

As Engrossed: 2/19/93

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

A Bill

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

21
22 "AN ACT CREATING THE ARKANSAS NEW MOTOR VEHICLE QUALITY
23 ASSURANCE ACT COMMONLY KNOWN AS A LEMON LAW."

24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26
27 SECTION 1. This act shall be known and may be cited as the "Arkansas
28 New Motor Vehicle Quality Assurance Act."

29
30 SECTION 2. The Arkansas General Assembly recognizes that a motor
31 vehicle is a major consumer acquisition and that a defective motor vehicle
32 undoubtedly creates a hardship for the consumer. The Arkansas General
33 Assembly further recognizes that a duly franchised motor vehicle dealer is an
34 authorized service agent of the manufacturer. It is the intent of the
35 Arkansas General Assembly that a good faith motor vehicle warranty complaint

1 by a consumer be resolved by the manufacturer within a specified period of
2 time. It is further the intent of the Arkansas General Assembly to provide
3 the statutory procedures whereby a consumer may receive a replacement motor
4 vehicle, or a full refund, for a motor vehicle which cannot be brought into
5 conformity with the warranty provided for in this act. However, nothing in
6 this act shall in any way limit the rights or remedies which are otherwise
7 available to a consumer under any other law.

8

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

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

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

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

28 (4) "Nonconformity" means any specific or generic defect or condition
29 or any concurrent combination of defects or conditions that:

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

32 (b) renders the motor vehicle nonconforming to the terms of an
33 applicable manufacturer's express warranty or implied warranty of
34 merchantability.

35 (5) "Motor Vehicle Quality Assurance Period" means a period of time

1 that:

2 (a) begins:

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

4 (2) in the case of a replacement vehicle provided by a
5 manufacturer to a consumer under this act, on the date of delivery of the
6 replacement vehicle to the consumer; and

7 (b) ends twenty-four (24) months after the date of the original
8 delivery of the motor vehicle to a consumer, or the first twenty-four thousand
9 (24,000) miles of operation attributable to the consumer, whichever is latter.

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

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

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

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

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

32 (11) "Lease price" means the aggregate of:

33 (a) Lessor's actual purchase costs;

34 (b) Collateral charges, if applicable;

35 (c) Any fee paid to another person to obtain the lease;

1 (d) Any insurance or other costs expended by the lessor for the
2 benefit of the lease;

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

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

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

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

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

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

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

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

27

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

34

35 SECTION 5. Notice by consumer. (1) A consumer must notify the

1 manufacturer of a claim under this act if the manufacturer has made the
2 disclosure required by subsection (2) below. However, if the manufacturer has
3 not made the required disclosure, the consumer is not required to notify the
4 manufacturer of a claim under this act.

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

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

19

20 SECTION 6. Failure to make required repairs. (1) After three (3)
21 attempts have been made to repair the same nonconformity that substantially
22 impairs the motor vehicle, or after one (1) attempt to repair a nonconformity
23 that is likely to cause death or serious bodily injury, the consumer shall
24 give written notification, by certified or registered mail, to the
25 manufacturer of the need to repair the nonconformity in order to allow the
26 manufacturer a final attempt to cure the nonconformity. The manufacturer
27 shall, within ten (10) days after receipt of the notification, notify and
28 provide the consumer with the opportunity to have the vehicle repaired at a
29 reasonably accessible repair facility and after delivery of the vehicle to the
30 designated repair facility by the consumer, the manufacturer shall, within ten
31 (10) days, conform the motor vehicle to the warranty. If the manufacturer
32 fails to notify and provide the consumer with the opportunity to have the
33 vehicle repaired at a reasonably accessible repair facility or fails to
34 perform the repairs within the time periods prescribed in this subdivision,
35 the requirement that the manufacturer be given a final attempt to cure the

1 nonconformity does not apply.

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

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

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

14 (c) the replacement or refund shall include payment of all
15 collateral and reasonably incurred incidental charges. The consumer shall
16 have an unconditional right to choose a refund rather than a replacement. At
17 the time of such refund or replacement, the consumer, lienholder, or lessor
18 shall furnish to the manufacturer clear title to and possession of the motor
19 vehicle.

20 (3) The amount of reasonable offset for use by the consumer shall be
21 determined by multiplying the actual price of the new motor vehicle paid or
22 payable by the consumer, including any charges for transportation and
23 manufacturer-installed or agent-installed options, by a fraction having as its
24 denominator one-hundred-thousand (100,000) and having as its numerator
25 the number of miles traveled by the new motor vehicle prior to the time the
26 buyer first delivered the vehicle to the manufacturer, its agent, or
27 authorized dealer for correction of the problem that gave rise to the
28 nonconformity.

29

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

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

35 (b) The lessor shall receive the lease price less the aggregate

1 deposit and rental payments previously paid to the lessor for the leased
2 vehicle.

