

SECOND REGULAR SESSION

HOUSE BILL NO. 1117

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SALVA (Sponsor) AND DUSENBERG (Co-sponsor).

Pre-filed December 14, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3482L.01I

AN ACT

To repeal sections 407.560, 407.563, 407.565, 407.567, 407.569, 407.571, 407.573, and 407.579, RSMo, and to enact in lieu thereof eight new sections relating to lemon laws for boats and watercraft.

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

Section A. Sections 407.560, 407.563, 407.565, 407.567, 407.569, 407.571, 407.573, and 407.579, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 407.560, 407.563, 407.565, 407.567, 407.569, 407.571, 407.573, and 407.579, to read as follows:

407.560. As used in sections 407.560 to 407.579, the following terms mean:

- (1) "Collateral charges", those additional charges to a consumer not directly attributable to a manufacturer's suggested retail price label for the new motor vehicle. For the purposes of sections 407.560 to 407.579, "collateral charges" includes all sales tax, license fees, registration fees, title fees and motor vehicle inspections;
- (2) "Comparable motor vehicle", an identical or reasonably equivalent motor vehicle;
- (3) "Consumer", the purchaser, other than for the purposes of resale, of a new motor vehicle, primarily used for personal, family, or household purposes, and any person to whom such new motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such new motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty;

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.

12 (4) "Express warranty", any written affirmation of the fact or promise made by a
13 manufacturer to a consumer in connection with the sale of new motor vehicles which relates to
14 the nature of the material or workmanship or will meet a specified level of performance over a
15 specified period of time;

16 (5) "Manufacturer", any person engaged in the manufacturing or assembling of new
17 motor vehicles as a regular business;

18 (6) "New motor vehicle", any motor vehicle being transferred for the first time from a
19 manufacturer, distributor or new vehicle dealer, which has not been registered or titled in this
20 state or any other state and which is offered for sale, barter or exchange by a dealer who is
21 franchised to sell, barter or exchange that particular make of new motor vehicle. The term "new
22 motor vehicle" shall include only those vehicles propelled by power other than muscular power,
23 but the term shall not include vehicles used as a commercial motor vehicle, off-road vehicles,
24 mopeds, motorcycles or recreational motor vehicles as defined in section 301.010, RSMo, except
25 for the chassis, engine, powertrain and component parts of recreational motor vehicles. The term
26 "new motor vehicle" shall also include demonstrators or lease-purchase vehicles as long as a
27 manufacturer's warranty was issued as a condition of sale;

28 (7) **"New vessel", any vessel, as defined in section 306.010, RSMo, which has not**
29 **been registered or titled in this state or any other state and which is offered for sale, barter**
30 **or exchange by a dealer who is franchised to sell, barter or exchange that particular make**
31 **of new vessel.**

407.563. The provisions of sections 400.2-602 to 400.2-609, RSMo, shall not apply to
2 sales of new motor vehicles **or new vessels** and such sales shall be governed by the provisions
3 of sections 407.560 to 407.579.

407.565. For the purposes of sections 407.560 to 407.579, if a new motor vehicle **or new**
2 **vessel** does not conform to all applicable express warranties, and the consumer reports the
3 nonconformity to the manufacturer, or its agent, during the term of such express warranties, or
4 during the period of one year following the date of original delivery of the new motor vehicle **or**
5 **new vessel** to the consumer, whichever period expires earlier, the manufacturer, or its agent,
6 shall make such repairs as are necessary to conform the new vehicle **or new vessel** to such
7 express warranties, notwithstanding the fact that such repairs are made after the expiration of
8 such term or such one-year period.

407.567. 1. If the manufacturer, through its authorized dealer or its agent, cannot
2 conform the new motor vehicle **or new vessel** to any applicable express warranty by repairing
3 or correcting any default or condition which impairs the use, market value, or safety of the new
4 motor vehicle **or new vessel** to the consumer after a reasonable number of attempts, the
5 manufacturer shall, at its option, either replace the new motor vehicle **or new vessel** with a

6 comparable new vehicle **or new vessel** acceptable to the consumer, or take title of the vehicle
7 **or vessel** from the consumer and refund to the consumer the full purchase price, including all
8 reasonably incurred collateral charges, less a reasonable allowance for the consumer's use of the
9 vehicle **or vessel**. The subtraction of a reasonable allowance for use shall apply when either a
10 replacement or refund of the new motor vehicle **or new vessel** occurs.

11 2. Refunds shall be made to the consumer and lienholder of record, if any, as their
12 interests may appear.

