

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas *As Engrossed: S3/4/19 S3/13/19*

2 92nd General Assembly

A Bill

3 Regular Session, 2019

SENATE BILL 450

4

5 By: Senators B. Johnson, Rice

6 By: Representatives Richmond, Bentley, D. Douglas, Eubanks, Sullivan, Vaught, Watson

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For An Act To Be Entitled

9 AN ACT TO ESTABLISH THE ARKANSAS NEW FARM MACHINERY

10 QUALITY ASSURANCE ACT; AND FOR OTHER PURPOSES.

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12

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Subtitle

14

TO ESTABLISH THE ARKANSAS NEW FARM

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MACHINERY QUALITY ASSURANCE ACT.

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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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20 SECTION 1. Arkansas Code Title 4, Chapter 96, is amended to add an

21 additional subchapter to read as follows:

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Subchapter 3 – Arkansas New Farm Machinery Quality Assurance Act

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4-96-301. Title.

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This subchapter shall be known and may be cited as the "Arkansas New Farm Machinery Quality Assurance Act".

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4-96-302. Definitions.

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As used in this subchapter:

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(1) "Authorized dealer" means an individual, corporation, or limited liability company authorized by the manufacturer or distributor to sell, barter, or exchange a particular make of new farm machinery;

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(2) "Collateral charges" means any reasonable additional charge to a consumer not directly attributable to the aggregate purchase price of the farm machinery;

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(3) "Comparable farm machinery" means an identical or reasonable



1 replacement piece of farm machinery;

2 (4) "Consumer" means a purchaser or lessee of new farm
3 machinery, other than for purposes of resale, or a person entitled to enforce
4 the obligations of the warranty during the duration of the farm machinery
5 quality assurance period;

6 (5)(A) "Farm machinery" means self-propelled equipment or
7 machinery typically used for agricultural purposes that is purchased or
8 leased for the first time from a manufacturer, distributor, or an authorized
9 dealer.

10 (B) "Farm machinery" includes farm machinery propelled by
11 power other than physical power if the farm machinery is not an off-road
12 vehicle, an all-terrain vehicle, as defined under § 27-21-102, equipment
13 under twenty-five horsepower (25 h.p.), lawn tractors, or lawn mowers;

14 (6) "Farm machinery quality assurance period" means a period of
15 time that:

16 (A) Begins:

17 (i) On the date of original delivery of farm
18 machinery; or

19 (ii) In the case of a replacement piece of farm
20 machinery provided by a manufacturer to a consumer under this subchapter, on
21 the date of delivery of the replacement vehicle to the consumer; and

22 (B) Ends twelve (12) months after the date of the original
23 delivery of the farm machinery to a consumer, or the first six hundred (600)
24 hours of operation attributable to the consumer, whichever is earlier;

25 (7) "Nonconformity" means any condition of farm machinery that:

26 (A) Does not conform with the terms of an express warranty
27 issued by a manufacturer to a consumer;

28 (B) Significantly impairs the use, value, or safety of the
29 farm machinery; and

30 (C) Does not arise or occur as a result of abuse or
31 neglect, including without limitation failure to operate and maintain the
32 farm machinery according to the manufacturer's operator manual and
33 recommended maintenance of the farm machinery;

34 (8) "Reasonable allowance for consumer use" means an amount
35 attributable to use by a consumer:

36 (A) Before the consumer's first report of the

1 nonconformity to the manufacturer or authorized dealer of the farm machinery;
2 (B) During any period of use of the farm machinery
3 subsequent to the first report of nonconformity if the farm machinery is not
4 out of service by reason of repair of the reported nonconformity; and

5 (C) Of the farm machinery provided by the manufacturer or
6 its authorized dealer while the farm machinery is out of service by reason of
7 repair of the reported nonconformity, but not less than the fair lease value
8 of the farm machinery;

9 (9)(A) "Seller" means a retail seller of the farm machinery as
10 evidenced by the purchase order or lease agreement, that may be a dealer,
11 distributor, manufacturer, or manufacturer's agent; and

12 (10)(A) "Warranty" means a written warranty, as labeled, issued
13 by a manufacturer of new farm machinery or an affirmation of fact or promise
14 made by the manufacturer, including any terms or conditions precedent to the
15 enforcement of obligations under that warranty in connection with the sale or
16 lease of farm machinery to a consumer concerning the nature of the material
17 or workmanship that affirms or promises that the material or workmanship is
18 free of defects or will meet a specified level of performance.

