

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS

First Regular Session

HB 2864



Introduced by Honorable Lucy Marie Torres-Gomez

EXPLANATORY NOTE

The 13th, 14th and 15th Congress adopted, but failed to pass, a proposed legislation that would eventually have gained recognition as the "Philippine Lemon Law."

This law aims to protect consumers or buyers of new, but faulty, motor vehicles, by providing them a more effective mechanism for vindicating their rights against these defects within the so-called lemon law rights period or within a certain mileage provided under the law. In extreme cases where the factory defects of the car are extensive, the law also warrants the refund of the consumer's money or the replacement of lemon car with a new automobile altogether.

The passage of this measure is long overdue.

As of the adoption of this legislation by the 14th Congress, statistics show that of an average of 100,000 units of automobiles sold per year, 100 are reported to be suffering from factory defects.

While Republic Act No. 7394, otherwise known as the Consumer Protection Act, provides for the protection of consumers from scheming manufacturers and defective products, its consumer-protection mechanism for lemon vehicles still leaves much to be desired.

Generally, complaints before the DTI are resolved through mediation. But said grievance procedure is not enough to protect the consumer rights of automobile buyers who mostly do not have enough economic surpluses for repairs and insurance participation fees, but are nonetheless constrained to allocate such unwarranted expenses for brand new vehicles. Therefore, there is a need to install a more effective sanction against these defects.

The most effective way is to give the DTI more punitive powers in order to reinforce its function of protecting buyers of lemon cars through the enactment of this proposed legislation.

This refilled version of the proposal is the same version adopted by the members of the bicameral conference committee during the 13th and 14th Congress.

As previously presented, it already incorporates and represents the various proposals from the car manufacturing industry, consumer protection organizations, concerned government agencies, individual consumers, and other industry stakeholders. All of these groups had actively participated in crafting this piece of legislation. It is thus a version acceptable to all concerned.

In fine, we hope that this legislation will be given preferential and immediate attention as with other proposed legislations imbued with public interest.



LUCY MARIE TORRES-GOMEZ

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Sixteenth Congress
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HOUSE BILL NO. 2864

INTRODUCED BY HONORABLE LUCY TORRES-GOMEZ

**AN ACT
STRENGTHENING CONSUMER PROTECTION IN THE PURCHASE OF BRAND
NEW VEHICLES AND FOR OTHER PURPOSES**

SECTION 1. Short Title. – This Act shall be known as the “Lemon Law of 2008.”

SECTION 2. Declaration of Policy – It is hereby declared the policy of the State to promote full protection to the rights of consumers in the sale of motor vehicles against sales and trade practices which are deceptive, unfair or otherwise inimical to the consumers and the public interest.

The State recognizes that a motor vehicle is a major consumer purchase or investment. The consumer rights should thus be clearly defined including the means for redress for violation thereof.

SECTION 3. Definition of Terms – For the purpose of this Act, the following terms shall mean:

(a) “Brand New Vehicle” refers to a vehicle constructed entirely from new parts that has never been sold or registered with the Department of Transportation and Communication or an appropriate agency or authority and operated on the highway of the Philippines, or in foreign state or country.

(b) “Collateral Charges” refers to the fee paid to the Land Transportation Office for the registration of a brand new motor vehicle and other incidental expense including the cost of insurance pertaining to aid vehicle.

(c) "Comparable Motor Vehicle" refers to a motor vehicle that is identical or reasonably equivalent to the motor vehicle to be replaced, in terms of specifications and values subject to availability, as the motor vehicle existed at the time of purchase, Provided, That there shall be an offset from this value for reasonable allowance for its use.

(d) "Consumer" refers to any person, natural or juridical, who is a purchaser, either by cash or credit of a brand new motor vehicle.

(e) "Dealer" or "Seller" refers to any person other than manufacturer who sells motor vehicle to the public.

(f) "Determination of Reasonable Allowance for Use"- For purpose of this Act, "reasonable allowance for use" shall mean twenty per cent (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.

(g) "Distributor" refers to any person or entity other than a manufacturer who sells brand new motor vehicles to their duly authorized dealers or retailers.

(h) "Implementing Agency" refers to the Department of Trade and Industry (DTI).

(i) "Lemon Law Right Period" refers to the period ending twelve (12) months after the date of the original delivery of a brand new motor vehicle to a consumer of the first twenty thousand (20,000) kilometers of operation after such delivery, whichever comes first. This shall be the period during which the consumer can report any non confirmatory as defined in paragraph (k) herein to the standards and specifications of the manufacturer, distributor, authorized dealer or retailer, and pursue any right provided for under this Act.

