

SENATE BILL REPORT

SB 5610

As Reported by Senate Committee On:
Law & Justice, February 16, 2023

Title: An act relating to enacting the used motor vehicles express warranties act.

Brief Description: Enacting the used motor vehicles express warranties act.

Sponsors: Senators Keiser, Frame, Hunt, Kuderer, Pedersen, Stanford, Trudeau and Wilson, C.;
by request of Attorney General.

Brief History:

Committee Activity: Law & Justice: 2/14/23, 2/16/23 [DPS, DNP].

Brief Summary of First Substitute Bill

- Enacts the Used Motor Vehicles Express Warranties Act, requiring used motor vehicle dealers to provide an express warranty for used motor vehicles in specific circumstances.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5610 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Torres, Wagoner and Wilson, L..

Staff: Tim Ford (786-7423)

Background: Implied Warranties and Motor Vehicles. Washington's Uniform

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Commercial Code (UCC) provides a consistent and integrated framework of rules to deal with commercial transactions. The UCC generally applies to transactions of goods, and specifies, unless otherwise modified, there is an implied warranty in all contracts for the sale of goods that the goods are merchantable. Warranties are generally an express or implied promise concerning the qualities or characteristics of goods or services. The UCC's implied warranty applies to the sale of used cars.

Goods are merchantable when they pass without objection in the trade, under the contract description, and are fit for the ordinary purpose for which they are used. For used cars, this includes that a vehicle must be in reasonably safe condition and substantially free of defects which render it inoperable. The nature of an implied warranty turns more on the used car's operative qualities, as opposed to aesthetics.

To waive an implied warranty, the parties must specifically negotiate the waiver and it must state, with particularity, the qualities and characteristics that are not warranted. When an implied warranty for a used motor vehicle is breached, remedies may include canceling the sale and recovering the purchase price, as well as related damages.

Motor Vehicle Warranty Act. The Motor Vehicle Warranty Act, also referred to as the Lemon Law, establishes the rights and responsibilities of consumers, dealers, and manufacturers, and applies only to the sale or lease of new motor vehicles purchased or leased at retail from a new car dealer or leasing company.

Summary of Bill (First Substitute): Express Warranty Created for Used Vehicles. An express warranty is statutorily created and a used motor vehicle dealer provides the express warranty for the sale of used cars less than 20 years old. The express warranty covers certain costs of both parts and labor necessary to repair any defect that significantly limits the use of this vehicle for the ordinary purpose of transportation on any public highway.

Application. The duration of the express warranty applies based on the mileage of a used motor vehicle as follows:

Used vehicle miles	Required Warranty Term
< 40,000 miles	90 days or 3750 miles, whichever occurs first
40,000 - 79,999 miles	60 days or 2500 miles, whichever occurs first
80,000 - 124,999 miles	30 days or 1250 miles, whichever occurs first
125,000 miles or more	No statutory warranty
If the vehicle's true mileage is not known:	
Year purchased – Model Year	Required Warranty Term

3 years	90 days or 3750 miles
3-6 years	60 days or 2500 miles
6-15 years	30 days or 1250 miles
15 years or older	No statutory warranty

Used motor vehicle dealers may provide the warranty electronically if a purchaser acknowledges receipt by electronic signature. When the warranty is provided electronically, the sales agreement must include the following conspicuous statement: "The seller hereby provides an express warranty covering certain costs of both parts and labor necessary to repair any defect that significantly limits the use of this vehicle for the ordinary purpose of transportation on any public highway, as set forth in a statement the seller will provide to the purchaser electronically."

Parts Covered by the Warranty. The parts covered by the express warranty are:

- engine—all lubricated parts, water pump, fuel pump, manifolds, engine block, cylinder head, rotary engine housings, and flywheel;
- transmission—the transmission case, internal parts, and the torque converter;
- drive axle—front and rear drive axle housings and internal parts, axle shafts, propeller shafts, and universal joints;
- brakes—master cylinder, vacuum assist booster, wheel cylinders, hydraulic lines and fittings, and disc brake calipers;
- radiator;
- steering—the steering gear housing and all internal parts, power steering pump, valve body, piston, and rack;
- alternator, generator, starter, and ignition system, excluding the battery;
- rechargeable battery used to power electric or hybrid vehicles; and
- additional parts deemed integral to the safe and reliable operation of the vehicle adopted by rule by the attorney general.

The express warranty is met if a used motor vehicle is substantially free of any defects that significantly limit the use of the used motor vehicle for the ordinary purpose of transportation on any public highway for the durations set forth in the chart.

Sales Agreement Voidable. Any sales agreement for a used motor vehicle sold by a used motor vehicle dealer is voidable by a purchaser if:

- the warranty is breached and the dealer is notified within ten business days of the purchaser knowing of such breach; and
- the dealer has not provided a mandatory conspicuous statement of the express warranty in the sales agreement or a separate document at the time of sale.

Remedies. If the express warranty is breached, a purchaser must give the used car dealer reasonable notice and opportunity to refund the full price, minus a reasonable allowance for use, or repair the vehicle. A purchaser's payment obligation for repairs is one-half the cost

of the repairs but a purchaser's cumulative payment obligation may not exceed \$200. The Attorney General must annually calculate maximum rates, using the consumer price index, for a purchaser's out-of-pocket payment obligation for repairs, and a dealer's refund obligation if the warranty is breached.

The following provisions also apply to repairs:

- if a used car dealer fails to repair the same defect after three attempts, the dealer must accept return of the car and refund the full repurchase price, minus a reasonable allowance for use; and
- regardless of the number of defects, if a car is out of service for 45 days during the warranty period, the dealer must accept return of the car and refund the purchase price, minus a reasonable allowance for use.

Exceptions. The express warranty requirement does not:

- apply to used cars more than 20 years old at the time of sale;
- apply to used cars sold for \$1,000 or less;
- apply to used cars sold for \$100,000 or more;
- apply to used cars sold at wholesale or at auction;
- apply to any used car sold by a used car dealer if the car is not roadworthy, and that fact is disclosed in writing at the time of sale; or
- extend to damage that occurs after the sale of a used car and is the result of:
 1. abuse, misuse, neglect;
 2. failure to perform regular maintenance, or to maintain adequate oil, coolant, other fluids, or lubricant; and
 3. off-road use, racing, or towing.

Additional Requirements. The following provisions also apply:

- used car dealers must disclose, in writing or electronically, to purchasers at the time of sale the existence of any open, unremedied recalls.
- if a used car is still subject to a manufacturer's warranty upon sale, the duration of the used car dealer's express warranty is reduced by the remaining time on the manufacturer's warranty.

Any agreement for the purchase of a used car where the used car dealer waives, limits, or disclaims any rights in the Used Motor Vehicles Express Warranties Act is void as contrary to public policy.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Provides an exception from the warranty requirement for vehicles sold at auction.
- Provides an effective date of January 1, 2024.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2024.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This is important for people to get something they can rely on to get to work or school. The used car market is important for low-income people who need to get to work. This may increase costs for dealers and consumers, but it strikes the right balance. This is a modest warranty that will give some security, so people are not left without transportation. Lemon Law protections do not often protect consumers from used cars. This is one of the top complaints the Attorney General's Office receives from consumers. This will provide additional consumer protections without hurting credit challenged individuals. Many dealers offer predatory loans on vehicles that people cannot even use. Auto auctions should be excluded from this bill.

CON: The unintended consequences of this bill will hurt those who can least afford it. This will increase the cost of used cars and decrease the amount offered on trades, hurting Washington State consumers. Only an infinitesimal number of used cars that are sold, fail. Most complaints are handled by the dealer. Better enforcement of current laws will root out the bad actors. This bill will hurt independent auto dealers. It is biased and unfair and lacks research and evidence-based analysis. Asking independent auto dealers to warranty cars they did not manufacture. This bill will negatively impact small business in counties that border Oregon and Idaho and drive business out of state.

OTHER: This bill will increase the cost of used automobiles. Groups should be brought together to discuss educational opportunities to root out bad actors that are tainting the sale of used automobiles. Taking a pause would be better than moving forward with this legislation.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Scott Hazlegrove, WA State Auto Dealers Association; Matthew Phillips, Car Pros; Rory Paine-Donovan, Attorney General's Office; Aaron Fickes, Attorney General's Office; Nina Martinez, Latino Civic Alliance; Albert Sardinias, WBBA.

CON: Rick Olson, Washington State Independent Auto Dealers Association; Wasim Azzam, Washington State Independent Auto Dealers Association; Emil Scarsella, Washington State Independent Auto Dealers Association; Badie Darwazeh, Washington State Independent Auto Dealer Association; Dave Magarrell, Washington State Independent Auto Dealers Association; Rachel Frankel, Top Auto Brokers; Scott Musser, Trucks & Auto Auctions.

OTHER: Mark Johnson, Washington Retail Association.

Persons Signed In To Testify But Not Testifying: CON: Mohammed Bendjelloul; Jacob Tartaglia, AUTOS4LESS | Rod's All Star Auto; Micah Raphael, Raphael Luxury Motor Cars.

OTHER: Alexander Cardenas, Testifying on behalf of Alex's auto sales.