

FIFTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

10 JUL 12 24:20

SENATE
S.B. No. **1310**

INTRODUCED BY SEN. MANNY VILLAR

EXPLANATORY NOTE

The number of car-owners is fast revving up as the present time demands the necessity of owning at least one automobile. With this fact, there is a deeper call to protect buyer of cars from the wily and fraudulent schemes of lemon motor vehicles dealers.

The historical antecedents of the lemon law originated in the United States. The lemon law was crafted primarily to return to the consumer the full value of his money. The law provides that if a manufacturer or its authorized dealer cannot successfully repair a defective product within a reasonable number of repair attempts, the manufacturer must either promptly replace or repurchase the product. Stated otherwise, the law provides for legal remedies to buyers who face the ill fate of lemon automobiles ending up in their hands.

This bill seeks to adopt the US lemon law to our own jurisdiction subject to some appropriate modifications, which may be may suitable to our country's setting.

The prompt and immediate passage of this bill deserves utmost attention.


MANNY VILLAR

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AN ACT PROVIDING PROTECTION AND REMEDIES TO BUYERS OF NEW AND USED MOTOR VEHICLES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Short Title. -This Act shall be cited as the "Philippine Lemon Law."

SECTION 2. Declaration of State Policies.-- It is the policy of the State to protect the consumers from wily and fraudulent sellers of automobiles. The State shall promote the right to full disclosure of information involving the condition of the motor vehicles for sale in order to promote transparency, fairness and the return of the full value of money.

Toward these ends, the State shall implement measures to achieve protection against deceptive, unfair and unconscionable sales acts and practices and the provision of adequate rights and means of redress.

SECTION 3. Coverage. - The provisions of this Act shall apply to buyers of new motor vehicles as well as used motor vehicles to the extent provided for under this Act.

Motorcycles, conversion vans or farm equipment are not included under this Act. For the purpose of this Act:

- a) "Buyer" shall mean a person who is a purchaser either by cash or credit, of a brand new or second-hand motor vehicle.
- b) "Seller" shall mean a person engaged in the business of selling motor vehicles directly to buyers, which shall include a supplier or distributor if (1) the seller is a subsidiary or affiliate of the supplier or distributor; (2) the seller interchanges personnel or maintains common or overlapping officers or directors with the supplier or distributor; or (3) the supplier or distributor provides or exercises supervision, direction or control over the selling practices of the seller.
- c) "Manufacturer" means any person who manufactures, assembles or processes motor vehicles, except that if the motor vehicles are manufactured, assembled or processed for another person who attaches his own brand name to the said motor vehicles, the latter shall be deemed the manufacturer. In case of imported motor vehicles, the manufacturer's representative or, in his absence, the importer, shall be deemed the manufacturer.

SECTION 4. When a motor vehicle is deemed a lemon.--A motor vehicle shall be presumed to be a lemon, when the following conditions concur:

- a) the motor vehicle was purchased within the Philippines;
- b) the buyer must have reported the failure to repair the non-conformity to the seller or manufacturer within the first 12 months or 12,000 miles, whichever is first;
- c) the defect of the automobile must substantially impair the use, value, or safety of the automobile; and
- d) the automobile has been out of service for the same defect for a cumulative total of thirty (30) days or more or the defect was not corrected within the reasonable

number of attempts. Four (4) attempts to repair the same defect is presumed to be reasonable.

SECTION 5. Buyer's remedy when motor vehicle is a lemon. -- A buyer of a new motor vehicle shall have the right to either the remedy of a prompt repurchase or replacement from a seller or manufacturer should his automobile is shown to be a lemon in accordance with the next preceding section. A buyer of used motor vehicle shall have the same right to the extent of the seller's warranty as provided for in this Act.

SECTION 6. Replacement. - The buyer who chooses replacement as a remedy is entitled to a motor vehicle identical to the vehicle being replaced. The seller or manufacturer shall be responsible for paying all taxes and licensing fees.

SECTION 7. Repurchase.-- A buyer may at his option be entitled to a refund of all monies invested in the lemon including the down payment, monthly finance payments and payoff of the finance contract. In both cases of replacement or repurchase, the buyer is also entitled to recover expenses such as towing costs and repair costs.

SECTION 8. Mileage Deduction.-The seller shall be entitled to deduct from the recovered value of the motor vehicle an amount which corresponds to the use of the lemon vehicle prior to the first repair attempt. The mileage deduction shall be computed as the mileage at the time of the first repair attempt of the defect, divided by 120,000 multiplied by the actual at price paid or payable by the buyer.

SECTION 9. Attorney's fees. -In addition to the foregoing sections, a buyer is also entitled to an award of attorney's fees and other costs of litigation.

SECTION 10. Civil liability of seller who refuses to comply. - A seller of a lemon motor vehicle who willfully fails to comply with his obligations to repurchase or replace lemon products after final judgment shall be subject to a civil penalty of up to two times the buyer's actual damages.

