

Pennsylvania Enacts Legislation Requiring Disclosure of Pre-Sale Damage

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Pennsylvania's New Motor Vehicle Damage Disclosure Act (73 P. S. § 1970.1 et seq.) became effective June 28, 2000. The purpose of the Act is to assure that purchasers of new vehicles are made aware of any repairs made to their vehicle before they take title to it. Unlike many of Pennsylvania's laws relating to "motor vehicles," including the Lemon Law, this Act specifically includes motor homes within its scope. The Act requires a dealer to disclose damage or other repairs for which the repair cost exceeds \$500.00 or 3% of the manufacturer's suggested retail price, whichever is greater. However, with respect to motor homes, the Act provides the value of the living-quarters portion of the vehicle is not to be included in the calculation process. Interestingly, the Act does not specify whether repairs to the living quarters portion of the vehicle are exempt from the disclosure requirement, leaving this open to question.

The Act states that the "repair cost" to be used in the calculation is that dealer's own retail charge for the same work on the date the repairs were made. Only new, original equipment manufacturer parts may be used in connection with these repairs. Given the calculation criteria, it would seem that minor repairs would not need to be disclosed. However, the Act provides that if there are multiple incidents of damage for which the combined repair costs exceed the \$500/3% mark, then all repairs must be disclosed. In addition, the Act provides that replacement of any permanently sealed glass window must be disclosed to the purchaser, regardless of the cost of the replacement. Presumably because the disclosure of such a replacement is automatic, the Act goes on to state that the cost of replacing a permanently sealed window need not be included when attempting to determine whether a disclosure is required for a vehicle which has had multiple repairs. The Act specifically states that a purchaser will not have the right to revoke or rescind a contract for sale based on damage which is not subject to disclosure. However, manufacturers and dealers should be aware that in such cases, a purchaser may still have a right of action under Pennsylvania's Sales Code or its Unfair Trade Practice and Consumer Protection Law (UTCPL). The new Act specifically provides that claims for violations of this Act will be governed by the provisions of the (UTCPL) relating to private actions. The UTCPL, among other things, provides that a purchaser may be entitled to collect treble damages from a manufacturer or dealer who acts maliciously, outrageously, or with reckless indifference in dealing with the particular problem at issue. As such, manufacturers and dealers must be vigilant in fulfilling their obligations under the new Act.

Where it is determined that a disclosure is required, the Act requires the dealer to make the disclosure in writing prior to the sale. The disclosure form must contain the date of the disclosure, the seller's name and address, and must indicate whether the damage is covered by any manufacturer's warranty, and whether the damage or repairs affect any warranty in any way. The Act goes on to state that a notice in substantially the same format as indicated below must be provided somewhere in immediate proximity to the space provided for purchaser's signature on the sale contract:

New Vehicle Damage Disclosure Notice

In accordance with the Commonwealth of Pennsylvania's New Motor Vehicle Damage Disclosure Act and in connection with the purchase from _____ (Dealer) of the motor vehicle described as follows:

Year _____ Make _____ Type _____

Serial No. _____ Stock No. _____

I/we the undersigned, hereby acknowledge that Dealer has disclosed to me/us before I/we agreed to purchase the above listed motor vehicle that the motor vehicle has been subjected to postmanufacturing damage as follows:

Damage Description: _____

The above disclosed damage or repaired damage is:

covered not covered (check one)

by the manufacturer's warranty.

The above disclosed damage or repaired damage has (check one):

no effect on the manufacturer's warranty

the following effect on the manufacturer's warranty (specify) _____

I/we further acknowledge that the listed damage has been repaired to my/our satisfaction.

Date: _____

Signature of Purchaser

Signature of Co-Purchaser

Printed Name

Printed Name

Signature of Dealer Representative

The Act specifies that this notice must be in bold-face type, in at least a ten point font.

Overall, the Act seems clear in its intent and application. However, as noted above, there is some question as to whether the provisions of the Act apply to damage to the living-quarters area of motor homes. Caution would dictate that until this point is clarified, manufacturers and dealers should assume that these repairs are included within the scope of the Act, and disclose them accordingly. The inclusion of motor homes within the ambit of this Act also raises the broader question of whether a shift in policy is occurring, and whether we may see a change in the application of Pennsylvania's lemon law, to include recreational vehicles in its scope.