

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

April 12, 1985

The sixty-third meeting of the Senate Judiciary Committee was called to order at 10:05 a.m. on April 12, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senators Crippen and Daniels who were excused.

CONSIDERATION OF HB 295: Representative Dan Harrington, sponsor of the bill, stated this bill is commonly known as Lemon Law II. In 1983 he was successful in passing Lemon Law I, which he hoped would be an answer to some of the problems facing the consumers. Many problems have begun to exist as far as cars are concerned. There is no way for the state to actually handle this. The automobile industry has set up a system of Auto CAP (Consumer Action Programs) and arbitration boards to settle disputes. This has been unsuccessful. This bill extends the lemon law to a two-year or 18,000 mile warranty. The purchase of an automobile is the second greatest purchase the consumer can make these days. People cannot afford to go out and pay this amount of money and not have the satisfaction of getting something worthy of it. Representative Harrington introduced into evidence several letters from consumers who have purchased unsatisfactory automobiles (Exhibit 1). He has in his file over 100 additional letters from people who have contacted him over the last few weeks who have had problems with their cars. Representative Harrington testified the two basic parts of the bill are to set up the warranty and to set up arbitration boards. He would like to have a citizen board. The automobile industry has set up arbitration boards, not one of which has been certified by federal law. Our law is modeled after the Connecticut law. Once these arbitration boards are certified by the federal government, they will have met the arbitration standards and the state will not have to worry about it. In the meantime, the state must set up some arbitration panels. If the automobile industry's panels do not meet federal standards, then we will have the state panels to fall back on. Representative Harrington believes what we need in Montana is somewhere the consumer can go when he has a problem. He pointed out 90% of the cars are in very good running shape and the consumers get their moneys worth out of them, but the other 10% of the consumers should also be protected.

PROPONENTS: Robert Wood, General Counsel, Department of Commerce, appeared representing Brint Markle, Chief Counsel of the Consumer

Affairs Division. He addressed the two major issues of the bill. First, the two-year warranty period. They believe it is necessary in light of the cost of automobiles and their experience with automobile complaints. It is necessary to see what defects might arise. Second, the citizens' arbitration panel. In the absence of federal standards, they believe a panel provides a fair and reasonable forum. There are provisions in our statutes for people who feel they have been wronged by the panel. Norm Proctor, Manager, State Government Relations, Paccar Inc., testified Paccar is essentially an assembler of vehicles. Mr. Proctor presented written testimony in support of the bill (Exhibit 2). He further stated Senator Farrell would be offering an amendment to include heavy duty trucks in the bill. They would oppose that amendment, but they would support the automobile manufacturers' amendments. Teri England, representing the Montana Public Interest Research Group, submitted written testimony in support of the bill (Exhibit 3). She testified consumers need protection; while the first lemon law helps, we need to strengthen the laws in this regard. Senator Bill Farrell testified in support of the bill but offered an amendment (Exhibit 4). The bill has excluded large trucks. He is suggesting essentially putting large trucks back into the bill. The letter from Paccar leads you to believe the owner-operator is protected from this. Owner-operators are paying for this. They can't afford the time of going through the legal process with a lawsuit because the vehicle payments go on. By excluding large trucks, they lose the slight bit of leverage the single operator has. This is not a one-time deal. Page 4 states "if after a reasonable number of attempts." If they don't want to deal with a particular engine company or a parts company, it doesn't have to. The dealer can go back and sue the manufacturer. Paul Brady, who lives South of Great Falls, testified he purchased a lemon. He paid \$19,000 for a Ford 4x4. He then reiterated the extensive problems he had with his vehicle. He made numerous attempts to get it fixed. He also went to the Consumer Affairs Division in Helena. Finally, he had to see an attorney. His first truck was a Ford which he purchased in 1971. He put 118,000 miles on that vehicle before purchasing the new one. He believes Tonka builds a tough truck, not Ford. John Motl, a registered lobbyist speaking on his own behalf, testified one-half of his practice consists of consumer cases. They are difficult for attorneys to deal with because the amount of money involved isn't always that large and many times you want to encourage them to try and resolve the problem between themselves and the seller. His general approach to a consumer case is to work with the consumer and see if they can go back to the seller to settle the case themselves. That is tough with automobiles, because dealers try to ignore consumers and wait it out. He looks at this bill as a way to improve the bargaining position of the consumer with respect to the dealer. That will encourage give and take between the manufacturer and purchaser. Don Miller testified he has been following mechanics for better than 40 years. He has seen situations

that were inexcusable on the part of dealers. He owned a 1964 GMC pickup which he sold with 90,000 miles and had no problems. He now drives a 1980 Ford Fairmont. It does not have a safe motor in it and may be a hazard to safety. He thinks the dealer should assert extra effort to remedy the problem and the company should be compelled either ethically or legally to correct that problem because lives are at stake in the process. If the company doesn't have ethics enough to correct those kinds of problems, there should be some kind of legal remedy to make them. Mr. Miller related stories of several lemons with which he has had contact. Frank Obstarzce, of Great Falls, stated he would like to see an amendment for reciprocity between the states that have lemon laws. When he purchased a new vehicle, his dealer said his warranty was good anywhere in the country. However, when he attempted to get service elsewhere, he found that was not true. He wrote for arbitration in 1984. He has yet to see the arbitration board. This bill allows arbitration in the state of Montana because the manufacturers' arbitration boards never show up anyway.