SECTION 11. Inscription of ownership of reacquired lemon vehicles. -- Any manufacturer who reacquires or assists a seller or lien-holder to reacquire a motor vehicle registered in the Philippines shall prior to any sale, lease or transfer of the vehicle within the country cause the vehicle to be re-titled in the name of the manufacturer, request the Land Transportation office to inscribe the ownership certificate with the notation "Lemon Buyback," and affix a decal to the vehicle if the manufacturer knew or should have known that the vehicle is required by law to be replaced, accepted for restitution due to the failure of the manufacturer to conform to the vehicle to warranties.

SECTION 12. Notice to buyers of condition of reacquired cars. -In addition to the requirement in the next preceding section, the manufacturer shall prior to the sale, lease, or other transfer of the vehicle, execute and deliver to the subsequent transferee a notice and obtain the transferee's written acknowledgement of a notice stating the following:

- a) year, make, model, and vehicle identification number of the vehicle;
- b) whether the title to the vehicle has been inscribed with the notation "Lemon law Buyback;"
- c) the nature of each nonconformity reported by the original buyer or lessee of the vehicle;
- d) repairs, if any, made to the vehicle in attempt to correct each nonconformity reported by the original buyer or lessee;
- e) The notice shall be on a from 8 % x 11 inches in size and printed in no smaller than 10-point black type on a white background.

SECTION 13. Disclosure Statement. - Any person, including any manufacturer or dealer, who sells, leases, or transfers ownership of a motor vehicle when the vehicle's ownership certificate is inscribed with the notation "Lemon Law Buyback" in accordance with Section 10 shall prior to the sale, lease, or ownership transfer of the vehicle, provide the transferee with a disclosure statement signed by the transferee that states: "THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO THE LEMON LAW. THE TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE NOTATION "LEMON LAW BUYBACK."

SECTION 14. Prohibitions. - Any automobile manufacturer, seller, importer, distributor, dealer or lien-holder who reacquires, or assists in reacquiring a motor vehicle, whether by judgment, decree, arbitration award, settlement agreement, or voluntary agreement, is prohibited from doing either of the following:

- a) Requiring, as a condition of the reacquisition of the motor vehicle, that a buyer or lessee who is a resident of the Philippines agree not to disclose the problems with the vehicle experienced by the buyer or lessee or the nonfinancial terms of the reacquisition.
- b) Including, in any release or other agreement, whether prepared by the manufacturer, seller, importer, distributor, dealer, or lienholder, for signature by the buyer or lessee, a confidentiality clause, gag clause, or similar clause prohibiting the buyer or lessee from disclosing information to anyone about the problems with the vehicle, or the non-financial terms of the reacquisition of the vehicle by the manufacturer, importer, distributor, dealer, or lienholder.
 - 1) Any confidentiality clause, gag clause, or similar clause in such a release or other agreement in violation of this section shall be null and void as against the public policy of this state.
 - 2) Nothing in this section is intended to prevent any confidentiality clause, gag clause, or similar clause regarding the financial terms of the reacquisition of the vehicle.

SECTION 15. Penalties. -(a) Any person who shall violate any provision of Article of the next preceding Section, upon conviction, be subject to a fine of not less than ten thousand pesos (P10,000.00) but not more than thirty thousand pesos (P30,000.00) or imprisonment of not less than two (2) months but not more than one (1) year, or both upon the discretion of the court.

- b) If the offender is an alien, he shall be deported after service of sentence and payment of fine without further deportation proceedings.
- c) In case the offender is a naturalized citizen, he shall, in addition to the penalty prescribed herein, suffer the penalty of cancellation of his naturalization certificate and its registration in the civil registrar and immediate deportation after service of sentence and payment of fine.
- d) any director, officer or agent of a corporation who shall authorize, order or perform any of the acts or practices constituting in whole or in part a violation of Article 14, and who has knowledge or notice of non-compliance received by the corporation from the concerned department, shall be subject to penalties to which that corporation may be subject.
- e) In case the violation is committed by, or in the interest of a foreign juridical person duly licensed to engage in business in the Philippines, such license to engage in business in the Philippines shall immediately be revoked.

SEC 16. Administrative sanctions. -- Any automobile manufacturer, seller, importer, distributor, dealer or lien-holder who violates the next preceding section shall be liable to administrative sanctions to be prescribed by the Secretary of the Department of Transportation and Communication without prejudice to civil or criminal liabilities.

SECTION 17. Prescription of action for repurchase or replacement. -- The right to file an action for repurchase or replacement shall prescribe after the lapse of four (4) years from the date the buyer knew or should have known that the vehicle is a lemon.

SECTION 18. Implementing Rules and Regulations. -- The Secretary of the Department of Transportation and Communication shall promulgate the appropriate rules and regulations to implement this Act.

SECTION 19. Separability Clause. - If any part or provision of this Act is held unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SECTION 20. Repealing Clause. - All laws, orders, rules or regulations which are inconsistent with or contrary to the provisions of this Act are hereby amended or repealed accordingly.

SECTION 21. EFFECTIVITY -This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved,