

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995  
4 By: Representatives Watts, Stalnaker, Angel, Simmons, Hunton, Hill, Fletcher,  
5 Simon, Goodwin, Choate, Baker, B. Wood, J. Wilson, McGinnis, Purdom, and  
6 George  
7 By: Senator Smith

# A Bill

HOUSE BILL 2106

## For An Act To Be Entitled

10 "AN ACT TO CREATE THE ARKANSAS FARM EQUIPMENT WARRANTY  
11 COMPLIANCE ACT; TO PROVIDE PROCEDURES WHEREBY A PURCHASER  
12 OF DEFECTIVE FARM EQUIPMENT MAY RECEIVE A REFUND; AND FOR  
13 OTHER PURPOSES."

## Subtitle

16 "TO CREATE THE ARKANSAS FARM EQUIPMENT  
17 WARRANTY COMPLIANCE ACT; TO PROVIDE  
18 PROCEDURES WHEREBY A PURCHASER OF  
19 DEFECTIVE FARM EQUIPMENT MAY RECEIVE A  
20 REFUND."

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

24 SECTION 1. This act shall be known and may be cited as the "Arkansas  
25 Farm Equipment Warranty Compliance Act".

27 SECTION 2. The Arkansas General Assembly recognizes that farm  
28 equipment is a major acquisition and that defective farm equipment  
29 undoubtedly creates a hardship on the agricultural and farming community of  
30 this state. It is the intent of the Arkansas General Assembly that a good  
31 faith farm equipment warranty dispute be resolved by the manufacturer within  
32 a reasonable time. It is further the intent of the Arkansas General Assembly  
33 to provide the statutory procedures whereby a purchaser of farm equipment may  
34 receive a refund for farm equipment that cannot be brought into compliance  
35 with the warranty. To that end, this act is to be remedial in nature, and

1 any provision of this act shall be liberally construed. Nothing in this act,  
2 however, shall in any way limit the rights or remedies which are otherwise  
3 available to a consumer under any other law.

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5 SECTION 3. Definitions. As used in this act:

6 (1) "Farm Equipment" means any implement of husbandry with a  
7 manufacturer suggested retail price of ten thousand dollars (\$10,000) or  
8 more, including but not limited to, self-propelled vehicles which are  
9 designed primarily for pulling or propelling agricultural machinery and  
10 implements, and which are used principally in the occupation or business of  
11 farming.

12 (2) "Consumer" means a purchaser, other than for purposes of resale,  
13 of new farm equipment, a person to whom the new farm equipment is transferred  
14 for the same purposes during the duration of an express warranty applicable  
15 to the farm equipment, and any other person entitled by the terms of the  
16 warranty to enforce the terms of the warranty.

17 (3) "Manufacturer" means a person engaged in the business of  
18 manufacturing, assembling, or distributing new farm equipment.

19 (4) "Warranty" means the written warranty of the manufacturer of new  
20 farm equipment of its condition and fitness for use, including any terms or  
21 conditions precedent to the enforcement of obligations under that warranty.

22 (5) "Nonconformity" means any condition of the farm equipment that  
23 substantially impairs the use, value or safety of the farm equipment as to  
24 the purpose for which it was intended.

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26 SECTION 4. Notice to consumer. At the time of purchase the  
27 manufacturer must provide directly to the consumer a written statement on a  
28 separate piece of paper, in not less than 10-point all capital type, in  
29 substantially the following form:

30 "IMPORTANT: IF THIS FARM EQUIPMENT IS DEFECTIVE, YOU MAY BE ENTITLED  
31 UNDER STATE LAW TO A REPLACEMENT OF IT OR A REFUND OF ITS  
32 PURCHASE PRICE. HOWEVER, TO BE ENTITLED TO A REFUND OR A  
33 REPLACEMENT, YOU MUST FIRST NOTIFY THE MANUFACTURER, ITS AGENT,  
34 OR ITS AUTHORIZED DEALER OF THE PROBLEM IN WRITING AND GIVE THEM  
35 AN OPPORTUNITY TO REPAIR THE EQUIPMENT."