OPPONENTS: Tom Schwertfeger, Denver Regional Office, Motor Vehicle Manufacturers Association, testified he could support three sentences in the bill--amendments by the House which exclude heavy duty trucks for the reasons set forth by Paccar. He has three major objections to the bill, two of which are addressed by amendments he submitted to the committee (Exhibit 5). The first amendment has to do with the extension of warranty. He would oppose that concept in law. It has the effect of statutorily determining warranty decisions on products. He believes that is a competitive issue between manufacturers. Consumers can shop for longer warranties. The second objection, which deals with his proposed amendment No. 2, would delete the loaner car. As presently drafted, the legislation places that responsibility upon the manufacturer to provide a loaner car. They do not have fleets of loaner cars to make available to dealers or consumers, especially since the bill states these cars can only be two years old. His third objection relates to the creation of the state arbitration program at a cost of \$31,000 in fiscal year 1986. He believes it is unnecessary and duplicative of existing manufacturers' arbitration programs. It is his understanding the Federal Trade Commission (hereinafter referred to as FTC) has no intention of certifying them. He believes the existing arbitration programs are working. Just because the FTC has not certified them does not mean they are not effective or independent or impartial. He believes certification is a non-issue. Those programs in many cases are being conducted in the state of Montana. Lucille Douglas, Owner Relations Manager, Ford Motor Company, submitted written testimony in opposition to the bill (Exhibit 6). Dean Mansfield, Vice President, Montana Auto Dealers Association, testified the dealers are in the middle of the problem. They stand neither to support nor to oppose the bill but only

in support of certain amendments. They are concerned about the increase in cost this may impose on new vehicles because of the mandatory warranty provision. Dealers do not have cars to loan or rent. They are concerned about the effect of this requirement on smaller dealers. Because of tight insurance restrictions, most dealers are prohibited from providing loaner cars. They support the amendments to delete the two-year warranty period and to delete the loaner car provision. The dealer-operated arbitration program called Auto Cap (Consumer Action Program) deals with consumer complaints and has worked very well. He testified 90% of the complaints it deals with are resolved through the arbitration process, although it cannot deal with lemon law cases.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked Ms. Douglas if the automobile appeals board provision outlined in her letter would qualify for the provision outlined on page 7 of the bill which says you do not need a separate panel if the manufacturer already has a dispute procedure. Ms. Douglas stated that would seem to be true. Senator Towe asked if that would cause any problems as far as Ford is concerned. Ms. Douglas responded no. Senator Towe asked what Ford's opposition to the bill was. Ms. Douglas replied the FTC does not certify their panels, but the independent audit they had done says they substantially comply with the requirements. She understands this bill is seeking certification. Representative Harrington responded he feels it is not the FTC certification they are looking for. It says if they comply with the regulations in this bill, the state will certify them. After they certify them, they must live up to the standards. Senator Towe pointed out that as he reads the bill on page 7, the department shall issue a certificate of approval to a manufacturer who complies. The department appears to have no choice. Representative Harrington replied that is correct. If they go along with that, then there is no problem. Senator Towe asked Ms. Douglas what she found wrong with that. She was concerned whether the certification would be accepted by the state automatically or if they in turn would have to go through another certification in some fashion. Senator Towe stated he felt the state should have the opportunity to look and see if it is in compliance. Mr. Schwertfeger felt it would be duplicative recordkeeping and certification. If each state were to adopt this, they would be submitting their panel to every state and to the federal government. That is duplicative of what is being conducted at the federal level. The statement of intent indicates they might also have to meet other rules. Senator Mazurek asked Mr. Motl if the Magnuson-Moss Act provided for attorneys' fees under the lemon law. Mr. Motl responded he believes most attorneys allege a separate count of violation of the Consumer Protection Act. Magnuson-Moss does allow attorney fees, but attorneys actually use Montana's Consumer Protection Act. Senator Mazurek pointed out the 18,000 mile limit will not extend this act for owner-operators because they put that many miles on in three months. Mr. Proctor responded there are warranties

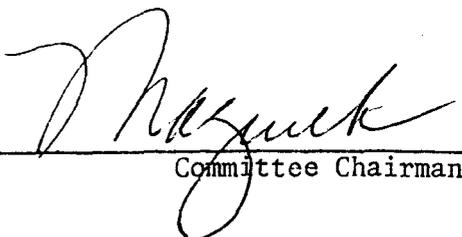
from the manufacturers. He questioned whether they should give you a new vehicle because you told them the type of component you wanted in your truck and they did nothing more than assemble it. Senator Mazurek replied 18,000 miles would not be that much more protection due to the nature of the work. Mr. Proctor pointed out Wisconsin's lemon laws include trucks. Senator Mazurek commented the policy decision they, as the legislature, must make is who is in a better position to bear the cost of that--the consumer or the assembler. Mr. Proctor stated if the consumer is asking for that part, and their job is to construct it to the consumer's specifications, the consumer should bear that cost. Senator Mazurek questioned whether the warranty is something the state should be getting into. Representative Harrington pointed out the good will adjustment mentioned in Ford's written testimony is paid for by the consumer. He believes you should be guaranteed that. Many people keep that car 9-10 months and then unload it because they want to get rid of it. The next person gets it and only has it two months before something happens. The car then just sits there. The two-year period guarantees that car will still maintain that warranty. A lot of cars will be unloaded. This bill protects the dealers, and he can't understand why they are against it. It gives them a remedy. The bill also states used cars must be distinguished as lemons. Senator Towe asked Representative Harrington to respond to the concern that the industry has expressed that they would have to go into 50 states with 50 certification procedures and why isn't the federal certification enough. Representative Harrington replied once the federal law is set up, they only have to fall into that. They could be audited to see how they were doing on these arbitration panels, however. Senator Towe asked if the federal regulation provided for a certification of compliance. Representative Harrington responded he did not think it did. Senator Towe asked if he would have a problem if they provided production of a federal certification certifying compliance with the federal regulations was sufficient in lieu of a state certification. Representative Harrington responded no, just so they would fall within the federal guidelines. Senator Towe commented he noticed the bill did not state where the arbitration should take place. Representative Harrington stated the statement of intent indicates the rules and regulations would be set down by the Consumer Affairs Division. He did not feel people should have to go to Denver to arbitrate. Senator Towe asked if he had an objection if they made that clear in the statute. Representative Harrington replied he would have no problem with that, as that is one of the biggest problems these people have. Ms. Douglas commented customers do not appear unless their panel invites them to do so; everything is decided on documentation provided to the panel. Senator Towe asked if she were suggesting that this procedure which does not allow any participation from the consumer is in full compliance with the FTC and we can, by adopting that system, avoid their having to listen to the consumer. Ms. Douglas stated the consumer may request to be invited to attend. Senator Towe asked if he

