

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Batasan Hills, Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. **4295**

Introduced by: Representative **AUGUSTO Boboy SYJUCO, Ph.D.**

EXPLANATORY NOTE

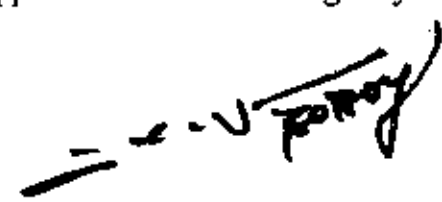
This bill seeks to provide protection for consumers against the fraudulent sale of defective motor vehicles machineries and appliances and breach of warranties by its seller or manufacturer.

There have been reported cases of newly purchased motor vehicle proving to be defective or failing to meet standards of quality and performance guaranteed by its seller or manufacturer. Unfortunately, there is no "*Lemon Law*" in the Philippines. In the United States, the "*Lemon Law*" provides full protection to consumers against sales and trade practices of sellers or manufacturers of motor vehicles which are deceptive, unfair or otherwise inimical to consumers and the public interest. With the proposed "*Lemon Law*" protection is provided not only to buyers of motor vehicles but it also protects the right of buyers of machineries and appliances

Under the proposed measure, if the seller or the manufacturer fails to repair a new motor vehicle machinery or appliance to meet the terms of an express written warranty, after reasonable notice and attempts, the manufacturer shall be required to replace the vehicle machinery or appliance with a new one of the same kind and value, or return the purchase price to the buyer, at the option of the latter. The manufacturer shall also be responsible to pay for sales or license, registration and other official fees including incidental damages that the buyer or lessee may have incurred due to the breach of warranty.

This measure intends to provide the same protection to consumers in the Philippines against breach of warranties of motor vehicle machinery and appliance sellers or manufacturers. This bill will also ensure that the consumers will get the full value of their hard earned money or investment when buying a new motor vehicle machinery or appliance.

In view of the foregoing, approval of this bill is urgently recommended.


AUGUSTO BOBOY SYJUCO, Ph.D.

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AN ACT

PROTECTING CONSUMERS AGAINST THE SALE OF DEFECTIVE MOTOR VEHICLE, MACHINERIES AND APPLIANCES USUALLY SOLD TO COMMON CONSUMERS AND IMPOSING PENALTIES FOR VIOLATION THEREOF

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

SECTION 1. Short Title. – This Act shall be known as the “*Philippine Lemon Law*.”

SEC. 2. Declaration of Policy. – It is hereby declared the policy of the State to promote consumer rights and provide full protection to buyers of motor vehicles, machineries and appliances usually sold to common consumers against trade practices of sellers or manufacturers which are inimical to the economy and the public interest.

SEC. 3. Definition of Terms. – As used in this Act:

a) *Common Consumer* refers to the purchaser, other than for purposes of resale, of a motor vehicles, machineries and appliances which is used primarily for personal, family, or household purposes, and any person to whom the motor vehicle, machineries or appliance is transferred for the same purposes during the duration of any warranty applicable to the the item bought, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty;

b) *Manufacturer* refers to a person, partnership, association, corporation or entity engaged in the business of manufacturing or assembling motor vehicles, machineries or appliances or of distributing motor vehicles, machineries and appliances to sellers;

c) *Express warranty* refers to the written warranty of the manufacturer of a new motor vehicle, machinery or appliance including any terms or conditions precedent to the enforcement of obligations under that warranty;

d) *Motor vehicle* refers to passenger cars, pick-up or panel -trucks, sports utility vehicles, Asian utility vehicles, vans, motorcycles, and demonstrators or lease purchase vehicles which was subject to a manufacturer's express warranty at the time of the delivery and was purchased and registered in the Philippines;

e) *Machineries*-device designed to yield a high mechanical advantage to reduce the effort needed to do that work.

