



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB4377

by Rep. Rita Mayfield

#### SYNOPSIS AS INTRODUCED:

815 ILCS 505/2L

from Ch. 121 1/2, par. 262L

Amends the Consumer Fraud and Deceptive Business Practices Act. Removes provisions requiring all new and used motor vehicle dealers to pay a percentage of certain repairs for power train components. Adds provisions regarding used motor vehicle dealers and auction companies. Provides that used motor vehicle dealers and certain auction companies may not exclude, modify, or disclaim an implied warranty of merchantability before the expiration of the 15th calendar day after delivery of the used motor vehicle or before the used motor vehicle is driven 500 miles after delivery, whichever occurs first. Exempts the sale of antique and collector vehicles from the new provisions. Provides that an implied warranty of merchantability does not extend to damage that occurs after the sale of the used motor vehicle that results from certain conduct, including: off-road use, racing, neglect, and failure to perform regular maintenance. Sets forth remedies and defenses.

LRB099 15636 KTG 39929 b

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) (from Ch. 121 1/2, par. 262L)

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

9 (a) Any retail sale of a motor vehicle made after the  
10 effective date of this amendatory Act of the 99th General  
11 Assembly January 1, 1968 to a consumer by a ~~new motor vehicle~~  
12 dealer ~~or~~ used motor vehicle dealer within the meaning of  
13 Chapter 5 of the Illinois Vehicle Code is made subject to this  
14 Section.

15 (b) Any motor vehicle sale conducted by a motor vehicle  
16 dealer licensed under Section 5-102 of the Illinois Vehicle  
17 Code or by an auction company at an auction that is open to the  
18 general public may not exclude, modify, or disclaim the implied  
19 warranty of merchantability prescribed in Section 2-314 of the  
20 Uniform Commercial Code or limit the remedies for a breach of  
21 the warranty before midnight of the 15th calendar day after  
22 delivery of a used motor vehicle or until a used motor vehicle  
23 is driven 500 miles after delivery, whichever is earlier. In

1 calculating time under this Section, a day on which the  
2 warranty is breached and all subsequent days in which the used  
3 motor vehicle fails to conform with the implied warranty of  
4 merchantability are excluded. In calculating distance under  
5 this Section, the miles driven to obtain or in connection with  
6 the repair, servicing, or testing of a used motor vehicle that  
7 fails to conform with the implied warranty of merchantability  
8 are excluded. An attempt to exclude, modify, or disclaim the  
9 implied warranty of merchantability or to limit the remedies  
10 for a breach of the warranty in violation of this Section  
11 renders a purchase agreement voidable at the option of the  
12 purchaser.

13 (c) An implied warranty of merchantability is met if a used  
14 motor vehicle functions substantially free of a defect that  
15 significantly limits the use of the used motor vehicle for the  
16 ordinary purpose of transportation on any public highway. The  
17 implied warranty of merchantability expires at midnight of the  
18 15th calendar day after delivery of a used motor vehicle or  
19 until a used motor vehicle is driven 500 miles after delivery,  
20 whichever is earlier. In calculating time, a day on which the  
21 implied warranty of merchantability is breached is excluded and  
22 all subsequent days in which the used motor vehicle fails to  
23 conform with the warranty are also excluded. In calculating  
24 distance, the miles driven to obtain or in connection with the  
25 repair, servicing, or testing of a used motor vehicle that  
26 fails to conform with the implied warranty of merchantability

1 are excluded.

2 (d) An implied warranty of merchantability does not extend  
3 to damage that occurs after the sale of the used motor vehicle  
4 that results from:

5 (1) off-road use;

6 (2) racing;

7 (3) towing;

8 (4) abuse;

9 (5) misuse;

10 (6) neglect;

11 (7) failure to perform regular maintenance; and

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

14 (e) If the implied warranty of merchantability described in  
15 this Section is breached, the consumer shall give reasonable  
16 notice to the seller within 15 days after the date of the  
17 breach. Before the consumer exercises another remedy pursuant  
18 to Article 2 of the Uniform Commercial Code, the seller shall  
19 have a reasonable opportunity to repair the used motor vehicle.  
20 The consumer shall pay one-half of the cost of the first 2  
21 repairs necessary to bring the used motor vehicle into  
22 compliance with the warranty. The payments by the consumer are  
23 limited to a maximum payment of \$25 for each repair.

24 (f) The maximum liability of a seller for repairs pursuant  
25 to this Section is limited to the purchase price paid for the  
26 used motor vehicle, to be refunded to the consumer or lender,

1 as applicable, in exchange for return of the vehicle.

2 (g) An agreement for the sale of a used motor vehicle by a  
3 used motor vehicle dealer subject to this Section is voidable  
4 at the option of the consumer, unless it contains on its face  
5 the following conspicuous statement printed in boldface,  
6 10-point, or larger type set off from the body of the  
7 agreement:

8 "Illinois law requires that this vehicle will be fit for  
9 the ordinary purposes for which the vehicle is used for 15 days  
10 or 500 miles after delivery, whichever is earlier, except with  
11 regard to particular defects disclosed on the first page of  
12 this agreement. You (the consumer) will have to pay up to \$25  
13 for each of the first 2 repairs if the warranty is violated."

14 (h) The inclusion in the agreement of the statement  
15 prescribed in subsection (g) of this Section does not create an  
16 express warranty.