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SECTION 5. Manufacturer\_s duty to repair. If the farm equipment does not conform to applicable express written warranties and the consumer reports the nonconformity to the manufacturer and its authorized dealer during the term of the express written warranties, the manufacturer shall, or through its authorized dealer, make the repairs necessary to conform the farm equipment to any express written warranty, notwithstanding that the repairs are made after the expiration of the warranty term.

SECTION 6. Manufacturer\_s duty to refund or replace.

(a) If the manufacturer or its authorized dealers are unable to make the farm equipment conform to any applicable express written warranty by repairing or correcting any condition which substantially impairs the use, value, or safety of the farm equipment within the time periods and after the number of attempts specified in subsection (b) of this section, the manufacturer shall, at the option of the consumer, replace the farm equipment with comparable equipment, charging the consumer only a reasonable allowance for the consumer\_s use of the farm equipment, or accept the return of the farm equipment from the consumer, and refund to the consumer the cash purchase price, including any allowance for trade-in equipment, sales tax, license fees, registration fees, and any similar governmental charges, less a reasonable allowance for prior use. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear in records of the office of the county clerk and ex officio recorder in the county of the debtor\_s residence or where the goods are kept. If no replacement or refund is made within twenty (20) days of receipt of a written demand sent certified or registered mail to the manufacturer by the consumer requesting a replacement or refund as provided by this section, the consumer may bring a civil action to enforce the obligation, including recovery of costs and reasonable attorney\_s fees.

(b) The replacement or refund obligation specified in subsection (a) of this section shall arise if the manufacturer or its authorized dealers are unable to make the farm equipment conform to applicable express written warranties within the express written warranty term after:

(1) (A) three (3) attempts have been made by the manufacturer

1 or its authorized dealer to repair the same nonconformity that substantially  
2 impairs the farm equipment, and

3 (B) twenty (20) days has expired after the receipt by the  
4 manufacturer of a consumer's written notification, by certified or registered  
5 mail, to the manufacturer of the need to repair the nonconformity allowing  
6 the manufacturer a final attempt to cure the nonconformity, and

7 (C) such nonconformity has not been cured and continues  
8 to exist; or

9 (2) the farm equipment has been out of service by reason of  
10 repair of the same nonconformity for a cumulative total of thirty (30) or  
11 more calendar days during the term of the warranty.

12 (c) In determining any amount to be offset against any replacement or  
13 refund, as a measure of reasonable use of the equipment by the consumer, the  
14 burden shall be on the manufacturer of coming forward with credible evidence  
15 to show that the manufacturer is entitled to such offset and the amount of  
16 such offset.

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18 SECTION 7. Alternative dispute settlement.

19 (a) If a manufacturer has established, or participates in, an  
20 informal dispute settlement procedure which substantially complies with the  
21 provisions of the Code of Federal Regulations, title 16, part 703, as  
22 amended, and the requirements of this section, the provisions of this act  
23 concerning refunds or replacement do not apply to a consumer who has not  
24 first used this alternative dispute procedure; however, nothing in this  
25 section shall require a consumer to first use an alternative dispute  
26 procedure if a manufacturer waives such requirement.

27 (b) The findings and decisions in an informal dispute settlement  
28 procedure shall address and state in writing whether the consumer would be  
29 entitled to a refund or replacement under the presumptions and criteria set  
30 forth by this act, and are admissible as non-binding evidence in any legal  
31 action and are not subject to further foundation requirements.

32 (c) If, in an informal dispute settlement procedure, it is decided  
33 that a consumer is entitled to replacement equipment under this act, then the  
34 consumer has the option of selecting and receiving either replacement  
35 equipment or a full refund as authorized by this act. Any refund selected by

1 a consumer shall include all amounts authorized by this act.

