

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

HOUSE BILL

1378

By: Representatives Newman, McCoy, Landers and McCuiston

For An Act To Be Entitled

"AN ACT TO GRANT CONSUMER PROTECTION REQUIREMENTS FOR  
PURCHASERS OF NEW AUTOMOBILES; TO REQUIRE CORRECTION OR  
REPAIR OF NONCONFORMITIES; AND FOR OTHER PURPOSES."

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

SECTION 1. This act may be cited as the Arkansas Automobile Lemon Law.

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Dealer" or "Motor Vehicle Dealer" means a person in the business of buying, selling or exchanging vehicles.

(2) "Manufacturer" means any person engaged in the business of constructing or assembling new and unused motor vehicles or engaged in the business of importing new and unused motor vehicles into the United States for the purpose of selling or distributing new and unused motor vehicles to motor vehicle dealers in this state.

(3) "Manufacturer's Express Warranty" or "Warranty" means the written warranty of the manufacturer of a new automobile of its condition and fitness for use, including any terms or conditions precedent to the enforcement of obligations under the warranty.

(4) "New Motor Vehicle" means any new and unused self-propelled, motorized conveyance driven upon public roads, streets or highways which is designed to transport not more than fifteen (15) persons, which was purchased and is registered in the state and is used or bought for use primarily for personal, family or household purposes, including a vehicle used by a manufacturer or dealer as a demonstrator or dealer car prior to its sale. The term does not include motorcycles, motor homes or off-road vehicles.

(5) "Nonconformity" means a defect or condition which substantially

impairs the use, value or safety of a new motor vehicle and does not conform to the manufacturer's express warranty.

(6) "Purchaser" means a person or his successors or assigns who has obtained ownership of a new motor vehicle by transfer or purchase or who has entered into an agreement or contract for the purchase of a new motor vehicle which is used or bought for use primarily for personal, family or household purposes.

SECTION 3. The attorney general shall prepare and publish in the Arkansas Register a statement which explains a purchaser's rights under this law. Manufacturers shall provide to each purchaser at the time of original purchase of a new motor vehicle a written statement containing a copy of the attorney general's statement and a listing of the office of Consumer Protection Division within the office of Attorney General, with address and phone number, which can be contacted by the purchaser for the purpose of securing the remedies provided for in this act.

SECTION 4. (a) The manufacturer of a new motor vehicle sold and registered in the state shall repair or correct, at no cost to the purchaser, a nonconformity which substantially impairs the use, value or safety of said motor vehicle which may occur within a period of one year following the actual delivery of the vehicle to the purchaser, within the first 12,000 miles of use, or during the term of the warranty, whichever may first occur.

(b) It shall be the duty of the purchaser to deliver the nonconforming vehicle to the manufacturer's authorized service and repair facility within the state, unless, due to reasons of size and weight or method of attachment or method of installation or nature of the nonconformity, such delivery cannot reasonably be accomplished. Should the purchaser be unable to effect return of the nonconforming vehicle, he shall notify the manufacturer or its authorized service and repair facility. Written notice of nonconformity to the manufacturer or its authorized service and repair facility shall constitute return of the vehicle when purchaser is unable to return the vehicle due to the nonconformity. Upon receipt of such notice of nonconformity the manufacturer shall, at its option, service or repair the vehicle at the location of nonconformity, or pick up the vehicle for service and repair or arrange for transporting the vehicle to its authorized service

and repair facility. All costs of transporting the vehicle when purchaser is unable to effect return, due to nonconformity, shall be at the manufacturer's expense.

SECTION 5. If the manufacturer fails to repair or correct a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle with a comparable motor vehicle of equal value or accept return of the vehicle from the purchaser and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchaser's use of the vehicle not exceeding ten (10) cents per mile driven or ten percent (10%) of the purchase price of the vehicle, whichever is less. Refunds shall be made to the purchaser and lienholder, if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use by the purchaser prior to his first report of the nonconformity to the manufacturer. In the event the consumer elects a refund, payment shall be made within thirty (30) days of such election. A consumer shall not be entitled to a refund or replacement if the nonconformity does not substantially impair the use, value, or safety of the vehicle or the nonconformity is the result of abuse, neglect, modification or alteration of the motor vehicle by the purchaser.

SECTION 6. It shall be presumed that a reasonable number of attempts have been undertaken to repair or correct a nonconformity if:

(1) The same nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or

(2) The vehicle is out-of-service by reason of any nonconformity for a cumulative total of thirty (30) or more calendar days.

SECTION 7. The manufacturer or dealer shall provide to the purchaser each time the purchaser's vehicle is returned from being serviced or repaired a fully itemized statement indicating all work performed on said vehicle including, but not limited to, parts and labor. It shall be the duty of a dealer to notify the manufacturer of the existence of a nonconformity within seven (7) days of the delivery by a purchaser of a vehicle subject to a

nonconformity when it is delivered to the same dealer for the second time for repair of the same nonconformity. The notification shall be by certified mail, return receipt requested.

SECTION 8. Any purchaser of a new motor vehicle who suffers any loss due to nonconformity of such vehicle as a result of the manufacturer's failure to comply with this act may bring a civil action in a court of competent jurisdiction and, in addition to other relief, shall be entitled to recover reasonable attorneys' fees and all court costs.

SECTION 9. (a) If a motor vehicle has been returned under the provisions of this act or a similar statute of another state, it may not be resold in this state unless:

(1) The manufacturer provides the same express warranty it provided to the original purchaser, except that the term of the warranty need only last for 12,000 miles or 12 months after the date of resale, whichever is earlier.

(2) The manufacturer provides the consumer with a written statement on a separate piece of paper, in ten (10) point all capital type, in substantially the following form:

"Important: this vehicle was returned to the manufacturer because it did not conform to the manufacturer's express warranty and the nonconformity was not cured within a reasonable time as provided by state law."

The provisions of this section apply to the resold motor vehicle for the full term of the warranty required under this subsection.

(b) Notwithstanding the provisions of subsection (a), if a new motor vehicle has been returned under the provisions of this act or a similar statute of another state because of a nonconformity resulting in a complete failure of the braking or steering system of the motor vehicle likely to cause death or serious bodily injury if the vehicle was driven, the motor vehicle may not be resold in this state.

SECTION 10. A violation of this act shall also be a violation of Arkansas Code §4-88-101 et seq. (Deceptive Trade Practices).

SECTION 11. Nothing in this act shall limit the purchaser from pursuing any other rights or remedies under any other law, contract or warranty.

SECTION 12. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 13. All laws and parts of laws in conflict with this act are hereby repealed.

