

Hall of the House of Representatives
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of House Bill No. 2640

"TO CREATE A MOTORBOAT LEMON LAW."

Amendment No. 1 to House Bill No. 2640.

Amend House Bill No. 2640 as originally introduced:

Insert additional sections immediately following Section 1 to read as follows:

"SECTION 2. Definitions. As used in this act:

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

(2) "Inboard Motorboat" means any motorized boat that is powered by a permanently attached engine or motor that is not mounted on the transom of the boat;

(3) "Motorboat" means any inboard motorboat or outboard motorboat;

(4) "Motorboat quality assurance period" means a period of time that begins on the date of delivery of a new or replacement motorboat and ends after the earlier of two hundred (200) hours of operation or twenty-four (24) months; and

(5) "Outboard Motorboat" means any motorized boat that is powered by an engine or motor of 9.9 horsepower or greater that is mounted on the transom of the boat.

SECTION 3. Legislative intent. The Arkansas General Assembly recognizes that a motorboat is a major consumer acquisition and that a defective motorboat undoubtedly creates a hardship for the consumer. The Arkansas General Assembly further recognizes that a franchised motorboat dealer is an authorized service agent of the manufacturer. It is the intent of the Arkansas General Assembly that a good faith motorboat warranty complaint by a consumer be resolved by the manufacturer within a specified period of time. It is further the intent of the Arkansas General Assembly to provide the statutory procedures whereby a consumer may receive a replacement motorboat, or a full refund, for a motorboat which cannot be brought into conformity with the warranty provided for in this act. However, nothing in

this act shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

SECTION 4. Deceptive Trade Practice. A violation of any of the provisions of this act shall be deemed a deceptive trade practice under Arkansas Code Title 4, Chapter 88, Subchapter 1.

SECTION 5. Required Warranty Repairs.

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

SECTION 6. Failure to Make Required Repairs.

(a)(1) After three (3) attempts have been made to repair the same nonconformity that substantially impairs the motorboat, or after one (1) attempt to repair a nonconformity that is likely to cause death or serious bodily injury, the consumer shall give written notification, by certified or registered mail, to the manufacturer of the need to repair the nonconformity in order to allow the manufacturer a final attempt to cure the nonconformity.

(2) The manufacturer shall, within ten (10) calendar days after receipt of the notification, notify and provide the consumer with the opportunity to have the motorboat repaired at a reasonably accessible repair facility, and, after delivery of the motorboat to the designated repair facility by the consumer, the manufacturer shall, within ten (10) calendar days, conform the motorboat to the warranty.

(3) If the manufacturer fails to notify and provide the consumer with the opportunity to have the motorboat repaired at a reasonably accessible repair facility or fails to perform the repairs within the time periods prescribed in this subsection, the requirement that the manufacturer be given a final attempt to cure the nonconformity does not apply and a nonrebuttable presumption of a reasonable number of attempts to repair arises.

(b)(1)(A) If the manufacturer, its agent, or authorized dealer has not conformed the motorboat to the warranty by repairing or correcting one (1) or more nonconformities that substantially impair the motorboat after a reasonable number of attempts, the manufacturer, within forty (40) calendar days, shall:

(i) At the time of its receipt of payment of a reasonable offset for use by the consumer, replace the motorboat with a replacement motorboat acceptable to the consumer; or

(ii) Repurchase the motorboat from the consumer or lessor and refund to the consumer or lessor the full purchase price or lease price, less a reasonable offset for use and less a reasonable offset for physical damage sustained to the motorboat while under the ownership of the consumer.

(B) The replacement or refund shall include payment of all collateral and reasonably incurred incidental charges.

(2)(A) The consumer shall have an unconditional right to choose a refund rather than a replacement.

(B) At the time of the refund or replacement, the consumer, lienholder, or lessor shall furnish to the manufacturer clear title to and possession of the motorboat.

(3) The amount of reasonable offset for use by the consumer shall be determined by multiplying the actual price of the new motorboat paid or payable by the consumer, including any charges for transportation and manufacturer-installed or agent-installed options, by a fraction having as its denominator two thousand (2,000) and having as its numerator the number of hours the new motorboat has been operated prior to the time the buyer first delivered the motorboat to the manufacturer, its agent, or authorized dealer for correction of the problem that gave rise to the nonconformity."

The Amendment was read _____

By: Representative Magnus

LH/MHF

MHF898

Chief Clerk