

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: House Committee on Public Transportation**

# **A Bill**

**ACT 297 OF 1993**  
**HOUSE BILL 1233**

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

8 "AN ACT TO CREATE THE ARKANSAS NEW MOTOR VEHICLE QUALITY  
9 ASSURANCE ACT; TO REQUIRE MOTOR VEHICLE MANUFACTURERS TO  
10 REPAIR NONCONFORMITIES COVERED UNDER WARRANTY; TO REQUIRE  
11 A CONSUMER TO NOTIFY THE MANUFACTURER OF A CLAIM UNDER  
12 THIS ACT; TO DEFINE A REASONABLE NUMBER OF ATTEMPTS TO  
13 REPAIR A NONCONFORMITY; TO REQUIRE A REFUND FOR A VEHICLE  
14 THAT HAS NOT BEEN REPAIRED AFTER A REASONABLE NUMBER OF  
15 ATTEMPTS TO REPAIR; TO PROVIDE FOR REFUND OF SALES TAX  
16 COLLECTED ON A RETURNED VEHICLE; TO REQUIRE DISCLOSURE  
17 UPON SUBSEQUENT RESALE OF A RETURNED VEHICLE; TO REQUIRE  
18 THE MANUFACTURER TO ESTABLISH AN INFORMAL HEARING PROCESS;  
19 TO PROVIDE REMEDIES; AND FOR OTHER PURPOSES."

## **Subtitle**

22 **"AN ACT CREATING THE ARKANSAS NEW MOTOR VEHICLE**  
23 **QUALITY ASSURANCE ACT COMMONLY KNOWN AS A**  
24 **LEMON LAW."**

26 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:**

28 **SECTION 1. This act shall be known and may be cited as the "Arkansas New Motor**  
29 **Vehicle Quality Assurance Act."**

31 **SECTION 2. The Arkansas General Assembly recognizes that a motor vehicle is a**  
32 **major consumer acquisition and that a defective motor vehicle undoubtedly creates a hardship**  
33 **for the consumer. The Arkansas General Assembly further recognizes that a duly franchised**  
34 **motor vehicle dealer is an authorized service agent of the manufacturer. It is the intent of the**  
35 **Arkansas General Assembly that a good faith motor vehicle warranty complaint by a consumer**  
36 **be resolved by the manufacturer within a specified period of time. It is further the intent of the**

1 **Arkansas General Assembly to provide the statutory procedures whereby a consumer may**  
2 **receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be**  
3 **brought into conformity with the warranty provided for in this act. However, nothing in this**  
4 **act shall in any way limit the rights or remedies which are otherwise available to a consumer**  
5 **under any other law.**

6

7 **SECTION 3. Definitions. As used in this act, unless the context otherwise requires:**

8 **(1) "Calendar day" means any day of the week other than a legal holiday.**

9 **(2) "Manufacturer" means any person who is engaged in the business of constructing**  
10 **or assembling new motor vehicles or installing on previously assembled vehicle chassis, special**  
11 **bodies or equipment which, when installed, form an integral part of the new motor vehicle; or**  
12 **in the case of motor vehicles not manufactured in the United States, any person who is engaged**  
13 **in the business of importing new motor vehicles into the United States for the purpose of**  
14 **selling or distributing new motor vehicles to new motor vehicle dealers.**

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

21 **(4) "Nonconformity" means any specific or generic defect or condition or any**  
22 **concurrent combination of defects or conditions that:**

23 **(a) substantially impairs the use, market value, or safety of a motor vehicle;**

24 **or**

25 **(b) renders the motor vehicle nonconforming to the terms of an applicable**  
26 **manufacturer's express warranty or implied warranty of merchantability.**

27 **(5) "Motor Vehicle Quality Assurance Period" means a period of time that:**

28 **(a) begins:**

29 **(1) on the date of original delivery of a motor vehicle; or**

30 **(2) in the case of a replacement vehicle provided by a manufacturer to a**  
31 **consumer under this act, on the date of delivery of the replacement vehicle to the consumer;**

32 **and**

33 **(b) ends twenty-four (24) months after the date of the original delivery of the**  
34 **motor vehicle to a consumer, or the first twenty-four thousand (24,000) miles of operation**  
35 **attributable to the consumer, whichever is latter.**

