

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: S3/15/01

A Bill

HOUSE BILL 1771

5 By: Representative Bookout
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For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS PROVISIONS OF THE
10 ARKANSAS NEW MOTOR VEHICLE QUALITY ASSURANCE ACT;
11 AND FOR OTHER PURPOSES.
12

Subtitle

13 TO AMEND VARIOUS PROVISIONS OF THE
14 ARKANSAS NEW MOTOR VEHICLE QUALITY
15 ASSURANCE ACT.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code 4-90-402 is amended to read as follows:
22 4-90-402. Legislative determinations and intent.

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

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SECTION 2. Arkansas Code 4-90-403(4), concerning definitions, is amended to read as follows:

(4) "Consumer" means the purchaser or lessee, other than for the purposes of lease or resale, of a new or previously untitled motor vehicle, or any other person entitled ~~by the terms of the warranty~~ to enforce the obligations of the warranty during the duration of the motor vehicle quality assurance period, provided the purchaser has titled and registered the motor vehicle as prescribed by law;

SECTION 3. Arkansas Code 4-90-404 is amended to read as follows:

4-90-404. Notice by consumer - Disclosure by manufacturer, agent, or dealer.

(a)(1) A consumer ~~must notify the manufacturer of a claim under this subchapter~~ shall utilize the informal dispute settlement procedure provided for in this subchapter prior to bringing any legal action to enforce the consumer's rights under this subchapter if the manufacturer has made the disclosure required by subsection (b) of this section.

(2) However, if the manufacturer has not made the required disclosure, the consumer is not required to ~~notify the manufacturer of a claim under this subchapter~~ utilize the informal dispute settlement procedure prior to any legal action to enforce the consumer's rights under this subchapter.

(b)(1)(A) At the time of the consumer's purchase or lease of the vehicle, the manufacturer, its agent, or an authorized dealer shall provide to the consumer a written statement that explains the consumer's rights and obligations under this subchapter.

(B) The manufacturer's authorized dealer shall obtain the consumer's signed acknowledgement of the receipt of the written statement explaining the consumer's rights and obligations under this subchapter.

(C) The manufacturer's authorized dealer shall maintain copies of the consumer's signed acknowledgement for a period of not less than five (5) years.

(2) The written statement shall be prepared by the Consumer Protection Division of the Office of the Attorney General and shall include the telephone number of the Consumer Protection Division that the consumer

1 can contact to obtain information regarding his or her rights and obligations
2 under this subchapter.

3 (3) For each failure of the manufacturer, its agent, or an
4 authorized dealer to provide to a consumer the written statement required
5 under this section, or failure to retain a signed acknowledgement form, the
6 manufacturer shall be liable to the State of Arkansas for a civil penalty of
7 not less than twenty-five dollars (\$25.00) nor more than one thousand dollars
8 (\$1,000).

9 (c)(1) The manufacturer shall clearly and conspicuously disclose to
10 the consumer, in the warranty or owner's manual, that written notice of the
11 nonconformity is required before the buyer may be eligible for a refund or
12 replacement of the vehicle.

13 (2) The manufacturer shall provide the consumer with conspicuous
14 notice of the address and phone number for its zone, district, or regional
15 office for this state at the time of vehicle acquisition, to which the buyer
16 must send notification.

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18 SECTION 4. Arkansas Code 4-90-405 is amended to read as follows:

19 4-90-405. Required warranty repairs.

20 If a motor vehicle does not conform to the warranty and the consumer
21 reports the nonconformity to the manufacturer, its agent, or authorized
22 dealer during the motor vehicle quality assurance period, the manufacturer,
23 its agent, or authorized dealer shall make such repairs as are necessary to
24 correct the nonconformity, even if the repairs are made after the expiration
25 *of the term of protection*.

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27 SECTION 5. Arkansas Code 4-90-411 is amended to read as follows:

28 4-90-411. Diagnosis or repair - Documentation.

29 (a) A manufacturer, its agent, or authorized dealer may not refuse to
30 diagnose or repair any vehicle for the purpose of avoiding liability under
31 this subchapter.

32 (b)(1)(A) A manufacturer, its agent, or authorized dealer shall
33 provide a consumer with a written repair order each time the consumer's
34 vehicle is brought in for examination or repair.

35 (B) The written repair order shall include reference to
36 each defect, nonconformity, or other complaint brought to the attention of

1 the manufacturer, its agent, or authorized dealer by the consumer, and each
2 presentation of the vehicle by the consumer with a reasonable opportunity to
3 repair consumer with a reasonable opportunity to repair shall be a repair
4 attempt for those defects, nonconformities, or other complaints noted in the
5 written repair order.

6 (C)(i) However, in the case of a motor vehicle that is a
7 motor home, where two (2) or more manufacturers contributed to the
8 construction of the motor home, it shall not count as a repair attempt if the
9 repair facility at which the consumer presented the vehicle, is not
10 authorized by the manufacturer to provide warranty to service on that
11 vehicle.