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

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

12

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

15

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

19 "26-52-515. Refund of sales tax on vehicles returned as defective.

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

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

35 (3) When a consumer has tendered a trade-in vehicle toward the purchase

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

11

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

16

17 SECTION 11. Option to retain use of vehicle. A consumer has the option
18 of retaining the use of any vehicle returned under this act until the time
19 that the consumer has been tendered a full refund or replacement vehicle of
20 comparable value.

21

22 SECTION 12. Presumption of reasonable attempts to repair. A rebuttable
23 presumption of a reasonable number of attempts to repair is considered to have
24 been undertaken to correct a nonconformity if:

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

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

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

33 (2) The thirty (30) calendar days in subsection (1) (b) shall be
34 extended by any period of time during which repair services are not available
35 as a direct result of war, invasion, strike, fire, flood, or natural disaster.

1 The manufacturer, its agent, or authorized dealer shall provide or make
2 provisions for the free use of a vehicle to any consumer whose vehicle is out
3 of service beyond thirty (30) days by reason of delayed repair as a direct
4 result of war, invasion, strike, fire, flood, or natural disaster.

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

9

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

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

18

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

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

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

33

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

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

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

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

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

10

11 SECTION 16. Informal proceeding as precedent.

12 (a) Any manufacturer doing business in this state, entering into
13 franchise agreements for the sale of its motor vehicles in this state, or
14 offering express warranties on its motor vehicles sold or distributed for sale
15 in this state shall operate, or participate in, an informal dispute settlement
16 proceeding located in the state of Arkansas which complies with the
17 requirements of this section. The provisions of Section 6, subsection (2)
18 concerning refunds or replacement do not apply to a consumer who has not first
19 used this informal proceeding before commencing a civil action, unless the
20 manufacturer allows a consumer to commence an action without first using this
21 informal procedure.

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

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

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

34 (2) The informal dispute procedure must prescribe a reasonable
35 time, not to exceed thirty (30) days after the decision is accepted by the

1 buyer, within which the manufacturer or its agent must fulfill the terms of
2 its decisions;

3 (3) No documents shall be received by any informal dispute
4 procedure unless those documents have been provided to each of the parties in
5 the dispute at or prior to the proceeding, with an opportunity for the parties
6 to comment on the documents either in writing or orally. If a consumer is
7 present during the informal dispute proceeding, the consumer may request
8 postponement of the proceeding meeting to allow sufficient time to review any
9 documents presented at the time of the meeting which had not been presented to
10 the consumer prior to the time of the meeting.

11 (4) The informal dispute procedure shall allow each party to
12 appear and make an oral presentation within the state of Arkansas unless the
13 consumer agrees to submit the dispute for decision on the basis of documents
14 alone or by telephone, or unless the party fails to appear for an oral
15 presentation after reasonable prior written notice. If the consumer agrees to
16 submit the dispute for decision on the basis of documents alone, then the
17 manufacturer or dealer representatives may not participate in the discussion
18 or decision of the dispute.

19 (5) Consumers shall be given an adequate opportunity to contest a
20 manufacturer's assertion that a nonconformity falls within intended
21 specifications for the vehicle by having the basis of the manufacturer's claim
22 appraised by a technical expert selected and paid for by the consumer prior to
23 the informal dispute settlement hearing.

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

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

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

35 (2) If the informal dispute procedure deems it appropriate to

1 require the services of an independent investigator, such investigator shall
2 be selected from a pool of not less than four (4) members who are appointed
3 annually with the advice and consent of the Consumer Protection Division of
4 the Office of the Attorney General and from which the particular investigator
5 shall be selected strictly by rotation.

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

11

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

15

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

18

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

25

26 SECTION 20. Time limitation for commencement of action.

27 (1) An action brought under this act must be commenced within two (2)
28 years following the date the buyer first reports the nonconformity to the
29 manufacturer, its agent, or authorized dealer.

30 (2) When the buyer has commenced an informal dispute settlement
31 procedure described in Section 15 of this act, the two (2) year period
32 specified in subsection (1) above begins to run at the time the informal
33 dispute settlement procedure is being commenced.

34

35 SECTION 21. Deceptive trade practices.

1 A violation of any of the provisions of this act shall be deemed a
2 deceptive trade practice under § 4-88-101 et seq..

3

4 SECTION 22. All provisions of this act of a general and permanent
5 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
6 Code Revision Commission shall incorporate the same in the Code.

7

8 SECTION 23. If any provisions of this act or the application thereof to
9 any person or circumstance is held invalid, the invalidity shall not affect
10 other provisions or applications of the act which can be given effect without
11 the invalid provisions or application, and to this end the provisions of this
12 act are declared to be severable.

13

14 SECTION 24. All laws and parts of laws in conflict with this act are
15 hereby repealed.

16

/s/B. G. Hendrix

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