had a right to attend. Ms. Douglas responded yes. Senator Towe suggested they say that right can be exercised within the state of Montana and at a place convenient to the consumer. Ms. Douglas replied only the board decides where it will meet. Senator Blaylock asked if the loaner car demand would be for only those cars that meet the definition of a lemon. Representative Harrington responded it would be for cars that have been proven to have serious problems and they take them in to be worked on. Senator Blaylock asked if the loaner car were mandatory from the dealer only where the car meets the definition of a lemon or when they have a serious problem with their car. Representative Harrington responded both. Senator Blaylock commented, knowing the dealers, that is quite a demand and quite an expense. Representative Harrington replied, yes, but he believed the dealer can bill the manufacturer for that. He stated the House subcommittee agreed there would be no problem with this loaner car. He was surprised the Judiciary Committee felt there might be. Senator Pineseault asked if they agreed with the basic premise every once in a while, there is a car put out that isn't worth a damn. Mr. Schwertfeger replied he acknowledges there may be problems with parts, but he would not go so far as to say the entire automobile is worthless. Senator Pineseault stated everyone has had problems with a vehicle, such as the man with the Ford who testified. Why didn't Ford take that automobile back and give him another one? Mr. Schwertfeger replied there are buy outs and buy backs voluntary on the person even without arbitration.

CLOSING STATEMENT: Representative Harrington commented as far as the amendment with the trucks, they put the amendment in to take them out because the truckers' lobbyist came in and said they wanted them out. In spite of that, he has no problem with that amendment. He pointed out many people go back to the dealer and say this car's a lemon, take it back, and I won't pay another dime. The car is then repossessed, and the person loses his credit rating. That is one of the basic problems. When we talk about lemon disclosure, we are in essence helping in the used car sales of lemons. Some of the settlements made with people are that they buy another car. The extended warranty is only for lemons. People don't buy cars to have problems. The problems should be remedied.

Hearing on HB 295 was closed.

There being no further business to come before the committee, the meeting was adjourned at 11:28 a.m.


Committee Chairman

DATE

April 12, 1985

COMMITTEE ON

Judiciary

VISITORS' REGISTER

HB 295

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Tom Schwertfeger	MOTOR VEHICLE MFRS ASSOC	295		✓
NORM PROCTOR	PACCAR INC	295	✓	
Lucille Douglas	Ford Motor Co	295		✓
Dan Millic	Self	295	✓	
Paul R. Brady	self	295	✓	
ROBERT WOOD	DEPT OF COMMERCE	295	✓	
J. Ireland	MONTPIALG	295	X	
FRANK OBSTARCZYK Frank Obstarczyk	Self	295	X	
Wm Mansfield	Montana Auto Dealers	295		✓
Jonathan Wolf	reg noles of wolf withness at Land			✓
Carol Douglas	Lobby Ed. Assoc	211-212	✓	
Ruth Schreiber	Lobby Ed. Assoc.	211-212	✓	
Terrence Rose	Lobby Ed. Assoc.	211-212	✓	
Diane Reverts	" " "	211-212	✓	
Janet Kendall	Lobby Ed. Assoc.	211-212	✓	
Carol Jan Jones	Hydrona H&A MEA	211-212	✓	

(Please leave prepared statement with Secretary)

ROBERT F. TURNER
107 High Park Way
Missoula, MT 59803

2/20/85

Rep. Dan Harrington D-Butte
Montana Legislature
Helena, Montana

Dear Mr. Harrington:

We read w/ interest your article on
"Lemon victims". I am sending
along a copy of my latest letter
to Gen'l. Motors.

In my opinion we have been
assaulted by the dealer & by GM.
Money that we have spent in
putting the car back together
should have been given to our
children for education.

Hoping the enclosed letter will
help you.

Sincerely,
Robert F. Turner

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 4-12-85

BILL NO. H.B. 295

107 High Park Way
Missoula, MT. 59803
February 18, 1985

cc to: T & W Chevrolet - Missoula, Mt.
UAW Detroit
Customer Relations - Salt Lake City
Ralph Nader - Consumer Advocate - Wn DC

General Motors Corp.
3044 West Grand Boulevard
Detroit, Michigan 48202

Sirs: REF: 1981 Citation
ID # 1GLAX 6851 B6 216676

This letter is a followup to various memos I wrote in early 1983, one year after we purchased the car new and to bring to your attention what has occurred since that time. The vehicle now has 60,000 miles on the odometer.

The following items have failed during the four year period:

Clutch @ 19,000	Heater control broke
Front axle @ 49,000	Oil leak from valve cover
Rear shocks @ 32,000	Shift knob spring broke
Brake master cylinder	Seat belt still not adjusted
Battery @ 29,000	Front end misaligned from factory
Brakes - twice	Power steering stiff when cold
Emergency Brake (numerous)	Exhaust line to emission control burned off
Engine tune (every 4-6 mo.)	Window door knob fell off
Fit of all doors (unadjustable)	Plastic gear, on shift, replaced twice
Radio speaker	Head light switch - excessive heat on control
Visor fell off (\$25)	Starting safety switch broken

During the Winter of 1984, brake/ lock-up causing a high velocity 360 Degree turn while going downhill at 30 MPH.

Previous to this ownership we had purchased (3) new Impala Station Wagons and (3) used Chevrolet vehicles. The Citation has cost us more money and grief than all the previous vehicles. It is hard to believe this is really happening to us.