(j) "Manufacturer" refers to a person, partnership, association, corporation or entity engaged in the business of manufacturing or assembling motor vehicle, or of distributing motor vehicles to motor vehicle dealers.

(k) "Motor Vehicle" refers to any self-propelled four-wheeled road vehicle designed to carry passengers including, but not limited to sedan, coupes, station wagons, convertibles, pick-ups, vans, sports utility vehicles (SUV's) and Asian utility vehicles (AUV's) but excepting motorcycle, delivery trucks, dump trucks, buses, road rollers, trolley cars, street sweepers, sprinklers, lawn mowers and heavy equipment, such as, but not limited to bulldozers, pay loaders, graders, forklifts, amphibians trucks,

cranes and vehicles which run only on rails or trucks or tractors, trailer and traction engines of all kinds used exclusively for agricultural purposes, Trailers having any number of wheels, when propelled or intended by attachment to a motor vehicle, shall be classified as separate motor vehicle with power rating.

(l) "Non-Conformity" refers to any defect or condition that substantially impairs the use, value or safety of a brand new motor vehicle which prevent it from conforming to the manufacturer's or distributor's standards or specifications, which cannot be repaired, but excluding conditions resulting from non-compliance by the consumer of his obligation under his obligations under the warranty, modifications not authorized by the manufacturer or distributors, abuse or neglect, and damage due to accident or force majeure.

(m) "Purchase Price" refers to the invoice price or the amount of money which the dealer or retailer actually received for the brand new motor vehicle in consideration of the sale of such brand new motor vehicle.

(n) "Warranty" refers to the written assurance, so labeled, of the manufacturer of a brand new motor vehicle, including any term or condition precedent to the enforcement of obligations under the warranty;

(o) "Warranty Right Period" refers to the period provided for under the contract of sale when the manufacturer would guarantee the material used, workmanship and roadworthiness of a brand new motor vehicle for ordinary use or reasonable intended purposes.

SECTION 4 Coverage.- This Act shall cover brand new motor vehicle with non-conformity reported by the consumer within (12) months from date of original delivery to the consumer or twenty thousand (20,000) kilometers of operation after such delivery whichever comes first. The following causes of non-conformity shall be excluded:

- a. Non-compliance of the consumer of his obligations under the warranty;
- b. Modification not authorized by the manufacturer or distributor;
- c. Abuse or neglect of the brand new motor vehicle; and
- d. Damage to the vehicle due to an act accident or force majeure.

SECTION 5. Repair Attempt—At any time within the lemon law rights period, and after at least four (4) separate repair attempts by the same dealer-manufacturer for the same complaint, the consumer if still unsatisfied with the result of the said repairs, may invoke his right under this Act.

SECTION 6. Notice of Availment of Lemon Law Rights – Before availing of any remedy under this Act and subject to compliance with the provisions of Section 5 hereof, the consumer shall, in writing, notify the manufacturer, distributors, authorized dealer or retailer of the resolved complaint, and the consumer's intention to invoke his rights under this Act within the lemon law rights period.

The warranty booklet issued by the manufacturer, distributor, authorized dealer or retailer shall clearly state the responsibility of the consumer under this section. It shall likewise provide the manner and form of such notice to constitute a valid and legal notice to the manufacturer, distributor, authorized dealer or retailer.

SECTION 7. Availment of Lemon Rights – Subsequent to the filing of notice of availment referred to in the preceding section, the consumer shall bring the vehicle to the dealer from which the vehicle was purchased for a final attempt to address the consumer's complaints to his satisfaction.

It shall be the duty of the manufacturer, distributor, authorized dealer or retailer, upon receipt of the motor vehicle and the notice of non-conformity required under Section 6 hereof, to attend to the complaint of the consumer including, as may be necessary, make the repairs and undertake such actions to make the vehicle conform to the standards or specifications of the manufacturer or distributors of such vehicle.

In case the consumer remains unsatisfied with the dealer-manufacturer's efforts to repair the vehicle, pursuant to the consumer's availment of his lemon law rights, the consumer may file a complaint with the DTI as provided under this Act. Provided, however, That if the vehicle is not returned for repair based on the same complaint within thirty (30) calendar days from the date of notice of release of the motor vehicle to the consumer following this repair attempt within the lemon law right period, the repair is deemed successful; Provided, finally, That in event the consumer still unsatisfied after the thirty (30) days period, still within the lemon law period, the consumer may be allowed to avail of the same remedies under section 5 and 6 hereof.

