

HOUSE BILL NO. 295

INTRODUCED BY HARRINGTON, PAVLOVICH, MENAHAN, CHRISTIAENS,
MCCORMICK, KRUEGER, PECK, REAM, PISTORIA, GARCIA, HARP,
J. HAMMOND, HAND, BACHINI, VINCENT, HANSEN, LYNCH, JACOBSON,
STIMATZ, DRISCOLL

IN THE HOUSE

| | |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| January 21, 1985 | Introduced and referred to Committee on Business and Labor. |
| January 23, 1985 | Fiscal Note requested. |
| January 25, 1985 | Fiscal Note returned. |
| February 15, 1985 | Committee recommend bill do pass as amended. Report adopted. Statement of Intent attached. Bill printed and placed on members' desks. |
| February 16, 1985 | Second reading, do pass as amended. On motion, taken from engrossing and rereferred to Committee on Appropriations. |
| February 18, 1985 | Correctly engrossed. |
| March 5, 1985 | On motion, taken from Committee on Appropriations and rereferred to second reading. |
| March 9, 1985 | Second reading, do pass as amended. Correctly engrossed. On motion, taken from engrossing and rereferred to Committee on Appropriations. |

March 30, 1985

Committee recommend bill do pass. Report adopted.

Bill printed and placed on members' desks.

April 1, 1985

Second reading, do pass as amended.

Third reading, passed.

Transmitted to Senate.

IN THE SENATE

April 3, 1985

Introduced and referred to Committee on Judiciary.

April 15, 1985

Committee recommend bill be concurred in as amended. Report adopted.

April 18, 1985

Second reading, concurred in as amended.

April 19, 1985

Third reading, concurred in. Ayes, 44; Noes, 6.

Returned to House with amendments.

IN THE HOUSE

April 19, 1985

Received from Senate.

April 20, 1985

Second reading, pass consideration.

April 23, 1985

Second reading, amendments concurred in.

April 23, 1985

Third reading, amendments
concurrent in.

Sent to enrolling.

Reported correctly enrolled.

1 *Mc* HOUSE BILL NO. 295
 2 INTRODUCED BY Stanton Carol Merdhan
 3 KEUEBER Ream J. Hammond B. Hand
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE Business
 5 NEW MOTOR VEHICLE WARRANTY REMEDY LAW; INCREASING MINIMUM Vincent
 6 WARRANTY PERIODS; PROVIDING FOR REMEDIES, DISCLOSURES, AND Spch
 7 PENALTIES; CREATING AN ARBITRATION PROCEDURE; AMENDING Sturck
 8 SECTIONS 61-4-501 THROUGH 61-4-503 AND 61-4-505 THROUGH Orsull
 9 61-4-507, MCA; AND PROVIDING AN APPLICABILITY PROVISION."

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

12 Section 1. Section 61-4-501, MCA, is amended to read:

13 "61-4-501. Definitions. For purposes of this part, the
14 following definitions apply:

15 (1) "Collateral charge" means all governmental
16 charges, including but not limited to sales tax, property
17 tax, license and registration fees, and fees in lieu of tax.

18 (2) "Consumer" means the purchaser, other than for
19 purposes of resale, of a motor vehicle that has not been
20 brought into nonconformity as the result of abuse, neglect,
21 or unauthorized modifications or alterations by the
22 purchaser, any person to whom the motor vehicle is
23 transferred during the duration of an express warranty
24 applicable to the motor vehicle, or any other person
25 entitled by the terms of the warranty to the benefits of its

1 provisions.

2 (3) "Department" means the department of commerce
3 created in 2-15-1801.

4 (4) "Division" means the division of motor vehicles
5 defined in 61-1-301.

6 (5) "Finance charge" means a finance charge as defined
7 in 31-1-202, incurred by a consumer after he first reports a
8 nonconformity to the manufacturer or agent and during any
9 subsequent period when the vehicle is out of service by
10 reason of repair related to the nonconformity.

11 (6) "Incidental damage" means incidental and
12 consequential damage as defined in 30-2-715.

13 (7) "Motor vehicle" means a vehicle propelled by
14 its own power, designed primarily to transport persons or
15 property upon the public highways, and sold in this state.
16 The term does not include a motor home as defined in
17 61-1-130.

18 (8) "Reasonable allowance for use" is an amount
19 directly attributable to use of the motor vehicle by the
20 consumer and any previous consumers prior to the first
21 written notice of the nonconformity to the manufacturer or
22 its agent and during any subsequent period when the vehicle
23 is not out of service because of nonconformity. The
24 reasonable allowance for use shall be computed by
25 multiplying the total contract price of the vehicle by a



1 fraction having as its denominator 100,000 and having as its
 2 numerator the number of miles that the vehicle traveled
 3 prior to the manufacturer's acceptance of its return.

4 ~~†3,†9~~ "Warranty period" means ~~the-term-of-an--express~~
 5 ~~agreement-or~~ the period ending ~~1-year~~ 2 years after the date
 6 of the original delivery to the consumer of a new motor
 7 vehicle, or during the first 18,000 miles of operation,
 8 whichever is earlier."

9 Section 2. Section 61-4-502, MCA, is amended to read:

10 "61-4-502. Warranty Notice -- warranty enforceable
 11 after warranty period -- when. (1) If a consumer notifies in
 12 writing the manufacturer or its agent during the warranty
 13 period that a new motor vehicle does not conform to all
 14 applicable express warranties, the repairs necessary to
 15 conform the new motor vehicle to the express warranties
 16 shall be made by or at the expense of the warrantor,
 17 regardless of the expiration of the warranty period after
 18 notification of nonconformity is given by the consumer.

19 (2) The warranty period of an express warranty is
 20 extended to equal the time that repair services are not
 21 available because of war or invasion or because of strike or
 22 fire, flood, or other natural disaster. The presumption
 23 provided herein may not apply against a manufacturer who has
 24 not received prior written notification from or on behalf of
 25 the consumer and has not had an opportunity to cure the

1 alleged defect.

2 (3) The manufacturer must clearly and conspicuously
 3 disclose to the consumer in the warranty or owner's manual
 4 that written notification of a nonconformity is required
 5 before a consumer may be eligible for a refund or
 6 replacement of the vehicle. The manufacturer must include
 7 with the warranty or owner's manual the name and address
 8 where the written notification must be sent."

9 Section 3. Section 61-4-503, MCA, is amended to read:

10 "61-4-503. Replacement for nonconformity to warranty.
 11 (1) If after a reasonable number of attempts the
 12 manufacturer or its agent or authorized dealer is unable,
 13 during the warranty period, to conform the new motor vehicle
 14 to any applicable express warranty by repairing or
 15 correcting any defect or condition that substantially
 16 impairs the use and market value or safety of the motor
 17 vehicle to the consumer, the manufacturer shall replace it
 18 with a new motor vehicle of the same model and style and of
 19 equal value, unless for reasons of lack of availability such
 20 replacement is impossible, in which case the manufacturer
 21 shall replace it with a vehicle of comparable market value.

22 (2) As an alternative to replacement, the manufacturer
 23 may accept return of the new motor vehicle from the consumer
 24 upon refund to him of the full purchase price, ~~excluding all~~
 25 ~~sales--taxes,--license--fees,--registration--fees,--and--any~~

1 ~~similar---governmental---charges~~ plus collateral charges,
 2 finance charges, and incidental damages, less a reasonable
 3 allowance for the consumer's use of the motor vehicle. The
 4 refund shall be paid to the consumer and to a lienholder, if
 5 any, in proportion to their interests. ~~A---reasonable~~
 6 ~~allowance--for-use-is-an-amount-directly-attributable-to-use~~
 7 ~~by-the-consumer-and-any--previous--consumers--prior--to--his~~
 8 ~~first---written---report---of---the---nonconformity--to--the~~
 9 ~~manufacturer-or-its-agent-and-during-any--subsequent--period~~
 10 ~~when---the---vehicle--is--not--out--of--service--because--of~~
 11 ~~nonconformity:"~~

12 Section 4. Section 61-4-505, MCA, is amended to read:

13 "61-4-505. Dealer exemption -- liability to
 14 manufacturer. (1) Nothing in this part imposes any liability
 15 on a dealer or creates a cause of action by a consumer
 16 against a dealer under 61-4-503.

17 (2) A dealer is not liable to a manufacturer for any
 18 refunds or vehicle replacements in the absence of evidence
 19 indicating that repairs made by the dealer were carried out
 20 in a manner inconsistent with the manufacturer's
 21 instructions."

22 Section 5. Section 61-4-506, MCA, is amended to read:

23 "61-4-506. Provisions nonexclusive -- applicability of
 24 UCC -- defenses. (1) The provisions of this part do not
 25 limit the rights or remedies available to a consumer under

1 any other law.

2 (2) All express and implied warranties arising from
 3 the sale of a new motor vehicle are subject to the
 4 provisions of Title 30, chapter 2, part 3.

5 (3) It is an affirmative defense to a claim brought
 6 under this part that an alleged nonconformity does not
 7 substantially impair the use, market value, or safety of the
 8 vehicle or that the nonconformity is the result of abuse,
 9 neglect, or unauthorized modification or alteration of a
 10 motor vehicle by the consumer."

11 Section 6. Section 61-4-507, MCA, is amended to read:

12 "61-4-507. Exhaustion of remedies under federal law.
 13 The provisions of 61-4-503 are not applicable against a
 14 manufacturer who has established an informal dispute
 15 settlement procedure certified by the department to be in
 16 substantial compliance with the provisions of Title 16, Code
 17 of Federal Regulations, part 703, as those provisions read
 18 on October 1, 1983, unless the consumer has first resorted
 19 to that procedure without satisfaction."

20 NEW SECTION. Section 7. Manufacturer's dispute
 21 settlement procedure -- certification -- prohibited
 22 contents. (1) A manufacturer who has established an informal
 23 dispute settlement procedure under the provisions of Title
 24 16, Code of Federal Regulations, part 703 (16 CFR, part
 25 703), as those provisions read on October 1, 1983, shall

1 submit a copy of the procedure to the department. The
 2 department shall issue a certificate of approval to a
 3 manufacturer whose procedure complies in all respects with
 4 such federal regulations and subsection (2). The department
 5 shall report to the division all manufacturer's procedures
 6 certified. The department may issue subpoenas requiring the
 7 attendance of witnesses and the production of records,
 8 documents, or other evidence necessary to it in an
 9 investigation related to the certification of a
 10 manufacturer's informal dispute settlement procedure.

11 (2) A manufacturer's informal dispute settlement
 12 procedure may not include any practices that:

13 (a) delay a decision in any dispute beyond 60 days
 14 after the date on which the consumer initially resorts to
 15 the dispute settlement procedure;

16 (b) delay performance of remedies awarded in a
 17 settlement beyond 10 days after a decision, except that a
 18 manufacturer may have 30 days following the date of decision
 19 to replace a motor vehicle or make refund to the consumer as
 20 provided in 61-4-503;

21 (c) require the consumer to make the vehicle available
 22 for inspection by a manufacturer's representative more than
 23 once;

24 (d) require the consumer to make the vehicle available
 25 for repair of the same defect more than once unless upon the

1 consumer's furnishing proof of financial responsibility as
 2 provided in 61-6-301, he is provided with the loan of a
 3 reliable vehicle not more than 2 years old during the
 4 periods required for repair;

5 (e) fail to consider in decisions any remedies
 6 provided by this part; or

7 (f) require the consumer to take any action or assume
 8 any obligation not specifically authorized under the federal
 9 regulations referred to in subsection (1).

