

# Hall of the House of Representatives

86th General Assembly - Regular Session, 2007

## Amendment Form

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### Subtitle of House Bill No. 2406

"AN ACT TO ESTABLISH A LEMON LAW FOR CERTAIN AGRICULTURAL AND INDUSTRIAL EQUIPMENT."

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### Amendment No. 1 to House Bill No. 2406.

Amend House Bill No. 2406 as originally introduced:

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code Title 4, Chapter 105 is amended to add an additional subchapter to read as follows:

4-105-301. Title.

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

4-105-302. Definitions.

As used in this subchapter:

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

(2)(A) "Collateral charges" means those additional charges to a consumer wholly incurred as a result of the acquisition of the equipment.

(B) "Collateral charges" includes manufacturer-installed or agent-installed items, earned finance charges, sales taxes, title charges, and charges for extended warranties provided by a manufacturer, its agent, or an authorized dealer;

(3) "Condition" means a general problem that may be attributable to a defect in more than one (1) part;

(4) "Consumer" means a purchaser or lessee, other than for the purposes of lease or resale, of new or previously used equipment or any other person entitled to enforce the obligations of the warranty during the duration of the quality assurance period;

(5) "Equipment" means any self-propelled farm equipment, construction equipment, or industrial equipment that has one hundred five horsepower (105 hp) or less and is primarily designed for farm, construction, or industrial use;

(6) "Incidental charges" means those reasonable costs incurred by a consumer, including hauling charges and the costs of obtaining alternative equipment, which are directly caused by the nonconformity or nonconformities that are the subject of the claim but shall not include loss



of use, loss of income, or personal injury claims;

(7) "Lease price" means the aggregate of:

(A) A lessor's actual purchase costs;

(B) Collateral charges, if applicable;

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

(D) Any insurance or other costs expended by the lessor

for the benefit of the lease;

(E) An amount equal to state and local sales taxes, not otherwise included as collateral charges, paid by the lessor when the equipment was initially purchased; and

(F) An amount equal to five percent (5%) of the lessor's actual purchase price;

(8) "Lessee" means a consumer who leases equipment for one (1) year or more under a written lease agreement that provides that the lessee is responsible for repairs to the equipment;

(9) "Lessee cost" means the aggregate deposit and rental payments previously paid to a lessor for the equipment;

(10) "Lessor" means a person that owns the equipment leased to a lessee under the written lease agreement or that holds the lessor's rights under the written lease agreement;

(11) "Manufacturer" means:

(A) A person that is engaged in the business of constructing or assembling new equipment or installing on previously assembled equipment special bodies or equipment that when installed form an integral part of the equipment; or

(B) In the case of equipment not manufactured in the United States, a person that is engaged in the business of importing new equipment into the United States for the purpose of selling or distributing new equipment to new equipment dealers;

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

(A) Substantially impairs the use, market value, or safety of equipment; or

(B) Renders the equipment nonconforming to the terms of an applicable manufacturer's express warranty or implied warranty of merchantability;

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

(14) "Purchase price" means the cash price paid for the equipment appearing in the sales agreement or contract, including any net allowance for trade-in equipment;

(15) "Quality assurance period" means a period of time that:

(A) Begins:

(i) On the date of original delivery of an equipment; or

(ii) In the case of replacement equipment provided by a manufacturer to a consumer under this subchapter, on the date of delivery of the replacement equipment to the consumer; and

(B) Ends twenty-four (24) months after the date of the original delivery of the equipment to a consumer or the first one thousand (1,000) hours of operation attributable to the consumer, whichever is later;

(16) "Replacement equipment" means equipment that is identical

or reasonably equivalent to the equipment to be replaced, as the equipment replaced existed at the time of the original acquisition; and

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

4-105-303. Disclosure by manufacturer, agent, or dealer.