Nothing herein shall be construed to limit or impair the rights and remedies of a consumer under any law.

SECTION 8. Remedies for Dispute Resolution – The DTI shall exercise exclusive and original jurisdiction over disputes arising from the provision of this Act. All disputes arising from the provision of this Act shall be settled by the DTI in accordance with the following resolution mechanism;

8.1 Mediation

- a. The principle of negotiation, conciliation and mediation towards amicable settlement between the manufacturer or distributor and consumer shall be strictly observed;
- b. In the course of the dispute resolution efforts, the DTI shall endeavor to independently establish the validity of the consumer's outstanding complaint. The DTI shall likewise retain the services of other government agencies or independent private entities in the ascertainment of the validity of consumer's complaint. Any cost incurred in establishing the validity of the consumer's complaint shall be born jointly by the consumer and the dealer manufacturer.
- c. The complaint shall be deemed valid if it is independently establish that the vehicle does not conform to the standard or specifications set by the manufacturer.
- d. Upon failure of negotiation or mediation between the manufacturer or distributor and consumer, the parties shall execute a certificate attesting to such failure;
- e. At any time during the dispute resolution period, the manufacturer or distributor and the consumer shall be encouraged to settle amicably. All disputes that have been submitted for mediation shall be settled not more than forty (40) working days from the date of filing of the complaint with the DTI.

8.2 Arbitration

- (a) In the event there is failure to settle the complaint during the mediation proceedings, the parties may voluntary enter into arbitration proceedings, likewise to be supervised by the DTI. The DTI shall rely on the independent findings in conformity to the standard and specification established herein;
- (b) In case a non-conformity of the vehicle is found established by the DTI, it shall rule in favor of the consumer and direct the dealer-

manufacturer to grant either of the following remedies to the consumer;

- i. Replace the motor vehicle with a similar or comparable motor vehicle in terms of specification and values, subject to availability, or
- ii. Accept the return of the motor vehicle and pay the consumer the purchase price plus collateral charges.

In case the consumer decides to purchase another vehicle with a higher value and specifications from the same dealer-manufacturer, the consumer shall pay the non-conforming vehicle.

In both cases of replacement and repurchase, the reasonable allowance for use, as defined in this Act, shall be deducted in determining the value of the non-conforming vehicle.

- (c) In case a non-conformity of the vehicle is not found by the DTI, it shall rule in favor of the dealer-manufacturer and direct the consumer to reimburse the dealer-manufacturer the cost incurred by the latter in validating the consumer's complaint.

SECTION 9. Determination of Reasonable Allowance for Use – For the purpose of this Act. "reasonable allowance for use" shall mean twenty per cent (20%) per annum deduction from the purchase price, or the product of the distance travelled in kilometers and the purchase price divided by one hundred thousand (100,000), whichever is higher.

SECTION 10. Disclosure of Resale – Should the returned vehicle be made available for resale, the manufacturer or distributor shall, prior to sale, or transfer, disclose to the dealer in writing that:

- a. The motor vehicle was returned to the manufacturer, distributor, factory or branch;
- b. The nature of the non-conformity which caused the return; and
- c. The condition of the motor vehicle at the time of the transfer to the dealer.

It shall be the responsibility of the dealer to make the same disclosure in writing, in turn, to the next purchaser prior to sale. The responsibility of the

dealer under this section shall cease upon the sale of the affected motor vehicle to the first purchaser.

SECTION 11. Penalty – The manufacturer, distributor or dealer adjudged to have violated the provisions requiring disclosure as mentioned in the preceding section shall be liable to for a minimum amount of One Hundred Thousand (100,000.00) as damages to the aggrieved party without prejudice to any civil or criminal liability they and /or the responsible officer may incur under existing laws.

SECTION 12. Assistance by Other Agencies. – The Department of Transportation and Communication and other agencies, political subdivisions, local government units, including government-owned and controlled corporations shall render such assistance as required by the DTI in order to effectively implement the provision of this Act.

SECTION 13. Implementing Rules and Regulations. – The DTI shall promulgate the necessary implementing rules and regulations within ninety (90) days from the effectivity of this Act.

SECTION 14. Separability Clause – If, for any reason, any part of the provision of this Act is declared invalid, such declaration shall not affect the other provisions of this Act.

SECTION 15. 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.

SECTION 16. Effectivity - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in two national newspaper of general circulation.

Approved

A handwritten signature in black ink, appearing to be 'G. H. S.', with a long horizontal line extending to the left and a large loop on the right.