10 NEW SECTION. Section 8. Annual audit -- revocation or
 11 suspension of certification. (1) A manufacturer establishing
 12 an informal dispute resolution procedure shall file with the
 13 department a copy of the annual audit required under Title
 14 16, Code of Federal Regulations, part 703 (16 CFR, part
 15 703), as those provisions read on October 1, 1983, along
 16 with any additional information the department may require,
 17 including the number of refunds and replacements made by the
 18 manufacturer during the period audited.

19 (2) The department may, after notice and hearing as
 20 provided in Title 2, chapter 4, suspend or revoke the
 21 certification of a manufacturer's informal dispute
 22 resolution procedure upon a finding that the procedure is
 23 being used to injure consumers. The department shall notify
 24 the division of any revocation or suspension of a
 25 certification. The division may consider the revocation or

1 suspension in licensing manufacturers under Title 61,
2 chapter 4, part 2.

3 NEW SECTION. Section 9. Notice on resale of replaced
4 vehicle. A motor vehicle which is returned to the
5 manufacturer and which requires replacement or refund may
6 not be sold in the state without a clear and conspicuous
7 written disclosure of the fact that the vehicle was
8 returned. The division may prescribe by rule the form and
9 content of the disclosure statement and a procedure by which
10 the disclosure may be removed upon a determination that the
11 vehicle is no longer defective.

12 NEW SECTION. Section 10. Arbitration procedure. (1)
13 The department shall provide an independent forum and
14 arbitration procedure for the settlement of disputes between
15 consumers and manufacturers of motor vehicles that do not
16 conform to all applicable warranties under the provisions of
17 this part. The procedure must conform to Title 27, chapter
18 5.

19 (2) Except as provided in [section 16], a consumer
20 owning a motor vehicle that fails to conform to all
21 applicable warranties may bring a grievance before an
22 arbitration panel only if the manufacturer of the motor
23 vehicle has not established an informal dispute settlement
24 procedure which has been certified by the department under
25 [section 7].

1 NEW SECTION. Section 11. Composition of arbitration
2 panel. An arbitration panel hearing a grievance under this
3 part must consist of three members. One member must be
4 chosen by the consumer, one member must be chosen by the
5 manufacturer, and one member must be chosen by mutual
6 agreement of the parties. The department may maintain a list
7 of persons willing to serve on panels from which the third
8 member may be chosen.

9 NEW SECTION. Section 12. Implementation of
10 arbitration. (1) A consumer may initiate a request for
11 arbitration by filing a notice with the department. The
12 consumer shall file, on a form prescribed by the department,
13 any information considered relevant to the resolution of the
14 dispute and shall return the form, along with a \$50 filing
15 fee, within 5 days after receiving it. The complaint form
16 must offer the consumer the choice of presenting any
17 subsequent testimony orally or in writing, but not both.

18 (2) The department shall determine whether the
19 complaint alleges the violation of any applicable warranty
20 under this part. If the department determines that a
21 complaint does not allege a warranty violation, it must
22 refund the filing fee.

23 (3) Upon acceptance of a complaint, the department
24 shall notify the manufacturer of the filing of a request for
25 arbitration and shall obtain from the manufacturer, on a

1 form prescribed by the department, any information
2 considered relevant to the resolution of the dispute. The
3 manufacturer must return the form within 15 days of receipt,
4 with a filing fee of \$250.

5 (4) Fees collected under this section shall be
6 deposited in a special revenue fund for the use of the
7 department in administering [this act].

8 NEW SECTION. Section 13. Role of department --
9 expert. (1) The department shall investigate, gather, and
10 organize all information necessary for a fair and timely
11 decision in each dispute. The department may, on behalf of
12 the arbitration panel, issue subpoenas to compel the
13 attendance of witnesses and the production of documents,
14 papers, and records relevant to the dispute.

15 (2) If requested by the panel, the department shall
16 forward a copy of all written testimony and documentary
17 evidence to an independent technical expert certified by the
18 national institute of automotive excellence. The expert
19 shall review the material and be available to advise and
20 consult with the panel. The expert shall sit as a nonvoting
21 member of the panel whenever oral testimony is presented.
22 The division may suggest an expert at the request of the
23 department.

24 NEW SECTION. Section 14. Action by arbitration panel
25 -- decision. (1) The arbitration panel shall, as

1 expeditiously as possible, but not later than 60 days after
2 the department has accepted a complaint, render a fair
3 decision based on the information gathered and disclose its
4 findings and its reasoning to the parties.

5 (2) The decision shall provide appropriate remedies,
6 including but not limited to:

7 (a) repair of the vehicle;

8 (b) replacement of the vehicle with an identical
9 vehicle or a comparable vehicle acceptable to the consumer;

10 (c) refund as provided in 61-4-503(2);

11 (d) any other remedies available under the applicable
12 warranties or 15 U.S.C. 2301 through 2312, as in effect on
13 October 1, 1983; or

14 (e) reimbursement of expenses and costs to the
15 prevailing party.

16 (3) The decision shall specify a date for performance
17 and completion of all awarded remedies. The department shall
18 contact the prevailing party within 10 working days after
19 the date for performance to determine whether performance
20 has occurred. The parties shall act in good faith in abiding
21 by any decision. In addition, if the decision is not
22 accepted, the parties shall follow the provisions of Title
23 27, chapter 5, part 3. If it is determined by the court that
24 the appellant has acted without good cause in bringing an
25 appeal of an award, the court, in its discretion, may grant

1 to the respondent his costs and reasonable attorney fees.

2 NEW SECTION. Section 15. Records of disputes. The

3 department shall maintain records of each dispute as it

4 determines, including an index of disputes by brand name and

5 model. The department shall, at intervals of no more than 6

6 months, compile and maintain statistics indicating the

7 record of compliance with arbitration decisions and the

8 number of refunds or replacements awarded. A copy of the

9 statistical summary must be filed with the division and must

10 be considered by it in determining the issuance of any

11 manufacturer license required under Title 61, chapter 4,

12 part 2.

13 NEW SECTION. Section 16. Nonconforming procedure --

14 arbitration de novo. A consumer injured by the operation of

15 any procedure that does not conform with procedures

16 established by a manufacturer pursuant to [section 7] and

17 the provisions of Title 16, Code of Federal Regulations,

18 part 703, as in effect on October 1, 1983, may appeal any

19 decision rendered as the result of such a procedure by

20 requesting arbitration de novo of the dispute by a

21 department panel. Filing procedures and fees for appeals

22 must be the same as those required in [sections 10 through

23 12]. The findings of the manufacturer's informal dispute

24 settlement procedure are admissible in evidence at the

25 department arbitration panel hearing and in any civil action

1 arising out of any warranty obligation or matter related to

2 the dispute.

3 NEW SECTION. Section 17. Display of notice. If a

4 manufacturer has not established an informal dispute

5 settlement procedure certified by the department as

6 complying with the requirements of [section 7], public

7 notice of the availability of the department's motor vehicle

8 arbitration procedure shall be prominently posted in the

9 place of business of each new car dealer licensed by the

10 division to engage in the sale of such manufacturer's new

11 motor vehicles. Display of the public notice must be a

12 condition of licensure under Title 61, chapter 4, part 2.

13 The department shall by rule prescribe the size, typeface,

14 form, and wording of the notice, which must include the

15 telephone number and address for requesting arbitration

16 services.

17 NEW SECTION. Section 18. Rulemaking. The department

18 may adopt rules to implement the provisions of this part.

19 NEW SECTION. Section 19. Penalty. A violation of any

20 provision of this part is an unfair or deceptive trade

21 practice under Title 30, chapter 14, part 2, and the

22 penalties provided in 30-14-224(1) apply.

23 NEW SECTION. Section 20. Applicability. This act

24 applies to automobiles sold on or after October 1, 1985.

25 NEW SECTION. Section 21. Severability. If a part of

1 this act is invalid, all valid parts that are severable from
2 the invalid part remain in effect. If a part of this act is
3 invalid in one or more of its applications, the part remains
4 in effect in all valid applications that are severable from
5 the invalid applications.

6 NEW SECTION. Section 22. Codification instruction.
7 Sections 7 through 19 are intended to be codified as an
8 integral part of Title 61, chapter 4, part 5, and the
9 provisions of Title 61, chapter 4, part 5, apply to sections
10 7 through 19.

11 NEW SECTION. Section 23. Coordination. If this act
12 and __Bill__ [LC 909] are both passed and approved,
13 including section 12 of this act providing for a special
14 revenue fund and the section of __Bill__ [LC 909] creating
15 an investigative account, the reference to "a special
16 revenue fund" in section 12 of this act must be changed to
17 "the investigative account" created in __Bill__ [LC 909].

-End-

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. FNN 167-85Form BD-15

In compliance with a written request received January 23, 19 85, there is hereby submitted a Fiscal Note for H.B. 295 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

H.B. 295 ("LEMON LAW II") revises new motor vehicle warranty remedy laws, establishes warranty periods and provides for state arbitration mechanism, consumer remedies, disclosures and penalties.

ASSUMPTIONS:

Assuming 10 complaints will be received in FY 86, and 20 complaints in FY 87, fees will generate \$3,000 and \$6,000 respectfully. It is assumed that the legal division will absorb substantial rental costs and capital expenditure requirements.

EXPENDITURES:

1 FTE will be required to establish the arbitration mechanisms procedure and perform certification. 1/2 FTE will provide maintenance after FY 86.

| | | | | | |
|--------|---------------------------|-----------------|--------|-----------------------------|-----------------|
| FY 86: | Salary (1 FTE @ Grade 12) | \$20,812 | FY 87: | Salary (1/2 FTE @ Grade 12) | \$10,406 |
| | Operating expenses | 13,500 | | Operating Expenses | 8,500 |
| | | <u>\$34,312</u> | | | <u>\$18,906</u> |
| | Fees generated | - 3,000 | | Fees generated | - 6,000 |
| | General Fund Cost | <u>\$31,312</u> | | General Fund Cost | <u>\$12,906</u> |

AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

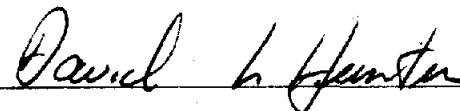
None

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Revenue and expenditures should remain fairly stable during the 1980's.

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

None



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: JAN 25, 1985

FISCAL NOTE

In compliance with a written request received February 4, 19 85, there is hereby submitted a Fiscal Note for S.B. 295 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

"AN ACT TO PROHIBIT THE DEPOSIT AND INVESTMENT OF STATE PUBLIC FUNDS IN A FINANCIAL INSTITUTION THAT HAS A LOAN OUTSTANDING TO THE REPUBLIC OF SOUTH AFRICA OR A SOUTH AFRICAN CORPORATION: TO PROHIBIT THE INVESTMENT OF STATE PUBLIC FUNDS IN A FIRM THAT IS DOING BUSINESS IN THAT COUNTRY: TO PROVIDE A SCHEDULE FOR THE DIVESTITURE OF ANY CURRENT INVESTMENT IN SUCH FINANCIAL INSTITUTION OR FIRM: AMENDING SECTION 17-6-211, MCA; AND PROVIDING AN EFFECTIVE DATE."

ASSUMPTIONS:

1. 1,265,278 common shares will be divested at \$.20 per share (commission costs).
2. \$157,570,000 par value of bonds will be divested at \$2.50 per 1,000 par value.
3. The shares and bonds reflected in No. 1 and No. 2 are associated with companies identified in Section 1, Paragraph 4 of the bill. (The list used for this fiscal note was provided by Payne Weber and may or may not be the actual list noted in Paragraph 4, Section 1.
4. The act of divesting and reinvesting will require additional staff for the Board of Investments.

