

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Representatives Newman, Parkerson and O. Miller**

# A Bill

**HOUSE BILL 1467**

## **For An Act To Be Entitled**

8 "AN ACT TO PROVIDE FOR ENFORCEMENT OF MOTOR VEHICLE  
9 MANUFACTURER'S WARRANTIES; TO ESTABLISH A 'MOTOR VEHICLE  
10 QUALITY ASSURANCE PERIOD' IN WHICH TO MAKE CLAIMS AGAINST  
11 MANUFACTURERS FOR DEFECTS AND MALFUNCTIONS WITH NEW MOTOR  
12 VEHICLES; TO DELEGATE TO THE *ATTORNEY GENERAL'S CONSUMER*  
13 *PROTECTION DIVISION* THE AUTHORITY TO ACT AS AN ARBITRATION  
14 BOARD TO HEAR WARRANTY DISPUTES; AND FOR OTHER PURPOSES."

15  
16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

17  
18 SECTION 1. This act shall be known and may be cited as the "Arkansas  
19 New Motor Vehicle Quality Assurance Act".

20  
21 SECTION 2. The Arkansas General Assembly recognizes that a motor  
22 vehicle is a major consumer acquisition and that a defective motor vehicle  
23 undoubtedly creates a hardship for the consumer. The Arkansas General  
24 Assembly further recognizes that a duly franchised motor vehicle dealer is an  
25 authorized service agent of the manufacturer. It is the intent of the  
26 Arkansas General Assembly that a good faith motor vehicle warranty complaint  
27 by a consumer be resolved by the manufacturer within a specified period of  
28 time. It is further the intent of the Arkansas General Assembly to provide  
29 the statutory procedures whereby a consumer may receive a replacement motor  
30 vehicle, or a full refund, for a motor vehicle which cannot be brought into  
31 conformity with the warranty provided for in this act. However, nothing in  
32 this act shall in any way limit the rights or remedies which are otherwise  
33 available to a consumer under any other law.

34  
35 SECTION 3. As used in this act, unless the context otherwise requires:

1           (1) "Collateral charges" means those additional charges to a consumer  
2 wholly incurred as a result of the acquisition of the motor vehicle. For the  
3 purposes of this act, collateral charges include, but are not limited to,  
4 manufacturer-installed or agent-installed items, earned finance charges, sales  
5 taxes, and title charges.

6           (2) "Condition" means a general problem that may be attributable to a  
7 defect in more than one (1) part.

8           (3) "Consumer" means the purchaser or lessee, other than for the  
9 purposes of lease or resale, of a new or previously untitled motor vehicle, or  
10 for any other person entitled by the terms of the warranty to enforce the  
11 obligations of the warranty during the duration of the Motor Vehicle Quality  
12 Assurance period.

13           (4) "Days" means calendar days, unless otherwise specified in this act.

14           (5) *"Division" means the Consumer Protection Division of the Attorney  
15 General's office.*

16           (6) "Incidental charges" means those reasonable costs incurred by the  
17 consumer, including, but not limited to, towing charges and the costs of  
18 obtaining alternative transportation, which are directly caused by the  
19 nonconformity or nonconformities which are the subject of the claim, but shall  
20 not include loss of use, loss of income, or personal injury claims.

21           (7) "Lease price" means the aggregate of:

22                   (A) Lessor's actual purchase costs;

23                   (B) Collateral charges, if applicable;

24                   (C) Any fee paid to another person to obtain the lease;

25                   (D) Any insurance or other costs expended by the lessor for the  
26 benefit of the lease;

27                   (E) An amount equal to state and local sales taxes, not otherwise  
28 included as collateral charges, paid by the lessor when the vehicle was  
29 initially purchased; and

30                   (F) An amount equal to five percent (5%) of the lessor's actual  
31 purchase price.

32           (8) "Lessee" means any consumer who leases a motor vehicle for one (1)  
33 year or more pursuant to a written lease agreement which provides that the  
34 lessee is responsible for repairs to such motor vehicle.

35           (9) "Lessee cost" means the aggregate deposit and rental payments  
36 previously paid to the lessor for the leased vehicle.

1           (10) "Lessor" means a person who holds title to a motor vehicle leased  
2 to a lessee under the written lease agreement or who holds the lessor's rights  
3 under such agreement.

4           (11) "Manufacturer" means a person engaged in the business of  
5 constructing or assembling new motor vehicles or installing on previously  
6 assembled vehicle chassis, special bodies or equipment which, when installed,  
7 form an integral part of the new motor vehicle or a person engaged in the  
8 business of importing new motor vehicles into the United States for the  
9 purpose of selling or distributing new motor vehicles to new motor vehicle  
10 dealers.

