

- SUBJECT:** Amending the motor vehicle warranty law ("lemon law")
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 7 ayes — Alexander, Bosse, Alonzo, Clemons, Moreno, Price, Siebert
0 nays
2 absent — Edwards, Uher
- WITNESSES:** For — Charles Rogers; Leigh Nichols, American Automobile Manufacturing Association

Against — None
- BACKGROUND:** The motor vehicle warranty law, often called the "lemon law," in the Motor Vehicle Commission Code allows the commission to order an automobile manufacturer, converter or distributor to replace a motor vehicle with a comparable vehicle or refund the owner the full purchase price, less reasonable allowance for use, under certain circumstances. The requirement is triggered when the seller is unable to fix a defect or condition that presents a serious safety hazard or affects the market value of a car after a reasonable number of attempts.
- DIGEST:** *(Rep. Combs said she planned to offer a floor amendment, outlined in the Supporters Say section, substantially revising CSHB 1905.)*
- CSHB 1905 would amend the motor vehicle warranty law to give vehicle owners the option of replacement or refund and specify that replacement would be on payment of a reasonable allowance for use of the vehicle.
- The bill would change the reference to "defect or condition" to "defect or nonconformity" that creates a safety hazard or affects the market value of the car.
- No order to refund or repurchase a car could be sent to a manufacturer, converter or distributor who had not received written notice of the alleged

nonconformity or defect and had the opportunity to fix the vehicle after receipt of the notice.

CSHB 1905 would eliminate the rebuttable presumption that a reasonable number of attempts have been made to fix the vehicle and would require that a vehicle have been subject to the specified number of repairs set out in the law (i.e., two in the first year or 12,000 miles and the second two within one year or 12,000 of the last of the first repairs).

The bill would require that a proceeding brought under the "lemon law" be brought within six months following the warranty expiration, or 24 months or 12,000 miles after the person received the car from the dealer, whichever was earlier.

The bill would require that an order to replace or repurchase a new vehicle could be made within 24 months or 24,000 miles from the day the car was delivered to the owner, whichever was earlier.

CSHB 1905 would repeal the section of the code that sets out hearings procedures to enforce a warranty.

The bill would only apply to proceedings brought after the effective date of the bill, September 1, 1995.

**SUPPORTERS
SAY:**

By enacting CSHB 1905, with floor amendments planned by the author, the Legislature would craft a fairer and more reasonable vehicle warranty law. The floor amendment would generally leave the "lemon law" as it is now except to give a vehicle owner the option of choosing between replacement or refund when a vehicle cannot be made right and to specify that if a driver who chooses replacement would have to pay a reasonable amount for having used the returned car. Consumers themselves should have the option of deciding whether they want the vehicle replaced or a refunded. This is a fair and equitable way to handle the situation.

Another provision to be retained in the floor amendment would allow a proceeding to be started within six months after the warranty expired or 24 months or 24,000 miles, whichever came *later*, not earlier. Consumers

should be assured of adequate time to initiate a proceeding if they have a troublesome car.

The amendment would delete the section of the substitute that would require that an order to replace or repurchase a new vehicle could only be made on or before the earlier of 24 months or 24,000 miles from the day the car was delivered to the owner.

The floor amendment would make the following other changes to the committee substitute:

- A manufacturer, converter or distributor could be ordered by the state to replace or refund if they had been given an opportunity to fix the vehicle after receiving either written notice *or* constructive notice (that is they should have known of the defect based on circumstances).
- There would be a rebuttable presumption that a reasonable number of attempts have been made to fix the car.
- Warranty provisions repealed in the committee substitute would be replaced.

OPPONENTS
SAY:

CSHB 1905, even as amended, would not be an improvement over current law. It would not give the consumer enough time in which to bring a proceeding to deal with a "lemon" vehicle. Consumers should have at least 36 months or 36,000 miles, whichever is later. Sometimes "lemons" do not show their true colors for close to three years.

Giving the consumer the option of whether they wish another car or have their car repurchased may be a good idea, but if consumers agree to a comparable replacement, they should not have to pay reasonable costs for using the "lemon" car to the manufacturer, converter or distributor unless they receive a new vehicle. The law should contain a definition of comparable car to protect the consumer.

The bill should not substitute "nonconformity" for "condition" in describing what creates a serious safety hazard or impairs the market value of the car. Currently, a manufacturer is required to repurchase or replace a motor

vehicle if unable to cure a defect or condition that creates a hazard or substantially impairs the use or market value after a reasonable amount of repair attempts. A dealer or manufacturer would claim that an engine surge or jerking condition is a normal operating characteristic of the vehicle, not a defect. This provision would favor the manufacturer at the expense of the consumer.

NOTES:

The original version of HB 1905 would have applied the lemon law to all cars under warranty, not just new cars. It would have allowed a vehicle to be replaced or repurchased at the owner's option, and would have defined a comparable vehicle as one of the current model year or the same model as the vehicle covered under warranty. It would have required the owner to pay reasonable use allowance for the "lemon" car to the manufacturer, converter or distributor. It would have increased the time in which a person could bring a proceeding from the earlier of 24 months or 24,000 miles to the earlier of 36 months or 36,000 miles. It would have required the manufacturer, converter, or distributor to replace or refund the vehicle regardless of when a proceeding was begun if the motor vehicle commission had ordered them fix a car and they had not fixed the car by the fourth attempt or 31 days after the commission ordered the car fixed.