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

(B) The manufacturer, its agent, or the 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, its agent, or the 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 provided under subdivision (a)(1)(A) of this section shall:

(A) Be prepared by the Consumer Protection Division of the Office of the Attorney General; and

(B) Include the telephone number of the division where the consumer can call for information regarding his or her rights and obligations under this subchapter.

(b)(1) In the warranty or owner's manual, a manufacturer shall clearly and conspicuously disclose to a consumer that written notice of a nonconformity is required before the consumer may be eligible for a refund or replacement of the equipment.

(2) At the time of acquisition of the equipment, the manufacturer shall provide the consumer with conspicuous notice of the address and telephone number for its zone, district, or regional office for this state where the consumer must send notification of any nonconformity.

(c)(1) If a manufacturer makes the disclosure required by subsections (a) and (b) of this section, a consumer shall utilize the informal dispute settlement proceeding under § 4-105-313 before bringing any legal action to enforce the consumer's rights under this subchapter.

(2) If the manufacturer does not make the disclosure required by subsections (a) and (b) of this section, the consumer is not required to use the informal dispute settlement procedure under § 4-105-313 before using any other remedy to enforce his or her rights under this subchapter.

(d) For each failure of a manufacturer, its agent, or an authorized dealer to provide a consumer the disclosures statement required under this section and for each failure to retain a signed acknowledgement form as required by this section, the manufacturer shall be liable to the state for a civil penalty of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000).

4-105-304. Required warranty repairs.

If equipment does not conform to the warranty and the consumer reports the nonconformity to a manufacturer, its agent, or an authorized dealer during the quality assurance period, the manufacturer, its agent, or the authorized dealer shall make the necessary repairs to correct the nonconformity.

4-105-305. Required repairs – Consumer’s options.

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

(2)(A) Within ten (10) days after receipt of the notification, the manufacturer shall notify and provide the consumer with the opportunity to have the equipment repaired at a reasonably accessible repair facility.

(B) Within ten (10) days after delivery of the equipment to the designated repair facility by the consumer, the manufacturer shall conform the equipment to the warranty.

(3) If the manufacturer fails to notify and provide the consumer with the opportunity to have the equipment repaired at a reasonably accessible repair facility or fails to perform the repairs within the time periods required under this section:

(A) The consumer is not required to give the manufacturer a final attempt to cure the nonconformity under subdivision (a)(1) of this section; and

(B) A nonrebuttable presumption of a reasonable number of attempts to repair exists.

(b)(1)(A) If the manufacturer, its agent, or an authorized dealer fails to conform the equipment to the warranty by repairing or correcting one (1) or more nonconformities after a reasonable number of attempts, the manufacturer, its agent, or the authorized dealer shall:

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

(ii) Repurchase the equipment from the consumer or lessor and refund to the consumer or the lessor the full purchase price or lease price less a reasonable offset for:

(a) Its use; and

(b) Any physical damage sustained to the equipment while under the ownership of the consumer or the lessor.

(B) A replacement or refund under subdivision (b)(1)(A) of this section shall include payment of all collateral and reasonably incurred incidental charges.

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

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

(3) The amount of any reasonable offset for use by the consumer shall be determined by multiplying the actual price of the equipment paid or payable by the consumer, including any charges for transportation and

manufacturer-installed or agent-installed options, by a fraction having:

(A) As its denominator, six thousand (6,000); and

(B) As its numerator, the number of hours the equipment was used before it was delivered to the manufacturer, its agent, or the authorized dealer for correction of the problem that gave rise to the nonconformity.

4-105-306. Refunds.

(a)(1) Refunds shall be made to a consumer and lienholder of record, if any, as their interests may appear.

(2) If applicable, refunds shall be made to a lessor and lessee as follows:

(A) The lessee shall receive the lessee's cost less a reasonable offset for the equipment's use; and

(B) The lessor shall receive the lease price less the aggregate deposit and rental payments previously paid to the lessor for the leased equipment.