f) *Appliances*- A device or instrument designed to perform a specific function, especially an electrical device usually used within the household

g) *Seller* refers to any person other than a manufacturer which sells motor vehicles, machineries or appliances to the public. It includes manufacturers' authorized dealer, retailer, distributor or agent;

h) *Collateral charges* refer to sales-related charges including but not limited to sales tax, license fees, finance charges and interest, transportation charges, dealer preparation charges or any other charges for service contracts, undergoing rust-proofing or installed options, not recoverable from a third party;

i) *Comparable motor vehicle/machinery/appliance* refers to a motor vehicle or machinery or appliance that is identical or reasonably equivalent to the motor vehicle or machinery or appliance to be replaced, in terms of specifications and value;

j) *Non-conformity* refers to a failure to conform to a warranty, a defect or a condition, including those that do not affect the driveability of the vehicle or the operation of machinery or the appliance but significantly impairs the use, market value, or safety of a motor vehicle;

k) *Notification* means a written complaint of the defect or defects communicated to the manufacturer who has responded to the consumer in writing regarding said complaint, or that a representative of the manufacturer or seller has either inspected the vehicle or machinery or the appliance or met with the consumer regarding the non-conformity;

l) *Reasonable allowance for use* refers to twenty percent (20%) per annum deduction from the purchase price, or the product of the distance traveled in kilometers and the purchase price divided by one hundred thousand (100,000), whichever is higher; and

k) *Warranty* refers to any undertaking, written or otherwise, of the manufacturer, or any affirmations of fact or promise made by the manufacturer in connection with the sale of a motor vehicle/machinery or appliance that become part of the basis of the bargain which includes the obligations of the manufacturer in relation to materials, workmanship, and fitness of a motor vehicle/machinery/appliance for ordinary use or reasonable intended purposes throughout the duration of the lemon law rights period as defined in this section.

SEC. 4. *Lemon Law Rights Period.* – The period ending twenty four (24) months after the date of original delivery of a brand new motor vehicle to a consumer or the first ten (10) thousand kilometers of operation after such delivery, whichever comes first, during which the consumer can report any non-conformity to the standards and specifications of the manufacturer or seller, and pursue any right provided for under this Act. In the case of machineries, the period of 24 months after the date of original delivery, the consumer may pursue any right under this Act. Consumers who bought appliances shall have 6 months from the date of purchase to pursue their rights under this Act.

SEC. 5. *Conformity to Warranties.* – If a new motor vehicle or machinery does not conform to all express warranties, and the consumer reports the non-conformity within the lemon rights period, the seller shall make such repairs within seven (7) days after the receipt of the written notice to correct the defect or the non-conformity. The repair shall be free of any charges against the consumer, notwithstanding the fact that

such repairs are made after the expiration of the manufacturer's or seller's warranty period. In the case of purchasers of appliances, if the appliance prove to be defective within one month after purchase, the seller is required to replace the same with a similar appliance. Any defect of the appliance on the succeeding months but not longer than six months, repair of which shall be made by the seller without cost.

SEC. 6. *Lemon Law Rights.* – If the seller does not repair the defect within the seven (7) day period despite receipt of the notification, the consumer may forward a written notice of refusal or failure to correct the non-conformity to the manufacturer. The manufacturer shall repair the non-conformity within twenty (20) days.

If the manufacturer fails to repair the non-conformity within the twenty (20) day period or after a reasonable number of attempts, the manufacturer or seller shall:

a) Replace the motor vehicle or machinery with a comparable motor vehicle or machinery; or

b) Accept the return of the motor vehicle or machinery and refund to the consumer and any lien holder as their interest may appear the full purchase price, including all collateral charges, incidental charges, incidental damages, less reasonable allowance for use of the vehicle up to the date of the first notice of non-conformity that is given to the manufacturer or seller.

The consumer shall have the unconditional right to choose a refund rather than a replacement vehicle or machinery and to drive a motor service vehicle or temporary replacement to be used in cases of machinery which shall be provided by the manufacturer, until he receives either a replacement or a refund. The subtraction of a reasonable allowance for the use of the vehicle in excess of the first five thousand kilometers of operation shall apply to either a replacement or refund of the motor vehicle. Mileage, expenses, and reasonable loss of use necessitated by attempts to conform such motor vehicle to the express warranty may be recovered by the consumer.

Four (4) attempts to repair the same defect shall be presumed to be reasonable.

In the case of appliances if there be failure to replace or repair the defective appliance, after due notice to the seller, the consumer may right away file complaint with the Department of Trade and Industry.

