

1 House BILL NO. 784
 2 INTRODUCED BY Frank Manahan Cooney

3
 4 A BILL FOR AN ACT ENTITLED: "THE MOTOR VEHICLE REPAIR
 5 WARRANTY ACT OF 1977."

6
 7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Short title. This act may be cited as "The
 9 Motor Vehicle Repair Warranty Act of 1977".

10 Section 2. Purpose. The purpose of this act is to
 11 protect consumers from incompetent and improper motor
 12 vehicle maintenance, repair, and service.

13 Section 3. Construction. This act shall be liberally
 14 construed to effect its purpose.

15 Section 4. Definitions. As used in this act the
 16 following definitions apply:

- 17 (1) "Consumer" means a person who purchases or in any
 18 other way gives good consideration for a motor vehicle
 19 repair.
- 20 (2) "Motor vehicle" means all types of self-propelled
 21 vehicles, including but not limited to vehicles defined in
 22 53-104 or subject to registration under Title 53.
- 23 (3) "Motor vehicle repair" means any maintenance,
 24 repair, or service performed on a motor vehicle for which a
 25 consumer pays or gives good consideration.

1 (4) "Person" means an individual, firm, corporation,
 2 or other legal entity.

3 Section 5. Implied warranty in motor vehicle repair
 4 contract. Implied in every motor vehicle repair contract or
 5 work order entered into in this state which is supported by
 6 good consideration, whether written or oral, is a warranty
 7 that the motor vehicle repair will be done in a workmanlike
 8 manner.

9 Section 6. Workmanlike manner defined. A motor vehicle
 10 repair is performed in a workmanlike manner when it is done
 11 according to the standards of skill and competence and the
 12 mechanical methods and procedures necessary to successfully
 13 and properly complete it.

14 Section 7. Criteria for determining workmanlike
 15 manner. In determining whether a motor vehicle repair was
 16 performed in a workmanlike manner, the following criteria
 17 shall be used:

- 18 (1) the type of motor vehicle repair performed;
- 19 (2) the type of motor vehicle upon which the repair
 20 was performed;
- 21 (3) the general availability or lack of availability
 22 of persons in the area willing or qualified to do the motor
 23 vehicle repair in question;
- 24 (4) the representations made to the consumer or the
 25 public by the person who did the motor vehicle repair in

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1 question;

2 (5) the special needs, requirements, and instructions
3 of the consumer which were made known to the person who did
4 the motor vehicle repair in question;

5 (6) the cost of the motor vehicle repair in question;
6 and

7 (7) any other criteria which is pertinent to the
8 determination.

9 Section 8. Waiver of implied warranty. Except as
10 provided by [section 15], the warranty implied by [section
11 5] may not be waived by contract or otherwise. To the extent
12 a contract attempts to waive the warranty implied by
13 [section 5], except as provided by [section 15], it is void.

14 Section 9. Enforcement of implied warranty through
15 civil suit. The warranty implied by [section 5] may be
16 enforced by filing a civil suit in the appropriate district
17 court of this state. If a suit is filed as provided by this
18 section, all of the rules of evidence and procedure
19 generally applicable to suits brought in district courts of
20 this state apply.

21 Section 10. Enforcement of implied warranty through
22 arbitration. (1) In lieu of enforcing the warranty implied
23 by [section 5] through a civil suit filed in the appropriate
24 district court, the parties may contractually agree to
25 submit an alleged breach of the implied warranty to binding

1 arbitration.

2 (2) A contract to arbitrate entered into under the
3 provisions of this section shall be fairly bargained for and
4 mutually agreed upon by all parties.

5 (3) A contract to arbitrate entered into under the
6 provisions of this section may provide for any method of
7 arbitration acceptable to the parties and for the rules and
8 procedures under which the arbitration will be conducted.
9 However, all arbitration contracts entered into under the
10 provisions of this section shall require the arbitration
11 panel or arbitrator, as the case may be, to consider the
12 criteria enumerated in [section 7].

13 (4) If the parties have contractually agreed to submit
14 an alleged breach of the warranty implied by [section 5] to
15 arbitration, the decision of the arbitration panel or
16 arbitrator, as the case may be, is final and binding and no
17 appeal of the decision may be made to any court of this
18 state.

19 (5) Notwithstanding the provisions of 17-807, a
20 contract to arbitrate entered into under the provisions of
21 this section is specifically enforceable.

22 Section 11. Lack of privity no defense. In a civil
23 suit filed to enforce the warranty implied by [section 5],
24 it is not a defense, regardless of the causal connection,
25 that parts were supplied by a third party or that part of

1 the motor vehicle repair in question was done by a third
2 party.

3 Section 12. Damages allowed for breach of implied
4 warranty. An award of damages for a breach of the warranty
5 implied by [section 5] may include but is not limited to:

- 6 (1) the cost of the motor vehicle repair in question;
- 7 (2) the damages for personal injuries caused by the
8 breach;
- 9 (3) the damages to other motor vehicles caused by the
10 breach; and
- 11 (4) the consequential and incidental damages caused by
12 the breach, including but not limited to:
 - 13 (a) reasonable motor vehicle rental charges;
 - 14 (b) reasonable towing charges; and
 - 15 (c) reasonable storage charges.

16 Section 13. Costs of suit and attorneys' fees. The
17 prevailing party in a suit filed to enforce the warranty
18 implied by [section 5] may be awarded the costs of the suit,
19 including attorneys' fees. However, the fees paid to an
20 expert witness, including his necessary travel expenses, are
21 to be paid by the party bringing him in to testify. The
22 costs of arbitration may be provided for in the contract to
23 arbitrate.

24 Section 14. Limitation of action. No suit to enforce
25 the warranty implied by [section 5] may be commenced more

1 than 3 years from the date the motor vehicle repair in
2 question was completed.

3 Section 15. Contractual warranty in lieu of implied
4 warranty. (1) In lieu of the warranty implied by [section
5 5], a motor vehicle repair contract or work order may
6 provide a written warranty as provided by this section. In
7 order to replace the warranty implied by [section 5], the
8 written warranty shall unconditionally guarantee the motor
9 vehicle repair, including all parts and labor involved, for
10 a period of not less than:

- 11 (a) 6 months or 6,000 miles, whichever occurs first,
12 if the cost of the motor vehicle repair is less than \$500;
- 13 or
- 14 (b) 12 months or 12,000 miles, whichever occurs first,
15 if the cost of the motor vehicle repair is \$500 or more.

16 (2) If a motor vehicle repair contract or work order
17 provides a written warranty as provided by this section, the
18 warranty implied by [section 5] is voided and unenforceable.

19 Section 16. Saving clause. This act does not affect
20 rights and duties that matured, penalties that were
21 incurred, or proceedings that were begun before July 1,
22 1977.

23 Section 17. Severability. If a part of this act is
24 invalid, all valid parts that are severable from the invalid
25 part remain in effect. If a part of this act is invalid in

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1 one or more of its applications, the part remains in effect
2 in all valid applications that are severable from the
3 invalid applications.

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