

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 86th General Assembly  
3 Regular Session, 2007  
4

As Engrossed: H3/29/07

# A Bill

HOUSE BILL 2406

5 By: Representative Davenport  
6  
7

## For An Act To Be Entitled

9 AN ACT TO ESTABLISH A "LEMON LAW" FOR CERTAIN  
10 AGRICULTURAL AND INDUSTRIAL EQUIPMENT; AND FOR  
11 OTHER PURPOSES.  
12

## Subtitle

14 AN ACT TO ESTABLISH A "LEMON LAW" FOR  
15 CERTAIN AGRICULTURAL AND INDUSTRIAL  
16 EQUIPMENT.  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

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

23 *4-105-301. Title.*

24 *This subchapter shall be known and may be cited as the "Arkansas*  
25 *Equipment Quality Assurance Act".*  
26

27 *4-105-302. Definitions.*

28 *As used in this subchapter:*

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

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

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



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

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

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

11           (6) "Incidental charges" means those reasonable costs incurred  
12 by a consumer, including hauling charges and the costs of obtaining  
13 alternative equipment, which are directly caused by the nonconformity or  
14 nonconformities that are the subject of the claim but shall not include loss  
15 of use, loss of income, or personal injury claims;

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

17                   (A) A lessor's actual purchase costs;

18                   (B) Collateral charges, if applicable;

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

20                   (D) Any insurance or other costs expended by the lessor  
21 for the benefit of the lease;

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

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

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

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

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

35           (11) "Manufacturer" means:

36                   (A) A person that is engaged in the business of

1 constructing or assembling new equipment or installing on previously  
2 assembled equipment special bodies or equipment that when installed form an  
3 integral part of the equipment; or

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

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

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

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

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

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

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

21 (A) Begins:

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

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

27 (B) Ends twenty-four (24) months after the date of the  
28 original delivery of the equipment to a consumer or the first one thousand  
29 (1,000) hours of operation attributable to the consumer, whichever is later;

30 (16) "Replacement equipment" means equipment that is identical  
31 or reasonably equivalent to the equipment to be replaced, as the equipment  
32 replaced existed at the time of the original acquisition; and

33 (17) "Warranty" means any written warranty issued by a  
34 manufacturer, or any affirmation of fact or promise made by the manufacturer,  
35 excluding statements made by a dealer, in connection with the sale or lease  
36 of equipment to a consumer that relates to the nature of the material or

1 workmanship and affirms or promises that such material or workmanship is free  
2 of defects or will meet a specified level of performance.

3  
4 4-105-303. Disclosure by manufacturer, agent, or dealer.

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

9 (B) The manufacturer, its agent, or the authorized dealer  
10 shall obtain the consumer's signed acknowledgement of the receipt of the  
11 written statement explaining the consumer's rights and obligations under this  
12 subchapter.

13 (C) The manufacturer, its agent, or the authorized dealer  
14 shall maintain copies of the consumer's signed acknowledgement for a period  
15 of not less than five (5) years.

16 (2) The written statement provided under subdivision (a)(1)(A)  
17 of this section shall:

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

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

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

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

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

35 (2) If the manufacturer does not make the disclosure required by  
36 subsections (a) and (b) of this section, the consumer is not required to use

1 the informal dispute settlement procedure under § 4-105-313 before using any  
2 other remedy to enforce his or her rights under this subchapter.

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

9  
10 4-105-304. Required warranty repairs.

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

16  
17 4-105-305. Required repairs – Consumer’s options.

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

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

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

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

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

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

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

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

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

13 (a) Its use; and

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

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

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

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

24 (3) The amount of any reasonable offset for use by the consumer  
25 shall be determined by multiplying the actual price of the equipment paid or  
26 payable by the consumer, including any charges for transportation and  
27 manufacturer-installed or agent-installed options, by a fraction having:

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

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

32  
33 4-105-306. Refunds.

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

36 (2) If applicable, refunds shall be made to a lessor and lessee

1 as follows:

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

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

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

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

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

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

18  
19 4-105-307. Reimbursement of hauling and rental costs.

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

23  
24 4-105-308. Option to retain use of equipment.

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

27 (1) A full refund; or

28 (2) Replacement equipment of comparable value.

29  
30 4-105-309. Presumption of failure to correct – Suspension during  
31 certain periods.

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

34 (1) The nonconformity has been subject to repair as provided in  
35 § 4-105-305 and the nonconformity continues to exist;

36 (2) The equipment is out of service for a cumulative total of

1 thirty (30) calendar days for repair of a nonconformity; or

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

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

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

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

15  
16 4-105-310. Diagnosis or repair - Documentation.

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

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

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

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

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

32  
33 4-105-311. Resale of returned nonconforming equipment.

34 (a) If equipment has been replaced or repurchased by a manufacturer,  
35 its agent, or an authorized dealer as the result of a court judgment, an  
36 arbitration award, or any voluntary agreement between the manufacturer, its

1 agent, or authorized dealer and a consumer, the equipment may not be resold  
2 in this state unless:

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

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

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

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

16  
17 4-105-312. Affirmative defenses.

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

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

22 (2) The nonconformity, defect, or condition is the result of an  
23 accident, abuse, neglect, or unauthorized modification or alteration of the  
24 equipment by someone other than a manufacturer, its agent, or an authorized  
25 dealer;

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

27 (4) Any other defense allowed by law.

28  
29 4-105-313. Informal dispute settlement proceeding.

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

36 (2) The provisions of § 4-105-306 concerning refunds or

1 replacement do not apply to a consumer who does not use the informal dispute  
2 settlement proceeding before commencing a civil action unless the  
3 manufacturer:

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

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

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

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

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

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

19 (B) The provisions of this subchapter shall govern if  
20 there is any provision of 16 C.F.R. § 703.1 et seq., as it existed on January  
21 1, 2007, that conflicts with this subchapter;

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

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

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

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

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

35 (B) If the consumer is present during the informal dispute  
36 settlement proceeding, he or she may request a postponement of the informal

1 dispute settlement proceeding that will allow sufficient time to review any  
2 document that had not been provided before the informal dispute settlement  
3 proceeding began;

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

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

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

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

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

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

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

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

25  
26 4-315-314. Enforcement - Exclusivity - Costs and expenses.

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

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

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

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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.

/s/ Davenport