1           **(6) "Consumer" means the purchaser or lessee, other than for the purposes of lease or**  
2 **resale, of a new or previously untitled motor vehicle, or for any other person entitled by the**  
3 **terms of the warranty to enforce the obligations of the warranty during the duration of the**  
4 **Motor Vehicle Quality Assurance period *provided the purchaser has titled and registered the***  
5 ***motor vehicle as prescribed by law.***

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

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

11           **(9) "Collateral charges" means those additional charges to a consumer wholly incurred**  
12 **as a result of the acquisition of the motor vehicle. For the purposes of this act, collateral**  
13 **charges include, but are not limited to, manufacturer-installed or agent-installed items, earned**  
14 **finance charges, sales taxes, title charges, and charges for extended warranties provided by the**  
15 **manufacturer, its subsidiary or agent.**

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

21           **(11) "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 benefit of the**  
26 **lease;**

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

29                   **(f) An amount equal to five percent (5%) of the lessor's actual purchase price.**

30           **(12) "Lessee cost" means the aggregate deposit and rental payments previously paid to**  
31 **the lessor for the leased vehicle.**

32           **(13) "Lessor" means a person who holds title to a motor vehicle leased to a lessee under**  
33 **the written lease agreement or who holds the lessor's rights under such agreement.**

34           **(14) "Person" means any natural person, partnership, firm, corporation, association,**  
35 **joint venture, trust, or other legal entity.**

1           **(15) "Purchase price" means the cash price paid for the motor vehicle appearing in the**  
2 **sales agreement or contract, including any net allowance for a trade-in vehicle.**

3           **(16) "Replacement motor vehicle" means a motor vehicle which is identical or**  
4 **reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle replaced existed**  
5 **at the time of the original acquisition.**

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

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12           **SECTION 4. Required Warranty Repairs. If a motor vehicle does not conform to the**  
13 **warranty and the consumer reports the nonconformity to the manufacturer, its agent, or**  
14 **authorized dealer during the Motor Vehicle Quality Assurance period, the manufacturer, its**  
15 **agent, or authorized dealer shall make such repairs as are necessary to correct the**  
16 **nonconformity, even if the repairs are made after the expiration of the term of protection.**

17

18           **SECTION 5. Notice by consumer. (1) A consumer must notify the manufacturer of a**  
19 **claim under this act if the manufacturer has made the disclosure required by subsection (2)**  
20 **below. However, if the manufacturer has not made the required disclosure, the consumer is**  
21 **not required to notify the manufacturer of a claim under this act.**

22           **(2) At the time of the consumer's purchase or lease of the vehicle, the manufacturer, *its***  
23 ***agent, or authorized dealer* shall provide to the consumer a written statement that explains**  
24 **the consumer's rights and obligations under this act. The written statement shall be prepared**  
25 **by the Consumer Protection Division of the Office of the Attorney General and shall include**  
26 **the phone number of the Consumer Protection Division that the consumer can contact to**  
27 **obtain information regarding rights and obligations under this act.**

28           **(3) The manufacturer shall clearly and conspicuously disclose to the consumer, in**  
29 **the warranty or owner's manual, that written notice of the nonconformity is required before**  
30 **the buyer may be eligible for a refund or replacement of the vehicle. The manufacturer shall**  
31 **provide the consumer with conspicuous notice of the address and phone number for its zone,**  
32 **district, or regional office for this state at the time of vehicle acquisition to which the buyer**  
33 **must send notification.**

34

35           **SECTION 6. Failure to make required repairs. (1) After three (3) attempts have**

1 been made to repair the same nonconformity that substantially impairs the motor vehicle, or  
2 after one (1) attempt to repair a nonconformity that is likely to cause death or serious bodily  
3 injury, the consumer shall give written notification, by certified or registered mail, to the  
4 manufacturer of the need to repair the nonconformity in order to allow the manufacturer a  
5 final attempt to cure the nonconformity. The manufacturer shall, within ten (10) days after  
6 receipt of the notification, notify and provide the consumer with the opportunity to have the  
7 vehicle repaired at a reasonably accessible repair facility and after delivery of the vehicle to the  
8 designated repair facility by the consumer, the manufacturer shall, within ten (10) days,  
9 conform the motor vehicle to the warranty. If the manufacturer fails to notify and provide the  
10 consumer with the opportunity to have the vehicle repaired at a reasonably accessible repair  
11 facility or fails to perform the repairs within the time periods prescribed in this subdivision,  
12 the requirement that the manufacturer be given a final attempt to cure the nonconformity does  
13 not apply.

