

1 H.165

2 Introduced by Representatives Burke of Brattleboro, Donahue of Northfield,

3 Greshin of Warren, Kitzmiller of Montpelier, Masland of

4 Thetford, McFaun of Barre Town, and Potter of Clarendon

5 Referred to Committee on

6 Date:

7 Subject: Commerce and trade; used motor vehicles; warranty; right to refund;

8 artisan lien; towing and storage charges; notice

9 Statement of purpose of bill as introduced: This bill proposes to:

10 (1) establish a statutory 30-day or 2,000-mile warranty for covered parts of  
11 used motor vehicles with an agreed price of \$4,000.00 or more, unless the  
12 consumer has waived his or her warranty rights;

13 (2) establish a statutory right of return allowing a buyer or lessee of a used  
14 motor vehicle to cancel a lease or contract of sale and obtain a refund if the  
15 vehicle fails to pass inspection within 10 days from the date the vehicle is  
16 delivered and if the estimated cost of repairs to pass inspection exceeds 10  
17 percent of the agreed price, unless the consumer has waived the right of return;

18 (3) provide that an artisan's lien on personal property for charges exceeding  
19 \$100.00 may only attach to the extent the work to be performed is approved by  
20 the owner of the property; and

1           (4) require towing service operators to provide vehicle owners with notices  
2 concerning towing and storage services and fees.

3           An act relating to miscellaneous consumer protection provisions related to  
4 motor vehicles

5 It is hereby enacted by the General Assembly of the State of Vermont:

6                                 \* \* \* Used Motor Vehicle Lemon Law \* \* \*

7 Sec. 1. 9 V.S.A. chapter 116 is added to read:

8                         CHAPTER 116. USED MOTOR VEHICLES; CONSUMER RIGHTS

9                         § 4185. DEFINITIONS

10           As used in this chapter:

11                         (1) “Agreed price” means:

12                                 (A) In the case of a purchase, the gross consideration, exclusive of  
13 any purchase and use tax imposed, to be paid for the motor vehicle, including  
14 cash consideration, if any, plus the value of any services or property given or  
15 to be given, or both, in exchange for the motor vehicle.

16                                 (B) In the case of a lease, the gross consideration, exclusive of any  
17 purchase and use tax imposed, to be paid over the life of the lease, including  
18 cash consideration, if any, plus the value of any services or property given or  
19 to be given, or both, in consideration for the lease.

1           (2) “Consumer” means a person who purchases or leases, other than for  
2 purposes of resale, a used motor vehicle primarily for personal, family, or  
3 household use, and any person to whom such motor vehicle is transferred for  
4 personal, family, or household use during the period of any warranty or rights  
5 under this chapter applicable to such motor vehicle.

6           (3) “Covered part” means:

7           (A) engine parts, which include the head gasket, cylinder block and  
8 its internal parts, cylinder head assemblies, timing case, timing chain, timing  
9 belt, gears and sprockets, harmonic balancer, oil pump, water pump and  
10 housing, intake manifolds, flywheel with starter ring gear, core plugs, valve  
11 covers, oil pan, turbocharger housing and internal parts, and turbocharger  
12 wastegate actuator;

13           (B) transmission parts, which include the transmission case and its  
14 internal parts, torque converter, drive/flex plate, transmission control module,  
15 bell housing, oil pan, front wheel drive, and transaxle case and its internal  
16 parts;

17           (C) drive axle parts, which include the transfer cases and power  
18 transfer units for four-wheel-drive or all-wheel-drive vehicles; and

19           (i) for the rear drive axle, the rear axle housing and its internal  
20 parts, axle shafts, axle shaft bearings, drive shaft assemblies, drive shaft center  
21 bearings, universal joints and yokes; and

1           (ii) for the front drive axle, the axle shaft assemblies, constant  
2 velocity joints, and boots;

3           (D) brake parts, which include the master cylinder; vacuum assist  
4 booster; wheel cylinders; disc brake calipers and pistons; brake lines, hoses,  
5 and fittings; proportioning valve; brake shoes, pads, and rotors, but not drums  
6 unless damaged by a covered part listed in this subdivision (3);

7           (E) the radiator;

8           (F) steering parts, which include the steering gear housing and its  
9 internal parts, power steering pump, valve body, piston, and rack;

10          (G) the alternator, generator, starter motor and solenoid; powertrain  
11 control module; distributor; ignition coil; coil pack assembly; and transmission  
12 control module; and

13          (H) seals and gaskets needed to correct a failure of any of the parts  
14 listed in this subdivision (3).

