

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

A Bill

HOUSE BILL 2441

5 By: Representative Maloch
6
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE ARKANSAS MOTORCYCLE LEMON
10 LAW ACT TO APPLY TO THE SALE OF NEW STREET READY
11 MOTORCYCLES WITH TWO HUNDRED FIFTY CUBIC
12 CENTIMETERS (250 CC) OF ENGINE DISPLACEMENT OR
13 MORE; AND FOR OTHER PURPOSES.
14

Subtitle

15 TO CREATE THE ARKANSAS MOTORCYCLE LEMON
16 LAW ACT TO APPLY TO THE SALE OF NEW
17 STREET READY MOTORCYCLES WITH TWO
18 HUNDRED FIFTY CUBIC CENTIMETERS (250 CC)
19 OF ENGINE DISPLACEMENT OR MORE.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

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

27 4-105-301. Title.

28 This subchapter shall be known and may be cited as the "Arkansas
29 Motorcycle Lemon Law Act".
30

31 4-105-302. Legislative findings.

32 The General Assembly finds that:

33 (1) Motorcycles are a major consumer acquisition that are often
34 obtained on credit;

35 (2) A defective motorcycle creates hardship on the consumer; and

36 (3) A mechanism is necessary in the law to allow a consumer to



1 receive a replacement motorcycle or receive a refund of the purchase price if
2 the motorcycle cannot be brought into conformity with the warranty during the
3 motorcycle quality assurance period provided under this subchapter.

4
5 4-105-303. Definitions.

6 As used in this subchapter:

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

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

11 (B) "Collateral charges" includes without limitation:

12 (i) Manufacturer-installed items or agent-installed
13 items;

14 (ii) Earned finance charges;

15 (iii) Sales taxes;

16 (iv) Title charges; or

17 (v) Charges for extended warranties provided by the
18 manufacturer, its subsidiary, or its agent;

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

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

27 (5)(A) "Incidental charges" means those reasonable costs
28 incurred by the consumer.

29 (B) "Incidental charges" includes without limitation
30 towing charges and the costs of obtaining alternative transportation that are
31 directly caused by the nonconformity or nonconformities that are the subject
32 of the claim.

33 (C) "Incidental charges" shall not include loss of use,
34 loss of income, or personal injury claims;

35 (6) "Lease price" means the aggregate of:

36 (A) The lessor's actual purchase costs;

1 time that:

2 (A) Begins:

3 (i) On the date of original delivery of a
4 motorcycle; or

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

8 (B) Ends twenty-four (24) months after the date of the
9 original delivery of the motorcycle to a consumer, or the first twenty-four
10 thousand (24,000) miles of operation attributable to the consumer, whichever
11 is later;

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

14 (A) Substantially impairs the use, market value, or safety
15 of a motorcycle; or

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

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

21 (15) "Purchase price" means the cash price paid for the
22 motorcycle appearing in the sales agreement or contract, including any net
23 allowance for a trade-in motorcycle;

24 (16) "Replacement motorcycle" means a motorcycle that is
25 identical or reasonably equivalent to the motorcycle to be replaced, as the
26 motorcycle replaced existed at the time of the original acquisition; and

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

33

34 4-105-304. Notice by consumer – Disclosure by manufacturer, agent, or
35 dealer.

36 (a)(1) A consumer shall utilize the informal dispute settlement

1 proceeding provided for in this subchapter prior to bringing any legal action
 2 to enforce the consumer's rights under this subchapter, if the manufacturer
 3 has made the disclosure required by subsection (b) of this section.

4 (2) However, if the manufacturer has not made the required
 5 disclosure, the consumer is not required to utilize the informal dispute
 6 settlement procedure pursuant to § 4-105-314 prior to any legal action to
 7 enforce the consumer's rights under this subchapter.

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

12 (B) The manufacturer's authorized dealer shall obtain the
 13 consumer's signed acknowledgement of the receipt of the written statement
 14 explaining the consumer's rights and obligations under this subchapter.