19 (B) "Warranty" does not include a statement or expression
20 made by an authorized dealer.

21
22 4-96-303. Disclosure by seller

23 (a)(1) When a consumer purchases or leases farm machinery from a
24 seller, the seller shall at the time of purchase or lease transaction:"

25 (A) Provide to the consumer a written statement that
26 adequately discloses and explains the rights and obligations of a consumer
27 under this subchapter;

28 (B) Obtain a signed acknowledgment from the consumer of
29 the receipt of the written statement described in subdivision (a)(1)(A) of
30 this section; and

31 (C) For self-propelled farm machinery, maintain copies of
32 the consumer's signed acknowledgment for at least the period equal to the
33 term of coverage of the manufacturer's warranty.

34 (2) It is a violation of this subchapter for a seller to fail to
35 provide to a consumer the written statement required under subdivision
36 (a)(1)(A) of this section.

1 (b)(1) The Consumer Protection Division of the office of the Attorney
2 General shall prepare and make available, in either print or by electronic
3 form, a written statement as described in subdivision (a)(1)(A) of this
4 section that includes the telephone number of the division that the consumer
5 can call to obtain information regarding his or her rights and obligations
6 under this subchapter.

7 (2) It is a violation of this subchapter for a seller to fail to
8 provide to a consumer the written statement described in subdivision (b)(1)
9 of this section.

10 (c) For each failure of the seller to provide to a consumer the
11 written statement required under this section or failure to retain a signed
12 acknowledgement form, the seller shall be liable to the state for a civil
13 penalty of not less than twenty-five dollars (\$25.00) but no more than one
14 thousand dollars (\$1,000).

15 (d)(1) A seller shall clearly and conspicuously disclose to the
16 consumer that written notice of a nonconformity is required before the buyer
17 may be eligible for a refund or replacement of the farm machinery.

18 (2) At the time of acquisition of farm machinery, a seller shall
19 provide the consumer with conspicuous notice of the address and phone number
20 for the manufacturer, distributor, or authorized dealer at the time of
21 acquisition of farm machinery to which the buyer shall send notification of a
22 nonconformity.

23 (e)(1) If farm machinery does not conform to any applicable express
24 warranties and the consumer provides written notice by certified mail to the
25 manufacturer, distributor, or authorized dealer demanding correction or
26 repair of the nonconformity during the term of the express warranty or during
27 the farm machinery quality assurance period, whichever period expires
28 earlier, the manufacturer, agent of a manufacturer, distributor, or an
29 authorized dealer shall make any necessary repairs to conform the farm
30 machinery to the express warranties, notwithstanding the fact that the
31 repairs are made after the expiration of the term of the express warranty or
32 farm machinery quality assurance period.

33 (2) For self-propelled farm machinery, this section is limited
34 to warranty coverage for the engine, transmission, and power train.

35 (f) This subchapter applies to farm machinery sold on or after January
36 1, 2020.

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4-96-304. Right to repair.

After notice is provided under § 4-96-303, a manufacturer, a distributor, or an authorized dealer shall have the right to repair a nonconformity of farm machinery:

(1)(A) Three (3) times for the same repair issue or thirty (30) days out of service for the same issue under this subchapter.

(B) The cost of three (3) repairs shall equal at least thirty percent (30%) of total purchase price of the farm machinery in order to trigger recourse under this subchapter; or

(2)(A) Five (5) times for all issues or sixty (60) days of out of service time.