11           (12) "Motor vehicle" means a self-propelled vehicle purchased or leased  
12 in this state and primarily designed for the transportation of persons or  
13 property over the public streets and highways, but does not include mopeds,  
14 motorcycles, the living facilities of a motor home, or vehicles over ten  
15 thousand (10,000) pounds gross vehicle weight rating. For purposes of this  
16 definition, the limit of ten thousand (10,000) pounds gross vehicle weight  
17 rating does not apply to motor homes.

18           (13) "Motor Vehicle Quality Assurance period" means the term of the  
19 manufacturer's written warranty, the period ending two (2) years after the  
20 date of the original delivery of motor vehicle to a consumer, or the first  
21 twenty four thousand (24,000) miles of operation attributable to the consumer,  
22 whichever expires first.

23           (14) "Nonconformity" means a defect, malfunction, or condition that  
24 fails to conform to the warranty, but does not include a defect, malfunction,  
25 or alteration of the motor vehicle by persons other than the manufacturer or  
26 its authorized service agent.

27           (15) "Person" means any natural person, partnership, firm, corporation,  
28 association, joint venture, trust, or other legal entity.

29           (16) "Program" means an informal dispute settlement procedure  
30 established by a manufacturer which mediates and arbitrates motor vehicle  
31 warranty disputes arising in this state.

32           (17) "Purchase price" means the cash price paid for the motor vehicle  
33 appearing in the sales agreement or contract, including any net allowance for  
34 a trade-in vehicle.

35           (18) "Reasonable offset for use" means the number of miles attributable

1 to a consumer up to the date of the third repair attempt of the same  
2 nonconformity which is the subject of the claim, or the first repair attempt  
3 of a nonconformity that is likely to cause death or serious bodily injury, or  
4 the twentieth (20th) cumulative day when the vehicle is out of service by  
5 reason of repair of one (1) or more nonconformities, whichever occurs first,  
6 multiplied by the purchase price of the vehicle and divided by one hundred  
7 twenty thousand (120,000).

8 (19) "Replacement motor vehicle" means a motor vehicle which is  
9 identical or reasonably equivalent to the motor vehicle to be replaced, as the  
10 motor vehicle to be replaced existed at the time of the original acquisition.

11 (20) "Substantially impair" means to render the motor vehicle unfit,  
12 unreliable, or unsafe for warranted or ordinary use, or to significantly  
13 diminish the value of the motor vehicle.

14 (21) "Warranty" means any written warranty issued by the manufacturer;  
15 or any affirmation of fact or promise made by the manufacturer, excluding  
16 statements made by the dealer, in connection with the sale or lease of a motor  
17 vehicle to a consumer which relates to the nature of the material or  
18 workmanship and affirms or promises that such material or workmanship is free  
19 of defects or will meet a specified level of performance.

20

21 SECTION 4. (a) If a motor vehicle does not conform to the warranty and  
22 the consumer reports the nonconformity to the manufacturer, or its authorized  
23 service agent, during the Motor Vehicle Quality Assurance period, the  
24 manufacturer, or its authorized service agent, shall make such repairs as are  
25 necessary to conform the vehicle to the warranty, irrespective of whether such  
26 repairs are made after the expiration of the Motor Vehicle Quality Assurance  
27 period.

28 (b) For purposes of the consumer notifying the manufacturer pursuant to  
29 subsection (a) of this section, each manufacturer shall provide the consumer  
30 with conspicuous notice of the address and phone number for its zone, district  
31 or regional office for this state at the time of vehicle acquisition. Within  
32 thirty (30) days of the introduction of the new model year for each make and  
33 model of motor vehicle sold in this state, the manufacturer shall forward to  
34 the *Division* a copy of the owner's manual and any written warranty provided  
35 for the vehicle.

1 (c) At the time of the consumer's purchase or lease of the vehicle, the  
2 manufacturer shall make the disclosure required pursuant to subsection (a) of  
3 Section 7 of this act and provide to the consumer a written statement that  
4 explains the consumer's rights and obligations under this act. The written  
5 statement shall be prepared by the *Division* and shall contain the *Division's*  
6 phone number that the consumer can contact to commence arbitration or obtain  
7 information regarding rights and obligations under this act.

8 (d) A manufacturer, through its authorized service agent, shall provide  
9 to the consumer, each time his motor vehicle is returned after being examined  
10 or repaired under the warranty, a fully itemized, legible statement or repair  
11 order indicating any test drive performed and the approximate length of the  
12 test drive, any diagnosis made, and all work performed on the motor vehicle  
13 including, but not limited to, a general description of the problem reported  
14 by the consumer or an identification of the defect or condition, parts and  
15 labor, the date and the odometer reading when the motor vehicle was submitted  
16 for examination or repair, and the date when the repair or examination was  
17 completed.