15          (4) “Lease” means a written agreement with a lessee for the use of a  
16 motor vehicle for consideration for a term of two or more years.

17          (5) “Lessee” means a consumer who leases a motor vehicle pursuant to  
18 a written lease agreement for a term of two or more years.

19          (6) “Motor vehicle” means a passenger motor vehicle which is  
20 purchased, leased, or registered in the State of Vermont and shall not include  
21 tractors, motorized highway building equipment, road-making appliances,

1 snowmobiles, motorcycles, motor-driven cycles, the living portion of  
2 recreation vehicles, trucks with a gross vehicle weight rating over 12,000  
3 pounds, or vehicles constructed or reconstructed primarily for racing,  
4 exhibition, or off-road use.

5 (7)(A) “Seller” means a person who, in the 12-month period preceding  
6 the sale or lease of a used motor vehicle to a consumer, has sold or leased four  
7 or more motor vehicles, whether personally, through an agent or broker, or in  
8 concert with another person.

9 (B) “Seller” does not include:

10 (i) the State of Vermont and any of its political subdivisions; or

11 (ii) finance or auction dealers or transporters as defined in

12 23 V.S.A. § 4.

13 (8) “Used motor vehicle” means a motor vehicle as defined in this  
14 chapter which, prior to its sale or lease to a consumer, was sold or leased to  
15 another person other than for purposes of resale.

16 (9) “Warranty” means any undertaking in connection with the sale or  
17 lease of a used motor vehicle to refund, repair, replace, maintain, or take other  
18 action with respect to the vehicle and provided at no extra charge beyond the  
19 agreed price of the vehicle.

1           (10) “Warranty period” means the following, whichever comes sooner:

2           (A) 30 days from the date that a seller tenders a used motor vehicle to  
3           a consumer; or

4           (B) the period over which the consumer adds 2,000 miles to the  
5           mileage of a used motor vehicle.

6           § 4186. WARRANTY FOR COVERED PARTS

7           (a) Except as provided in subsection (h) of this section, every lease or sale  
8           by a seller to a consumer of a used motor vehicle with an agreed price of  
9           \$4,000.00 or more shall be covered during the warranty period by a warranty  
10           obligating the seller or its agent to repair or, at the election of the seller, to  
11           reimburse the consumer for the reasonable costs of repairing, the failure of a  
12           covered part during the warranty period. In the event of failure of a covered  
13           part at a location which makes it impossible or unreasonable to return the  
14           vehicle to the seller, the consumer may have repairs performed near the  
15           location of the failure with the consent of the seller, which consent shall not be  
16           unreasonably withheld. The seller may elect to discharge warranty obligations  
17           under this section by accepting return of the used motor vehicle and promptly  
18           issuing a refund in accordance with subsection 4172(e) or subdivision  
19           4172(i)(1) of this title.

1        (b) The failure of a covered part shall not be warranted under this section if  
2        caused after delivery of the motor vehicle to the consumer by:

3            (1) damage arising from an accident or vandalism;

4            (2) an attempt to repair the vehicle by a person other than the seller or  
5        his or her agent; or

6            (3) the consumer's negligence, abuse, or attempt to modify the vehicle.

7        (c) The consumer shall provide the seller notice of failure of a covered part  
8        within five days of the consumer learning of the failure.

9        (d)(1) The warranty period for a failed covered part shall be extended until  
10       the covered part is repaired, provided the consumer gave or mailed the seller  
11       notice as provided under subsection (c) of this section.

12           (2) Any repair required under this section shall itself be warranted for a  
13       new warranty period commencing upon the vehicle's being tendered to the  
14       consumer following the repair.

15           (e) A motor vehicle contract of sale or lease may be voided by the  
16       consumer and the consumer shall be entitled to a prompt refund in accordance  
17       with subsection 4172(e) or subdivision 4172(i)(1) of this title if the seller has  
18       made at least three unsuccessful attempts to repair the covered part, or if the  
19       vehicle is out of service by reason of waiting for the seller to begin or complete  
20       a repair for a cumulative total of 30 or more calendar days. A vehicle shall be

1 deemed out of service if it is not available to the consumer for a major part of  
2 the day.

3 (f) While a used motor vehicle is out of service, the seller shall lend the  
4 consumer a comparable vehicle at no cost or pay the reasonable costs of a  
5 rental vehicle comparable to the vehicle that is out of service.