14 (2) If the manufacturer, its agent, or authorized dealer has not conformed the motor  
15 vehicle to the warranty by repairing or correcting one (1) or more nonconformities that  
16 substantially impair the motor vehicle after a reasonable number of attempts, the  
17 manufacturer, within forty (40) days, shall:

18 (a) at the time of its receipt of payment of a reasonable offset for use by the  
19 consumer, replace the motor vehicle with a replacement motor vehicle acceptable to the  
20 consumer; or

21 (b) repurchase the motor vehicle from the consumer or lessor and refund to the  
22 consumer or lessor the full purchase price or lease price, less a reasonable offset for use and  
23 less a reasonable offset for physical damage sustained to the vehicle while under the ownership  
24 of the consumer.

25 (c) the replacement or refund shall include payment of all collateral and  
26 reasonably incurred incidental charges. The consumer shall have an unconditional right to  
27 choose a refund rather than a replacement. At the time of such refund or replacement, the  
28 consumer, lienholder, or lessor shall furnish to the manufacturer clear title to and possession  
29 of the motor vehicle.

30 (3) The amount of reasonable offset for use by the consumer shall be determined by  
31 multiplying the actual price of the new motor vehicle paid or payable by the consumer,  
32 including any charges for transportation and manufacturer-installed or agent-installed  
33 options, by a fraction having as its denominator one-hundred-twenty thousand (120,000) and  
34 having as its numerator the number of miles traveled by the new motor vehicle prior to the  
35 time the buyer first delivered the vehicle to the manufacturer, its agent, or authorized dealer

1 for correction of the problem that gave rise to the nonconformity.

2

3           **SECTION 7. Refunds. (1) Refunds shall be made to the consumer and lienholder of**  
4 **record, if any, as their interests may appear. If applicable, refunds shall be made to the lessor**  
5 **and lessee as follows:**

6                   **(a) The lessee shall receive the lessee cost less a reasonable offset for use; and**

7                   **(b) The lessor shall receive the lease price less the aggregate deposit and rental**  
8 **payments previously paid to the lessor for the leased vehicle.**

9           **(2) If the manufacturer makes a refund to the lessor or lessee pursuant to this act, the**  
10 **consumer's lease agreement with the lessor shall be terminated upon payment of the refund**  
11 **and no penalty for early termination shall be assessed.**

12           **(3) If a replaced vehicle was financed by the manufacturer, its subsidiary, or agent, the**  
13 **manufacturer, subsidiary, or agent may not require the buyer to enter into any refinancing**  
14 **agreement concerning a replacement vehicle that would create any financial obligations upon**  
15 **the buyer beyond those of the original financing agreement.**

16

17           **SECTION 8. Arkansas Code Annotated § 26-52-510 (a) (2) is hereby repealed.**

18

19           **SECTION 9. Subchapter 5 of Chapter 52 of Title 26 of the Arkansas Code is hereby**  
20 **amended by inserting an additional section at the end thereof to read as follows:**

21           **"26-52-515. Refund of sales tax on vehicles returned as defective.**

22           **(1) The Director of the Department of Finance and Administration shall refund to a**  
23 **manufacturer any state and local sales or use tax which the manufacturer refunded to the**  
24 **consumer, lessee, or lessor pursuant to the Arkansas New Vehicle Quality Assurance Act or**  
25 **other defective vehicle buy back agreement, if the manufacturer provides to the Department of**  
26 **Finance and Administration a written request for a refund in accordance with Ark. Code Ann.**  
27 **§ 26-18-507; evidence that the sales tax was paid when the vehicle was registered; assignment**  
28 **of the tax refund by the taxpayer; proof that the manufacturer refunded the sales tax to the**  
29 **consumer, lessee, or lessor; and such other information as shall be required by the Director of**  
30 **the Department of Finance and Administration.**

31           **(2) Claims for refund of sales or use tax under this section shall be subject to the**  
32 **Arkansas Tax Procedure Act (Ark. Code Ann. § 26-18-101 et seq.). Any claim must be made in**  
33 **writing and filed within three (3) years from the date the vehicle was first registered.**

34           **(3) When a consumer has tendered a trade-in vehicle toward the purchase of the**  
35 **vehicle which is refunded under the Arkansas New Motor Vehicle Quality Assurance Act or**

1 other defective vehicle buy back agreement, the consumer may apply to the Director of the  
2 Department of Finance and Administration for a voucher in the amount of the trade-in  
3 vehicle's consideration. The Director shall prescribe the forms and other information  
4 necessary to issue the voucher. In calculating the sales tax due upon registration of a  
5 subsequent replacement vehicle, the voucher shall be used to reduce the sales price of the  
6 subsequent replacement vehicle. The voucher shall be valid for six (6) months from the date of  
7 issuance and may only be used by the consumer to whom it was issued."

