

# SB3428



## 100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB3428

Introduced 2/16/2018, by Sen. Dave Syverson

### SYNOPSIS AS INTRODUCED:

815 ILCS 505/2L

Amends the Consumer Fraud and Deceptive Business Practices Act. Deletes language providing that retail sales of used vehicles by an auction company at an auction that is open to the public are subject to the used vehicle implied warranty of merchantability provisions of the Act. Effective immediately.

LRB100 18645 JLS 33872 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.

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

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

1 agreement voidable at the option of the purchaser.

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

11 (e) The implied warranty of merchantability expires at  
12 midnight of the 15th calendar day after delivery of a used  
13 motor vehicle or when a used motor vehicle is driven 500 miles  
14 after delivery, whichever is earlier. In calculating time, a  
15 day on which the implied warranty of merchantability is  
16 breached is excluded and all subsequent days in which the used  
17 motor vehicle fails to conform with the warranty are also  
18 excluded. In calculating distance, the miles driven to or by  
19 the seller to obtain or in connection with the repair,  
20 servicing, or testing of a used motor vehicle that fails to  
21 conform with the implied warranty of merchantability are  
22 excluded. An implied warranty of merchantability does not  
23 extend to damage that occurs after the sale of the used motor  
24 vehicle that results from:

25 (1) off-road use;

26 (2) racing;

- 1 (3) towing;
- 2 (4) abuse;
- 3 (5) misuse;
- 4 (6) neglect;
- 5 (7) failure to perform regular maintenance; and
- 6 (8) failure to maintain adequate oil, coolant, and
- 7 other required fluids or lubricants.

8 (f) If the implied warranty of merchantability described in  
9 this Section is breached, the consumer shall give reasonable  
10 notice to the seller no later than 2 business days after the  
11 end of the statutory warranty period. Before the consumer  
12 exercises another remedy pursuant to Article 2 of the Uniform  
13 Commercial Code, the seller shall have a reasonable opportunity  
14 to repair the used motor vehicle. The consumer shall pay  
15 one-half of the cost of the first 2 repairs necessary to bring  
16 the used motor vehicle into compliance with the warranty. The  
17 payments by the consumer are limited to a maximum payment of  
18 \$100 for each repair; however, the consumer shall only be  
19 responsible for a maximum payment of \$100 if the consumer  
20 brings in the vehicle for a second repair for the same defect.  
21 Reasonable notice as defined in this Section shall include, but  
22 not be limited to:

- 23 (1) text, provided the seller has provided the consumer  
24 with a cell phone number;
- 25 (2) phone call or message to the seller's business  
26 phone number provided on the seller's bill of sale for the

1 purchase of the motor vehicle;

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

5 (4) in person at the seller's address provided on the  
6 seller's bill of sale for the purchase of the motor  
7 vehicle.

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

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

18 "Illinois law requires that this vehicle will be free of a  
19 defect in a power train component for 15 days or 500 miles  
20 after delivery, whichever is earlier, except with regard to  
21 particular defects disclosed on the first page of this  
22 agreement. "Power train component" means the engine block,  
23 head, all internal engine parts, oil pan and gaskets, water  
24 pump, intake manifold, transmission, and all internal  
25 transmission parts, torque converter, drive shaft, universal  
26 joints, rear axle and all rear axle internal parts, and rear

1 wheel bearings. You (the consumer) will have to pay up to \$100  
2 for each of the first 2 repairs if the warranty is violated."

3 (i) The inclusion in the agreement of the statement  
4 prescribed in subsection (h) of this Section does not create an  
5 express warranty.

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

11 (1) the seller subject to this Section fully and  
12 accurately discloses to the consumer that because of  
13 circumstances unusual to the business, the used motor  
14 vehicle has a particular defect;

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

17 (3) before the sale, the consumer indicates agreement  
18 to the waiver by signing and dating the following  
19 conspicuous statement that is printed on the first page of  
20 the sales agreement or on a separate document in boldface  
21 10-point or larger type and that is written in the language  
22 in which the presentation was made:

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

26 1. ....