FISCAL IMPACT:

| | <u>FY 86</u> | <u>FY 87</u> | <u>FY 88</u> |
|---------------------------|-------------------|-------------------|-------------------|
| Commission Expense | \$ <u>215,660</u> | \$ <u>215,660</u> | \$ <u>215,660</u> |
| Research for Reinvestment | <u>133,919</u> | <u>133,919</u> | <u>133,919</u> |
| Proprietary Fund Cost* | \$ <u>349,579</u> | \$ <u>349,579</u> | \$ <u>349,579</u> |

*This cost would reduce the amount of earnings available for transfer to the General Fund.

TECHNICAL NOTES:

1. Future bids for the "state bank" would have to assure compliance with the proposed legislation. This might limit the number of banks that could bid.
2. It is not clear if the legislation impacts the purchase of loans from financial institutions. If so, there could be impact on the Montana Economic Development Board if participating banks are on the list mentioned in Section 1, Paragraph 4.

David L. Hunter
BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 8 1985
SB 295

APPROVED BY COMM. ON
BUSINESS AND LABOR

1 STATEMENT OF INTENT

2 HOUSE BILL 295

3 House Business and Labor Committee

4

5 A statement of intent is required for this act because
6 it delegates rulemaking authority to the department of
7 commerce. The department may adopt rules governing
8 certification and auditing of manufacturers' informal
9 dispute settlement procedures and procedures for consumers
10 to implement the arbitration procedures of the department.
11 It is the intent of the legislature that in developing these
12 rules, the department look to procedures utilized by the
13 state of Connecticut in implementing its "Lemon Law II".

1 HOUSE BILL NO. 295

2 INTRODUCED BY HARRINGTON, PAVLOVICH, MENAHAN, CHRISTIAENS,
 3 MCCORMICK, KRUEGER, PECK, REAM, PISTORIA, GARCIA, HARP,
 4 J. HAMMOND, HAND, BACHINI, VINCENT, HANSEN, LYNCH,
 5 JACOBSON, STIMATZ, DRISCOLL
 6

7 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 8 NEW MOTOR VEHICLE WARRANTY REMEDY LAW; INCREASING MINIMUM
 9 WARRANTY PERIODS; PROVIDING FOR REMEDIES, DISCLOSURES, AND
 10 PENALTIES; CREATING AN ARBITRATION PROCEDURE; AMENDING
 11 SECTIONS 61-4-501 THROUGH 61-4-503 AND 61-4-505 THROUGH
 12 61-4-507, MCA; AND PROVIDING AN APPLICABILITY PROVISION."
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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 61-4-501, MCA, is amended to read:

16 "61-4-501. Definitions. For purposes of this part, the
 17 following definitions apply:

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 19 charges, including but not limited to sales tax, property
 20 tax, license and registration fees, and fees in lieu of tax.

21 (2) "Consumer" means the purchaser, other than for
 22 purposes of resale, of a motor vehicle that has not been
 23 brought into nonconformity as the result of abuse, neglect,
 24 or unauthorized modifications or alterations by the
 25 purchaser, any person to whom the motor vehicle is

1 transferred during the duration of an express warranty
 2 applicable to the motor vehicle, or any other person
 3 entitled by the terms of the warranty to the benefits of its
 4 provisions.

5 (3) "Department" means the department of commerce
 6 created in 2-15-1801.

7 (4) "Division" means the division of motor vehicles
 8 defined in 61-1-301.

9 ~~(5) "Finance charge" means a finance charge as defined~~
 10 ~~in 31-1-202, incurred by a consumer after he first reports a~~
 11 ~~nonconformity to the manufacturer or agent and during any~~
 12 ~~subsequent period when the vehicle is out of service by~~
 13 ~~reason of repair related to the nonconformity.~~

14 (5) "Incidental damage" means incidental and
 15 consequential damage as defined in 30-2-715.

16 ~~(7)(6) "Motor vehicle" means a vehicle propelled by~~
 17 ~~its own power, designed primarily to transport persons or~~
 18 ~~property upon the public highways, and sold in this state.~~
 19 ~~The term does not include a motor home as defined in~~
 20 ~~61-1-130 OR A TRUCK WITH 10,000 POUNDS OR MORE GROSS VEHICLE~~
 21 ~~WEIGHT RATING.~~

22 (7) "Reasonable allowance for use" is an amount
 23 directly attributable to use of the motor vehicle by the
 24 consumer and any previous consumers prior to the first
 25 written notice of the nonconformity to the manufacturer or

1 its agent and during any subsequent period when the vehicle
 2 is not out of service because of nonconformity. The
 3 reasonable allowance for use shall be computed by
 4 multiplying the total contract price of the vehicle by a
 5 fraction having as its denominator 100,000 and having as its
 6 numerator the number of miles that the vehicle traveled
 7 prior to the manufacturer's acceptance of its return.

8 ~~(3)(9)(B)~~ "Warranty period" means ~~the--term--of--an~~
 9 ~~express-agreement-or~~ the period ending ~~1-year~~ 2 years after
 10 the date of the original delivery to the consumer of a new
 11 motor vehicle, or during the first 18,000 miles of
 12 operation, whichever is earlier."

13 Section 2. Section 61-4-502, MCA, is amended to read:

14 "61-4-502. Warranty Notice -- warranty enforceable
 15 after warranty period -- when. (1) If a consumer notifies in
 16 writing the manufacturer or its agent during the warranty
 17 period that a new motor vehicle does not conform to all
 18 applicable express warranties, the repairs necessary to
 19 conform the new motor vehicle to the express warranties
 20 shall be made by or at the expense of the warrantor,
 21 regardless of the expiration of the warranty period after
 22 notification of nonconformity is given by the consumer.

23 (2) The warranty period of an express warranty is
 24 extended to equal the time that repair services are not
 25 available because of war or invasion or because of strike or

1 fire, flood, or other natural disaster. The presumption
 2 provided herein may not apply against a manufacturer who has
 3 not received prior written notification from or on behalf of
 4 the consumer and has not had an opportunity to cure the
 5 alleged defect.

6 (3) The manufacturer must clearly and conspicuously
 7 disclose to the consumer in the warranty or owner's manual
 8 that written notification of a nonconformity is required
 9 before a consumer may be eligible for a refund or
 10 replacement of the vehicle. The manufacturer must include
 11 with the warranty or owner's manual the name and address
 12 where the written notification must be sent."

13 Section 3. Section 61-4-503, MCA, is amended to read:

14 "61-4-503. Replacement for nonconformity to warranty.

15 (1) If after a reasonable number of attempts the
 16 manufacturer or its agent or authorized dealer is unable,
 17 during the warranty period, to conform the new motor vehicle
 18 to any applicable express warranty by repairing or
 19 correcting any defect or condition that substantially
 20 impairs the use and market value or safety of the motor
 21 vehicle to the consumer, the manufacturer shall replace it
 22 with a new motor vehicle of the same model and style and of
 23 equal value, unless for reasons of lack of availability such
 24 replacement is impossible, in which case the manufacturer
 25 shall replace it with a vehicle of comparable market value.

1 (2) As an alternative to replacement, the manufacturer
 2 may accept return of the new motor vehicle from the consumer
 3 upon refund to him of the full purchase price, ~~excluding all~~
 4 ~~sales taxes, license fees, registration fees, and any~~
 5 ~~similar governmental charges~~ plus REASONABLE collateral
 6 ~~charges, finance charges,~~ and incidental damages, less a
 7 reasonable allowance for the consumer's use of the motor
 8 vehicle. The refund shall be paid to the consumer and to a
 9 lienholder, if any, in proportion to their interests. A
 10 reasonable allowance for use is an amount directly
 11 attributable to use by the consumer and any previous
 12 consumers prior to his first written report of the
 13 nonconformity to the manufacturer or its agent and during
 14 any subsequent period when the vehicle is not out of service
 15 because of nonconformity."

16 Section 4. Section 61-4-505, MCA, is amended to read:
 17 "61-4-505. Dealer exemption -- liability to
 18 manufacturer. (1) Nothing in this part imposes any liability
 19 on a dealer or creates a cause of action by a consumer
 20 against a dealer under 61-4-503.

21 (2) A dealer is not liable to a manufacturer for any
 22 refunds or vehicle replacements in the absence of evidence
 23 indicating that repairs made by the dealer were carried out
 24 in a manner inconsistent with the manufacturer's
 25 instructions."

1 Section 5. Section 61-4-506, MCA, is amended to read:
 2 "61-4-506. Provisions nonexclusive -- applicability of
 3 UCC -- defenses. (1) The provisions of this part do not
 4 limit the rights or remedies available to a consumer under
 5 any other law.

6 (2) All express and implied warranties arising from
 7 the sale of a new motor vehicle are subject to the
 8 provisions of Title 30, chapter 2, part 3.

9 (3) It is an affirmative defense to a claim brought
 10 under this part that an alleged nonconformity does not
 11 substantially impair the use, market value, or safety of the
 12 vehicle or that the nonconformity is the result of abuse,
 13 neglect, or unauthorized modification or alteration of a
 14 motor vehicle by the consumer."

15 Section 6. Section 61-4-507, MCA, is amended to read:
 16 "61-4-507. Exhaustion of remedies under federal law.
 17 The provisions of 61-4-503 are not applicable against a
 18 manufacturer who has established an informal dispute
 19 settlement procedure certified by the department to be in
 20 substantial compliance with the provisions of Title 16, Code
 21 of Federal Regulations, part 703, as those provisions read
 22 on October 1, 1983, unless the consumer has first resorted
 23 to that procedure without satisfaction."

24 NEW SECTION. Section 7. Manufacturer's dispute
 25 settlement procedure -- certification -- prohibited

1 contents. (1) A manufacturer who has established an informal
 2 dispute settlement procedure under the provisions of Title
 3 16, Code of Federal Regulations, part 703 (16 CFR, part
 4 703), as those provisions read on October 1, 1983, shall
 5 submit a copy of the procedure to the department. The
 6 department shall issue a certificate of approval to a
 7 manufacturer whose procedure complies in all respects with
 8 such federal regulations and subsection (2). The department
 9 shall report to the division all manufacturer's procedures
 10 certified. The department may issue subpoenas requiring the
 11 attendance of witnesses and the production of records,
 12 documents, or other evidence necessary to it in an
 13 investigation related to the certification of a
 14 manufacturer's informal dispute settlement procedure.

15 (2) A manufacturer's informal dispute settlement
 16 procedure may not include any practices that:

17 (a) delay a decision in any dispute beyond 60 days
 18 after the date on which the consumer initially resorts to
 19 the dispute settlement procedure;

20 (b) delay performance of remedies awarded in a
 21 settlement beyond 10 days after a decision, except that a
 22 manufacturer may have 30 days following the date of decision
 23 to replace a motor vehicle or make refund to the consumer as
 24 provided in 61-4-503;

25 (c) require the consumer to make the vehicle available

1 for inspection by a manufacturer's representative more than
 2 once;

3 (d) require the consumer to make the vehicle available
 4 for repair of the same defect more than once unless upon the
 5 consumer's furnishing proof of financial responsibility as
 6 provided in 61-6-301, he is provided with the loan of a
 7 reliable vehicle not more than 2 years old during the
 8 periods required for repair;

9 (e) fail to consider in decisions any remedies
 10 provided by this part; or

11 (f) require the consumer to take any action or assume
 12 any obligation not specifically authorized under the federal
 13 regulations referred to in subsection (1).

14 NEW SECTION. Section 8. Annual audit -- revocation or
 15 suspension of certification. (1) A manufacturer establishing
 16 an informal dispute resolution procedure shall file with the
 17 department a copy of the annual audit required under Title
 18 16, Code of Federal Regulations, part 703 (16 CFR, part
 19 703), as those provisions read on October 1, 1983, along
 20 with any additional information the department may require,
 21 including the number of refunds and replacements made by the
 22 manufacturer during the period audited.