(b) If a manufacturer makes a refund to a lessor or lessee under this subchapter:

(1) The consumer's lease agreement with the lessor shall terminate upon payment of the refund; and

(2) No penalty for early termination shall be assessed.

(c) If the replaced equipment was financed by a manufacturer, its agent or an authorized dealer, the manufacturer, the agent or the authorized dealer may not require a consumer to enter into any refinancing agreement concerning replacement equipment that would create any additional financial obligations upon the consumer that would be greater than the financial obligations under the consumer's original financing agreement.

4-105-307. Reimbursement of hauling and rental costs.

Whenever equipment is replaced or refunded under this subchapter, the manufacturer shall reimburse a consumer for necessary hauling and rental costs actually incurred as a direct result of the nonconformity.

4-105-308. Option to retain use of equipment.

A consumer has the option of retaining the use of any equipment returned under this subchapter until the consumer has been given:

(1) A full refund; or

(2) Replacement equipment of comparable value.

4-105-309. Presumption of failure to correct – Suspension during certain periods.

(a) A rebuttable presumption of a failure to correct a nonconformity arises if:

(1) The nonconformity has been subject to repair as provided in § 4-105-305 and the nonconformity continues to exist;

(2) The equipment is out of service for a cumulative total of thirty (30) calendar days for repair of a nonconformity; or

(3) There have been five (5) or more attempts to repair a nonconformity.

(b)(1) The thirty-day time period in subdivision (a)(2) of this section is suspended by the period of time during which repair services are unavailable as a direct result of war, invasion, strike, fire, flood, or

natural disaster.

(2) During a suspension under subdivision (b)(1) of this section, a manufacturer, its agent, or an authorized dealer shall provide or make provision for a consumer to have the free use of substitute equipment.

(c) A manufacturer, its agent, or an authorized dealer has the burden of proof to show that the reason for an extension under subsection (b) of this section was the direct cause for its failure to cure any nonconformity during a suspension under subdivision (b)(1) of this section.

4-105-310. Diagnosis or repair - Documentation.

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

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

(B)(i) The written repair order shall include a reference to each defect, nonconformity, or other complaint brought to the attention of the manufacturer, its agent, or the authorized dealer by the consumer.

(ii) Each presentation of the equipment by the consumer for a reasonable opportunity to repair shall be a repair attempt for those defects, nonconformities, or other complaints noted in the written repair order.

(2) The repair order shall indicate all work performed on the equipment, including any examination of the equipment, parts, and labor.

4-105-311. Resale of returned nonconforming equipment.

(a) If equipment has been replaced or repurchased by a manufacturer, its agent, or an authorized dealer as the result of a court judgment, an arbitration award, or any voluntary agreement between the manufacturer, its agent, or authorized dealer and a consumer, the equipment may not be resold in this state unless:

(1)(A) The manufacturer, its agent, or the authorized dealer provides the same express warranty that was provided to the original purchaser.

(B) The term of the warranty shall be for five hundred (500) hours or twelve (12) months after the date of resale, whichever is the earliest; and

(2) The manufacturer, its agent, or the authorized dealer provides a written disclosure, signed by the consumer, indicating that the equipment was returned because of a nonconformity that was not cured within a reasonable time under Arkansas law.

(b) The written disclosure required by this section applies to the first resale to a consumer of the equipment in this state by a manufacturer, its agent, or an authorized dealer.

4-105-312. Affirmative defenses.

The following affirmative defenses are available as a defense to any claim under this subchapter:

(1) The nonconformity, defect, or condition does not substantially impair the use, value, or safety of the equipment;

(2) The nonconformity, defect, or condition is the result of an

accident, abuse, neglect, or unauthorized modification or alteration of the equipment by someone other than a manufacturer, its agent, or an authorized dealer;

(3) The claim by a consumer was not filed in good faith; or

(4) Any other defense allowed by law.

4-105-313. Informal dispute settlement proceeding.