18 (e) Upon request from the consumer, the manufacturer or its authorized  
19 service agent shall provide a copy of any report or computer reading compiled  
20 by the manufacturer or its authorized service agent regarding inspection,  
21 diagnosis, or test-drive of the motor vehicle, or shall provide a copy of any  
22 technical service bulletin issued by the manufacturer regarding the year and  
23 model of the consumer's motor vehicle as it pertains to any material, feature,  
24 component, or the performance thereof.

25

26 SECTION 5. (a) (1) After three (3) attempts have been made to repair the  
27 same nonconformity that substantially impairs the motor vehicle, or after one  
28 (1) attempt to repair a nonconformity that is likely to cause death or serious  
29 bodily injury, the consumer shall give written notification, by certified or  
30 registered mail, to the manufacturer of the need to repair the nonconformity  
31 in order to allow the manufacturer a final attempt to cure the nonconformity.  
32 The manufacturer shall, within ten (10) days after receipt of the  
33 notification, notify and provide the consumer with the opportunity to have the  
34 vehicle repaired at a reasonably accessible repair facility and after delivery  
35 of the vehicle to the designated repair facility by the consumer, the

1 manufacturer shall, within ten (10) days, conform the motor vehicle to the  
2 warranty. If the manufacturer fails to notify and provide the consumer with  
3 the opportunity to have the vehicle repaired at a reasonably accessible repair  
4 facility or perform the repairs within the time periods prescribed in this  
5 subdivision, the requirement that the manufacturer be given a final attempt to  
6 cure the nonconformity does not apply.

7 (2) Upon twenty (20) or more cumulative days when the motor  
8 vehicle has been out of service by reason of repair of one (1) or more  
9 nonconformities, the consumer shall give written notification to the  
10 manufacturer by certified or registered mail service. Commencing upon the  
11 date the notification is received, the manufacturer shall have ten (10)  
12 cumulative days when the vehicle has been out of service by reason of repair  
13 of one (1) or more nonconformities to conform the motor vehicle to the  
14 warranty.

15 (b)(1) If the manufacturer, or its authorized service agent, has not  
16 conformed the motor vehicle to the warranty by repairing or correcting one (1)  
17 or more nonconformities that substantially impair the motor vehicle after a  
18 reasonable number of attempts, the manufacturer, within forty (40) days, shall  
19 at the time of its receipt of payment of a reasonable offset for use by the  
20 consumer, replace the motor vehicle with a replacement motor vehicle  
21 acceptable to the consumer, or repurchase the motor vehicle from the consumer  
22 or lessor and refund to the consumer or lessor the full purchase or lease  
23 price, less a reasonable offset for use. The replacement or refund shall  
24 include payment of all collateral and reasonably incurred incidental charges.  
25 The consumer shall have an unconditional right to choose a refund rather than  
26 a replacement. At the time of such refund or replacement, the consumer,  
27 lienholder, or lessor shall furnish to the manufacturer clear title to and  
28 possession of the motor vehicle.

29 (2) Refunds shall be made to the consumer and lienholder of  
30 record, if any, as their interests may appear. If applicable, refunds shall  
31 be made to the lessor and lessee as follows: the lessee shall receive the  
32 lessee cost less a reasonable offset for use, and the lessor shall receive the  
33 lease price less the aggregate deposit and rental payments previously paid to  
34 the lessor for the leased vehicle. If it is determined that the lessee is  
35 entitled to a refund pursuant to this act, the consumer's lease agreement with

1 the lessor shall be terminated upon payment of the refund and no penalty for  
2 early termination shall be assessed. The Department of Finance and  
3 Administration shall refund to the manufacturer any sales tax which the  
4 manufacturer refunded to the consumer, lessee, or lessor under this section,  
5 if the manufacturer provides to the Department of Finance and Administration a  
6 written request for a refund and evidence that the sales tax was paid when the  
7 vehicle was purchased and that the manufacturer refunded the sales tax to the  
8 consumer, lessee, or lessor.