23 (2) The department may, after notice and hearing as
 24 provided in Title 2, chapter 4, suspend or revoke the
 25 certification of a manufacturer's informal dispute

1 resolution procedure upon a finding that the procedure is
 2 being used to ~~injure~~ CREATE HARDSHIP TO consumers. The
 3 department shall notify the division of any revocation or
 4 suspension of a certification. The division may consider the
 5 revocation or suspension in licensing manufacturers under
 6 Title 61, chapter 4, part 2.

7 NEW SECTION. Section 9. Notice on resale of replaced
 8 vehicle. A motor vehicle which is returned to the
 9 manufacturer and which requires replacement or refund may
 10 not be sold in the state without a clear and conspicuous
 11 written disclosure of the fact that the vehicle was
 12 returned. The division may prescribe by rule the form and
 13 content of the disclosure statement and a procedure by which
 14 the disclosure may be removed upon a determination that the
 15 vehicle is no longer defective.

16 NEW SECTION. Section 10. Arbitration procedure. (1)
 17 The department shall provide an independent forum and
 18 arbitration procedure for the settlement of disputes between
 19 consumers and manufacturers of motor vehicles that do not
 20 conform to all applicable warranties under the provisions of
 21 this part. The procedure must conform to Title 27, chapter
 22 5.

23 (2) Except as provided in [section 16], a consumer
 24 owning a motor vehicle that fails to conform to all
 25 applicable warranties may bring a grievance before an

1 arbitration panel only if the manufacturer of the motor
 2 vehicle has not established an informal dispute settlement
 3 procedure which has been certified by the department under
 4 [section 7].

5 NEW SECTION. Section 11. Composition of arbitration
 6 panel. An arbitration panel hearing a grievance under this
 7 part must consist of three members. One member must be
 8 chosen by the consumer, one member must be chosen by the
 9 manufacturer, and one member must be chosen by mutual
 10 agreement of the parties. The department may maintain a list
 11 of persons willing to serve on panels from which the third
 12 member may be chosen.

13 NEW SECTION. Section 12. Implementation of
 14 arbitration. (1) A consumer may initiate a request for
 15 arbitration by filing a notice with the department. The
 16 consumer shall file, on a form prescribed by the department,
 17 any information considered relevant to the resolution of the
 18 dispute and shall return the form, along with a \$50 filing
 19 fee, within 5 days after receiving it. The complaint form
 20 must offer the consumer the choice of presenting any
 21 subsequent testimony orally or in writing, but not both.

22 (2) The department shall determine whether the
 23 complaint alleges the violation of any applicable warranty
 24 under this part. If the department determines that a
 25 complaint does not allege a warranty violation, it must

1 refund the filing fee.

2 (3) Upon acceptance of a complaint, the department
3 shall notify the manufacturer of the filing of a request for
4 arbitration and shall obtain from the manufacturer, on a
5 form prescribed by the department, any information
6 considered relevant to the resolution of the dispute. The
7 manufacturer must return the form within 15 days of receipt,
8 with a filing fee of \$250.

9 (4) Fees collected under this section shall be
10 deposited in a special revenue fund for the use of the
11 department in administering [this act].

12 (5) THE MANUFACTURER'S FEE PROVIDED IN SUBSECTION (3)
13 IS DUE ONLY IF THE DEPARTMENT ARBITRATION PROCEDURES ARE
14 UTILIZED.

15 NEW SECTION. Section 13. Role of department --
16 expert. (1) The department shall investigate, gather, and
17 organize all information necessary for a fair and timely
18 decision in each dispute. The department may, on behalf of
19 the arbitration panel, issue subpoenas to compel the
20 attendance of witnesses and the production of documents,
21 papers, and records relevant to the dispute.

22 (2) If requested by the panel, the department shall
23 forward a copy of all written testimony and documentary
24 evidence to an independent technical expert certified by the
25 national institute of automotive excellence. The expert

1 shall review the material and be available to advise and
2 consult with the panel. The expert shall sit as a nonvoting
3 member of the panel whenever oral testimony is presented.
4 The division may suggest an expert at the request of the
5 department.

6 NEW SECTION. Section 14. Action by arbitration panel
7 -- decision. (1) The arbitration panel shall, as
8 expeditiously as possible, but not later than 60 days after
9 the department has accepted a complaint, render a fair
10 decision based on the information gathered and disclose its
11 findings and its reasoning to the parties.

12 (2) The decision shall provide appropriate remedies,
13 including but not limited to:

- 14 (a) repair of the vehicle;
- 15 (b) replacement of the vehicle with an identical
16 vehicle or a comparable vehicle acceptable to the consumer;
- 17 (c) refund as provided in 61-4-503(2);
- 18 (d) any other remedies available under the applicable
19 warranties or 15 U.S.C. 2301 through 2312, as in effect on
20 October 1, 1983; or
- 21 (e) reimbursement of expenses and costs to the
22 prevailing party.

23 (3) The decision shall specify a date for performance
24 and completion of all awarded remedies. The department shall
25 contact the prevailing party within 10 working days after

1 the date for performance to determine whether performance
 2 has occurred. The parties shall act in good faith in abiding
 3 by any decision. In addition, if the decision is not
 4 accepted, the parties shall follow the provisions of Title
 5 27, chapter 5, part 3. If it is determined by the court that
 6 the appellant has acted without good cause in bringing an
 7 appeal of an award, the court, in its discretion, may grant
 8 to the respondent his costs and reasonable attorney fees.

9 NEW SECTION. Section 15. Records of disputes. The
 10 department shall maintain records of each dispute as it
 11 determines, including an index of disputes by brand name and
 12 model. The department shall, at intervals of no more than 6
 13 months, compile and maintain statistics indicating the
 14 record of compliance with arbitration decisions and the
 15 number of refunds or replacements awarded. A copy of the
 16 statistical summary must be filed with the division and must
 17 be considered by it in determining the issuance of any
 18 manufacturer license required under Title 61, chapter 4,
 19 part 2.

20 NEW SECTION. Section 16. Nonconforming procedure --
 21 arbitration de novo. A consumer injured by the operation of
 22 any procedure that does not conform with procedures
 23 established by a manufacturer pursuant to [section 7] and
 24 the provisions of Title 16, Code of Federal Regulations,
 25 part 703, as in effect on October 1, 1983, may appeal any

1 decision rendered as the result of such a procedure by
 2 requesting arbitration de novo of the dispute by a
 3 department panel. Filing procedures and fees for appeals
 4 must be the same as those required in [sections 10 through
 5 12]. The findings of the manufacturer's informal dispute
 6 settlement procedure are admissible in evidence at the
 7 department arbitration panel hearing and in any civil action
 8 arising out of any warranty obligation or matter related to
 9 the dispute.

10 NEW SECTION. Section 17. ~~Display of notice. If a~~
 11 ~~manufacturer has not established an informal dispute~~
 12 ~~settlement procedure certified by the department as~~
 13 ~~complying with the requirements of [section 7], public~~
 14 ~~notice of the availability of the department's motor vehicle~~
 15 ~~arbitration procedure shall be prominently posted in the~~
 16 ~~place of business of each new car dealer licensed by the~~
 17 ~~division to engage in the sale of such manufacturer's new~~
 18 ~~motor vehicles. Display of the public notice must be a~~
 19 ~~condition of licensure under Title 61, chapter 4, part 2.~~
 20 ~~The department shall by rule prescribe the size, typeface,~~
 21 ~~form, and wording of the notice, which must include the~~
 22 ~~telephone number and address for requesting arbitration~~
 23 ~~services. NONDELEGABLE. THE LIABILITIES AND OBLIGATIONS~~
 24 ~~CONTAINED IN THIS ACT MAY NOT BE DELEGATED OR ASSIGNED TO OR~~
 25 ~~ASSUMED BY ANY OTHER PERSON OR ENTITY.~~

1 NEW SECTION. Section 18. Rulemaking. The department
2 may adopt rules to implement the provisions of this part.

3 NEW SECTION. Section 19. Penalty. A violation of any
4 provision of this part is an unfair or deceptive trade
5 practice under Title 30, chapter 14, part 2, and the
6 penalties provided in 30-14-224(1) apply.

7 NEW SECTION. Section 20. Applicability. This act
8 applies to automobiles sold on or after October 1, 1985.

9 NEW SECTION. Section 21. Severability. If a part of
10 this act is invalid, all valid parts that are severable from
11 the invalid part remain in effect. If a part of this act is
12 invalid in one or more of its applications, the part remains
13 in effect in all valid applications that are severable from
14 the invalid applications.

15 NEW SECTION. Section 22. Codification instruction.
16 Sections 7 through 19 are intended to be codified as an
17 integral part of Title 61, chapter 4, part 5, and the
18 provisions of Title 61, chapter 4, part 5, apply to sections
19 7 through 19.

20 NEW SECTION. Section 23. Coordination. If this act
21 and Senate Bill No. 252 are both passed and approved,
22 including section 12 of this act providing for a special
23 revenue fund and the section of Senate Bill No. 252 creating
24 an investigative account, the reference to "a special
25 revenue fund" in section 12 of this act must be changed to

1 "the investigative account" created in Senate Bill No. 252.

-End-

RE-REFERRED AND
APPROVED BY COMMITTEE
ON APPROPRIATIONS

AS AMENDED

1 STATEMENT OF INTENT

2 HOUSE BILL 295

3 House Business and Labor Committee

4

5 A statement of intent is required for this act because
6 it delegates rulemaking authority to the department of
7 commerce. The department may adopt rules governing
8 certification and auditing of manufacturers' informal
9 dispute settlement procedures and procedures for consumers
10 to implement the arbitration procedures of the department.
11 It is the intent of the legislature that in developing these
12 rules, the department look to procedures utilized by the
13 state of Connecticut in implementing its "Lemon Law II".

1 HOUSE BILL NO. 295

2 INTRODUCED BY HARRINGTON, PAVLOVICH, MENAHAN, CHRISTIAENS,
 3 MCCORMICK, KRUEGER, PECK, REAM, PISTORIA, GARCIA, HARP,
 4 J. HAMMOND, HAND, BACHINI, VINCENT, HANSEN, LYNCH,
 5 JACOBSON, STIMATZ, DRISCOLL
 6

7 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 8 NEW MOTOR VEHICLE WARRANTY REMEDY LAW; INCREASING MINIMUM
 9 WARRANTY PERIODS; PROVIDING FOR REMEDIES, DISCLOSURES, AND
 10 PENALTIES; CREATING AN ARBITRATION PROCEDURE; AMENDING
 11 SECTIONS 61-4-501 THROUGH 61-4-503 AND 61-4-505 THROUGH
 12 61-4-507, MCA; AND PROVIDING AN APPLICABILITY PROVISION AND
 13 AN IMMEDIATE EFFECTIVE DATE."
 14

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

16 Section 1. Section 61-4-501, MCA, is amended to read:

17 "61-4-501. Definitions. For purposes of this part, the
 18 following definitions apply:

19 {1} "Collateral charge" means all governmental
 20 charges, including but not limited to sales tax, property
 21 tax, license and registration fees, and fees in lieu of tax.

22 {+}{2} "Consumer" means the purchaser, other than for
 23 purposes of resale, of a motor vehicle that has not been
 24 brought into nonconformity as the result of abuse, neglect,
 25 or unauthorized modifications or alterations by the

1 purchaser, any person to whom the motor vehicle is
 2 transferred during the duration of an express warranty
 3 applicable to the motor vehicle, or any other person
 4 entitled by the terms of the warranty to the benefits of its
 5 provisions.

6 {3} "Department" means the department of commerce
 7 created in 2-15-1801.

8 {4} "Division" means the division of motor vehicles
 9 defined in 61-1-301.