(1 of 2)

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 4-12-85

BILL NO. H.B. 295

We have the following concerns:

1. Treatment by "Customer Relations", in Salt Lake City, was terrible. They accused us of mishandling the car and spent some effort in justifying all the breakdowns. They acted like a typical "hit squad".
2. We were told by T & Ws Chief Mechanic (Riech) that because of our driving habits - we live in a hilly residential area- that our clutch would fail again in the 2nd 19,000 miles (clutch, installed by another company, is still working). He also said the clutch was designed for level terrain & highway use only (What a Ridiculous statement)
3. After one year my wife called T & W asking about a trade-in. She was told they weren't interested because they still had a lot full of new Citations.
4. The materials in the car are cheaply made. The "Fisher-Body" label is a joke-as is the rest of the car. I'm happy not to be a workman forced to install such poor materials- he must realize that as soon as the car hits the road it will start to disintegrate.
5. As a long time "patriot", I wouldn't have considered purchase of a foreign made car. I and thousands of others have really learned our lesson.

In conclusion, I wish to state that if this was some other situation, it would be classed as a felony cimminal action.


Robert F. Turner

(2 of 2)

SENATE JUDICIARY COMM

EXHIBIT NO. 1

DATE 4-12-85

BILL NO. H.B. 295

MORSE LAW FIRM
ATTORNEYS AT LAW
P. O. BOX ~~525~~ 550
ABSAROOKEE, MONTANA 59001
TELEPHONE 406-328-2671
406-328-2661

February 21, 1985

WM. R. MORSE
~~MICHAEL R. MORSE~~

Representative Dan Harrington
House of Representatives
Capitol Building
Helena, Montana 59620

Dear Representative Harrington:

You may recall that I was somewhat involved in the original "lemon law" hearings. I note your appeal in the Billings Gazette for contact by other "lemon" victims in connection with the proposed revision of the current law. I also note that there has been testimony that there were only 30 known "lemons" since the Bill was originally passed. In my opinion, this figure must be horribly distorted since I have had nearly that many presented to me alone! In the past 10-days I have had three complaints and I have no hesitation in identifying them to you:

- (1) Judy Reinhardt vs. Rice Motors involving a brand new vehicle which had countless problems documented;
- (2) Janet Cross vs. Arnlund Auto Plaza involving a new Plymouth with countless documented problems;
- (3) Nina Vandersloot vs. Davey Ford Motor of Columbus with the same kind of problems.

It is my experience that the motor companies continue to stonewall these victims and unless there is a provision for payment of costs and attorney fees, these people generally don't have the funds for a fight against the giants. It would also simplify proceedings if all service could be made against a named agent, perhaps the Secretary of State. Further, it appears that federal arbitration

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 4-12-85

BILL NO. H.B. 295

MORSE LAW FIRM
Wm. R. Morse
February 21, 1985
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proceedings are being used as a tool of the manufacturer and the customer lacks the experience and know-how to intelligently protect himself in those proceedings; in the cases which have come to my attention those proceedings have already taken place before the customer has had occasion to approach an attorney. It may be that the Action Line Section of the Billings Gazette would be of some help to you in determining the volume of consumer complaints, as they have recently referred two to me.

Please feel free to use these remarks as you deem appropriate.

Very Sincerely,


WM. R. MORSE

WRM/lh

cc: Action Line (Billings Gazette)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 04-12-85
BILL NO. H.D. 295

Representative Dan Harrington
Capital Station
Helena, Mt. 59620

MAN Bauer Jr.
1700 Valley Wind Lane
Missoula, Mt. 59801

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 04 12 85

BILL NO. H.B. 295

Dear Mr. Harrington—

Re: Lemon Law

In regards to your request for information, I would offer the following. I have enclosed a copy of letters sent concerning a 1983 GMC truck I purchased.

I was not aware there was any "lemon law" or I would have pursued the matter in that fashion. The letters summarize problems I had with the unit and the dealer. Since the letters, the truck has been in for several more brake problems, the engine failed when an oil cooler line broke and the radio still has not been repaired. The engine was rebuilt (I had to pay a 100 deductible) and I have been waiting for 6 months for reimbursement for a \$155 towing bill. The unit was under warranty when the engine failed.

I sincerely hope your proposed legislation passes since I and my family have gone thru a lot of hardship and stress in trying to get the vehicle problems solved. Because of fear of brake failure, my wife and children were scared to ride in the vehicle, and my brother narrowly avoided a wreck because of the brake problem.

Maybe the public will be more aware of the law if your legislation is accepted. I wish I had known of the law, and I am sure a lot of other people are not aware of it.

Sincerely,
MAN Bauer Jr.

and the kindness of their heart, they reimbursed me \$500.00 which I accepted, being I couldn't get another car. I paid \$7550.00 cash for the car and wanted one that would last me for the rest of my life but believe that when it goes bad again it will be junked, which it was in the first place.

Sincerely,

Daisy Groshart

Daisy Groshart
Box 127
Sidney, MT 59270

Sidm Montana
50X 127
Feb. 21, 1985

Att. Rep. Dan Harrington.

You have asked other people with car problems to voice their woes to you:

In 1981 I had turned 67 and decided to buy one more new car planning on it to last me without a lot of repair bills. It didn't seem to have any power so took it back to the dealer he adjusted the timing. This happen three times. Finally took it to another Ford dealer it cost \$121.00 to work on the carburetor.

(The problem was I would be out on the hi-way, maybe stopping then when I started up again the car would just died on me. I would have to raise the hood, take the air filter off pry the choke open run around and start the car.)