9 (c) (1) It is presumed that a reasonable number of attempts have been  
10 undertaken to conform a motor vehicle to the warranty if, during the Motor  
11 Vehicle Quality Assurance period, any of the following occur:

12 (A) The same nonconformity that substantially impairs the  
13 motor vehicle has been subject to examination or repair at least three (3)  
14 times by the manufacturer or its authorized service agent, plus a final  
15 attempt by the manufacturer to repair the motor vehicle if undertaken as  
16 provided for in subdivision (a) (1) of this section, and the nonconformity  
17 continues to exist; or

18 (B) A nonconformity that is likely to cause death or  
19 serious bodily injury has been subject to examination or repair at least one  
20 (1) time by the manufacturer or its authorized service agent, plus a final  
21 attempt by the manufacturer to repair the motor vehicle if undertaken as  
22 provided for in subdivision (a) (1) of this section, and such nonconformity  
23 continues to exist; or

24 (C) The motor vehicle has been out of service by reason of  
25 repair by the manufacturer, or its authorized service agent, of one (1) or  
26 more nonconformities that substantially impair the motor vehicle for a  
27 cumulative total of thirty (30) or more days, exclusive of down time for  
28 routine maintenance prescribed by the owner's manual. The thirty (30) day  
29 period may be extended by any period of time during which repair services are  
30 not available to the consumer because of war, invasion, strike, fire, flood,  
31 or natural disaster.

32 (2) The terms of subdivision (c) (1) of this section shall be  
33 extended for a period up to two (2) years after the date of the original  
34 delivery of a motor vehicle to a consumer, or the first 24,000 miles of  
35 operation attributable to a consumer, whichever occurs first, if a

1 nonconformity has been reported but has not been cured by the manufacturer, or  
2 its authorized service agent, before the expiration of the Motor Vehicle  
3 Quality Assurance period.

4 (d) No manufacturer, or its authorized service agent, shall refuse to  
5 examine or repair any nonconformity for the purpose of avoiding liability  
6 under this act.

7

8 SECTION 6. It is an affirmative defense to any claim under this act  
9 that:

10 (1) The alleged nonconformity or nonconformities do not substantially  
11 impair the motor vehicle;

12 (2) A nonconformity is the result of an accident, abuse, neglect, or  
13 unauthorized modifications or alterations of the motor vehicle by persons  
14 other than the manufacturer or its authorized service agent;

15 (3) The claim by the consumer was not filed in good faith; or

16 (4) Any other defense allowed by law may be raised against the claim.

17

18 SECTION 7. (a) At the time of the consumer's purchase or lease of the  
19 vehicle, a manufacturer who has established a program certified pursuant to  
20 this section shall, at a minimum, clearly and conspicuously disclose to the  
21 consumer in written materials accompanying the vehicle how and where to file a  
22 claim with such program.

23 (b) A certified program shall be funded and competently staffed at a  
24 level sufficient to ensure fair and expeditious resolution of all disputes,  
25 and shall not charge consumers any fee for use of the program. The  
26 manufacturer shall take all actions necessary to ensure that a certified  
27 program and its staff and decision makers are sufficiently insulated from the  
28 manufacturer so that the performance of the staff and the decisions of the  
29 decision makers are not influenced by the manufacturer. These actions shall  
30 include, as a minimum, insuring that the manufacturer does not make decisions  
31 on whether or not a consumer's dispute proceeds to the decision maker. Staff  
32 and decision makers of a certified program shall be trained in the provisions  
33 of this act and rules promulgated hereunder.

34 (c) A certified program shall allow an oral presentation by a party, or  
35 by a party's employee, agent or representative, if:



1                   (1) both the manufacturer and consumer expressly agree to such  
2 presentation; or

3                   (2) the decision maker determines that an oral presentation is  
4 required and the consumer consents; or

5                   (3) the consumer requests an oral presentation and the decision  
6 maker agrees.

7           (d) Meetings of a certified program to hear and decide disputes shall  
8 be open to observers, including either party to the dispute, on reasonable and  
9 nondiscriminatory terms.

10           (e) A certified program shall render a fair decision within forty (40)  
11 days from the consumer's notification to the program of the dispute. In the  
12 event the program, as a standard procedure, affords consumers the opportunity  
13 for oral hearings at reasonably convenient locations, a certified program  
14 shall render a fair decision within sixty (60) days from the consumer's  
15 notification of the dispute, provided that a significant number of decisions  
16 are rendered within forty (40) days. For purposes of this section and  
17 subsection (a) of Section 9, notification shall be deemed to have occurred  
18 when a certified program has received the consumer's name and address; the  
19 current date and the date of the original delivery of the motor vehicle to a  
20 consumer; the year, make, model and identification number of the motor  
21 vehicle; and a description of the nonconformity. If the consumer has not  
22 previously notified the manufacturer of the nonconformity, the forty (40) day  
23 or sixty (60) day period shall be extended for seven (7) days.

