

(2) over 7 years old;

(3) that has been declared a total loss by an insurance company and with respect to which the consumer, at or prior to the time of sale, has been advised in writing that the used motor vehicle has been declared a total loss by an insurance company; or

(4) with more than 100,000 miles.

NEW SECTION. Section 10. Refunds. (1) (a) If, during the warranty period specified in [section 4],

the dealer is unable to repair or correct a nonconformity within a reasonable time, the dealer shall accept the return of the motor vehicle from the consumer.

(b) The dealer shall provide the consumer with a full refund of the purchase price of the original motor vehicle, including any stated credit or allowance for the consumer's used motor vehicle, the cost of any options or other modifications arranged, installed, or made by the dealer within 30 days after the date of original delivery, and any other charges or fees, including but not limited to tax, license and registration fees, finance charges, reimbursement for towing, and reimbursement for actual expenses incurred by the consumer for the rental of a motor vehicle equivalent to the consumer's motor vehicle and limited to the period during which the consumer's motor vehicle was out of service due to a nonconformity, less a reasonable allowance for vehicle use.

(2) This section may not be construed to preclude a dealer from making an offer to replace the vehicle in lieu of a refund, except that the consumer may, in any case, reject a dealer's offer of replacement and demand a refund. Refunds must be made to the consumer and lienholder, if any, as their interests appear on the records of ownership maintained by the department of justice.

(3) If the consumer accepts an offer to replace the motor vehicle in lieu of a refund, it is the dealer's responsibility to ensure that any lien on the returned motor vehicle is transferred to the replacement vehicle.

NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 10] are intended to be codified as an integral part of Title 61, chapter 4, and the provisions of Title 61, chapter 4, apply to [sections 1 through 10].

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