Was in Wyoming took it to a Ford dealer \$14.00 and was supposed to be fixed. When I got back to Sidney, I took it to a shop \$16.00/Finally took it to a Carburetor shop. Still didn't work very good. Finally after all this time I took it to a ex-Ford mechanic who had opened his own shop. He tore into the motor and found a piston that had been cracked when the car was put together. I took it back to the dealer and showed his shop foreman and was told the car was off warranty and I would have to contact some one in Denver. That little repair cost me \$454.65. The car didn't do to bad until I took a trip then it started all over again. I took it back to the shop and the mechanic tore into the motor and had to replace pistons, #2 head cost \$830.50. I finally decided to call the Detroit office and voice my grip in a letter form. They referred me to a number in Denver, which I called and out of whole thing

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 04 12 85
BILL NO. H.B. 295

PACCAR Inc

Business Center Building
P.O. Box 1518
Bellevue, Washington 98009
Telephone (206) 455-7400

April 9, 1985

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 04 12 85

BILL NO. H.B. 295

The Honorable Joe Mazurek
Chairman, Senate Judiciary Committee
State Capital
Helena, Montana 59601

Dear Sir:

We understand that H. B. 295 has been assigned to your Committee for consideration.

PACCAR is a manufacturer of Kenworth and Peterbilt trucks, with plants located throughout the United States. We support passage of H. B. 295 as amended to exclude heavy-duty trucks, for the following reasons.

1. Assuming that repair/replace legislation is directed to the protection of the innocent consumer, it should be pointed out that the purchaser of a Class 8 vehicle is certainly more knowledgeable and in a better bargaining position than the majority of automobile purchasers. Class 8 trucks, especially Kenworths and Peterbilts, are custom vehicles for which a customer specifies the major components and configurations for that vehicle. In many cases, these trucks are bought by fleets and firms which, in reality, have equal bargaining power and product knowledge with the dealer and manufacturer. These purchasers do not need the protection of this type of legislation.
2. With both Class 8 trucks and automobiles, there are already in existence legal remedies under the Uniform Commercial Code by which the consumer can pursue the manufacturer should he have difficulty with the warranty. One has to realize that there is a distinction between the two classes of consumers. Since the heavy-duty truck purchaser uses the vehicle for his livelihood, it is more likely that he will avail himself of those legal remedies to pursue his rights. In the case of the automobile consumer, it is difficult to justify the cost of bringing a lawsuit, whereas with a truck purchaser, he will be in a position to allege consequential and incidental damages. This makes it more likely that he will avail himself of the legal remedies and find a more responsible manufacturer. Although this legislation simplifies the process of getting to the manufacturer, we believe it will encourage questionable cases to be brought and thereby will cost the manufacturer more. These costs will in turn be passed to the purchasers. There is no doubt that this legislation will increase the amount of litigation.

The Honorable Joe Mazurek
April 9, 1985
Page 2

3. Kenworth and Peterbilt, and I am sure other heavy-duty truck manufacturers, place engines in their vehicles they themselves do not manufacture or warrant. Kenworth and Peterbilt specifically exclude engines from their warranty certificates and this exclusion is agreed to by the customer. Thus, defects in the engine which are not corrected in the specified number of attempts or in the time period could require the vehicle manufacturer to replace the total vehicle for a problem with a component which it not only does not manufacture but for which it does not extend a warranty in the first place. Potentially, the truck manufacturer could be left without recourse against the engine manufacturer for the consequential damages it suffers by reason of its having purchased an allegedly defective engine. Additionally, since many truck dealers are not authorized engine service shops, they may not have the control over the servicing shops and mechanics performing the service to ensure the engine is repaired.
4. Unlike automobile owners who probably go to one dealer for repair work, truck owners have the truck serviced at numerous locations. If there is a problem with the vehicle during a trip, the owner could have the vehicle serviced three times without the manufacturer knowing there is a potential problem. Therefore, there must be at least notice to a manufacturer allowing proper opportunity to address the problem.

In summary, PACCAR urges your support of H. B. 295.

Sincerely,



Norman E. Proctor
Manager of
State Government Relations

NEP:ec



Montana Public Interest Research Group

729 Keith Avenue • Missoula, MT. 59801 • (406) 721-6040
532 N. WARREN HELENA, MT. 59601 (406)443-5155

TESTIMONY IN SUPPORT OF HB295

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS TERI ENGLAND AND I AM HERE ON BEHALF OF THE MONTANA PUBLIC INTEREST RESEARCH GROUP. MONTPIRG IS A NON-PROFIT, NON-PARTISAN RESEARCH AND ADVOCACY ORGANIZATION DIRECTED AND FUNDED BY UNIVERSITY OF MONTANA STUDENTS. I AM HERE TO SPEAK IN FAVOR OF HB295.

MONTPIRG OPERATES A CONSUMER HOTLINE WHICH DOES RECEIVE INQUIRIES FROM CONSUMERS ABOUT THE LEMON LAW. TO DATE WE HAVE RECEIVED INQUIRIES FROM ABOUT 15 LEMON OWNERS. I HAVE BROUGHT WITH ME SEVERAL LETTERS FROM CONSUMERS WHO WOULD HAVE BENEFITED FROM PASSAGE OF THE LAW BEFORE YOU TODAY. I WOULD LIKE TO ENTER THESE INTO THE RECORD AND ALSO READ EXCERPTS THAT I THINK PERTINENT TO THIS BILL.

THE CURRENT LEMON LAW WAS PASSED WHEN ONLY TWO OTHER STATES HAD PASSED SUCH A BILL, NOW OVER 17 STATES HAVE SUCH LEGISLATION. MONTANA'S LEMON LAW ESTABLISHES A DEFINITION OF WHAT A LEMON AUTOMOBILE IS. IT ALSO SUGGESTS WHAT THE MANUFACTURER SHOULD DO IF THE AUTOMOBILE IS DETERMINED TO BE A LEMON. IF THE MANUFACTURER IS COOPERATIVE THEN THE CONSUMER IS SIMPLY OUT TIME, TAXES AND OTHER ADDITIONAL NEW CAR CHARGES. UNFORTUNATELY, THIS IS SELDOM THE CASE WITH THE CONSUMERS WE HAD CONTACT WITH. THAT IS WHY WE SUPPORT THE BILL BEFORE YOU.

