

FIRST REGULAR SESSION

HOUSE BILL NO. 265

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JOHNSON (47) (Sponsor), SKAGGS AND PRATT (Co-sponsors).

Read 1st time January 19, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0916L.011

AN ACT

To amend chapter 407, RSMo, by adding thereto seven new sections relating to the sale of used motor vehicles.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto seven new sections, to be
2 known as sections 407.593, 407.594, 407.595, 407.596, 407.597, 407.598, and 407.599, to read
3 as follows:

407.593. As used in sections 407.593 to 407.599, the following terms mean:

- 2 **(1) "As is", a motor vehicle sold by a dealer to a consumer without any warranty,**
3 **either express or implied, and with the consumer being solely responsible for the cost of**
4 **any repairs to that motor vehicle;**
- 5 **(2) "Consumer", the purchaser, other than for the purposes of resale, of a used**
6 **motor vehicle, primarily used for personal, family, or household purposes;**
- 7 **(3) "Dealer", any person or business which sells or offers for sale a used motor**
8 **vehicle after selling or offering for sale three or more used motor vehicles in the previous**
9 **twelve-month period;**
- 10 **(4) "Excessive wear and tear", wear or damage to a used motor vehicle beyond that**
11 **expected to be incurred in normal circumstances;**
- 12 **(5) "Material defect", a malfunction of a used motor vehicle, subject to a warranty,**
13 **which substantially impairs its use, value, or safety;**
- 14 **(6) "Used motor vehicle", a passenger motor vehicle, excluding motorcycles, motor**
15 **homes, and off-road vehicles, title to, or possession of which has been transferred from the**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 person who first acquired it from the manufacturer or dealer, and so used as to become
17 what is commonly known as "secondhand", within the ordinary meaning thereof but does
18 not mean a passenger motor vehicle, subject to a motor vehicle lease agreement which was
19 in effect for more than ninety days, which is sold by the lessor to the lessee, or to a family
20 member or employee of the lessee upon the termination of the lease agreement;

21 (7) "Warranty", any undertaking, in writing and in connection with the sale by a
22 dealer of a used motor vehicle, to refund, repair, replace, maintain or take other action
23 with respect to the used motor vehicle, and which is provided at no extra charge beyond
24 the price of the used motor vehicle.

2 407.594. The provisions of sections 400.2-602 to 400.2-609, RSMo, shall not apply
3 to sales of used motor vehicles and such sales shall be governed by the provisions of
4 sections 407.593 to 407.599.

2 407.595. 1. It shall be unlawful practice for a dealer to:

3 (1) Misrepresent the mechanical condition of a used motor vehicle;

4 (2) Fail to disclose, prior to sale, any material defect in the mechanical condition
5 of the used motor vehicle which is known to the dealer;

6 (3) Represent that a used motor vehicle, or any component thereof, is free from
7 material defects in mechanical condition at the time of the sale, unless the dealer has a
8 reasonable basis for this representation at the time it is made;

9 (4) Fail to disclose, prior to sale, the existence and terms of any written warranty,
10 service contract, or repair insurance currently in effect on a used motor vehicle provided
11 by a person other than the dealer, and subject to transfer to a consumer, if known to the
12 dealer;

13 (5) Misrepresent the terms of any written warranty, service contract, or repair
14 insurance currently in effect on a used motor vehicle provided by a person other than the
15 dealer, and subject to transfer to a consumer;

16 (6) Fail to disclose, prior to sale, the existence and terms of any written warranty,
17 service contract, or repair insurance offered by the dealer in connection with the sale of a
18 used motor vehicle;

19 (7) Misrepresent the terms of any warranty, service contract, or repair insurance
20 offered by the dealer in connection with the sale of a used motor vehicle;

21 (8) Represent, prior to sale, that a used motor vehicle is sold with a warranty
22 service contract or repair insurance when the vehicle is sold without any warranty, service
23 contract, or repair insurance; or

24 (9) Fail to provide a clear written explanation, prior to sale, of what is meant by the
term "as is", if the used motor vehicle is sold "as is".

25 **2. It shall be an unlawful practice for a dealer to sell a used motor vehicle to a**
26 **consumer without giving the consumer a written warranty which shall at least have the**
27 **following minimum durations:**

28 **(1) If the used motor vehicle has twenty-four thousand miles or less, the warranty**
29 **shall be, at a minimum, forty-five days or one thousand miles, whichever comes first;**

30 **(2) If the used motor vehicle has more than twenty-four thousand miles but less**
31 **than sixty thousand miles, the warranty shall be, at a minimum, thirty days or five**
32 **hundred miles, whichever comes first;**

33 **(3) If the used motor vehicle has sixty thousand miles or more, the warranty shall**
34 **be, at a minimum, fifteen days or one hundred miles, whichever comes first, except that a**
35 **consumer may waive his or her right to a warranty as provided under section 407.597.**

36 **3. The written warranty shall require the dealer, upon failure or malfunction of a**
37 **covered item during the term of the warranty, to correct the malfunction or defect,**
38 **provided the used motor vehicle is delivered to the dealer, at the dealer's regular place of**
39 **business, and subject to a deductible amount of fifty dollars to be paid by the consumer for**
40 **each repair of a covered item. This written warranty shall exclude repairs covered by any**
41 **manufacturer's warranty, or recall program, as well as repairs of a covered item because**
42 **of collision, abuse, or the consumer's failure to properly maintain such used motor vehicle**
43 **in accordance with the manufacturer's recommended maintenance schedule, or from**
44 **damage of a covered item caused as a result of any commercial use of the used motor**
45 **vehicle, or operation of such vehicle without proper lubrication or coolant, or as a result**
46 **of any misuse, negligence, or alteration of such vehicle by someone other than the dealer.**