Any disagreement on this matter shall be resolved by the Department of Trade and Industry (DTI).

SEC. 7. *Notification Requirement.* – Prior to availing himself of the rights under the preceding section, it shall be the responsibility of the consumer or his representative to notify the manufacturer or seller in writing of the need for the correction or repair of the non-conformity and ensure that the same is properly received by the latter. If the seller was the one notified, the latter shall, upon receipt, forward a copy of such notification to the manufacturer.

SEC. 8. *Remedies.* – Any consumer who suffers loss by reason of a violation of any provision of this Act may file a complaint before the Department of Trade and Industry (DTI) for mediation proceedings as provided for in this Act.

Nothing in this Act shall be construed to limit or impair the rights and remedies of a consumer under any other law.

SEC. 9. *Dispute Resolution.* – The DTI shall exercise exclusive and original jurisdiction over disputes arising from the provisions of this Act. All disputes arising from the provisions of this Act shall be settled by the DTI in accordance with the following dispute resolution mechanisms:

a) *Mediation Proceedings.* – Prior to litigation, the parties shall be required to undergo mediation proceedings under the Bureau of Trade Regulation and Consumer Protection and the Consumer Welfare and Trade Regulation Group or any office under DTI as may be designated by the Secretary of the Department of Trade and Industry which has the necessary capability and expertise pertaining to motor vehicles.

Within six (6) months after the effectivity of this Act, the offices above mentioned are mandated to draft and promulgate its rules and procedures for said mediation proceedings. The rules shall incorporate an evaluation by the experts of the government on any technical issues, which shall be considered with finality.

The principles of negotiation, conciliation and mediation towards amicable settlement between the manufacturer or seller and the consumer shall be strictly observed.

In the course of its dispute resolution efforts, the DTI shall endeavor to independently establish the validity of the outstanding complaint of the consumer. The DTI shall likewise retain the services of other government agencies or independent private entities in the ascertainment of the validity of the complaint. Any cost incurred in establishing the validity of the complaint shall be borne jointly by the consumer and the manufacturer.

The complaint shall be deemed valid if it is independently established that the vehicle does not conform to the standards or specifications set by the manufacturer.

Upon failure of the negotiation or mediation between the manufacturer and the consumer, the DTI shall issue a certificate attesting to such failure and, at any time during the dispute resolution period, the manufacturer or seller and the consumer shall be encouraged to settle amicably.

All disputes that have been submitted for mediation shall be settled not later than forty-five (45) working days from the date of filing of the complaint with the DTI.

In case a non-conformity of the vehicle is not found by the DTI, it shall rule in favor of the manufacturer and direct the consumer to reimburse the manufacturer the costs incurred by the latter in validating the complaints.

(b) *Arbitration proceedings.* – In the event there is a failure to settle the complaint during the mediation proceedings, the parties may voluntarily enter into arbitration proceedings which shall be governed by Republic Act (RA) No. 876, otherwise known as "*The Arbitration Law*" and Republic Act (RA) No. 9285, otherwise known as "*The Alternative Dispute Resolution Act of 2004.*"

The arbitral tribunal which shall be constituted to settle the dispute arising from the provisions of this Act shall have a representative from DTI, as member.

The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be in Metro Manila, unless the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties, shall decide on a different place of arbitration.

The arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts, or the parties, or for inspection of goods, properties or documents.

SEC. 10. *Defenses.* – The manufacturer or any other person against whom an action is brought may deny liability by raising the following affirmative defenses:

a) The alleged non-conformity, defect or condition does not substantially impair its value neither there is a significant impairment or is a serious safety defect as defined under this Act; and

b) The non-conformity is the result of abuse, neglect, or unauthorized modification or alteration of a motor vehicle by a consumer.

SEC. 11. *Court Action.* – At any time after the mediation proceedings, the consumer may elect to voluntarily submit to arbitration proceedings or bring an action with the court to enforce the provisions of this Act.

SEC. 12. *Award of Damages.* – In any action brought by the consumer due to the failure of the manufacturer to comply with the decision rendered in a dispute resolution proceeding or court order, the consumer shall have the right to recover attorneys fees, moral and exemplary damages, and other equitable relief as the court may deem appropriate.