1           2. ....

2           3. .... "

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

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

7                 (2) a nonconformity is the result of abuse, neglect, or  
8 unauthorized modifications or alterations of the motor  
9 vehicle;

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

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

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

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

19                 (2) the seller fails to fully inform and disclose to  
20 the consumer that the vehicle is being sold without any  
21 further express or implied warranties, other than the 15  
22 day, 500 mile implied warranty of merchantability  
23 identified in this Section.

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

26           (Source: P.A. 99-768, eff. 7-1-17; 100-4, eff. 7-1-17; revised



1 10-12-17.)

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

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7 ~~amendatory Act of the 99th General Assembly~~ to a consumer by a  
8 licensed vehicle dealer within the meaning of Chapter 5 of the  
9 Illinois Vehicle Code ~~or by an auction company at an auction~~  
10 ~~that is open to the general public~~ is made subject to this  
11 Section.

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

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

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

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18 8,000 pounds or more; or

19 (4) a vehicle that is an antique vehicle, as defined in  
20 the Illinois Vehicle Code, or that is a collector motor  
21 vehicle.

22 (b-5) This Section does not apply to the sale of any  
23 vehicle for which the dealer offers an express warranty that  
24 provides coverage that is equal to or greater than the limited  
25 implied warranty of merchantability required under this

1 Section 2L.

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

5 (c) Except as otherwise provided in this Section 2L, any  
6 sale of a used motor vehicle as described in subsection (a) may  
7 not exclude, modify, or disclaim the implied warranty of  
8 merchantability created under this Section 2L or limit the  
9 remedies for a breach of the warranty hereunder before midnight  
10 of the 15th calendar day after delivery of a used motor vehicle  
11 or until a used motor vehicle is driven 500 miles after  
12 delivery, whichever is earlier. In calculating time under this  
13 Section, a day on which the warranty is breached and all  
14 subsequent days in which the used motor vehicle fails to  
15 conform with the implied warranty of merchantability are  
16 excluded. In calculating distance under this Section, the miles  
17 driven to obtain or in connection with the repair, servicing,  
18 or testing of a used motor vehicle that fails to conform with  
19 the implied warranty of merchantability are excluded. An  
20 attempt to exclude, modify, or disclaim the implied warranty of  
21 merchantability or to limit the remedies for a breach of the  
22 warranty in violation of this Section renders a purchase  
23 agreement voidable at the option of the purchaser.

24 (d) An implied warranty of merchantability is met if a used  
25 motor vehicle functions for the purpose of ordinary  
26 transportation on the public highway and substantially free of

1 a defect in a power train component. As used in this Section,  
2 "power train component" means the engine block, head, all  
3 internal engine parts, oil pan and gaskets, water pump, intake  
4 manifold, transmission, and all internal transmission parts,  
5 torque converter, drive shaft, universal joints, rear axle and  
6 all rear axle internal parts, and rear wheel bearings.

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21 problems and you agree to buy the vehicle on those terms:

- 22 1. ....
- 23 2. ....
- 24 3. .... "

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

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15 (2) the seller fails to fully inform and disclose to  
16 the consumer that the vehicle is being sold without any  
17 further express or implied warranties, other than the 15  
18 day, 500 mile implied warranty of merchantability  
19 identified in this Section.

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

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

24 Section 95. No acceleration or delay. Where this Act makes  
25 changes in a statute that is represented in this Act by text

1 that is not yet or no longer in effect (for example, a Section  
2 represented by multiple versions), the use of that text does  
3 not accelerate or delay the taking effect of (i) the changes  
4 made by this Act or (ii) provisions derived from any other  
5 Public Act.

6 Section 99. Effective date. This Act takes effect upon  
7 becoming law.