47 **4. If, within the periods specified in subsections 1, 2, and 3 of this section, the dealer**
48 **or the dealer's agent fails to correct a material defect of the used motor vehicle, after a**
49 **reasonable opportunity to repair the used vehicle, the dealer shall repurchase the used**
50 **motor vehicle and refund to the consumer the full purchase price, excluding all sales taxes,**
51 **title, and registration fees, or any similar governmental charges, and less a reasonable**
52 **allowance for excessive wear and tear and less a deduction for personal use of such vehicle.**
53 **Refunds shall be made to the consumer and lienholder, if any, as their interests appear on**
54 **the records of ownership kept by the director of the department of revenue.**

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

407.596. 1. It shall be an affirmative defense to any claim under sections 407.593
2 **to 407.599 that:**

3 **(1) An alleged material defect does not substantially impair the use, market value,**
4 **or safety of the used motor vehicle;**

5 **(2) A material defect is the result of abuse, neglect, or unauthorized modifications**
6 **or alteration of the used motor vehicle by anyone other than the dealer or the dealer's**
7 **agent;**

8 **(3) A claim by a consumer was not filed in good faith; or**

9 **(4) Any other affirmative defense allowed by law.**

10 **2. It shall be presumed that a dealer has a reasonable opportunity to correct or**
11 **repair a material defect in a used motor vehicle, if:**

12 **(1) The same material defect has been subject to repair three or more times by the**
13 **dealer or the dealer's agent within the warranty period, but the material defect continues**
14 **to exist; or**

15 **(2) The used motor vehicle is out of service by reason of waiting for the dealer to**
16 **begin or complete repair of the material defect for a cumulative total of twenty or more**
17 **days during the warranty period.**

407.597. 1. Notwithstanding any provision of sections 407.593 to 407.599 to the
2 **contrary, a consumer, as a result of a price negotiation for the purchase of a used motor**
3 **vehicle with over sixty thousand miles, may elect to waive the dealer's obligation to provide**
4 **a warranty on the used motor vehicle. The waiver shall be in writing and separately stated**
5 **in the agreement of retail sale or in an attachment thereto and separately signed by the**
6 **consumer. The waiver shall state the dealer's obligation to provide a warranty on used**
7 **motor vehicles offered for sale, as set forth in section 407.595. The waiver shall indicate**
8 **that the consumer, having negotiated the purchase price of the used motor vehicle and**
9 **obtained a price adjustment, is electing to waive the dealer's obligation to provide a**
10 **warranty on the used motor vehicle and is buying the used motor vehicle "as is".**

11 **2. If a dealer fails to give a written warranty required by subsection 2 of section**
12 **407.595, the dealer nevertheless shall be deemed to have given the warranty as a matter of**
13 **law, unless a waiver has been signed by the consumer in accordance with section 407.597.**

14 **3. Nothing in sections 407.593 to 407.599 shall in any way limit the rights or**
15 **remedies which are otherwise available to a consumer under any other law.**

407.598. 1. The provisions of subsections 1, 2, and 3 of section 407.595 shall not
2 **apply to:**

3 **(1) Any used motor vehicle sold for less than three thousand dollars;**

4 **(2) Any used motor vehicle over seven or more model years old;**

5 **(3) Any used motor vehicle which has been declared a total loss by an insurance**
6 **company and with respect to which the consumer, at or prior to the time of sale, has been**

7 advised in writing that the used motor vehicle has been declared a total loss by an
8 insurance company; or

9 (4) Any used motor vehicle with more than one hundred thousand miles.

10 2. The director of revenue shall implement a consumer awareness program which
11 shall advise consumers of the requirements, protections, and benefits provided by sections
12 407.593 to 407.599, within one hundred twenty days following the enactment of sections
13 407.593 to 407.599.

14 3. The director of revenue may establish an administrative fee, to be paid by the
15 consumer, in order to implement the provisions of sections 407.593 to 407.599, which fee
16 shall be fixed at a level not to exceed the cost for the administration and enforcement of
17 sections 407.593 to 407.599.

407.599. 1. If a consumer undertakes a court action after complying with the
2 provisions of sections 407.593 to 407.599 and finally prevails in that action, he or she shall
3 be allowed by the court to recover as part of the judgment a sum equal to the aggregate
4 amount of costs and expenses, including attorney's fees based on actual time expended,
5 determined by the court to have been reasonably incurred by the plaintiff for or in
6 connection with the commencement and prosecution of such action.

7 2. If any claim by a consumer under sections 407.593 to 407.599 is found by a court
8 to have been filed in bad faith, or solely for the purpose of harassment, or in the absence
9 of a substantial justifiable issue of either law or fact raised by the consumer, or for which
10 the final recovery is not at least ten percent greater than any settlement offer made by the
11 dealer prior to the commencement of the court action, then the consumer shall be liable for
12 all costs and reasonable attorney's fees incurred by the manufacturer, or its agent, as a
13 direct result of the bad faith claim.

14 3. Nothing in sections 407.593 to 407.599 shall in any way limit the rights or
15 remedies which are otherwise available to a consumer at law or in equity.