WE FAVOR THE FOLLOWING PROVISIONS:

- 1- EXTENSION OF WARRANTY PERIOD;
- 2- THE DISCLOSURE PROVISION IN LINES 8 THROUGH 14 ON PAGE 4;
- 3- COLLATERAL CHARGES AND INCIDENTAL FEES;
- 4- DEALER NOT LIABLE AS DESCRIBED IN SECTION 4, SUBSECTION 2 ON PAGE 5;
- 5- SECTION 7 ON DISPUTE SETTLEMENT BEGINNING ON PAGE 6;

SENATE JUDICIARY COMMITTEE

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- 6- THE NOTICE FOR RESALE ON LINES 9 THROUGH 17 ON PAGE 9;
- 7- THE ARBITRATION PROCEDURE BEGINNING WITH SECTION 10,
ON PAGE 9.

WE SUPPORT HB295 AND ARE PARTICULARLY SUPPORTIVE OF THE SECTIONS WE HAVE POINTED OUT TO YOU. THESE SECTIONS WOULD ADDRESS THE PROBLEMS WE HAVE HEARD FROM CONSUMERS WITH THE CURRENT LEMON LAW.

I WOULD LIKE TO READ EXCERPTS FROM LETTERS ADDRESSED TO THIS COMMITTEE FROM LEMON OWNERS CONTACTED BY OUR OFFICE.

HB295 PROVIDES CONSUMERS WITH SOME RECOURSE WHEN FACED WITH A LEMON AUTOMOBILE. WE URGE YOUR SUPPORT.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 04 12 85

BILL NO. H.B. 295

January 25, 1985

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 04 12 85

BILL NO. H.B. 295

To Whom It May Concern:

I am writing this letter in regards to an automobile I purchased from Arnlund Auto Plaza on February 4, 1984. I have had it in the shop numerous times for various problems and defects in the car (attached are the work-orders). I realize that any car needs service done on it, but I feel that this one has needed excessive work done on it. Many things were not normal bugs to be worked out, such as a defective gas tank, gas cage, air conditioner condenser and hydraulic clutch hose to name the major ones.

I have had the car in the shop 15-20 times in the 11 months that I have owned it, and each time it took me the extra time and inconvenience of having to take it out of my way to get it to the shop and be without a vehicle for the rest of that day. On two other occasions, it was necessary to leave the car for the whole week. I then had the added expense of borrowing or renting a loaner car. (I should add that the service dept. did only charge me for the insurance on the rented car.)

What this letter is driving at is that I am concerned that I will continue to have problems with this car after the warranty period is up, and will then be charged for the repairs. I am going on record here, with this complaint about my car, to make all parties concerned aware of the problems I have had with this car and to be sure that I will have no problem getting all repairs done to my satisfaction, should I have to take the car in for any service work on any of the previously documented problems. I was assured by the Dealership that this would be the case, and I was also informed by a representative from Mont. P.I.R.G. that I have this right under the Montana "Lemon Law" provisions.

I don't think I will have any problem with the service department taking care of any further repairs, at no charge to me, if they are things that should have been taken care of in the first place. If I do, then I will have to take legal action against the Dealership.

I am sending a copy of this letter to the House Business and Labor Committee in Helena in support of HB 295 calling for a stronger "Lemon Law" in our state in hopes of avoiding problems like this in the future.

Sincerely,

Quincy A. McClinton

CC: Rep. Dan Harrington
C.B. Pearson- Mont. P.I.R.G.
AMC Service Rep.-
Bert Arnlund Auto Plaza

1/29/85

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 04 12 85

BILL NO. H.B. 295

Dear Montana Representatives,

I took delivery of a 1984 Jeep Cherokee from Flanagans in Missoula on June 1, 1984. The following morning when I started the vehicle I engaged the choke, following the instructions in the owners manual. The exhaust smoked and pulsed like a misfiring cylinder and the vehicle shook badly. After a minute or two the idle would smooth out and begin to operate on fast idle. The dealer told me to let it break in. This Jeep, at idle, displayed an unusual feature from the car I traded in; when stopped at a light or stop sign, the engine idle speed would increase for a period of time and then drop back to a normal, low smooth idle. If, while at idle, the steering wheel were turned, even slightly, the engine idle speed would increase to compensate for the load on the engine. It would decrease when the steering wheel was released. It idled like this, normally, until I experienced a complete electrical system failure. After this electrical system failure, the engine idled erratically and I experienced a constant, intermittent problem with engine dieseling. It would run on after the ignition was turned off.

I was driving out on logging roads and came back to town and stopped the Jeep. The next time I started it, I heard an electrical clicking noise, a popping noise, an arcing noise and a strange smell was present, and the vehicle was dead. No lights, no horn, no radio, no nothing. After getting quite frustrated that my 10 day old Jeep had just had a major electrical malfunction, I started fiddling with the battery cables. It still wouldn't start so I started walking

to a friend's house. I remembered experiencing a similar problem with another vehicle that I had owned and I knew that the immediate problem most likely was a bad ground. I fiddled with the battery cables again, heard another clicking noise and the power was restored. The biggest mistake I made was not going back to the dealer and demanding that the contract be cancelled. I knew this electrical malfunction would be very difficult to find. The Jeep has never idled like it did before the first electrical failure and the dieseling problem became apparent after it also. There was another electrical failure, on the dealer's lot, one Sunday a few months later.

I've had problems in five major areas:

1. Fuel System; with bad choke operation, dieseling and rough inconsistent idle operation.
2. Electrical System Failures,
3. Transmission; grinding noises, a bad clutch, pressure plate, release bearing and problem with the flywheel.
4. Engine oil leaks; the rear main seal and the valve cover.
5. Fit and finish defects; consisting of a defective rear door, the fiberglass was cracking and on a fender the paint was peeling because it did not properly adhere to the primer at the factory.

To date this Jeep has made 13 visits for a total duration of 49 days in the repair facility in the 7½ months I've owned it. Luckily, the dealer loaned me a vehicle for about half that time, which did minimize the inconvenience, but did not eliminate it. He did not have to loan me a vehicle either, but he did, and I was grateful.