24           (f) A certified program shall, in rendering decisions, take into  
25 account the provisions of this act and all legal and equitable factors germane  
26 to a fair and just decision. The decision shall disclose to the consumer and  
27 the manufacturer the reasons therefor, and the manufacturer's required  
28 actions, if applicable. The decision shall prescribe a reasonable period of  
29 time, not to exceed thirty (30) days, within which the manufacturer must  
30 fulfill the terms of the decision. The decision of a certified program shall  
31 be binding upon the manufacturer, if the consumer elects to accept it. In an  
32 action brought by a consumer under this act, the decision of a certified  
33 program shall be admissible as evidence in a court of competent jurisdiction.

34           (g) A certified program shall establish written procedures which  
35 explain its operation. Copies of the written procedures shall be made

1 available to any person upon request and shall be sent to the consumer upon  
2 notification of the dispute.

3 (h) A certified program shall retain all records for each dispute for  
4 at least four (4) years after the final disposition of the dispute. A  
5 certified program shall have an independent audit conducted annually to  
6 determine whether the manufacturer and its performance and the program and its  
7 implementation are in compliance with this act. All records for each dispute  
8 shall be available for the audit. The audit, upon completion, shall be  
9 forwarded to the *Division*.

10 (i) Any manufacturer licensed to sell motor vehicles in this state may  
11 apply to the *Division* for certification of its program. A manufacturer  
12 seeking certification of its program in this state shall complete and submit  
13 to the *Division* an application for certification on a form prescribed by the  
14 *Division*.

15 (j) A program certified in this state or a program established by a  
16 manufacturer applying for certification in this state shall submit to the  
17 *Division* a copy of each settlement approved by the program or decision made by  
18 the panel or decision maker within thirty (30) days after the settlement is  
19 reached or the decision is rendered. The decision or settlement shall contain  
20 information prescribed by the *Division*.

21 (k) The *Division* shall review the operations of any certified program  
22 at least once annually. The *Division* shall prepare annual and periodic  
23 reports evaluating the operation of certified programs serving consumers in  
24 this state or programs established by motor vehicle manufacturers applying for  
25 certification in this state. The reports shall indicate whether certification  
26 should be granted, renewed, denied, or revoked.

27 (l) If a manufacturer has established a program which the *Division* has  
28 certified as substantially complying with the provisions of the rules  
29 promulgated under this act, and has informed the consumer how and where to  
30 file a claim with the program pursuant to subsection (a) of this section, the  
31 provisions of subsection (b) of Section 5 do not apply to any consumer who has  
32 not first resorted to such program.

33 (m) In the event of federal preemption of state authority, pursuant to  
34 this section, to certify and regulate manufacturer-established programs in  
35 this state, the requirements of subsection (1) of this section concerning

1 prior resort shall not apply.

2

3 SECTION 8. To encourage uniform application, interpretation and  
4 enforcement of this section and Section 7, and in implementing regulations  
5 adopted pursuant to this act, the *Division* may cooperate with agencies that  
6 perform similar functions in any other states that enact these or similar  
7 sections. The cooperation authorized by this section may include:

8 (1) Establishing a central depository for copies of all applications  
9 and accompanying materials submitted by manufacturers for certification, and  
10 all reports prepared, notices issued, and determinations made by the *Division*  
11 under Section 7.

12 (2) Sharing and exchanging information, documents, and records  
13 pertaining to program operations.

14 (3) Sharing personnel to perform joint reviews, surveys, and  
15 investigations of program operations.

16 (4) Preparing joint reports evaluating program operations.

17 (5) Granting joint certifications and certification renewals.

18 (6) Issuing joint denials or revocations of certification.

19 (7) Holding a joint administrative hearing.

20 (8) Formulating, in accordance with the Arkansas Administrative  
21 Procedure Act, Arkansas Code §§ 25-15-201 et seq., rules or proposed rules on  
22 matters such as guidelines, forms, statements of policy, interpretative  
23 opinions, and any other information necessary to implement Section 7.

24

25 SECTION 9. (a) *If a consumer resorts to a manufacturer's certified*  
26 *program and a decision is not rendered within forty (40) days or performed*  
27 *within the time specified in the decision or settlement and the consumer has*  
28 *notified the manufacturer pursuant to Subsection (a) of Section 5, the*  
29 *consumer may apply to the Division to have the dispute removed for*  
30 *arbitration.*

31 (b) *A consumer who resorts to a manufacturer's certified program and is*  
32 *not satisfied with the decision reached or the performance of the decision may*  
33 *apply to the Division to have the dispute submitted for arbitration. No*  
34 *manufacturer may seek review of a decision of its program. For purposes of*  
35 *this subsection, "not satisfied with the performance of the decision" means*

1 following the consumer's acceptance of the decision, the consumer indicates  
2 that the manufacturer failed to comply with the terms of the decision within  
3 the time specified in the decision or, in the event that further repairs were  
4 ordered, failed to cure the nonconformity within the time specified in the  
5 decision.