2 (d) In any informal dispute settlement procedure as allowed by this  
3 section:

4 (1) No documents shall be received by the informal dispute  
5 mechanism unless those documents have been provided to each of the parties in  
6 the dispute prior to the mechanism\_s meeting, with an opportunity for the  
7 parties to comment on the documents in writing or by oral presentation before  
8 the mechanism;

9 (2) "Nonvoting" manufacturer or dealer representatives shall  
10 not attend or participate in the informal dispute settlement procedures  
11 unless the consumer is also present and given a chance to be heard, or unless  
12 the consumer previously consents to the manufacturer or dealer participation  
13 without the consumer\_s presence and participation;

14 (3) Consumers shall be given an adequate opportunity to contest  
15 a manufacturer\_s assertion that a nonconformity falls within intended  
16 specifications for the equipment by having the basis of the manufacturer\_s  
17 claim appraised by a technical expert selected and paid for by the consumer  
18 prior to the informal dispute settlement hearing;

19 (4) No disputes shall be heard where there has been a recent  
20 attempt by the manufacturer to repair a consumer\_s farm equipment, but no  
21 response has yet been received by the informal dispute mechanism from the  
22 consumer as to whether the repairs were successfully completed. This  
23 provision shall not prejudice a consumer\_s rights under this section nor  
24 shall it extend the informal dispute mechanism\_s forty (40) day time limit  
25 for deciding disputes, as established by the Code of Federal Regulations,  
26 title 16, part 703; and

27 (5) The manufacturer shall provide, and the informal dispute  
28 settlement mechanism shall consider, all information relevant to resolving  
29 the dispute, such as the prior informal dispute mechanism records and  
30 information as required by the Code of Federal Regulations, title 16, part  
31 703.6, and any relevant technical service bulletins which may have been  
32 issued by the manufacturer regarding the farm equipment being disputed.

33 (e) A settlement reached under this section is binding upon the  
34 manufacturer only.

35 (f) No consumer shall be required to first participate in an informal

1 dispute settlement procedure before filing an action in court if the informal  
2 dispute settlement procedure does not comply with the requirements of this  
3 section, notwithstanding the procedure's compliance with the Code of Federal  
4 Regulations, title 16, part 703.

5 (g) Any violation of this section shall constitute an unfair or  
6 deceptive trade practice under Arkansas Code Annotated § 4-88-101 et seq.,  
7 and any remedies under the Deceptive Trade Practices Act, Arkansas Code  
8 Annotated § 4-88-101 et seq., shall be available to enforce the provisions of  
9 this section.

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11 SECTION 8. Affirmative defenses. It shall be an affirmative defense  
12 to claim by a consumer under this act that:

13 (1) an alleged nonconformity does not substantially impair the use,  
14 value, or safety of the farm equipment;

15 (2) a nonconformity is the result of abuse or neglect, or of  
16 modifications or alterations of the farm equipment not authorized by the  
17 manufacturer; or

18 (3) the consumer has unreasonably prevented the manufacturer from  
19 making any repair attempts.

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21 SECTION 9. *Limitations on actions. Any legal actions brought under*  
22 *the provisions of this act based upon a failure of the manufacturer to*  
23 *conform the farm equipment to the express written warranty shall be commenced*  
24 *within two (2) years following the date the cause of action arose.*

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26 SECTION 10. Remedy nonexclusive. Nothing in this act, however, shall  
27 in any way limit any other statutory or common law rights, causes of actions,  
28 or remedies which are otherwise available to a person, including but not  
29 limited to actions for: breach of warranty, fraud, negligent  
30 misrepresentation, intentional misrepresentation, deceptive trade practices  
31 actions, rescission, or revocation of acceptance.

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33 SECTION 11. *Nothing in this act shall operate to impose upon the*  
34 *selling dealer any additional duty to repair, replace, or repurchase any farm*  
35 *equipment beyond those requirements set forth under other state or federal*



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