

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: H3/8/01
A Bill

HOUSE BILL 2640

5 By: Representative Magnus
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8 **For An Act To Be Entitled**

9 AN ACT TO CREATE A MOTORBOAT LEMON LAW; AND FOR
10 OTHER PURPOSES.

11
12 **Subtitle**

13 TO CREATE A MOTORBOAT LEMON LAW.
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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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18 SECTION 1. Title. This act shall be known and may be cited as "The
19 Arkansas Motorboat Lemon Law of 2001.

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

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

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

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

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

36 (5) "Outboard Motorboat" means any motorized boat that is powered by

1 an engine or motor of 9.9 horsepower or greater that is mounted on the
2 transom of the boat.

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4 SECTION 3. Legislative intent. The Arkansas General Assembly
5 recognizes that a motorboat is a major consumer acquisition and that a
6 defective motorboat undoubtedly creates a hardship for the consumer. The
7 Arkansas General Assembly further recognizes that a franchised motorboat
8 dealer is an authorized service agent of the manufacturer. It is the intent
9 of the Arkansas General Assembly that a good faith motorboat warranty
10 complaint by a consumer be resolved by the manufacturer within a specified
11 period of time. It is further the intent of the Arkansas General Assembly to
12 provide the statutory procedures whereby a consumer may receive a replacement
13 motorboat, or a full refund, for a motorboat which cannot be brought into
14 conformity with the warranty provided for in this act. However, nothing in
15 this act shall in any way limit the rights or remedies which are otherwise
16 available to a consumer under any other law.

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

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22 SECTION 5. Required Warranty Repairs.
23 If a motorboat does not conform to the warranty and the consumer
24 reports the nonconformity to the manufacturer, its agent, or authorized
25 dealer during the motorboat quality assurance period, the manufacturer, its
26 agent, or authorized dealer shall make such repairs as are necessary to
27 correct the nonconformity, even if the repairs are made after the expiration
28 of the term of protection.

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30 SECTION 6. Failure to Make Required Repairs.

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

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

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

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

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

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

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

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

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

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

1 manufacturer-installed or agent-installed options, by a fraction having as
2 its denominator two thousand (2,000) and having as its numerator the number
3 of hours the new motorboat has been operated prior to the time the buyer
4 first delivered the motorboat to the manufacturer, its agent, or authorized
5 dealer for correction of the problem that gave rise to the nonconformity.

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7 /s/ Magnus
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