6 (c) If a manufacturer has no certified program, a consumer seeking  
7 relief pursuant to subsection (b) of Section 5 shall apply directly to the  
8 Division to have the dispute submitted for arbitration.

9 (d) A consumer seeking relief pursuant to subsection (b) of Section 5  
10 can request arbitration conducted by the Division provided that such request  
11 is made within thirty (30) months from the date of the original delivery of  
12 the motor vehicle to a consumer. All manufacturers shall submit to  
13 arbitration conducted by the Division if the dispute is deemed eligible for  
14 arbitration.

15 (e) The Division shall screen all requests for arbitration to determine  
16 eligibility. The consumer's request for arbitration before the Division shall  
17 be made on a form prescribed by regulation. The Division shall consider only  
18 disputes it determines are potentially entitled to relief under this act.

19 (f) The Division may reject a dispute that it determines to be  
20 fraudulent or outside the scope of its authority. Any dispute deemed by the  
21 Division to be ineligible for arbitration due to insufficient information may  
22 be reconsidered upon the submission of new information regarding the dispute.  
23 Following a second review, the Division may reject a dispute if the  
24 information submitted is clearly insufficient to qualify for relief. If a  
25 dispute is rejected by the Division, notice of the rejection with a brief  
26 explanation as to the reason therefor shall be sent by certified or registered  
27 mail to the consumer and to the manufacturer.

28 (g) If the Division rejects a dispute, the Division shall issue an  
29 order rejecting the dispute. The consumer may file a petition for judicial  
30 review of the Division's decision to reject a dispute in accordance with the  
31 Arkansas Administrative Procedure Act, Arkansas Code 25-15-201 et seq. In  
32 any civil action arising under this act and relating to a matter considered by  
33 the Division, any determination made to reject a dispute is admissible in  
34 evidence.

35

1           SECTION 10. (a) In addition to its other duties and powers, the  
2 Consumer Protection Division of the Attorney General's Office shall have the  
3 following duties and powers under this act to carry out the provisions of this  
4 law:

5           (1) The Division may appoint persons as necessary to serve as  
6 arbitrators to hear disputes submitted to the Division. The arbitrators may,  
7 under rules promulgated by the Division, hear and determine disputes between a  
8 consumer and a manufacturer or its authorized service agent. The arbitrators  
9 may conduct hearings and investigations and make such orders, decisions, and  
10 determinations as may be required to make a determination in the dispute. The  
11 Division shall assign any disputes brought before it to an arbitrator to hear  
12 evidence or to render a decision in an arbitration dispute. The arbitrator  
13 may hear the evidence of the parties and shall render a decision in the  
14 dispute.

15           (2) The arbitrators shall hear cases in various locations  
16 throughout the state so any consumer whose dispute is approved for arbitration  
17 by the Division may attend an arbitration hearing at a reasonably convenient  
18 location and present a dispute orally. Arbitration proceedings under this act  
19 shall be open to the public.

20           (3) The Division may issue subpoenas for witnesses or documents  
21 at the request of either party to a dispute which is pending before the  
22 arbitrator.

23           (4) At all arbitration proceedings, the parties may present oral  
24 and written testimony, present witnesses and evidence relevant to the dispute,  
25 cross-examine witnesses, and be represented by counsel. The arbitrator may  
26 also inspect the vehicle if requested by a party or if the arbitrator deems  
27 such inspection appropriate.

28           (b) The arbitrator shall grant the relief specified in subsection (b)  
29 of Section 5 to the consumer, if the consumer is entitled to relief under this  
30 act. The Division shall dismiss a dispute if it finds it is without  
31 jurisdiction in the matter, or if, after considering all the evidence  
32 presented, it finds that the consumer is not entitled to relief under this  
33 act.

34           (c) The Division and its arbitrators shall construe and apply the  
35 provisions of this act and rules adopted thereunder in making their decisions.

1 The Division and its arbitrators shall be trained in the application of this  
2 act and any rules adopted thereunder.

3

4 SECTION 11. (a) The arbitrator shall hear and decide the dispute  
5 within forty (40) days from the date the Division deems the dispute eligible  
6 for arbitration. The decision of the arbitrator shall contain written  
7 findings of fact and rationale for the decision and shall be sent by certified  
8 or registered mail to the consumer and the manufacturer. The failure of the  
9 arbitrator to hear and decide disputes within forty (40) days shall not  
10 invalidate the decision.