8  
9       **SECTION 10. Reimbursement of towing and rental costs.** Whenever a vehicle is  
10 replaced or refunded under this act, the manufacturer shall reimburse the consumer for  
11 necessary towing and rental costs actually incurred as a direct result of the nonconformity.

12  
13       **SECTION 11. Option to retain use of vehicle.** A consumer has the option of retaining  
14 the use of any vehicle returned under this act until the time that the consumer has been  
15 tendered a full refund or replacement vehicle of comparable value.

16  
17       **SECTION 12. Presumption of reasonable attempts to repair.** A rebuttable  
18 presumption of a reasonable number of attempts to repair is considered to have been  
19 undertaken to correct a nonconformity if:

20       **(1)(a)** the nonconformity has been subject to repair as provided in Section 6(1), but the  
21 nonconformity continues to exist; or

22       **(b)** the vehicle is out of service by reason of repair, or attempt to repair, any  
23 nonconformity for a cumulative total of thirty (30) calendar days; or

24       **(c)** *there have been five (5) or more attempts, on separate occasions, to repair*  
25 *any nonconformities that together substantially impair the use and value of the motor vehicle*  
26 *to the consumer.*

27       **(2)** The thirty (30) calendar days in subsection (1)(b) shall be extended by any period  
28 of time during which repair services are not available as a direct result of war, invasion, strike,  
29 fire, flood, or natural disaster. The manufacturer, its agent, or authorized dealer shall provide  
30 or make provisions for the free use of a vehicle to any consumer whose vehicle is out of service  
31 beyond thirty (30) days by reason of delayed repair as a direct result of war, invasion, strike,  
32 fire, flood, or natural disaster.

33       **(3)** The burden is on the manufacturer to show that the reason for an extension  
34 under subsection (2) above was the direct cause for the failure of the manufacturer, its agent,  
35 or authorized dealer to cure any nonconformity during the time of event.

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**SECTION 13. Diagnosis or repair, documentation. (1) A manufacturer, its agent, or authorized dealer may not refuse to diagnose or repair any vehicle for the purpose of avoiding liability under this act.**

**(2) A manufacturer, its agent, or authorized dealer shall provide a consumer with a written repair order each time the consumer's vehicle is brought in for examination or repair. The repair order must indicate all work performed on the vehicle including examination of the vehicle, parts, and labor.**

**SECTION 14. Resale of returned nonconforming vehicle. If a motor *vehicle has been replaced or repurchased by a manufacturer as the result of a court judgement, an arbitration award, or any voluntary agreement entered into between a manufacturer and consumer that occurs after a consumer complaint has been investigated and evaluated pursuant to this act or a similar law of another state, the motor vehicle may not be resold* in Arkansas unless:**

**(1) The manufacturer provides the same express warranty the manufacturer provided to the original purchaser, except that the term of the warranty need only last for twelve thousand (12,000) miles or twelve (12) months after the date of resale, whichever occurs first; and**

**(2) The manufacturer provides a written disclosure, signed by the consumer, indicating that the vehicle was returned to the manufacturer because of a nonconformity not cured within a reasonable time as provided by Arkansas law.**

**SECTION 15. Affirmative defenses. It is an affirmative defense to any claim under this act that:**

**(1) the nonconformity, defect, or condition does not substantially impair the use, value, or safety of the motor vehicle; or**

**(2) the nonconformity, defect, or condition is the result of an accident, abuse, neglect, or unauthorized modification or alteration of the motor vehicle by persons other than the manufacturer, its agent, or authorized dealer; or**

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

**(4) any other defense allowed by law that may be raised against the claim.**

**SECTION 16. Informal proceeding as precedent.**

**(a) Any manufacturer doing business in this state, entering into franchise agreements for the sale of its motor vehicles in this state, or offering express warranties on its motor**

1 vehicles sold or distributed for sale in this state shall operate, or participate in, an informal  
2 dispute settlement proceeding located in the state of Arkansas which complies with the  
3 requirements of this section. The provisions of Section 6, subsection (2) concerning refunds  
4 or replacement do not apply to a consumer who has not first used this informal proceeding  
5 before commencing a civil action, unless the manufacturer allows a consumer to commence an  
6 action without first using this informal procedure.