13 3. (1) Upon taking the title to a vehicle **or vessel** under this section, the manufacturer
14 may apply to the department of revenue for a reimbursement equal to any amounts refunded to
15 a consumer for any sales tax, license fees, registration fees, and title fees paid by the consumer
16 as a result of purchasing the vehicle **or vessel**. Upon the receipt of a written request for a refund,
17 accompanied by satisfactory proof that such sales tax and fees on the vehicle **or vessel** were paid
18 when or after the vehicle **or vessel** was purchased and that the manufacturer has refunded such
19 sales tax and fees to the consumer, lienholder, or lessor of the vehicle **or vessel**, the department
20 of revenue shall refund to the manufacturer an amount equal to the amounts refunded to a
21 consumer for such sales tax and fees paid by the consumer as a result of purchasing the vehicle
22 **or vessel**.

23 (2) The manufacturer may, in lieu of applying to the department of revenue for a
24 reimbursement under this subsection, direct the consumer to apply to the department of revenue
25 for a refund of any sales tax, license fees, registration fees, and title fees paid by the consumer
26 as a result of purchasing the vehicle **or vessel**. The manufacturer shall provide the consumer
27 with the documentation required to prove that the consumer paid such sales tax and fees to the
28 manufacturer. Upon the receipt of a written request by the consumer for a refund, accompanied
29 by satisfactory proof that such sales tax and fees on the vehicle **or vessel** were paid when or after
30 the vehicle **or vessel** was purchased, and a written statement from the manufacturer that such
31 sales tax and fees were not refunded to the consumer, lienholder, or lessor of the vehicle **or**
32 **vessel**, the department of revenue shall refund to the consumer an amount equal to the amounts
33 for such sales tax and fees paid by the consumer as a result of purchasing the vehicle **or vessel**.

2 407.569. It shall be an affirmative defense to any claim under sections 407.560 to
3 407.579 that:

4 (1) An alleged nonconformity does not substantially impair the use, market value, or
5 safety of the motor vehicle **or vessel**;

6 (2) A nonconformity is the result of abuse, neglect, or unauthorized modifications or
7 alterations of a motor vehicle **or vessel**;

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

(4) Any other affirmative defense allowed by law.

407.571. It shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle **or new vessel** to the applicable express warranties if within the terms, conditions, or limitations of the express warranty, or during the period of one year following the date of original delivery of the new motor vehicle **or new vessel** to a consumer, whichever expires earlier, either:

(1) The same nonconformity has been subject to repair four or more times by the manufacturer, or its agents, and such nonconformity continues to exist; or

(2) The new vehicle **or new vessel** is out of service by reason of repair of the nonconformity by the manufacturer, through its authorized dealer or its agents, for a cumulative total of thirty or more working days, exclusive of down time for routine maintenance as prescribed by the manufacturer, since delivery of the new vehicle **or new vessel** to the consumer. The thirty-day period may be extended by a period of time during which repair services are not available to the consumer because of conditions beyond the control of the manufacturer or its agents.

407.573. 1. The terms, conditions, or limitations of the express warranty, or the period of one year following the date of original delivery of the new motor vehicle **or new vessel** to a consumer, whichever expires earlier, may be extended if the new motor vehicle **or new vessel** warranty problem has been reported but has not been repaired by the manufacturer, or its agent, by the expiration of the applicable time period.

2. The manufacturer shall provide information for consumer complaint remedies with each new motor vehicle **or new vessel**. It shall be the responsibility of the consumer, or his representative, prior to availing himself of the provisions of sections 407.560 to 407.579, to give written notification to the manufacturer of the need for the repair of the nonconformity, in order to allow the manufacturer an opportunity to cure the alleged defect. The manufacturer shall immediately notify the consumer of a reasonably accessible repair facility of a franchised new vehicle **or new vessel** dealer to conform the new vehicle **or new vessel** to the express warranty. After delivery of the new vehicle **or new vessel** to an authorized repair facility by the consumer, the manufacturer shall have ten calendar days to conform the new motor vehicle **or new vessel** to the express warranty. Upon notification from the consumer that the new vehicle **or new vessel** has not been conformed to the express warranty, the manufacturer shall inform the consumer if an informal dispute settlement procedure has been established by the manufacturer in accordance with section 407.575. However, if prior notice by the manufacturer of an informal dispute settlement procedure has been given, no further notice is required.

3. Any action brought under sections 407.560 to 407.579 shall be commenced within six months following expiration of the terms, conditions, or limitations of the express warranty, or within eighteen months following the date of original delivery of the new motor vehicle **or new**

23 **vessel** to a consumer, whichever is earlier, or, in the event that a consumer resorts to an informal
24 dispute settlement procedure as provided in sections 407.560 to 407.579, within ninety days
25 following the final action of any panel established pursuant to such procedure.

407.579. 1. Except as provided in subdivision (1) of section 407.560, nothing in sections
2 407.560 to 407.579 shall in any way limit the rights or remedies which are otherwise available
3 to a consumer at law or in equity.

4 2. Sections 407.560 to 407.579 shall apply to any new motor vehicle sold after January
5 1, 1985, **and to any new vessel sold after January 1, 2007.**

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