10 {5}--"Finance charge" means a finance charge as defined
 11 in 31-1-202, incurred by a consumer after he first reports a
 12 nonconformity--to--the--manufacturer--or--agent--and--during--any
 13 subsequent period when the vehicle--is--out--of--service--by
 14 reason of repair related to the nonconformity.

15 {6}{5} "Incidental damage" means incidental and
 16 consequential damage as defined in 30-2-715.

17 {2}{7}{6} "Motor vehicle" means a vehicle propelled by
 18 its own power, designed primarily to transport persons or
 19 property upon the public highways, and sold in this state.
 20 The term does not include a motor home as defined in
 21 61-1-130 OR, A TRUCK WITH 10,000 POUNDS OR MORE GROSS
 22 VEHICLE WEIGHT RATING, OR A MOTORCYCLE AS DEFINED IN
 23 61-1-105.

24 {8}{7} "Reasonable allowance for use" is an amount
 25 directly attributable to use of the motor vehicle by the

1 consumer and any previous consumers prior to the first
 2 written notice of the nonconformity to the manufacturer or
 3 its agent and during any subsequent period when the vehicle
 4 is not out of service because of nonconformity. The
 5 reasonable allowance for use shall be computed by
 6 multiplying the total contract price of the vehicle by a
 7 fraction having as its denominator 100,000 and having as its
 8 numerator the number of miles that the vehicle traveled
 9 prior to the manufacturer's acceptance of its return.

10 ~~(3)(9)(8)~~ "Warranty period" means ~~the term of an~~
 11 ~~express agreement or~~ the period ending 1-year 2 years after
 12 the date of the original delivery to the consumer of a new
 13 motor vehicle, or during the first 18,000 miles of
 14 operation, whichever is earlier."

15 Section 2. Section 61-4-502, MCA, is amended to read:

16 "61-4-502. Warranty Notice -- warranty enforceable
 17 after warranty period -- when. (1) If a consumer notifies in
 18 writing the manufacturer or its agent during the warranty
 19 period that a new motor vehicle does not conform to all
 20 applicable express warranties, the repairs necessary to
 21 conform the new motor vehicle to the express warranties
 22 shall be made by or at the expense of the warrantor,
 23 regardless of the expiration of the warranty period after
 24 notification of nonconformity is given by the consumer.

25 (2) The warranty period of an express warranty is

1 extended to equal the time that repair services are not
 2 available because of war or invasion or because of strike or
 3 fire, flood, or other natural disaster. The presumption
 4 provided herein may not apply against a manufacturer who has
 5 not received prior written notification from or on behalf of
 6 the consumer and has not had an opportunity to cure the
 7 alleged defect.

8 (3) The manufacturer must clearly and conspicuously
 9 disclose to the consumer in the warranty or owner's manual
 10 that written notification of a nonconformity is required
 11 before a consumer may be eligible for a refund or
 12 replacement of the vehicle. The manufacturer must include
 13 with the warranty or owner's manual the name and address
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 17 (1) If after a reasonable number of attempts the
 18 manufacturer or its agent or authorized dealer is unable,
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 20 to any applicable express warranty by repairing or
 21 correcting any defect or condition that substantially
 22 impairs the use and market value or safety of the motor
 23 vehicle to the consumer, the manufacturer shall replace it
 24 with a new motor vehicle of the same model and style and of
 25 equal value, unless for reasons of lack of availability such

1 replacement is impossible, in which case the manufacturer
2 shall replace it with a vehicle of comparable market value.

3 (2) As an alternative to replacement, the manufacturer
4 may accept return of the new motor vehicle from the consumer
5 upon refund to him of the full purchase price, ~~excluding all~~
6 ~~sales--taxes,--license--fees,--registration--fees,--and--any~~
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8 ~~charges,--finance--charges,~~ and incidental damages, less a
9 reasonable allowance for the consumer's use of the motor
10 vehicle. The refund shall be paid to the consumer and to a
11 lienholder, if any, in proportion to their interests. A
12 ~~reasonable---allowance---for---use---is---an---amount---directly~~
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14 ~~consumers---prior---to---his---first---written---report---of---the~~
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20 manufacturer. (1) Nothing in this part imposes any liability
21 on a dealer or creates a cause of action by a consumer
22 against a dealer under 61-4-503.

23 (2) A dealer is not liable to a manufacturer for any
24 refunds or vehicle replacements in the absence of evidence
25 indicating that repairs made by the dealer were carried out

1 in a manner inconsistent with the manufacturer's
2 instructions."

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4 "61-4-506. Provisions nonexclusive -- applicability of
5 UCC -- defenses. (1) The provisions of this part do not
6 limit the rights or remedies available to a consumer under
7 any other law.

8 (2) All express and--implied warranties arising from
9 the sale of a new motor vehicle are subject to the
10 provisions of Title 30, chapter 2, part 3.

11 (3) It is an affirmative defense to a claim brought
12 under this part that an alleged nonconformity does not
13 substantially impair the use, market value, or safety of the
14 vehicle or that the nonconformity is the result of abuse,
15 neglect, or unauthorized modification or alteration of a
16 motor vehicle by the consumer."

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20 manufacturer who has established an informal dispute
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 24 manufacturer may have 30 days following the date of decision
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1 provided in 61-4-503;

2 (c) require the consumer to make the vehicle available
 3 for inspection by a manufacturer's representative more than
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 2 certification of a manufacturer's informal dispute
 3 resolution procedure upon a finding that the procedure is
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 25 complaint alleges the violation of any applicable warranty

1 under this part. If the department determines that a
2 complaint does not allege a warranty violation, it must
3 refund the filing fee.

4 (3) Upon acceptance of a complaint, the department
5 shall notify the manufacturer of the filing of a request for
6 arbitration and shall obtain from the manufacturer, on a
7 form prescribed by the department, any information
8 considered relevant to the resolution of the dispute. The
9 manufacturer must return the form within 15 days of receipt,
10 with a filing fee of \$250.

11 (4) Fees collected under this section shall be
12 deposited in a special revenue fund for the use of the
13 department in administering [this act].

14 (5) THE MANUFACTURER'S FEE PROVIDED IN SUBSECTION (3)
15 IS DUE ONLY IF THE DEPARTMENT ARBITRATION PROCEDURES ARE
16 UTILIZED.

17 NEW SECTION. Section 13. Role of department --
18 expert. (1) The department shall investigate, gather, and
19 organize all information necessary for a fair and timely
20 decision in each dispute. The department may, on behalf of
21 the arbitration panel, issue subpoenas to compel the
22 attendance of witnesses and the production of documents,
23 papers, and records relevant to the dispute.

24 (2) If requested by the panel, the department shall
25 forward a copy of all written testimony and documentary

1 evidence to an independent technical expert certified by the
2 national institute of automotive excellence. The expert
3 shall review the material and be available to advise and
4 consult with the panel. The expert shall sit as a nonvoting
5 member of the panel whenever oral testimony is presented.
6 The division may suggest an expert at the request of the
7 department.

8 NEW SECTION. Section 14. Action by arbitration panel
9 -- decision. (1) The arbitration panel shall, as
10 expeditiously as possible, but not later than 60 days after
11 the department has accepted a complaint, render a fair
12 decision based on the information gathered and disclose its
13 findings and its reasoning to the parties.

14 (2) The decision shall provide appropriate remedies,
15 including but not limited to:

- 16 (a) repair of the vehicle;
- 17 (b) replacement of the vehicle with an identical
18 vehicle or a comparable vehicle acceptable to the consumer;
- 19 (c) refund as provided in 61-4-503(2);
- 20 (d) any other remedies available under the applicable
21 warranties or 15 U.S.C. 2301 through 2312, as in effect on
22 October 1, 1983; or

23 (e) reimbursement of expenses and costs to the
24 prevailing party.

25 (3) The decision shall specify a date for performance

1 and completion of all awarded remedies. The department shall
 2 contact the prevailing party within 10 working days after
 3 the date for performance to determine whether performance
 4 has occurred. The parties shall act in good faith in abiding
 5 by any decision. In addition, if the decision is not
 6 accepted, the parties shall follow the provisions of Title
 7 27, chapter 5, part 3. If it is determined by the court that
 8 the appellant has acted without good cause in bringing an
 9 appeal of an award, the court, in its discretion, may grant
 10 to the respondent his costs and reasonable attorney fees.

11 NEW SECTION. Section 15. Records of disputes. The
 12 department shall maintain records of each dispute as it
 13 determines, including an index of disputes by brand name and
 14 model. The department shall, at intervals of no more than 6
 15 months, compile and maintain statistics indicating the
 16 record of compliance with arbitration decisions and the
 17 number of refunds or replacements awarded. A copy of the
 18 statistical summary must be filed with the division and must
 19 be considered by it in determining the issuance of any
 20 manufacturer license required under Title 61, chapter 4,
 21 part 2.

22 NEW SECTION. Section 16. Nonconforming procedure --
 23 arbitration de novo. A consumer injured by the operation of
 24 any procedure that does not conform with procedures
 25 established by a manufacturer pursuant to [section 7] and

1 the provisions of Title 16, Code of Federal Regulations,
 2 part 703, as in effect on October 1, 1983, may appeal any
 3 decision rendered as the result of such a procedure by
 4 requesting arbitration de novo of the dispute by a
 5 department panel. Filing procedures and fees for appeals
 6 must be the same as those required in [sections 10 through
 7 12]. The findings of the manufacturer's informal dispute
 8 settlement procedure are admissible in evidence at the
 9 department arbitration panel hearing and in any civil action
 10 arising out of any warranty obligation or matter related to
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12 NEW SECTION. Section 17. ~~Display of notice -- if a~~
 13 ~~manufacturer has not established an informal dispute~~
 14 ~~settlement procedure certified by the department as~~
 15 ~~complying with the requirements of {section 7} public~~
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 17 ~~arbitration procedure shall be prominently posted in the~~
 18 ~~place of business of each new car dealer licensed by the~~
 19 ~~division to engage in the sale of such manufacturer's new~~
 20 ~~motor vehicles. Display of the public notice must be a~~
 21 ~~condition of licensure under Title 61, chapter 4, part 2.~~
 22 ~~The department shall by rule prescribe the size, typeface,~~
 23 ~~form, and wording of the notice, which must include the~~
 24 ~~telephone number and address for requesting arbitration~~
 25 ~~services.~~ NONDELEGABLE. THE LIABILITIES AND OBLIGATIONS

1 CONTAINED IN THIS ACT MAY NOT BE DELEGATED OR ASSIGNED TO OR
 2 ASSUMED BY ANY OTHER PERSON OR ENTITY.

3 NEW SECTION. Section 18. Rulemaking. The department
 4 may adopt rules to implement the provisions of this part.

5 NEW SECTION. Section 19. Penalty. A violation of any
 6 provision of this part is an unfair or deceptive trade
 7 practice under Title 30, chapter 14, part 2, and the
 8 penalties provided in 30-14-224(1) apply.

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 12 this act is invalid, all valid parts that are severable from
 13 the invalid part remain in effect. If a part of this act is
 14 invalid in one or more of its applications, the part remains
 15 in effect in all valid applications that are severable from
 16 the invalid applications.

17 NEW SECTION. Section 22. Codification instruction.
 18 Sections 7 through 19 are intended to be codified as an
 19 integral part of Title 61, chapter 4, part 5, and the
 20 provisions of Title 61, chapter 4, part 5, apply to sections
 21 7 through 19.

22 NEW SECTION. Section 23. Coordination. If this act
 23 and Senate Bill No. 252 are both passed and approved,
 24 including section 12 of this act providing for a special
 25 revenue fund and the section of Senate Bill No. 252 creating

1 an investigative account, the reference to "a special
 2 revenue fund" in section 12 of this act must be changed to
 3 "the investigative account" created in Senate Bill No. 252.