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On January 11, 1985 the service department finally went into the vehicle with the attitude of fixing it. It had recently begun an occasional, non-start situation in which the electrical system was not controlling the fuel system properly and the vehicle would not start easily and when it did, it would just turn on, the engine would not rev; then there'd be a clicking noise in the engine and it would return to it's normal, always erratic idle. They recently kept it 13 days, drove it 135 miles and replaced a number of major components. The service technician told me he found a number of things wrong. Even after all these parts were replaced it still shows signs of dieseling, runs rough on choke, though not near as rough as when I took delivery, and the non-start situation has occurred once and it still does not idle like it did before the first electrical system failure. I feel quite confident it will not ever idle like that again.

No one at the dealership could tell me anything about the procedures to follow when encountering continuing problems like these. I had to dig for any information I found. I learned of Montana Autocap and contacted them. They told me they couldn't help me because they were not sanctioned by Jeep Corporation and I'd have to contact an arbitration panel in Denver. I had no intentions ^{of dealing} ~~to deal~~ with an arbitration panel based in Denver. The lawyer I spoke to in Helena said send him \$200.00 and couldn't tell me what the final figure would cost. Luckily, I'm a student here in Missoula and the Student Legal Services agreed to take the case.

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I completely believe that I took delivery of a defective Jeep. It's been a constant nuisance and I cannot believe it will ever be trouble free. It never has been trouble free. It has been defective the entire warranty period; a number of major components were recently replaced at Jeep's expense out of the expressed written warranty's duration. At 15,000 miles on the odometer, I'm out of warranty, my Jeep's never been right and I'm out of warranty. If I win the Lemon Law case I will still have to pay new vehicle taxes again, which bring licensing and taxes to near \$300.00 on this vehicle. If I hadn't taken delivery of a defective vehicle I wouldn't have to pay these taxes again.

The law must be strengthened, a state sanctioned arbitration panel with enforcement capabilities set up for individuals, ^{and situations} where hiring a lawyer might prove an additional, real burden. Any steps which might reduce the burden on the lemon owner must be taken. A Corporation is a faceless entity. I talked to the factory service representative and he gave me the impression that he thought I was imagining these problems. Having a lemon is a very discouraging experience. You spend your money on a new, expensive investment. You expect it to be right. If it's not you have to fight to get it fixed, and fight to get it replaced, if it can't be fixed. Vehicles that fall under the regulations of the lemon law should be replaced as soon as the defects are proven.

Sincerely,

Daniel DeFrank

Daniel DeFrank

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 04 12 85
BILL NO. H.B. 295

Jan. 25, 1985

Business and Labor Committee
c/o Representative Dan Harrington

To the Committee:

Please use this following testimony for enactment of House Bill 295.

In August of 1984 my wife and I purchased a 1984 Chevrolet Citation from the only Chevrolet dealer here in Belting Mt. For a five month period we had continuous problems with this motor vehicle. For the last two months of Nov. and Dec. of 1984 this vehicle was totally inoperative. Here is a list of some of the overall needed repair:

- Vehicle would not start
- Vehicle hesitation
- Vehicle engine would die out at low and highway speeds
- Transmission leaked
- Carburetor leaked - Gas in engine oil
- Brakes froze in cold weather
- Power steering did not work
- Heater did not work
- Air conditioning stalled out engine when engaged
- Loose windshield
- Electrical surges
- Misc. Rattles
- Window wipers did not work right
- Front end out of line

The engine problems forced this vehicle to remain in our garage or in the repair shop some time for the months of Nov. & Dec. 1984, while we continued to make bank payments on the vehicle.

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DATE 04 12 85

BILL NO. HR 105

During this short period of time my wife and I both had full time jobs while working different shifts. We spent more time at the dealership with this vehicle than at work. The dealership refused us a loaner car. This was the only vehicle we had.

Our greatest concern was the safety of our family, we have one child. This car at numerous times died out while at interchanges, interstate on-ramps, stop signs, while passing other vehicles, crosswalks, and while engaged in general. The dealership did not care at all!! They said it might be a computer control problems but they really did not know and did not offer any suggestions.

After trying all avenues at the dealership we proceeded with contacting several consumer outlets. We ended up with an attorney from Helena who specialized with the current Montana Lemon Law. The only way he suggested a win situation was to store our vehicle - pull off the registration plates and go the court route for maybe a year or so. This seemed to us as bad if not worst than having no law at all. What good is the current law? After having informed the dealership of our intent with our attorney they simply laughed in our face and said this current law was a joke and an insult to the public!

Also behind the situation was the fact that we had bank payments on this vehicle of over \$300.00 a month plus the money inputted for registration, insurance, general maintenance, and other work we had used on our own to rectify the vehicle's problems by a private garage! Simply waiting 4,000 dollars or so over a years time on an inoperative vehicle seemed to high a price to pay. The attorney could not ^{give} guaranty on any financial return or even a positive outcome. Again the current law seems to protect the auto dealer and or the manufacturer! A bad vehicle is a bad vehicle and can be easily proved.

They have your money and you have a proved bad vehicle they don't want anything to do with.

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DATE 04 12 85

11 R 005

It last in early January we sold this vehicle in an as is condition for 8,000 dollars having paid over 11,000 new for it. Hopefully no one will now come after us! However, we had to refinance a new loan at our bank to pay off the original vehicle loan. We now have a 150 dollar loan per month on a vehicle we do not even own.

With such large amounts of money needed to purchase a new vehicle, with most Montanians having low per capita income, long distances between places, hard winters, and high fuel costs why are we not stopping this rip-off. Let's make the dealers at least somewhat human! It apparently will take God himself to straighten out the manufacturers.

In our opinion the current Montana law is worthless at best. The lawyers make money and the dealers keep saying they can fix it if it takes two or three years. Most of us take our lick, dump the bad vehicle, and buy a used one that's in better condition than the new defective one. Have you got the time, the money, the emotional stability, and does your boss at work really understand.