7       **The consumer shall receive adequate written notice from the manufacturer of the**  
8 **existence of the procedure. Adequate written notice *may include* the incorporation of the**  
9 **informal dispute settlement procedure into the terms of the written warranty to which the**  
10 **motor vehicle does not conform.**

11       **(b) The informal dispute procedure must be certified by the Consumer Protection**  
12 **Division of the Office of the Attorney General as meeting the following criteria:**

13               **(1) The informal dispute procedure must comply with the minimum**  
14 **requirements of the Federal Trade Commission for informal dispute settlement procedures as**  
15 **set forth in Title 16, Code of Federal Regulations, Part 703, as in effect on date of adoption of**  
16 **this Act, unless any provision of Part 703 is in conflict with this act, in which the provisions of**  
17 **this act shall govern;**

18               **(2) The informal dispute procedure must prescribe a reasonable time, not to**  
19 **exceed thirty (30) days after the decision is accepted by the buyer, within which the**  
20 **manufacturer or its agent must fulfill the terms of its decisions;**

21               **(3) No documents shall be received by any informal dispute procedure unless**  
22 **those documents have been provided to each of the parties in the dispute at or prior to the**  
23 **proceeding, with an opportunity for the parties to comment on the documents either in writing**  
24 **or orally. If a consumer is present during the informal dispute proceeding, the consumer may**  
25 **request postponement of the proceeding meeting to allow sufficient time to review any**  
26 **documents presented at the time of the meeting which had not been presented to the consumer**  
27 **prior to the time of the meeting.**

28               **(4) The informal dispute procedure shall allow each party to appear and make**  
29 **an oral presentation within the state of Arkansas unless the consumer agrees to submit the**  
30 **dispute for decision on the basis of documents alone or by telephone, or unless the party fails to**  
31 **appear for an oral presentation after reasonable prior written notice. If the consumer agrees**  
32 **to submit the dispute for decision on the basis of documents alone, then the manufacturer or**  
33 **dealer representatives may not participate in the discussion or decision of the dispute.**

34               **(5) Consumers shall be given an adequate opportunity to contest a**  
35 **manufacturer's assertion that a nonconformity falls within intended specifications for the**

1 vehicle by having the basis of the manufacturer's claim appraised by a technical expert selected  
2 and paid for by the consumer prior to the informal dispute settlement hearing.

3 (6) A consumer may not be charged with a fee to participate in an informal  
4 dispute procedure.

5 (7) Any party to the dispute has the right to be  
6 represented by an attorney in an informal dispute proceeding.

7 (c)(1) The informal dispute procedure shall annually submit a pool of not less than six  
8 (6) members who are appointed with the advice and consent of the Consumer Protection  
9 Division of the Office of the Attorney General. Selected strictly by rotation, one (1) member  
10 shall hear disputes scheduled for a particular session unless the consumer requests a panel of  
11 three (3) members, in which case three (3) members shall hear disputes scheduled for a  
12 particular three (3) member session.

13 (2) If the informal dispute procedure deems it appropriate to require the  
14 services of an independent investigator, such investigator shall be selected from a pool of not  
15 less than four (4) members who are appointed annually with the advice and consent of the  
16 Consumer Protection Division of the Office of the Attorney General and from which the  
17 particular investigator shall be selected strictly by rotation.

18 (3) Upon notification to the administrator of any informal dispute procedure  
19 that a determination has been made by the Consumer Protection Division that a member of  
20 any pool is not conforming to standards of fairness and impartiality, that member shall be  
21 immediately removed from the pool.

22

23 **SECTION 17. Other legal actions permitted. This act does not limit the rights and**  
24 **remedies that are otherwise available to a consumer under any applicable provisions of law.**

25

26 **SECTION 18. Civil action by consumer. A consumer may bring civil action to enforce**  
27 **this act in a court of competent jurisdiction.**

28

29 **SECTION 19. Recovery of costs, expenses, and attorney fees. A consumer who**  
30 **prevails in any legal proceeding under this act is entitled to recover as part of the judgment a**  
31 **sum equal to the aggregate amount of cost and expenses, including attorney's fees based upon**  
32 **actual time expended by the attorney, determined by the court to have been reasonably**  
33 **incurred by the consumer for or in connection with the commencement and prosecution of the**  
34 **action.**

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