4 NEW SECTION. SECTION 24. EFFECTIVE DATE. THIS ACT IS
 5 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 295

3 House Business and Labor Committee

4
5 A statement of intent is required for this act because
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7 commerce. The department may adopt rules governing
8 certification and auditing of manufacturers' informal
9 dispute settlement procedures and procedures for consumers
10 to implement the arbitration procedures of the department.
11 It is the intent of the legislature that in developing these
12 rules, the department look to procedures utilized by the
13 state of Connecticut in implementing its "Lemon Law II".

HOUSE BILL NO. 295

INTRODUCED BY HARRINGTON, PAVLOVICH, MENAHAN, CHRISTIAENS, MCCORMICK, KRUEGER, PECK, REAM, PISTORIA, GARCIA, HARP, J. HAMMOND, HAND, BACHINI, VINCENT, HANSEN, LYNCH, JACOBSON, STIMATZ, DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE NEW MOTOR VEHICLE WARRANTY REMEDY LAW; INCREASING MINIMUM WARRANTY PERIODS; PROVIDING FOR REMEDIES, DISCLOSURES, AND PENALTIES; CREATING AN ARBITRATION PROCEDURE; AMENDING SECTIONS 61-4-501 THROUGH 61-4-503 AND 61-4-505 THROUGH 61-4-507, MCA; AND PROVIDING AN APPLICABILITY PROVISION AND AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 61-4-501, MCA, is amended to read:

"61-4-501. Definitions. For purposes of this part, the following definitions apply:

(1) "Collateral charge" means all governmental charges, including but not limited to sales tax, property tax, license and registration fees, and fees in lieu of tax.

(2) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle that has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or alterations by the

purchaser, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the warranty to the benefits of its provisions.

(3) "Department" means the department of commerce created in 2-15-1801.

(4) "Division" means the division of motor vehicles defined in 61-1-301.

(5) "Finance charge" means a finance charge as defined in 31-1-202, incurred by a consumer after he first reports a nonconformity to the manufacturer or agent and during any subsequent period when the vehicle is out of service by reason of repair related to the nonconformity.

(6) (5) "Incidental damage" means incidental and consequential damage as defined in 30-2-715.

(2) (7) (6) "Motor vehicle" means a vehicle propelled by its own power, designed primarily to transport persons or property upon the public highways, and sold in this state. The term does not include a motor home as defined in 61-1-130 OR A TRUCK WITH 10,000 POUNDS OR MORE GROSS VEHICLE WEIGHT RATING.

(8) (7) "Reasonable allowance for use" is an amount directly attributable to use of the motor vehicle by the consumer and any previous consumers prior to the first



1 written notice of the nonconformity to the manufacturer or
 2 its agent and during any subsequent period when the vehicle
 3 is not out of service because of nonconformity. The
 4 reasonable allowance for use shall be computed by
 5 multiplying the total contract price of the vehicle by a
 6 fraction having as its denominator 100,000 and having as its
 7 numerator the number of miles that the vehicle traveled
 8 prior to the manufacturer's acceptance of its return.

9 ~~{3}{9}{8}~~ "Warranty period" means ~~the--term--of--an~~
 10 ~~express--agreement--or~~ the period ending ~~1-year~~ 2 years after
 11 the date of the original delivery to the consumer of a new
 12 motor vehicle, or during the first 18,000 miles of
 13 operation, whichever is earlier."

14 Section 2. Section 61-4-502, MCA, is amended to read:
 15 "61-4-502. Warranty Notice -- warranty enforceable
 16 after warranty period -- when. (1) If a consumer notifies in
 17 writing the manufacturer or its agent during the warranty
 18 period that a new motor vehicle does not conform to all
 19 applicable express warranties, the repairs necessary to
 20 conform the new motor vehicle to the express warranties
 21 shall be made by or at the expense of the warrantor,
 22 regardless of the expiration of the warranty period after
 23 notification of nonconformity is given by the consumer.

24 (2) The warranty period of an express warranty is
 25 extended to equal the time that repair services are not

1 available because of war or invasion or because of strike or
 2 fire, flood, or other natural disaster. The presumption
 3 provided herein may not apply against a manufacturer who has
 4 not received prior written notification from or on behalf of
 5 the consumer and has not had an opportunity to cure the
 6 alleged defect.

7 (3) The manufacturer must clearly and conspicuously
 8 disclose to the consumer in the warranty or owner's manual
 9 that written notification of a nonconformity is required
 10 before a consumer may be eligible for a refund or
 11 replacement of the vehicle. The manufacturer must include
 12 with the warranty or owner's manual the name and address
 13 where the written notification must be sent."

14 Section 3. Section 61-4-503, MCA, is amended to read:
 15 "61-4-503. Replacement for nonconformity to warranty.
 16 (1) If after a reasonable number of attempts the
 17 manufacturer or its agent or authorized dealer is unable,
 18 during the warranty period, to conform the new motor vehicle
 19 to any applicable express warranty by repairing or
 20 correcting any defect or condition that substantially
 21 impairs the use and market value or safety of the motor
 22 vehicle to the consumer, the manufacturer shall replace it
 23 with a new motor vehicle of the same model and style and of
 24 equal value, unless for reasons of lack of availability such
 25 replacement is impossible, in which case the manufacturer

1 shall replace it with a vehicle of comparable market value.

2 (2) As an alternative to replacement, the manufacturer
 3 may accept return of the new motor vehicle from the consumer
 4 upon refund to him of the full purchase price, ~~excluding all~~
 5 ~~sales taxes, license fees, registration fees, and any~~
 6 ~~similar governmental charges~~ plus REASONABLE collateral
 7 charges, finance charges, and incidental damages, less a
 8 reasonable allowance for the consumer's use of the motor
 9 vehicle. The refund shall be paid to the consumer and to a
 10 lienholder, if any, in proportion to their interests. A
 11 ~~reasonable allowance for use is an amount directly~~
 12 ~~attributable to use by the consumer and any previous~~
 13 ~~consumers prior to his first written report of the~~
 14 ~~nonconformity to the manufacturer or its agent and during~~
 15 ~~any subsequent period when the vehicle is not out of service~~
 16 ~~because of nonconformity."~~

17 Section 4. Section 61-4-505, MCA, is amended to read:

18 "61-4-505. Dealer exemption -- liability to
 19 manufacturer. (1) Nothing in this part imposes any liability
 20 on a dealer or creates a cause of action by a consumer
 21 against a dealer under 61-4-503.

22 (2) A dealer is not liable to a manufacturer for any
 23 refunds or vehicle replacements in the absence of evidence
 24 indicating that repairs made by the dealer were carried out
 25 in a manner inconsistent with the manufacturer's

1 instructions."

2 Section 5. Section 61-4-506, MCA, is amended to read:

3 "61-4-506. Provisions nonexclusive -- applicability of
 4 UCC -- defenses. (1) The provisions of this part do not
 5 limit the rights or remedies available to a consumer under
 6 any other law.

7 (2) All express and implied warranties arising from
 8 the sale of a new motor vehicle are subject to the
 9 provisions of Title 30, chapter 2, part 3.

10 (3) It is an affirmative defense to a claim brought
 11 under this part that an alleged nonconformity does not
 12 substantially impair the use, market value, or safety of the
 13 vehicle or that the nonconformity is the result of abuse,
 14 neglect, or unauthorized modification or alteration of a
 15 motor vehicle by the consumer."

16 Section 6. Section 61-4-507, MCA, is amended to read:

17 "61-4-507. Exhaustion of remedies under federal law.
 18 The provisions of 61-4-503 are not applicable against a
 19 manufacturer who has established an informal dispute
 20 settlement procedure certified by the department to be in
 21 substantial compliance with the provisions of Title 16, Code
 22 of Federal Regulations, part 703, as those provisions read
 23 on October 1, 1983, unless the consumer has first resorted
 24 to that procedure without satisfaction."

25 NEW SECTION. Section 7. Manufacturer's dispute

1 settlement procedure -- certification -- prohibited
 2 contents. (1) A manufacturer who has established an informal
 3 dispute settlement procedure under the provisions of Title
 4 16, Code of Federal Regulations, part 703 (16 CFR, part
 5 703), as those provisions read on October 1, 1983, shall
 6 submit a copy of the procedure to the department. The
 7 department shall issue a certificate of approval to a
 8 manufacturer whose procedure complies in all respects with
 9 such federal regulations and subsection (2). The department
 10 shall report to the division all manufacturer's procedures
 11 certified. The department may issue subpoenas requiring the
 12 attendance of witnesses and the production of records,
 13 documents, or other evidence necessary to it in an
 14 investigation related to the certification of a
 15 manufacturer's informal dispute settlement procedure.

16 (2) A manufacturer's informal dispute settlement
 17 procedure may not include any practices that:

18 (a) delay a decision in any dispute beyond 60 days
 19 after the date on which the consumer initially resorts to
 20 the dispute settlement procedure;

21 (b) delay performance of remedies awarded in a
 22 settlement beyond 10 days after a decision, except that a
 23 manufacturer may have 30 days following the date of decision
 24 to replace a motor vehicle or make refund to the consumer as
 25 provided in 61-4-503;

1 (c) require the consumer to make the vehicle available
 2 for inspection by a manufacturer's representative more than
 3 once;

4 (d) require the consumer to make the vehicle available
 5 for repair of the same defect more than once unless upon the
 6 consumer's furnishing proof of financial responsibility as
 7 provided in 61-6-301, he is provided with the loan of a
 8 reliable vehicle not more than 2 years old during the
 9 periods required for repair;

10 (e) fail to consider in decisions any remedies
 11 provided by this part; or

12 (f) require the consumer to take any action or assume
 13 any obligation not specifically authorized under the federal
 14 regulations referred to in subsection (1).

15 NEW SECTION. Section 8. Annual audit -- revocation or
 16 suspension of certification. (1) A manufacturer establishing
 17 an informal dispute resolution procedure shall file with the
 18 department a copy of the annual audit required under Title
 19 16, Code of Federal Regulations, part 703 (16 CFR, part
 20 703), as those provisions read on October 1, 1983, along
 21 with any additional information the department may require,
 22 including the number of refunds and replacements made by the
 23 manufacturer during the period audited.

24 (2) The department may, after notice and hearing as
 25 provided in Title 2, chapter 4, suspend or revoke the

1 certification of a manufacturer's informal dispute
 2 resolution procedure upon a finding that the procedure is
 3 being used to ~~injure~~ CREATE HARDSHIP TO consumers. The
 4 department shall notify the division of any revocation or
 5 suspension of a certification. The division may consider the
 6 revocation or suspension in licensing manufacturers under
 7 Title 61, chapter 4, part 2.

8 NEW SECTION. Section 9. Notice on resale of replaced
 9 vehicle. A motor vehicle which is returned to the
 10 manufacturer and which requires replacement or refund may
 11 not be sold in the state without a clear and conspicuous
 12 written disclosure of the fact that the vehicle was
 13 returned. The division may prescribe by rule the form and
 14 content of the disclosure statement and a procedure by which
 15 the disclosure may be removed upon a determination that the
 16 vehicle is no longer defective.

17 NEW SECTION. Section 10. Arbitration procedure. (1)
 18 The department shall provide an independent forum and
 19 arbitration procedure for the settlement of disputes between
 20 consumers and manufacturers of motor vehicles that do not
 21 conform to all applicable warranties under the provisions of
 22 this part. The procedure must conform to Title 27, chapter
 23 5.

24 (2) Except as provided in [section 16], a consumer
 25 owning a motor vehicle that fails to conform to all

1 applicable warranties may bring a grievance before an
 2 arbitration panel only if the manufacturer of the motor
 3 vehicle has not established an informal dispute settlement
 4 procedure which has been certified by the department under
 5 [section 7].

