

HB4708



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4708

by Rep. Sue Scherer

SYNOPSIS AS INTRODUCED:

815 ILCS 505/2L

Amends the Consumer Fraud and Deceptive Business Practices Act. Provides that the prohibition against the modification or disclaimer of an implied warranty of merchantability regarding certain motor vehicle components for 15 days after the retail sale of a used vehicle to a consumer by a licensed dealer does not apply to a vehicle sold at an auction that is open to the general public if the auction company has conducted a mechanical inspection of the vehicle and given notice of any defects to prospective purchasers. Effective immediately.

LRB100 16738 JLS 31878 b

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Consumer Fraud and Deceptive Business
5 Practices Act is amended by changing Section 2L as follows:

6 (815 ILCS 505/2L)

7 (Text of Section before amendment by P.A. 100-512)

8 Sec. 2L. Used motor vehicles; modification or disclaimer of
9 implied warranty of merchantability limited.

10 (a) Any retail sale of a used motor vehicle made after July
11 1, 2017 (the effective date of Public Act 99-768) ~~this~~
12 ~~amendatory Act of the 99th General Assembly~~ to a consumer by a
13 licensed vehicle dealer within the meaning of Chapter 5 of the
14 Illinois Vehicle Code ~~or by an auction company at an auction~~
15 ~~that is open to the general public~~ is made subject to this
16 Section.

17 (b) This Section does not apply to any of the following:

18 (1) a vehicle with more than 150,000 miles at the time
19 of sale;

20 (2) a vehicle with a title that has been branded
21 "rebuilt" or "flood";

22 (3) a vehicle with a gross vehicle weight rating of
23 8,000 pounds or more; ~~or~~

1 (4) a vehicle that is an antique vehicle, as defined in
2 the Illinois Vehicle Code, or that is a collector motor
3 vehicle; or.

4 (5) a vehicle sold at an auction that is open to the
5 general public, provided that the auction company has
6 conducted a mechanical inspection of the vehicle and
7 provided notice of any defects to the vehicle to
8 prospective purchasers.

9 (b-5) This Section does not apply to the sale of any
10 vehicle for which the dealer offers an express warranty that
11 provides coverage that is equal to or greater than the limited
12 implied warranty of merchantability required under this
13 Section 2L.

14 (c) Except as otherwise provided in this Section 2L, any
15 sale of a used motor vehicle as described in subsection (a) may
16 not exclude, modify, or disclaim the implied warranty of
17 merchantability created under this Section 2L or limit the
18 remedies for a breach of the warranty hereunder before midnight
19 of the 15th calendar day after delivery of a used motor vehicle
20 or until a used motor vehicle is driven 500 miles after
21 delivery, whichever is earlier. In calculating time under this
22 Section, a day on which the warranty is breached and all
23 subsequent days in which the used motor vehicle fails to
24 conform with the implied warranty of merchantability are
25 excluded. In calculating distance under this Section, the miles
26 driven to obtain or in connection with the repair, servicing,

1 or testing of a used motor vehicle that fails to conform with
2 the implied warranty of merchantability are excluded. An
3 attempt to exclude, modify, or disclaim the implied warranty of
4 merchantability or to limit the remedies for a breach of the
5 warranty in violation of this Section renders a purchase
6 agreement voidable at the option of the purchaser.

7 (d) An implied warranty of merchantability is met if a used
8 motor vehicle functions for the purpose of ordinary
9 transportation on the public highway and substantially free of
10 a defect in a power train component. As used in this Section,
11 "power train component" means the engine block, head, all
12 internal engine parts, oil pan and gaskets, water pump, intake
13 manifold, transmission, and all internal transmission parts,
14 torque converter, drive shaft, universal joints, rear axle and
15 all rear axle internal parts, and rear wheel bearings.

16 (e) The implied warranty of merchantability expires at
17 midnight of the 15th calendar day after delivery of a used
18 motor vehicle or when a used motor vehicle is driven 500 miles
19 after delivery, whichever is earlier. In calculating time, a
20 day on which the implied warranty of merchantability is
21 breached is excluded and all subsequent days in which the used
22 motor vehicle fails to conform with the warranty are also
23 excluded. In calculating distance, the miles driven to or by
24 the seller to obtain or in connection with the repair,
25 servicing, or testing of a used motor vehicle that fails to
26 conform with the implied warranty of merchantability are

1 excluded. An implied warranty of merchantability does not
2 extend to damage that occurs after the sale of the used motor
3 vehicle that results from:

4 (1) off-road use;

5 (2) racing;

6 (3) towing;

7 (4) abuse;

8 (5) misuse;

9 (6) neglect;

10 (7) failure to perform regular maintenance; and

11 (8) failure to maintain adequate oil, coolant, and
12 other required fluids or lubricants.

13 (f) If the implied warranty of merchantability described in
14 this Section is breached, the consumer shall give reasonable
15 notice to the seller no later than 2 business days after the
16 end of the statutory warranty period. Before the consumer
17 exercises another remedy pursuant to Article 2 of the Uniform
18 Commercial Code, the seller shall have a reasonable opportunity
19 to repair the used motor vehicle. The consumer shall pay
20 one-half of the cost of the first 2 repairs necessary to bring
21 the used motor vehicle into compliance with the warranty. The
22 payments by the consumer are limited to a maximum payment of
23 \$100 for each repair; however, the consumer shall only be
24 responsible for a maximum payment of \$100 if the consumer
25 brings in the vehicle for a second repair for the same defect.
26 Reasonable notice as defined in this Section shall include, but

1 not be limited to:

2 (1) text, provided the seller has provided the consumer
3 with a cell phone number;

4 (2) phone call or message to the seller's business
5 phone number provided on the seller's bill of sale for the
6 purchase of the motor vehicle;

7 (3) in writing to the seller's address provided on the
8 seller's bill of sale for the purchase of the motor
9 vehicle;

10 (4) in person at the seller's address provided on the
11 seller's bill of sale for the purchase of the motor
12 vehicle.