(a)(1) A manufacturer, its agent, or an authorized dealer doing business in this state, entering into franchise agreements for the sale of its equipment in this state, or offering express warranties on its equipment sold or distributed for sale in this state shall operate or participate in an informal dispute settlement proceeding in this state that complies with the requirements of this section.

(2) The provisions of § 4-105-306 concerning refunds or replacement do not apply to a consumer who does not use the informal dispute settlement proceeding before commencing a civil action unless the manufacturer:

(A) Allows the consumer to commence an action without first using the informal dispute settlement proceeding; or

(B) Fails to make a disclosure required by § 4-105-303.

(3)(A) The manufacturer, its agent, or the authorized dealer shall provide the consumer with adequate written notice of the existence of the informal dispute settlement proceeding.

(B) Adequate written notice under subdivision (a)(3)(A) of this section includes the inclusion of the informal dispute settlement proceeding notice in the terms of the written warranty for the equipment.

(b) The informal dispute settlement proceeding shall meet the following criteria:

(1)(A) The informal dispute settlement proceeding must comply with the minimum requirements of the Federal Trade Commission for informal dispute settlement proceedings as set forth in 16 C.F.R. § 703.1 et seq., as it existed on January 1, 2007.

(B) The provisions of this subchapter shall govern if there is any provision of 16 C.F.R. § 703.1 et seq., as it existed on January 1, 2007, that conflicts with this subchapter;

(2)(A) The informal dispute settlement proceeding shall set a reasonable time after a consumer's acceptance of the decision when a manufacturer, its agent, or an authorized dealer must comply with the decision.

(B) The time for compliance with the decision may not exceed thirty (30) days;

(3)(A) Documents shall only be received in an informal dispute settlement proceeding if:

(i) That document was provided to each of the parties to the dispute either before or at the commencement of the informal dispute settlement proceeding; and

(ii) Each party is afforded an opportunity to comment either in writing or orally on the document.

(B) If the consumer is present during the informal dispute settlement proceeding, he or she may request a postponement of the informal dispute settlement proceeding that will allow sufficient time to review any document that had not been provided before the informal dispute settlement

proceeding began;

(4)(A) Each party shall be allowed to appear and make an oral presentation during the informal dispute settlement proceeding unless:

(i) The consumer agrees to submit the dispute for decision on the basis of documentation or by telephone; or

(ii) A party fails to appear for an oral presentation after being given reasonable written notice of the proceeding.

(B) If the consumer agrees to submit the dispute for decision on the basis of documents alone, then the manufacturer, its agent, or the authorized dealer may not participate in the discussion of the dispute;

(5)(A) The consumer shall be given an adequate opportunity to contest the manufacturer's assertion that a nonconformity falls within intended specifications for the equipment.

(B) An adequate opportunity includes having the basis of the manufacturer's claim appraised by a technical expert selected and paid for by the consumer before the commencement of the informal dispute settlement proceeding;

(6) The consumer may not be charged a fee to participate in an informal dispute settlement proceeding; and

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

#### 4-315-314. Enforcement - Exclusivity - Costs and expenses.

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

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

(c) A consumer who prevails in any legal proceeding under this subchapter is entitled to recover as part of the judgment a sum equal to the aggregate amount of the consumer's costs and expenses, including attorney's fees based upon actual time expended by an attorney, determined by the court to have been reasonably incurred by the consumer for or in connection with the commencement and prosecution of the action.

#### 4-105-315. Time limitation for commencement of action.

(a) An action brought under this subchapter must be commenced within two (2) years following the date a consumer first reports the nonconformity to a manufacturer, its agent, or an authorized dealer.

(b) If the consumer initiates the informal dispute settlement procedure under § 4-105-313, the two-year limitation in subsection (a) of this section shall begin to run on that date.

#### 4-105-316. Deceptive trade practices.

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



The Amendment was read \_\_\_\_\_  
By: Representative Davenport  
GLG/LEF - 03-22-2007 11:04  
GLG199 \_\_\_\_\_ Chief Clerk