6 (g) Each time an out-of-service used motor vehicle is returned to the  
7 consumer, a seller or its agent who makes a repair shall provide the consumer a  
8 fully itemized written repair receipt indicating any diagnosis made and all  
9 work performed on the vehicle and including:

10 (1) the date and odometer reading when the vehicle was submitted for  
11 repair;

12 (2) the date when the repaired vehicle was made available to the  
13 consumer; and

14 (3) a list of any parts replaced in performing the work.

15 (h) A warranty required under this section may be disclaimed if the seller:

16 (1) discloses in writing in clear and conspicuous terms that the vehicle is  
17 eligible for a statutory warranty but that the vehicle is being sold without  
18 warranty protection; and

19 (2) obtains written acknowledgement of receipt of this disclosure and a  
20 written waiver of the warranty from the consumer.

1     § 4187. RIGHT TO REFUND; EXCEPTION

2           (a) Eligibility for refund. Except as provided in subsection (e) of this  
3     section, notwithstanding any disclaimer of warranty, a lease agreement or  
4     contract of sale for a used motor vehicle may be voided by a consumer if the  
5     motor vehicle fails to pass an inspection performed by a certified inspection  
6     mechanic at an official Vermont inspection station within 10 days from the  
7     date the motor vehicle is tendered to the consumer, provided that the cost of  
8     repairs necessary for the issuance of a valid certificate of inspection exceeds 10  
9     percent of the agreed price.

10          (b) The right of return created under this subsection shall not apply if the  
11     defects which are the reasons for the failure to pass inspection were caused  
12     after delivery of the motor vehicle to the consumer by:

13            (1) damage arising from an accident or vandalism;

14            (2) an attempt to repair the vehicle by a person other than the seller or  
15     his or her agent; or

16            (3) the consumer's negligence, abuse, or attempt to modify the vehicle.

17          (c)(1) Notice; tender; documentation. To void a motor vehicle lease  
18     agreement or contract of sale under this section, the consumer shall, within  
19     14 days from the date the motor vehicle is tendered to the consumer:

20            (A) give the seller written notice of his or her intention to void  
21     the sale;

1           (B) return or tender return of the motor vehicle to the seller at the  
2 seller's premises; and

3           (C) provide the seller with a written statement signed by an  
4 authorized agent of an official inspection station stating the reasons why the  
5 motor vehicle failed to pass inspection and providing an estimate of the cost of  
6 necessary repairs.

7           (2) Remedies; refunds.

8           (A) If the eligibility criteria and requirements of this section are met,  
9 the seller shall issue a refund in accordance with subsection 4172(e) or  
10 subdivision 4172(i)(1) of this title, unless the consumer and seller otherwise  
11 agree in writing. However:

12           (i) if a consumer has financed a motor vehicle purchase or lease  
13 with a loan, the balance of which exceeds the agreed price, the seller may elect  
14 to repair the vehicle in lieu of issuing a refund, and any repair shall be  
15 warranted for 30 days or 2,000 miles, whichever comes first; and

16           (ii) if the consideration for the lease or sale involved a trade-in, the  
17 seller may elect to return the trade-in vehicle to the consumer, and the refund  
18 owed shall be reduced by the amount originally allowed for the trade-in  
19 vehicle.

20           (B) The person who sent payment of any purchase and use tax on a  
21 vehicle returned under this section is entitled to a refund if he or she files a

1 claim with the Commissioner of Motor Vehicles within 90 days of the  
2 vehicle's return. If the person who furnished the funds to pay the tax was not  
3 the person who sent payment of the tax, the furnishing party shall be entitled to  
4 the tax refund.

5 (d) Discontinuation of payments. If the eligibility criteria and requirements  
6 of this section are met and if the seller provided financing to the consumer, the  
7 consumer may discontinue payments to the seller, provided the consumer does  
8 not operate the motor vehicle.

9 (e) Exception. A lease agreement or contract of sale may not be voided  
10 under this section if the seller:

11 (1) discloses in writing in clear and conspicuous terms that the vehicle is  
12 eligible for a statutory 10-day right of return but that the vehicle is being sold  
13 without this statutory right; and

14 (2) obtains written acknowledgement of receipt of this disclosure from  
15 the consumer and a written waiver of the consumer's 10-day right of return.

16 § 4188. NOTICES OF WARRANTY AND OF RIGHTS; RULEMAKING;

17 GENERAL PROVISIONS

18 (a) A seller of a used motor vehicle shall provide a consumer written notice  
19 of the warranty rights and right of return provided under this chapter in the  
20 form specified by the Attorney General. However, if a seller fails to provide  
21 such written notice, the seller shall nonetheless be obligated by the statutory

1 warranty and right of return as a matter of law, unless a waiver in the form  
2 prescribed by the Attorney General has been signed by the consumer in  
3 accordance with subsections 4186(h) and 4187(e) of this chapter.