SEC. 13. *Prescriptive Period.* – Any action brought to enforce the provisions of this Act shall be commenced within four (4) years from the date of the original delivery of the motor vehicle to the consumer.

SEC. 14. *Disclosure on Resale or Transfer of Vehicles or Machinery.* – If a motor vehicle or machinery that is returned to the manufacturer or distributor either under this Act or by judgment, decree or award is then transferred to a dealer, the manufacturer or distributor shall disclose this information to the dealer prior to any sale, lease, or transfer. The manufacturer or distributor shall disclose the same to the Land Transportation Office (LTO) which shall then inscribe the ownership certificate with 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 or accepted for restitution due to failure to comply with warranties.

SEC. 15. *Tax Refund.* – The manufacturer who accepts a returned motor vehicle, machinery and appliance shall be entitled to a tax refund or credit for the sales taxes paid on the returned vehicle: *Provided*, That the claim for the tax refund or credit was made in accordance with the provisions of applicable tax laws.

SEC. 16. *Prohibitions.* – Any motor vehicle/ machinery or appliance manufacturer or seller or lien-holder who reacquires, or assists in reacquiring a motor vehicle or machinery or appliance whether by judgment, decree, arbitration award, settlement agreement, or voluntary agreement, is prohibited from:

a) Requiring as a condition of the reacquisition of the motor vehicle, machinery or appliance that a buyer or lessee who is a resident of the Philippines agrees not to disclose the problems with the vehicle experienced by the buyer or lessee or the non-financial terms of the reacquisition; and

b) Including in any release or other agreement, whether prepared by the manufacturer, seller or lien-holder for signature by the buyer or lessee, a confidentiality clause, gag clause, or similar clauses 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 or seller.

Any confidentiality clause, gag clause, or similar clauses in such a release or other agreement in violation of this section shall be null and void.

Nothing in this section is intended to prevent any confidentiality clause, gag clauses, or similar clause regarding the financial terms of the reacquisition of the vehicle.

SEC. 17. *Consumer Waiver of Rights.* – Any agreement entered into by a consumer for the purchase of a new motor vehicle/machinery or appliance which waives, limits or disclaims the rights set forth in this Act shall be void as contrary to public policy. Said rights shall inure to a subsequent transferee of such motor vehicle.

SEC. 18. **Lemon Law Rights Notice.** – Any motor vehicle machinery or appliance seller, manufacturer, agent or authorized dealer shall notify its buyers of the lemon law rights provided under Section 6 of this Act and shall post a written notice of these rights printed in bold face type, and displayed in conspicuous places in its sales offices.

SEC. 19. **Penalties.** – Any person found guilty of violating any of the provisions of this Act shall be penalized with a fine of not less than One hundred thousand pesos (P100,000.00) in the case of motor vehicles and machineries and in the case of appliances the fine equivalent to fifty percent (50%) of the original price of the said appliance.

The foregoing penalty shall be without prejudice to any civil or criminal liability that the offender or the responsible officers of the manufacturer, agent or authorized dealer may incur under existing law. If the offender is an alien, he shall be deported after payment of fine without further deportation proceedings.

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 payment of fine.

Any director, officer, 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 the preceding section, 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.

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. 20. **Assistance by Other Agencies.** – The Land Transportation Office, Bureau of Internal Revenue and other government agencies, political subdivisions and local government units, including government-owned and controlled corporations, shall render such assistance as required by the DTI in order to effectively implement the provisions of this Act.

SEC. 21. **Implementing Agency.** – The Secretary of Trade and Industry shall promulgate the necessary implementing rules and regulations within ninety (90) days from the effectivity of this Act.

SEC. 22. **Repealing Clause.** – All laws, decrees, executive orders, issuances, rules or regulations or parts thereof, which are inconsistent with the provisions of this Act, are hereby deemed repealed, amended or modified accordingly.

SEC. 23. **Separability Clause.** – If any provision or part of this Act is declared invalid or unconstitutional, the remaining parts or provisions not affected shall remain in full force and effect.

SEC. 24. **Effectivity.** – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in two (2) national newspapers of general circulation.

Approved,