Please help others that will lose their shirt in the near future! Thank you

Sincerely,



Ellen K. Bryan

2724 River Oaks
Billings, Mt. 59105
406-259-8213

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 04-12-85
BILL NO. H.B. 295

AMENDMENT TO HOUSE BILL 295

1. Page 2, line 21 and line 22
Following "61-1-130."
Strike: "A truck with 10,000 pounds or more gross vehicle
weight rating,"

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 04 12 85

BILL NO. H.B. 295

Montana Senate Judiciary Committee
Amendments to House Bill 295
Presented by the Motor Vehicle
Manufacturers Association
April 12, 1985

Amend House Third Reading Version of House Bill 295

Amendment No. 1

On Page 3, delete lines 10 through 14.

Amendment No. 2

On Page 8, delete lines 5 through 10 .

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 04 12 85
BILL NO. H.B. 295



Denver District Office
Ford Parts and Service Division
Ford Motor Company

2650 East 40th Avenue
Denver, Colorado 80205
Mailing Address:
P.O. Box 5588, Terminal Annex
Denver, Colorado 80217

April 10, 1985

TO: MONTANA SENATE JUDICIARY COMMITTEE

Please be assured we are strongly motivated to satisfy our customers by us and our dealers providing excellent service to Ford owners.

We oppose this additional legislation as unnecessary, administratively burdensome, vague and confusing to the consumer, manufacturer, and dealer. Our customers have ample warranty coverage for their protection. We spend millions to retain customer satisfaction beyond the basic warranty period.

Our customers have ample resources and means to gain our attention for assistance:

- . District personnel at dealership
- . Local District Office
- . District Service Engineers
- . Technical Hotline
- . Monitored Owner Relations System
- . Ford Consumer Appeals Board
- . Litigation - Magnuson-Moss, Uniform Commercial Code

- Owners Manual
- Warranty Statement
- "Take-One" cards at dealership
- "800" number

We have intensified our administrative procedures to give priority attention to a customer reporting a problem which would fall under the interpretation of "Lemon Law."

- . Specific individual at District handles the complaint
- . Dealers have received detailed instructions and flow chart
- . Procedures to "hotline" parts put in place

SENATE JUDICIARY COMMITTEE
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DATE 04 12-85
BILL NO. H.B. 295

MONTANA SENATE JUDICIARY COMMITTEE

April 10, 1985

Page 2

Ford Motor Company intends to comply with the spirit and intent of legislation as currently enacted, most recently H.B. No. 18, effective October 1, 1983. We believe it presents new opportunities to provide high-quality automotive goods and services to our Montana customers. Ford will work closely with each Montana dealer to attain this objective.

The Ford Consumer Appeals Board "takes arbitration beyond the basic requirements of Rule 703 pertaining to products under warranty" according to an independent audit by R. K. McCreight and Associates.

Sincerely,

L. C. Douglas
Owner Relations Manager

LCD/ms

SENATE JUDICIARY COMM

EXHIBIT NO. 6

DATE 04 12 85

BILL NO. H.B. 295

1984 AUDIT OF THE FCAB



AUGUST, 1984

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 04 12 85
BILL NO. H.B. 295

EXECUTIVE SUMMARYA. Program Strengths

Ford's Board members appear to be carefully screened and well-qualified. They are, as a group, dedicated and diligent. Their motivation is unselfish. They are proud of their involvement, and, from our vantage point, they are doing an excellent job (703.3,703.4).

Ford's Executive Secretaries are playing a proper role in administering --but not guiding--the Board's efforts (703.3b).

Ford's 800 Line operators are helpful and courteous. They send FCAB Customer Statement forms out promptly on request. Forms arrive within 3 or 4 days (703.3b).

Very few people at Ford or its Dealers (12%) tried to discourage customers from using the Ford Consumer Appeals Board (703.3).

Among those who submitted an appeal, only 4% were found ineligible (703.3).

Practically all (95%) of the customers who have been through FCAB arbitration found the forms, procedures and literature easy to understand (703.3).

The design and execution of recordkeeping is outstanding. The system is sophisticated, yet the results appear to be very practical, and extremely efficient. This is a model program, clearly in compliance with Rule 703.6.

The Ford Consumer Appeals Board will process about 8,000 cases during its first year as a nation-wide program. It has been well-designed and carefully thought out. Significant funds and personnel have been set in place to administer FCAB. It has top management commitment. During the course of this Audit, the President of Ford Motor Company made a personal visit to the Milwaukee Board meeting to learn more about the process.

Ford records (supported by the customer survey in the audit) indicate that the customer comes away from arbitration with some award in about half of the cases. If decisions supporting earlier Ford Owner Relations or Dealer offers are considered, about two-thirds of all FCAB customers get at least some award (703.7).

For a new national program which required signing up over 5,000 dealers and organizing 30 Boards in 29 Districts, the result appears to be excellent overall. Our impression is that with the exceptions to be noted next, this program is in substantial compliance with the FTC Rules under the Magnuson-Moss Warranty Act, Part 703, on Informal Dispute Settlement Procedures.

Ford has prepared a 121 page FCAB Procedures Manual for Executive Secretaries. This comprehensive document covers the complete administration of the arbitration program, and is easy to follow. It is being fully utilized in the field.

A final comment should be made on the plus side. The Ford Consumer Appeals Board is far more extensive in its coverage than some other dispute resolution systems, because it includes both warranty and non-warranty cases. In fact, only about three FCAB cases in ten are in warranty; the other seven involve vehicles which are no longer covered by the manufacturer's warranty.

This extended coverage is an extra benefit to Ford customers. However, it does add significantly to the workload and the decision times of the FCAB, since it takes arbitration beyond the basic requirements of Rule 703 pertaining to products under warranty. We feel that this kind of system is a definite plus for the consumer, and Ford deserves recognition for taking the initiative here.

SENATE JUDICIARY COMMITTEE
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