4 (b) The Attorney General shall specify:

5 (1) the content of notices informing consumers of rights under this  
6 chapter; and

7 (2) the requirements for an adequate written disclosure and waiver under  
8 subsections 4186(h) and 4187(e) of this chapter.

9 (c) The Attorney General shall adopt rules when necessary and proper to  
10 carry out the purposes of this chapter.

11 (d) Nothing in this chapter shall limit rights or remedies otherwise  
12 available to a consumer under any other law.

13 § 4189. RIGHT OF RESCISSION

14 (a) If a consumer waives warranty or return rights, or both, under this  
15 chapter pursuant to subsection 4186(h) or 4187(e) of this chapter, he or she  
16 may cancel a lease agreement or contract of sale for a used motor vehicle until  
17 midnight of the third business day after the date of signing the agreement or  
18 contract.

19 (b) Cancellation occurs when notice of cancellation is given to the seller.  
20 Notice of cancellation, if given by mail, shall be deemed given when deposited  
21 in a mailbox properly addressed and postage prepaid.

1       Sec. 2. ADDITION TO THE DEALER REPORT OF SALE FORM

2           The Department of Motor Vehicles shall amend the dealer report of sale  
3       form required under 23 V.S.A. § 467 to require a dealer to report, with respect  
4       to the sale of a used motor vehicle, whether the vehicle was sold subject to a  
5       consumer's waiver of warranty or return rights, or both, pursuant to 9 V.S.A.  
6       § 4186(h) or 4187(e).

7       Sec. 3. APPLICATION

8           The rights and remedies created under Sec. 1 of this act shall apply to used  
9       motor vehicle lease agreements or contracts of sale entered into on or after the  
10       effective date of this act.

11   \* \* \* Artisan's Liens \* \* \*

12       Sec. 4. 9 V.S.A. § 1951 is amended to read:

13       § 1951. ARTISAN'S LIEN

14           (a) A person who makes, alters, launders, dry cleans, or repairs an article of  
15       personal property; at the request of the owner; shall have a lien thereon for his  
16       or her reasonable charges and may retain possession of the property until the  
17       same charges are paid, except to the extent that the person fails to obtain prior  
18       approval under subsection (b) of this section for charges exceeding \$100.00.

19           (b) Before any work is done for which the charges will exceed \$100.00, the  
20       person who will perform the work shall obtain written or oral authorization  
21       from the owner for the amount to be charged. If oral authorization is provided,

1 the person who will perform the work shall make a written notation of the  
2 authorization which reflects the name, address, and telephone number of the  
3 person who provided the authorization, the name of the person who received  
4 the authorization, and the date and time that authorization was provided.

5 \* \* \* Notice of Towing Service and Storage Fees \* \* \*

6 Sec. 5. 9 V.S.A. § 2466b is added to read:

7 § 2466b. NOTICE OF TOWING SERVICE AND STORAGE FEES

8 (a) A towing service operator whose assistance is requested by law  
9 enforcement or by the owner of the vehicle to be towed shall provide the  
10 vehicle owner, unless he or she is absent or incapacitated, at the tow site and  
11 before the vehicle is towed a written notice which states:

12 (1) the name, address, telephone number, and, if available, website  
13 address of the towing service operator; and the hours during which the vehicle  
14 can be retrieved; and

15 (2) the daily fee to store the vehicle; when the storage fee will begin  
16 accruing; the name, address, telephone number and, if available, website  
17 address of the storage facility operator; and the hours during which the vehicle  
18 can be retrieved.

19 (b)(1) If a vehicle owner is absent from the tow site or deemed  
20 incapacitated by law enforcement, within 72 hours of the vehicle being towed,

1 the towing service operator shall send to the most recent address reflected in  
2 vehicle registration records a notice stating:

3 (A) that the vehicle has been towed or stored, or both;

4 (B) the names, addresses, telephone numbers, and, if available,  
5 website addresses of the towing service operator and storage facility operator;

6 (C) the daily fee for storage and when the storage fee began accruing;

7 (D) the fee for towing the vehicle; and

8 (E) payment instructions.

9 (2) Upon request by a towing service operator, the Vermont State Police  
10 shall provide the operator with the vehicle owner's most recent address  
11 reflected in vehicle registration records.

12 \* \* \* EFFECTIVE DATE \* \* \*

13 Sec. 6. EFFECTIVE DATE

14 This act shall take effect on July 1, 2013.