13 (g) The maximum liability of a seller for repairs pursuant
14 to this Section is limited to the purchase price paid for the
15 used motor vehicle, to be refunded to the consumer or lender,
16 as applicable, in exchange for return of the vehicle.

17 (h) An agreement for the sale of a used motor vehicle
18 subject to this Section is voidable at the option of the
19 consumer, unless it contains on its face or in a separate
20 document the following conspicuous statement printed in
21 boldface 10-point or larger type set off from the body of the
22 agreement:

23 "Illinois law requires that this vehicle will be free of a
24 defect in a power train component for 15 days or 500 miles
25 after delivery, whichever is earlier, except with regard to
26 particular defects disclosed on the first page of this

1 agreement. "Power train component" means the engine block,
2 head, all internal engine parts, oil pan and gaskets, water
3 pump, intake manifold, transmission, and all internal
4 transmission parts, torque converter, drive shaft, universal
5 joints, rear axle and all rear axle internal parts, and rear
6 wheel bearings. You (the consumer) will have to pay up to \$100
7 for each of the first 2 repairs if the warranty is violated."

8 (i) The inclusion in the agreement of the statement
9 prescribed in subsection (h) of this Section does not create an
10 express warranty.

11 (j) A consumer of a used motor vehicle may waive the
12 implied warranty of merchantability only for a particular
13 defect in the vehicle, including, but not limited to, a rebuilt
14 or flood-branded title and only if all of the following
15 conditions are satisfied:

16 (1) the seller subject to this Section fully and
17 accurately discloses to the consumer that because of
18 circumstances unusual to the business, the used motor
19 vehicle has a particular defect;

20 (2) the consumer agrees to buy the used motor vehicle
21 after disclosure of the defect; and

22 (3) before the sale, the consumer indicates agreement
23 to the waiver by signing and dating the following
24 conspicuous statement that is printed on the first page of
25 the sales agreement or on a separate document in boldface
26 10-point or larger type and that is written in the language

1 in which the presentation was made:

2 "Attention consumer: sign here only if the seller has
3 told you that this vehicle has the following problem or
4 problems and you agree to buy the vehicle on those terms:

- 5 1.
- 6 2.
- 7 3. "

8 (k) It shall be an affirmative defense to any claim under
9 this Section that:

10 (1) an alleged nonconformity does not substantially
11 impair the use and market value of the motor vehicle;

12 (2) a nonconformity is the result of abuse, neglect, or
13 unauthorized modifications or alterations of the motor
14 vehicle;

15 (3) a claim by a consumer was not filed in good faith;
16 or

17 (4) any other affirmative defense allowed by law.

18 (1) Other than the 15-day, 500-mile implied warranty of
19 merchantability identified herein, a seller subject to this
20 Section is not required to provide any further express or
21 implied warranties to a purchasing consumer unless:

22 (1) the seller is required by federal or State law to
23 provide a further express or implied warranty; or

24 (2) the seller fails to fully inform and disclose to
25 the consumer that the vehicle is being sold without any
26 further express or implied warranties, other than the 15

1 day, 500 mile implied warranty of merchantability
2 identified in this Section.

3 (m) Any person who violates this Section commits an
4 unlawful practice within the meaning of this Act.

5 (Source: P.A. 99-768, eff. 7-1-17; 100-4, eff. 7-1-17; revised
6 10-12-17.)

7 (Text of Section after amendment by P.A. 100-512)

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25 the Illinois Vehicle Code, or that is a collector motor

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3 general public, provided that the auction company has
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5 provided notice of any defects to the vehicle to
6 prospective purchasers.

7 (b-5) This Section does not apply to the sale of any
8 vehicle for which the dealer offers an express warranty that
9 provides coverage that is equal to or greater than the limited
10 implied warranty of merchantability required under this
11 Section 2L.

12 (b-6) ~~(b-5)~~ This Section does not apply to forfeited
13 vehicles sold at auction by or on behalf of the Department of
14 State Police.

15 (c) Except as otherwise provided in this Section 2L, any
16 sale of a used motor vehicle as described in subsection (a) may
17 not exclude, modify, or disclaim the implied warranty of
18 merchantability created under this Section 2L or limit the
19 remedies for a breach of the warranty hereunder before midnight
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8 (d) An implied warranty of merchantability is met if a used
9 motor vehicle functions for the purpose of ordinary
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11 a defect in a power train component. As used in this Section,
12 "power train component" means the engine block, head, all
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2 day, 500 mile implied warranty of merchantability
3 identified in this Section.

4 (m) Any person who violates this Section commits an
5 unlawful practice within the meaning of this Act.

6 (Source: P.A. 99-768, eff. 7-1-17; 100-4, eff. 7-1-17; 100-512,
7 eff. 7-1-18; revised 10-12-17.)

8 Section 95. No acceleration or delay. Where this Act makes
9 changes in a statute that is represented in this Act by text
10 that is not yet or no longer in effect (for example, a Section
11 represented by multiple versions), the use of that text does
12 not accelerate or delay the taking effect of (i) the changes
13 made by this Act or (ii) provisions derived from any other
14 Public Act.

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.