6 NEW SECTION. Section 11. Composition of arbitration
 7 panel. An arbitration panel hearing a grievance under this
 8 part must consist of three members. One member must be
 9 chosen by the consumer, one member must be chosen by the
 10 manufacturer, and one member must be chosen by mutual
 11 agreement of the parties. The department may maintain a list
 12 of persons willing to serve on panels from which the third
 13 member may be chosen.

14 NEW SECTION. Section 12. Implementation of
 15 arbitration. (1) A consumer may initiate a request for
 16 arbitration by filing a notice with the department. The
 17 consumer shall file, on a form prescribed by the department,
 18 any information considered relevant to the resolution of the
 19 dispute and shall return the form, along with a \$50 filing
 20 fee, within 5 days after receiving it. The complaint form
 21 must offer the consumer the choice of presenting any
 22 subsequent testimony orally or in writing, but not both.

23 (2) The department shall determine whether the
 24 complaint alleges the violation of any applicable warranty
 25 under this part. If the department determines that a

1 complaint does not allege a warranty violation, it must
2 refund the filing fee.

3 (3) Upon acceptance of a complaint, the department
4 shall notify the manufacturer of the filing of a request for
5 arbitration and shall obtain from the manufacturer, on a
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8 manufacturer must return the form within 15 days of receipt,
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-End-

SENATE

STANDING COMMITTEE REPORT

Page 1 of 2

April 15 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 295

third reading copy (blue color)

(Senator Christiaens)

REVISION OF MOTOR VEHICLE LEMON LAW

Respectfully report as follows: That HOUSE BILL No. 295

be amended as follows:

- 1. Page 7, line 18. Following: "procedure" Insert: "must afford the consumer or his representative an opportunity to appear and present evidence in Montana at a location reasonably convenient to the consumer, and further"
2. Page 8, line 9. Following: "than" Strike: "2" Insert: "4"
3. Page 8, line 10. Following: "repair" Insert: "if the vehicle is retained for more than 3 days"
4. Page 9, line 23. Following: "to" Insert: "["
5. Page 9, line 24. Following: "5" Insert: "]" Following: "." Insert: "All arbitration shall take place in Montana at a place reasonably convenient to the consumer."

XOXKASX

XOXKROBSSX

CONTINUED

Handwritten signature of Chairman

Chairman

Page 2 of 2

HOUSE BILL NO. 295

- 6. Page 13, line 6. Following: "of" Insert: "["
7. Page 13, line 7. Following: "3" Insert: "]"
8. Page 15, line 23. Following: "No." Strike: "252" Insert: "110"
9. Page 15, line 24, through line 3, page 16. Following: "including" on line 24 Strike: "section 12" Insert: "sections 10 and 12" Following: "act" on line 24 Strike: remainder of line 24 through "252" on line 3, page 16, in their entirety Insert: ", the bracketed language in sections 10 and 14 is replaced with a reference to Senate Bill No. 110"

AND AS AMENDED

BE CONCURRED IN

Handwritten initials

Handwritten signature of Senator Joe Mazurek

Senator Joe Mazurek, Chairman

COMMITTEE OF THE WHOLE AMENDMENT

SENATE

APR 18, 85
DATE

3:15
TIME

MR. CHAIRMAN: I MOVE TO AMEND HOUSE BILL No. 295

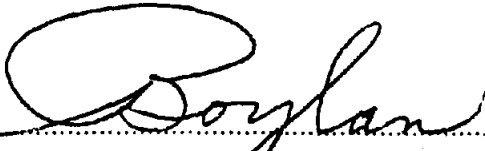
third reading copy (blue) as follows:
Color

Page 8, lines 5 through 10.
Strike: subsection (d) in its entirety
Renumber: subsequent subsections

PC3HB295.842

ADOPT

REJECT


BOYLAN

1 STATEMENT OF INTENT

2 HOUSE BILL 295

3 House Business and Labor Committee

4

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13 state of Connecticut in implementing its "Lemon Law II".

HOUSE BILL NO. 295

INTRODUCED BY HARRINGTON, PAVLOVICH, MENAHAN, CHRISTIAENS, MCCORMICK, KRUEGER, PECK, REAM, PISTORIA, GARCIA, HARP, J. HAMMOND, HAND, BACHINI, VINCENT, HANSEN, LYNCH, JACOBSON, STIMATZ, DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE NEW MOTOR VEHICLE WARRANTY REMEDY LAW; INCREASING MINIMUM WARRANTY PERIODS; PROVIDING FOR REMEDIES, DISCLOSURES, AND PENALTIES; CREATING AN ARBITRATION PROCEDURE; AMENDING SECTIONS 61-4-501 THROUGH 61-4-503 AND 61-4-505 THROUGH 61-4-507, MCA; AND PROVIDING AN APPLICABILITY PROVISION AND AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 61-4-501, MCA, is amended to read:

"61-4-501. Definitions. For purposes of this part, the following definitions apply:

(1) "Collateral charge" means all governmental charges, including but not limited to sales tax, property tax, license and registration fees, and fees in lieu of tax.

{+}(2) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle that has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or alterations by the

purchaser, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the warranty to the benefits of its provisions.

(3) "Department" means the department of commerce created in 2-15-1801.

(4) "Division" means the division of motor vehicles defined in 61-1-301.

~~{5}--"Finance-charge"--means-a-finance-charge-as-defined-in-31-1-202;-incurred-by-a-consumer-after-he-first-reports-a-nonconformity--to--the--manufacturer-or-agent-and-during-any-subsequent-period-when-the-vehicle--is--out--of--service--by-reason-of-repair-related-to-the-nonconformity;~~

{6}(5) "Incidental damage" means incidental and consequential damage as defined in 30-2-715.

{2}{7}(6) "Motor vehicle" means a vehicle propelled by its own power, designed primarily to transport persons or property upon the public highways, and sold in this state. The term does not include a motor home as defined in 61-1-130 OR, A TRUCK WITH 10,000 POUNDS OR MORE GROSS VEHICLE WEIGHT RATING, OR A MOTORCYCLE AS DEFINED IN 61-1-105.

{8}(7) "Reasonable allowance for use" is an amount directly attributable to use of the motor vehicle by the

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1 consumer and any previous consumers prior to the first
 2 written notice of the nonconformity to the manufacturer or
 3 its agent and during any subsequent period when the vehicle
 4 is not out of service because of nonconformity. The
 5 reasonable allowance for use shall be computed by
 6 multiplying the total contract price of the vehicle by a
 7 fraction having as its denominator 100,000 and having as its
 8 numerator the number of miles that the vehicle traveled
 9 prior to the manufacturer's acceptance of its return.

10 ~~†3††9†(8)~~ "Warranty period" means ~~the--term--of--an~~
 11 ~~express--agreement--or~~ the period ending ~~1-year~~ 2 years after
 12 the date of the original delivery to the consumer of a new
 13 motor vehicle, or during the first 18,000 miles of
 14 operation, whichever is earlier."

15 Section 2. Section 61-4-502, MCA, is amended to read:
 16 "61-4-502. Warranty Notice -- warranty enforceable
 17 after warranty period -- when. (1) If a consumer notifies in
 18 writing the manufacturer or its agent during the warranty
 19 period that a new motor vehicle does not conform to all
 20 applicable express warranties, the repairs necessary to
 21 conform the new motor vehicle to the express warranties
 22 shall be made by or at the expense of the warrantor,
 23 regardless of the expiration of the warranty period after
 24 notification of nonconformity is given by the consumer.

25 (2) The warranty period of an express warranty is

1 extended to equal the time that repair services are not
 2 available because of war or invasion or because of strike or
 3 fire, flood, or other natural disaster. The presumption
 4 provided herein may not apply against a manufacturer who has
 5 not received prior written notification from or on behalf of
 6 the consumer and has not had an opportunity to cure the
 7 alleged defect.

8 (3) The manufacturer must clearly and conspicuously
 9 disclose to the consumer in the warranty or owner's manual
 10 that written notification of a nonconformity is required
 11 before a consumer may be eligible for a refund or
 12 replacement of the vehicle. The manufacturer must include
 13 with the warranty or owner's manual the name and address
 14 where the written notification must be sent."

15 Section 3. Section 61-4-503, MCA, is amended to read:
 16 "61-4-503. Replacement for nonconformity to warranty.

17 (1) If after a reasonable number of attempts the
 18 manufacturer or its agent or authorized dealer is unable,
 19 during the warranty period, to conform the new motor vehicle
 20 to any applicable express warranty by repairing or
 21 correcting any defect or condition that substantially
 22 impairs the use and market value or safety of the motor
 23 vehicle to the consumer, the manufacturer shall replace it
 24 with a new motor vehicle of the same model and style and of
 25 equal value, unless for reasons of lack of availability such

1 replacement is impossible, in which case the manufacturer
2 shall replace it with a vehicle of comparable market value.

3 (2) As an alternative to replacement, the manufacturer
4 may accept return of the new motor vehicle from the consumer
5 upon refund to him of the full purchase price, ~~excluding all~~
6 ~~sales taxes, license fees, registration fees, and any~~
7 ~~similar governmental charges~~ plus REASONABLE collateral
8 charges, ~~finance charges,~~ and incidental damages, less a
9 reasonable allowance for the consumer's use of the motor
10 vehicle. The refund shall be paid to the consumer and to a
11 lienholder, if any, in proportion to their interests. A
12 ~~reasonable allowance for use is an amount directly~~
13 ~~attributable to use by the consumer and any previous~~
14 ~~consumers prior to his first written report of the~~
15 ~~nonconformity to the manufacturer or its agent and during~~
16 ~~any subsequent period when the vehicle is not out of service~~
17 ~~because of nonconformity."~~

18 Section 4. Section 61-4-505, MCA, is amended to read:

19 "61-4-505. Dealer exemption -- liability to
20 manufacturer. (1) Nothing in this part imposes any liability
21 on a dealer or creates a cause of action by a consumer
22 against a dealer under 61-4-503.

23 (2) A dealer is not liable to a manufacturer for any
24 refunds or vehicle replacements in the absence of evidence
25 indicating that repairs made by the dealer were carried out

1 in a manner inconsistent with the manufacturer's
2 instructions."

3 Section 5. Section 61-4-506, MCA, is amended to read:

4 "61-4-506. Provisions nonexclusive -- applicability of
5 UCC -- defenses. (1) The provisions of this part do not
6 limit the rights or remedies available to a consumer under
7 any other law.

8 (2) All express and implied warranties arising from
9 the sale of a new motor vehicle are subject to the
10 provisions of Title 30, chapter 2, part 3.

11 (3) It is an affirmative defense to a claim brought
12 under this part that an alleged nonconformity does not
13 substantially impair the use, market value, or safety of the
14 vehicle or that the nonconformity is the result of abuse,
15 neglect, or unauthorized modification or alteration of a
16 motor vehicle by the consumer."

17 Section 6. Section 61-4-507, MCA, is amended to read:

18 "61-4-507. Exhaustion of remedies under federal law.
19 The provisions of 61-4-503 are not applicable against a
20 manufacturer who has established an informal dispute
21 settlement procedure certified by the department to be in
22 substantial compliance with the provisions of Title 16, Code
23 of Federal Regulations, part 703, as those provisions read
24 on October 1, 1983, unless the consumer has first resorted
25 to that procedure without satisfaction."