17 (i) A consumer of a used motor vehicle may waive the  
18 implied warranty of merchantability only for a particular  
19 defect in the vehicle and only if all of the following  
20 conditions are satisfied:

21 (1) the motor vehicle dealer subject to this Section  
22 fully and accurately discloses to the consumer that because  
23 of circumstances unusual to the business of the used motor  
24 vehicle dealer, the used motor vehicle has a particular  
25 defect;

26 (2) the consumer agrees to buy the used motor vehicle

1 after disclosure of the defect; and  
 2 (3) before the sale, the consumer indicates agreement  
 3 to the waiver by signing and dating the following  
 4 conspicuous statement that is printed on the first page of  
 5 the sales agreement or on a separate document in boldface,  
 6 10-point, or larger type and that is written in the  
 7 language in which the presentation was made:

8 "Attention consumer: sign here only if the dealer has told  
 9 you that this vehicle has the following problem or problems and  
 10 you agree to buy the vehicle on those terms:

- 11 1.....  
 12 2.....  
 13 3.....".

14 (j) A used motor vehicle dealer subject to this Section has  
 15 the burden to prove by a preponderance of the evidence that the  
 16 dealer complied with subsection (i) of this Section.

17 (k) A consumer or seller that is aggrieved by a transaction  
 18 pursuant to this Section and that seeks a legal remedy shall  
 19 pursue an appropriate remedy prescribed in Article 2 of the  
 20 Uniform Commercial Code and shall comply with the requirements  
 21 prescribed in that Article.

22 (l) It shall be an affirmative defense to any claim under  
 23 this Section that:

- 24 (1) an alleged nonconformity does not substantially  
 25 impair the use and market value of the motor vehicle;  
 26 (2) a nonconformity is the result of abuse, neglect, or

1 unauthorized modifications or alterations of the motor  
2 vehicle;

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

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

6 (m) Other than the 15 day, 500 mile implied warranty of  
7 merchantability identified herein, a motor vehicle dealer is  
8 not required to provide any further express or implied  
9 warranties to a purchasing consumer unless:

10 (1) the motor vehicle dealer is required by federal or  
11 State law to provide a further express or implied warranty;  
12 or

13 (2) the motor vehicle dealer fully informs and  
14 discloses to the consumer that the vehicle is being sold  
15 without any further express or implied warranties, other  
16 than the 15 day mile implied warranty of merchantability  
17 identified in this Section.

18 (n) This Section does not apply to the sale of antique  
19 vehicles, as defined in the Illinois Vehicle Code, or to  
20 collector motor vehicles.

21 ~~(a) The dealer is liable to the purchasing consumer for the~~  
22 ~~following share of the cost of the repair of Power Train~~  
23 ~~components for a period of 30 days from date of delivery,~~  
24 ~~unless the repairs have become necessary by abuse, negligence,~~  
25 ~~or collision. The burden of establishing that a claim for~~  
26 ~~repairs is not within this Section shall be on the selling~~

1 ~~dealer. The dealer's share of such repair costs is:~~

2 ~~(1) in the case of a motor vehicle which is not more than 2~~  
3 ~~years old, 50%;~~

4 ~~(2) in the case of a motor vehicle which is 2 or more, but~~  
5 ~~less than 3 years old, 25%;~~

6 ~~(3) in the case of a motor vehicle which is 3 or more, but~~  
7 ~~less than 4 years old, 10%; and~~

8 ~~(4) in the case of a motor vehicle which is 4 or more years~~  
9 ~~old, none.~~

10 ~~(b) Notwithstanding the foregoing, such a dealer and a~~  
11 ~~purchasing consumer may negotiate a sale and purchase that is~~  
12 ~~not subject to this Section if there is stamped on any purchase~~  
13 ~~order, contract, agreement, or other instrument to be signed by~~  
14 ~~the consumer as a part of that transaction, in at least~~  
15 ~~10-point bold type immediately above the signature line, the~~  
16 ~~following:~~

17 ~~"THIS VEHICLE IS SOLD AS IS WITH NO WARRANTY~~  
18 ~~AS TO MECHANICAL CONDITION"~~

19 ~~(c) As used in this Section, "Power Train components" means~~  
20 ~~the engine block, head, all internal engine parts, oil pan and~~  
21 ~~gaskets, water pump, intake manifold, transmission, and all~~  
22 ~~internal transmission parts, torque converter, drive shaft,~~  
23 ~~universal joints, rear axle and all rear axle internal parts,~~  
24 ~~and rear wheel bearings.~~

25 ~~(d) The repair liability means that the dealer will make~~  
26 ~~necessary Power Train component repairs in his shop, or in the~~



1 ~~shop of his service affiliate, on the basis of his regular list~~  
2 ~~price charge for parts and labor, where the flat rate list~~  
3 ~~price does not exceed 50% of the selling price of the vehicle~~  
4 ~~at the time repairs are requested.~~

5 ~~(e) The age of the vehicle shall be measured according to~~  
6 ~~the manufacturer's model year designation as shown on the~~  
7 ~~Certificate of Title or Registration Certificate. Vehicles~~  
8 ~~shall be designated as current year models, one year old, 2~~  
9 ~~year old, and so forth according to the time that has elapsed~~  
10 ~~since January 1 of the appropriate model year so designated.~~

11 ~~(f) This Section does not preclude the issuance of a~~  
12 ~~warranty or guarantee by a motor vehicle dealer or motor car~~  
13 ~~manufacturer that meets or exceeds the basic provisions of~~  
14 ~~paragraph (a).~~

15 ~~(g) After the effective date of this amendatory Act of~~  
16 ~~1989, executives' and officials' cars when so advertised shall~~  
17 ~~have been used exclusively by executives of the parent motor~~  
18 ~~car manufacturer's personnel or by an executive of an~~  
19 ~~authorized dealer in the same make of car. These cars, so~~  
20 ~~advertised, shall not have been sold to a member of the public~~  
21 ~~prior to the appearance of the advertisement.~~

22 Any person who violates this Section commits an unlawful  
23 practice within the meaning of this Act.

24 (Source: P.A. 86-351; 87-1140.)