11 (b) The arbitrator's decision shall become the final order, if an  
12 application for review is not made to the Division within twenty (20) days of  
13 the arbitrator's decision. If an application for review is filed within  
14 twenty (20) days of the decision of an arbitrator, the Division shall review  
15 the evidence of the dispute submitted to the arbitrator and then render a  
16 final decision in the dispute and issue a final order giving its decision in  
17 the dispute after review.

18 (c) If the decision is in favor of the consumer, the consumer shall  
19 have up to twenty-five (25) days from the date of receipt of the Division's  
20 decision to indicate acceptance of the decision to the manufacturer. After  
21 receipt of the consumer's acceptance of the decision, the manufacturer has  
22 twenty-five (25) days to comply with the terms of the decision. Compliance  
23 occurs on the date the consumer receives delivery of an acceptable replacement  
24 motor vehicle or the refund specified in the arbitration award.

25 (d) A decision is final unless appealed for judicial review by either  
26 party. A petition for judicial review of the Division's order shall be in  
27 accordance with the Arkansas Administrative Procedure Act, Arkansas Code  
28 25-15-201 et seq. Within seven (7) days after the petition has been filed,  
29 the appealing party must send, by certified, registered or express mail, a  
30 copy of the petition to the Division.

31 (e) If the Division receives no notice of such petition within sixty  
32 (60) days after the manufacturer's receipt of a decision in favor of the  
33 consumer, and the consumer has indicated acceptance of the decision within the  
34 twenty-five (25) day period prescribed under subsection (c) of this section,  
35 but the manufacturer has neither complied with, nor petitioned to have such

1 decision reviewed, the Division may apply to the court to impose a fine up to  
2 one thousand dollars (\$1,000) per day against the manufacturer until the  
3 amount stands at twice the purchase price of the motor vehicle, unless the  
4 manufacturer provides clear and convincing evidence that the delay or failure  
5 was beyond its control or was acceptable to the consumer as evidenced by a  
6 written statement signed by the consumer. If the manufacturer fails to  
7 provide such evidence or fails to pay the fine, the Division shall initiate  
8 proceedings against the manufacturer for the failure to pay such fine. The  
9 proceeds from the fine herein imposed shall be collected by the clerk of the  
10 court and remitted to the Division which shall then deposit them as direct  
11 revenues into the State Treasury in the State Central Services Fund to the  
12 credit of the Attorney General's Office for implementation and enforcement of  
13 this act.

14 (f) The Division shall maintain records of each dispute submitted,  
15 including an index of motor vehicles by year, make, and model, and shall  
16 compile aggregate annual statistics for all disputes submitted to, and decided  
17 by, the Division, as well as annual statistics for each manufacturer that  
18 include, but are not limited to, the number and percent of:

- 19 (1) Replacement motor vehicle requests;
- 20 (2) Purchase price refund requests;
- 21 (3) Replacement motor vehicles obtained in pre-hearing  
22 settlements;
- 23 (4) Purchase price refunds obtained in pre-hearing settlement;
- 24 (5) Replacement motor vehicles awarded in arbitration;
- 25 (6) Purchase price refunds awarded in arbitration;
- 26 (7) Division decisions not complied with within the twenty-five  
27 (25) day time period set forth under subsection (c) of this section;
- 28 (8) Division decisions appealed for judicial review; and
- 29 (9) Division decisions upheld or overturned by the court.

30  
31 SECTION 12. (a) The Division may enforce and ensure compliance with  
32 the provisions of this act and rules adopted thereunder. The Division may  
33 levy and collect a civil fine in an amount not to exceed one thousand dollars  
34 (\$1,000) for each violation against any manufacturer found to be in violation  
35 of this act or rules adopted thereunder. A manufacturer may request a hearing

1 pursuant to the Arkansas Administrative Procedure Act, Arkansas Code §§ 25-15-  
2 201 et seq., if the manufacturer contests the fine levied, or about to be  
3 levied, upon it. The proceeds from the fine herein imposed shall be collected  
4 by the Division which shall then deposit them as direct revenues into the  
5 State Treasury in the State Central Services Fund to the credit of the  
6 Attorney General's Office for implementation and enforcement of this act.

7 (b) The Division may issue subpoenas requiring the attendance of  
8 witnesses and production of evidence, and may seek relief in the court to  
9 compel compliance with such subpoenas.

10

11 SECTION 13. (a) Other than a petition to the circuit court for  
12 judicial review of a decision of the Division filed by the consumer in  
13 accordance with the Arkansas Administrative Procedure Act, Arkansas Code §§  
14 25-15-201 et seq., a consumer may file an action in court to enforce his  
15 rights under this act within one (1) year from the expiration of the Motor  
16 Vehicle Quality Assurance period or extension thereof pursuant to subdivision  
17 (c) (2) of Section 5. The court may award a consumer who prevails in the  
18 action the amount of any pecuniary loss, reasonable attorney's fees, and  
19 costs.