(B) The cost of five (5) repairs under subdivision (2)(A) of this section shall be equal to at least fifty percent (50%) of the total purchase price of the farm machinery in order to trigger recourse under this subchapter.

(C) Days of out of service time do not count for the purposes of subdivision (1)(A) of this section if the authorized dealer provides comparable farm machinery.

4-96-305. Refund or replacement.

(a) If a manufacturer, an agent of a manufacturer, a distributor, or an authorized dealer does not conform farm machinery to the warranty as required under § 4-96-303, after notice of the nonconformity under § 4-96-303 by repairing or correcting one (1) or more nonconformities that substantially impair the farm machinery after a reasonable number of attempts, then, within thirty (30) days, the manufacturer or distributor shall:

(1) At the time of receipt of payment of a reasonable offset for use by the consumer, replace the farm machinery with comparable farm machinery acceptable to the consumer; or

(2) Repurchase the farm machinery from the buyer or lessor and refund to the buyer or lessor the full purchase price or lease price, less:

(A) A reasonable allowance for consumer use; and

(B) A reasonable offset for physical damage sustained by the farm machinery while under the ownership of the consumer.

(b) The replacement or refund under subsection (a) of this section

1 shall include payment of all collateral charges and reasonably incurred
2 incidental charges.

3 (c) A buyer has an unconditional right to choose a refund rather than
4 a replacement under this subchapter.

5 (d) At the time of the refund or replacement, a consumer, lien holder,
6 or lessor shall furnish clear title to and possession of the farm machinery
7 to the manufacturer, distributor, or authorized dealer.

8 (e) The amount of reasonable allowance for consumer use is determined
9 by the fair lease value of the farm machinery.

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11 4-96-306. Affirmative defenses.

12 It is an affirmative defense to a claim under this subchapter that:

13 (1) A defect or condition does not substantially impair the use,
14 value, or safety of the farm machinery;

15 (2) A nonconformity is the result of an accident, abuse,
16 neglect, or unauthorized modification or alteration of the farm machinery by
17 a person other than the manufacturer, agent of a manufacturer, distributor,
18 or an authorized dealer;

19 (3) A claim by the consumer was not filed in good faith; or

20 (4) If there are any other defense allowed by law that may be
21 raised against the claim.

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23 4-96-307. Enforcement – Exclusivity – Costs and expenses.

24 (a) A consumer may bring a civil action to enforce this subchapter in
25 a court of competent jurisdiction.

26 (b) This subchapter does not limit the rights and remedies that are
27 otherwise available to a consumer under any applicable law.

28 (c)(1) A consumer who prevails in a legal proceeding under this
29 subchapter is entitled to recover, as part of the judgment, a sum equal to
30 the aggregate amount of costs and expenses, including attorney's fees.

31 (2) The attorney's fees shall be:

32 (A) Based on actual time expended by the attorney; and

33 (B) Based on charges reasonably incurred by the consumer
34 for or in connection with the commencement and prosecution of the action as
35 determined by the court.

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1 4-96-308. Action – Limitations.

2 (a) A legal action brought under this subchapter shall commence within
3 two (2) years following the date a buyer first reports the nonconformity to a
4 manufacturer, an agent of a manufacturer, a distributor, or an authorized
5 dealer.

6 (b)(1) Before filing a legal action in court concerning the
7 enforcement of the rights and remedies available to the consumer under this
8 subchapter, the consumer and the manufacturer, distributor, or authorized
9 dealer shall, in good faith, attempt to resolve all issues and claims in
10 dispute through the use of an impartial, third-party mediator certified by
11 the Arkansas Alternative Dispute Resolution Commission, if the seller has
12 provided the required disclosures under § 4-96-303.

13 (2) The consumer and the manufacturer shall equally bear all
14 costs and expenses of mediation, unless agreed otherwise.

15 (3) However, if the seller has not provided the required
16 disclosure under § 4-96-303, the consumer is not required to utilize
17 mediation before commencement of any legal action to enforce the consumer's
18 rights under this subchapter.

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21 /s/B. Johnson
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