12 (ii) In addition, it shall count as only one (1)
13 repair attempt for a motor vehicle that is a motor home if the same
14 nonconformity is being addressed a second time due to the consumer's decision
15 to continue traveling and to seek the repair of that same nonconformity at
16 another repair facility rather than wait for the repair to be completed at
17 the initial repair facility.

18 (2) The repair order must indicate all work performed on the
19 vehicle, including examination of the vehicle, parts, and labor.

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21 SECTION 6. Arkansas Code 4-90-412 is amended to read as follows:

22 4-90-412. Resale of returned nonconforming vehicle.

23 (a) If a motor vehicle has been replaced or repurchased by a
24 manufacturer as the result of a court judgment, an arbitration award, or any
25 voluntary agreement entered into between a manufacturer, or a manufacturer
26 through its authorized dealer, and a consumer that occurs after a consumer
27 complaint has been investigated and evaluated has notified the manufacturer
28 of the consumer's desire to utilize the informal dispute settlement procedure
29 pursuant to this subchapter or a similar law of another state, the motor
30 vehicle may not be resold in Arkansas unless:

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

35 (2) The manufacturer provides a written disclosure, signed by
36 the consumer, indicating that the vehicle was returned to the manufacturer

1 because of a nonconformity not cured within a reasonable time as provided by
2 Arkansas law.

3 (b) The written disclosure required by this section applies to the
4 first resale to a retail customer of the vehicle in Arkansas by the
5 manufacturer or its authorized dealer.

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7 SECTION 7. Arkansas Code 4-90-414 is amended to read as follows:
8 4-90-414. Informal proceeding as precedent.

9 (a)(1) Any manufacturer doing business in this state, entering into
10 franchise agreements for the sale of its motor vehicles in this state, or
11 offering express warranties on its motor vehicles sold or distributed for
12 sale in this state, shall operate, or participate in, an informal dispute
13 settlement proceeding located in the State of Arkansas which complies with
14 the requirements of this section.

15 (2) The provisions of § 4-90-406(b)(1) and (2) concerning
16 refunds or replacement do not apply to a consumer who has not first used this
17 informal proceeding before commencing a civil action, unless the manufacturer
18 allows a consumer to commence an action without first using this informal
19 procedure or unless the manufacturer has failed to make the disclosure
20 required by § 4-90-404(b).

21 (3)(A) The consumer shall receive adequate written notice from
22 the manufacturer of the existence of the procedure.

23 (B) Adequate written notice may include the incorporation
24 of the informal dispute settlement procedure into the terms of the written
25 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 shall~~
28 meet the 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 16 C.F.R. § 703.1 et seq., as in effect on the
32 date of adoption of this subchapter, unless any provision of 16 C.F.R. §
33 703.1 et seq. is in conflict with this subchapter, in which case the
34 provisions of this subchapter shall govern;

35 (2) The informal dispute procedure must prescribe a reasonable
36 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)(A) 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
6 parties to comment on the documents either in writing or orally.

7 (B) If a consumer is present during the informal dispute
8 proceeding, the consumer may request postponement of the proceeding meeting
9 to allow sufficient time to review any documents presented at the time of the
10 meeting which had not been presented to the consumer prior to the time of the
11 meeting;

12 (4)(A) The informal dispute procedure shall allow each party to
13 appear and make an oral presentation within the State of Arkansas unless the
14 consumer agrees to submit the dispute for decision on the basis of documents
15 alone or by telephone, or unless the party fails to appear for an oral
16 presentation after reasonable prior written notice.

17 (B) If the consumer agrees to submit the dispute for
18 decision on the basis of documents alone, then the manufacturer or dealer
19 representatives may not participate in the discussion ~~or decision~~ of the
20 dispute;

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

26 (6) A consumer may not be charged with a fee to participate in
27 an informal dispute procedure; and

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

30 (c)(1)~~(A)~~ The informal dispute procedure shall annually submit a pool
31 of not ~~less~~ fewer than six (6) members ~~who are appointed with the advice and~~
32 ~~consent of~~ to the Consumer Protection Division of the Office of the Attorney
33 General.

34 ~~(B)(2)~~ Selected strictly by rotation, one (1) member shall hear
35 disputes scheduled for a particular session unless the consumer requests a
36 panel of three (3) members, in which case three (3) members, also selected by

1 rotation, shall hear disputes scheduled for a particular three-member
2 session.

3 ~~(C)(3)~~ If the informal dispute procedure deems it appropriate to
4 require the services of an independent investigator, such investigator shall
5 be selected from a pool of not ~~less~~ fewer than four (4) members who are
6 ~~appointed~~ submitted annually ~~with the advice and consent of~~ to the Consumer
7 Protection Division of the Office of the Attorney General and from which the
8 particular investigator shall be selected strictly by rotation.

9 ~~(2)~~ ~~Upon notification to the administrator of any informal~~
10 ~~dispute procedure that a determination has been made by the Consumer~~
11 ~~Protection Division of the Office of the Attorney General that a member of~~
12 ~~any pool is not conforming to standards of fairness and impartiality, that~~
13 ~~member shall be immediately removed from the pool.~~

14 /s/ Bookout

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