20 (b) This act does not prohibit a consumer from pursuing other rights or  
21 remedies under any other law.

22

23 SECTION 14. Nothing in this act imposes any liability on a franchised  
24 motor vehicle dealer or creates a cause of action by a consumer against a  
25 dealer, except for written express warranties made by the dealer apart from  
26 the manufacturer's warranties. A dealer may not be made a party defendant in  
27 any action involving or relating to this act, except as provided in this  
28 section. The manufacturer shall not charge back or require reimbursement by  
29 the dealer for any costs, including, but not limited to, any refunds or  
30 vehicle replacements, incurred by the manufacturer arising out of this act, in  
31 the absence of a finding by a court or other separate impartial proceeding  
32 that the related repairs had been carried out by the dealer in a manner  
33 substantially inconsistent with the manufacturer's published instructions. A  
34 manufacturer who is found by a court to have improperly charged back a dealer  
35 because of a violation of this section shall be liable to the injured dealer



1 for full reimbursement plus reasonable costs and any attorneys' fees.

2

3 SECTION 15. A manufacturer who accepts the return of a motor vehicle by  
4 reason of a settlement, determination, or decision pursuant to this act shall  
5 notify the *Division* and report the vehicle identification number of that  
6 motor vehicle to the *Department of Finance and Administration* within ten (10)  
7 days after such acceptance. The *Department of Finance and Administration*  
8 shall note the fact that the motor vehicle was returned pursuant to this act  
9 on the registration issued for the motor vehicle. No person shall knowingly  
10 lease, or sell, either at wholesale or retail, or transfer a title to a motor  
11 vehicle returned by reason of a settlement, determination, or decision  
12 pursuant to this act or similar statute of any other state unless the nature  
13 of the nonconformity is clearly and conspicuously disclosed to the prospective  
14 transferee, lessee, or buyer. The *Division* shall prescribe by rule, the form,  
15 content, and procedure pertaining to such disclosure statement, recognizing  
16 the need of manufacturers to implement a uniform disclosure form. The  
17 manufacturer shall make a reasonable effort to ensure that such disclosure is  
18 made to the first subsequent retail buyer or lessee. For purposes of this  
19 section, "settlement" includes an agreement entered into between the  
20 manufacturer and the consumer that occurs after the dispute has been submitted  
21 to a manufacturer-established program or has been deemed eligible by the  
22 *Division* for arbitration.

23

24 SECTION 16. Any agreement entered into by a consumer that waives,  
25 limits, or disclaims the rights set forth in this act is void as contrary to  
26 public policy.

27

28 SECTION 17. (a) The *Division* shall have the authority to promulgate  
29 all necessary rules and regulations to implement this act.

30 (b) In prescribing rules and forms under this act, the *Division* may  
31 cooperate with agencies that perform similar functions in other states with a  
32 view to effectuating the policy of this act to achieve maximum uniformity in  
33 the form and content of certification, regulation, and procedural evaluation  
34 of manufacturer-established programs, required record-keeping, required  
35 reporting wherever practicable, and required notices to consumers. In the

1 event of federal preemption of state authority to certify and regulate  
2 manufacturer-established programs in this state, this subsection shall become  
3 null and void.

4 (c) The *Division* shall have the authority to promulgate rules and  
5 regulations of procedure and practice before the *Division and arbitrators* as  
6 are necessary to effectuate the purposes of this act as regards the *Division*.

7  
8 SECTION 18. This act applies to motor vehicles originally purchased or  
9 leased in this state by consumers on or after January 1, 1992 and shall take  
10 effect on that date, except that Section 17 concerning rule making shall take  
11 effect immediately on the effective date of the act.

12  
13 SECTION 19. All provisions of this act of a general and permanent  
14 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
15 Code Revision Commission shall incorporate the same in the Code.

16  
17 SECTION 20. Severability. In the event any provision of this act is  
18 declared or adjudged to be invalid or unconstitutional, such declaration or  
19 adjudication shall not affect the remaining portions of this act which can be  
20 given effect without the invalid or unconstitutional provision. The remaining  
21 portions of this act shall remain in full force and effect as if the portion  
22 declared or adjudged invalid or unconstitutional was not originally a part of  
23 the act.

24  
25 SECTION 21. All laws and parts of laws in conflict with this act are  
26 hereby repealed.

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29 /s/B. Newman, et al  
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