1 NEW SECTION. Section 7. Manufacturer's dispute
 2 settlement procedure -- certification -- prohibited
 3 contents. (1) A manufacturer who has established an informal
 4 dispute settlement procedure under the provisions of Title
 5 16, Code of Federal Regulations, part 703 (16 CFR, part
 6 703), as those provisions read on October 1, 1983, shall
 7 submit a copy of the procedure to the department. The
 8 department shall issue a certificate of approval to a
 9 manufacturer whose procedure complies in all respects with
 10 such federal regulations and subsection (2). The department
 11 shall report to the division all manufacturer's procedures
 12 certified. The department may issue subpoenas requiring the
 13 attendance of witnesses and the production of records,
 14 documents, or other evidence necessary to it in an
 15 investigation related to the certification of a
 16 manufacturer's informal dispute settlement procedure.

17 (2) A manufacturer's informal dispute settlement
 18 procedure MUST AFFORD THE CONSUMER OR HIS REPRESENTATIVE AN
 19 OPPORTUNITY TO APPEAR AND PRESENT EVIDENCE IN MONTANA AT A
 20 LOCATION REASONABLY CONVENIENT TO THE CONSUMER, AND FURTHER
 21 may not include any practices that:

22 (a) delay a decision in any dispute beyond 60 days
 23 after the date on which the consumer initially resorts to
 24 the dispute settlement procedure;

25 (b) delay performance of remedies awarded in a

1 settlement beyond 10 days after a decision, except that a
 2 manufacturer may have 30 days following the date of decision
 3 to replace a motor vehicle or make refund to the consumer as
 4 provided in 61-4-503;

5 (c) require the consumer to make the vehicle available
 6 for inspection by a manufacturer's representative more than
 7 once;

8 ~~(d) require the consumer to make the vehicle available~~
 9 ~~for repair of the same defect more than once unless upon the~~
 10 ~~consumer's furnishing proof of financial responsibility as~~
 11 ~~provided in 61-6-301, he is provided with the loan of a~~
 12 ~~reliable vehicle not more than 2 1/2 years old during the~~
 13 ~~periods required for repair IF THE VEHICLE IS RETAINED FOR~~
 14 ~~MORE THAN 3 DAYS;~~

15 ~~(e) (D)~~ fail to consider in decisions any remedies
 16 provided by this part; or

17 ~~(f) (E)~~ require the consumer to take any action or
 18 assume any obligation not specifically authorized under the
 19 federal regulations referred to in subsection (1).

20 NEW SECTION. Section 8. Annual audit -- revocation or
 21 suspension of certification. (1) A manufacturer establishing
 22 an informal dispute resolution procedure shall file with the
 23 department a copy of the annual audit required under Title
 24 16, Code of Federal Regulations, part 703 (16 CFR, part
 25 703), as those provisions read on October 1, 1983, along

1 with any additional information the department may require,
2 including the number of refunds and replacements made by the
3 manufacturer during the period audited.

4 (2) The department may, after notice and hearing as
5 provided in Title 2, chapter 4, suspend or revoke the
6 certification of a manufacturer's informal dispute
7 resolution procedure upon a finding that the procedure is
8 being used to injure CREATE HARDSHIP TO consumers. The
9 department shall notify the division of any revocation or
10 suspension of a certification. The division may consider the
11 revocation or suspension in licensing manufacturers under
12 Title 61, chapter 4, part 2.

13 NEW SECTION. Section 9. Notice on resale of replaced
14 vehicle. A motor vehicle which is returned to the
15 manufacturer and which requires replacement or refund may
16 not be sold in the state without a clear and conspicuous
17 written disclosure of the fact that the vehicle was
18 returned. The division may prescribe by rule the form and
19 content of the disclosure statement and a procedure by which
20 the disclosure may be removed upon a determination that the
21 vehicle is no longer defective.

22 NEW SECTION. Section 10. Arbitration procedure. (1)
23 The department shall provide an independent forum and
24 arbitration procedure for the settlement of disputes between
25 consumers and manufacturers of motor vehicles that do not

1 conform to all applicable warranties under the provisions of
2 this part. The procedure must conform to [Title 27, chapter
3 5]. ALL ARBITRATION SHALL TAKE PLACE IN MONTANA AT A PLACE
4 REASONABLY CONVENIENT TO THE CONSUMER.

5 (2) Except as provided in [section 16], a consumer
6 owning a motor vehicle that fails to conform to all
7 applicable warranties may bring a grievance before an
8 arbitration panel only if the manufacturer of the motor
9 vehicle has not established an informal dispute settlement
10 procedure which has been certified by the department under
11 [section 7].

12 NEW SECTION. Section 11. Composition of arbitration
13 panel. An arbitration panel hearing a grievance under this
14 part must consist of three members. One member must be
15 chosen by the consumer, one member must be chosen by the
16 manufacturer, and one member must be chosen by mutual
17 agreement of the parties. The department may maintain a list
18 of persons willing to serve on panels from which the third
19 member may be chosen.

20 NEW SECTION. Section 12. Implementation of
21 arbitration. (1) A consumer may initiate a request for
22 arbitration by filing a notice with the department. The
23 consumer shall file, on a form prescribed by the department,
24 any information considered relevant to the resolution of the
25 dispute and shall return the form, along with a \$50 filing

1 fee, within 5 days after receiving it. The complaint form
2 must offer the consumer the choice of presenting any
3 subsequent testimony orally or in writing, but not both.

4 (2) The department shall determine whether the
5 complaint alleges the violation of any applicable warranty
6 under this part. If the department determines that a
7 complaint does not allege a warranty violation, it must
8 refund the filing fee.

9 (3) Upon acceptance of a complaint, the department
10 shall notify the manufacturer of the filing of a request for
11 arbitration and shall obtain from the manufacturer, on a
12 form prescribed by the department, any information
13 considered relevant to the resolution of the dispute. The
14 manufacturer must return the form within 15 days of receipt,
15 with a filing fee of \$250.

16 (4) Fees collected under this section shall be
17 deposited in a special revenue fund for the use of the
18 department in administering [this act].

19 (5) THE MANUFACTURER'S FEE PROVIDED IN SUBSECTION (3)
20 IS DUE ONLY IF THE DEPARTMENT ARBITRATION PROCEDURES ARE
21 UTILIZED.

22 NEW SECTION. Section 13. Role of department --
23 expert. (1) The department shall investigate, gather, and
24 organize all information necessary for a fair and timely
25 decision in each dispute. The department may, on behalf of

1 the arbitration panel, issue subpoenas to compel the
2 attendance of witnesses and the production of documents,
3 papers, and records relevant to the dispute.

4 (2) If requested by the panel, the department shall
5 MAY forward a copy of all written testimony and documentary
6 evidence to an independent technical expert certified by the
7 national institute of automotive excellence. The expert
8 shall MAY review the material and be available to advise and
9 consult with the panel. The expert shall MAY sit as a
10 nonvoting member of the panel whenever oral testimony is
11 presented. The division may suggest an expert at the request
12 of the department.

13 NEW SECTION. Section 14. Action by arbitration panel
14 -- decision. (1) The arbitration panel shall, as
15 expeditiously as possible, but not later than 60 days after
16 the department has accepted a complaint, render a fair
17 decision based on the information gathered and disclose its
18 findings and its reasoning to the parties.

19 (2) The decision shall provide appropriate remedies,
20 including but not limited to:

- 21 (a) repair of the vehicle;
22 (b) replacement of the vehicle with an identical
23 vehicle or a comparable vehicle acceptable to the consumer;
24 (c) refund as provided in 61-4-503(2);
25 (d) any other remedies available under the applicable

warranties or 15 U.S.C. 2301 through 2312, as in effect on October 1, 1983; or

(e) reimbursement of expenses and costs to the prevailing party.

(3) The decision shall specify a date for performance and completion of all awarded remedies. The department shall contact the prevailing party within 10 working days after the date for performance to determine whether performance has occurred. The parties shall act in good faith in abiding by any decision. In addition, if the decision is not accepted, the parties shall follow the provisions of [Title 27, chapter 5, part 3]. If it is determined by the court that the appellant has acted without good cause in bringing an appeal of an award, the court, in its discretion, may grant to the respondent his costs and reasonable attorney fees.

NEW SECTION. Section 15. Records of disputes. The department shall maintain records of each dispute as it determines, including an index of disputes by brand name and model. The department shall, at intervals of no more than 6 months, compile and maintain statistics indicating the record of compliance with arbitration decisions and the number of refunds or replacements awarded. A copy of the statistical summary must be filed with the division and must be considered by it in determining the issuance of any

manufacturer license required under Title 61, chapter 4, part 2.

NEW SECTION. Section 16. Nonconforming procedure -- arbitration de novo. A consumer injured by the operation of any procedure that does not conform with procedures established by a manufacturer pursuant to [section 7] and the provisions of Title 16, Code of Federal Regulations, part 703, as in effect on October 1, 1983, may appeal any decision rendered as the result of such a procedure by requesting arbitration de novo of the dispute by a department panel. Filing procedures and fees for appeals must be the same as those required in [sections 10 through 12]. The findings of the manufacturer's informal dispute settlement procedure are admissible in evidence at the department arbitration panel hearing and in any civil action arising out of any warranty obligation or matter related to the dispute.

NEW SECTION. Section 17. ~~Display--of--notice---if--a manufacturer--has--not--established--an--informal--dispute settlement---procedure---certified---by--the--department--as complying-with--the--requirements--of--{section--7},--public notice-of-the-availability-of-the-department's-motor-vehicle arbitration--procedure--shall--be--prominently-posted-in-the place-of-business-of-each-new-car--dealer--licensed--by--the division--to--engage--in-the-sale-of-such-manufacturer's-new~~

1 motor-vehicles. Display of the public notice must be a
 2 condition of licensure under Title 61, chapter 4, part 2.
 3 The department shall by rule prescribe the size, typeface,
 4 form and wording of the notice, which must include the
 5 telephone number and address for requesting arbitration
 6 services. NONDELEGABLE. THE LIABILITIES AND OBLIGATIONS
 7 CONTAINED IN THIS ACT MAY NOT BE DELEGATED OR ASSIGNED TO OR
 8 ASSUMED BY ANY OTHER PERSON OR ENTITY.

9 NEW SECTION. Section 18. Rulemaking. The department
 10 may adopt rules to implement the provisions of this part.

11 NEW SECTION. Section 19. Penalty. A violation of any
 12 provision of this part is an unfair or deceptive trade
 13 practice under Title 30, chapter 14, part 2, and the
 14 penalties provided in 30-14-224(1) apply.

15 NEW SECTION. Section 20. Applicability. This act
 16 applies to automobiles sold on or after October 1, 1985.

17 NEW SECTION. Section 21. Severability. If a part of
 18 this act is invalid, all valid parts that are severable from
 19 the invalid part remain in effect. If a part of this act is
 20 invalid in one or more of its applications, the part remains
 21 in effect in all valid applications that are severable from
 22 the invalid applications.

23 NEW SECTION. Section 22. Codification instruction.
 24 Sections 7 through 19 are intended to be codified as an
 25 integral part of Title 61, chapter 4, part 5, and the

1 provisions of Title 61, chapter 4, part 5, apply to sections
 2 7 through 19.

3 NEW SECTION. Section 23. Coordination. If this act
 4 and Senate Bill No. 252 110 are both passed and approved,
 5 including section ~~12~~ SECTIONS 10 AND 12 of this act
 6 providing for a special revenue fund and the section of
 7 Senate Bill No. 252 creating an investigative account, the
 8 reference to "a special revenue fund" in section 12 of this
 9 act must be changed to "the investigative account" created
 10 in Senate Bill No. 252, THE BRACKETED LANGUAGE IN SECTIONS
 11 10 AND 14 IS REPLACED WITH A REFERENCE TO SENATE BILL NO.
 12 110.

13 NEW SECTION. SECTION 24. EFFECTIVE DATE. THIS ACT IS
 14 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-