15 (C) The manufacturer's authorized dealer shall maintain
 16 copies of the consumer's signed acknowledgement for a period of no less than
 17 five (5) years.

18 (2) The written statement shall be prepared by the Consumer
 19 Protection Division of the Office of the Attorney General and shall include
 20 the telephone number of the division that the consumer can contact to obtain
 21 information regarding his or her rights and obligations under this
 22 subchapter.

23 (3) For each failure of the manufacturer, its agent, or an
 24 authorized dealer to provide to a consumer the written statement required
 25 under this section or failure to retain a signed acknowledgement form, the
 26 manufacturer shall be liable to the State of Arkansas for a civil penalty of
 27 not less than twenty-five dollars (\$25.00) nor more than one thousand dollars
 28 (\$1,000).

29 (c)(1) The manufacturer shall clearly and conspicuously disclose to
 30 the consumer, in the warranty or owner's manual, that written notice of the
 31 nonconformity is required before the consumer may be eligible for a refund or
 32 replacement of the motorcycle.

33 (2) The manufacturer shall provide the consumer with conspicuous
 34 notice of the address and phone number for its zone, district, or regional
 35 office for this state at the time of the motorcycle acquisition, to which the
 36 consumer must send notification.

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4-105-305. Required warranty repairs.

If a motorcycle does not conform to the warranty and the consumer reports the nonconformity to the manufacturer, its agent, or authorized dealer during the motorcycle quality assurance period, the manufacturer, its agent, or authorized dealer shall make repairs as are necessary to correct the nonconformity, even if the repairs are made after the expiration of the motorcycle quality assurance period.

4-105-306. Failure to make required repairs.

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

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

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

(b)(1)(A) If the manufacturer, its agent, or authorized dealer has not conformed the motorcycle to the warranty by repairing or correcting one (1) or more nonconformities that substantially impairs the motorcycle after a reasonable number of attempts, the manufacturer, within forty (40) days, shall:

(i) At the time of its receipt of payment of a reasonable offset for use by the consumer, replace the motorcycle with a

1 replacement motorcycle acceptable to the consumer; or

2 (ii) Repurchase the motorcycle from the consumer or
 3 lessor and refund to the consumer or lessor the full purchase price or lease
 4 price, less a reasonable offset for use and less a reasonable offset for
 5 physical damage sustained to the motorcycle while under the ownership of the
 6 consumer.

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

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

11 (B) At the time of the refund or replacement, the
 12 consumer, lienholder, or lessor shall furnish to the manufacturer clear title
 13 to and possession of the motorcycle.

14 (3) The amount of reasonable offset for use by the consumer
 15 shall be determined by multiplying the actual price of the new motorcycle
 16 paid or payable by the consumer, including any charges for transportation and
 17 manufacturer-installed or agent-installed options, by a fraction having as
 18 its denominator one hundred twenty thousand (120,000) and having as its
 19 numerator the number of miles traveled by the new motorcycle prior to the
 20 time the consumer first delivered the motorcycle to the manufacturer, its
 21 agent, or authorized dealer for correction of the problem that gave rise to
 22 the nonconformity.

23
 24 4-105-307. Refunds.

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

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

29 (A) The lessee shall receive the lease cost less a
 30 reasonable offset for use; and

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

34 (b) If the manufacturer makes a refund to the lessor or lessee
 35 pursuant to this subchapter, the consumer's lease agreement with the lessor
 36 shall be terminated upon payment of the refund and no penalty for early

1 termination shall be assessed.

2 (c) If a replaced motorcycle was financed by the manufacturer, its
3 subsidiary, or agent, the manufacturer, subsidiary, or agent may not require
4 the consumer to enter into any refinancing agreement concerning a replacement
5 motorcycle that would create any financial obligations upon the consumer
6 beyond those of the original financing agreement.

7
8 4-105-308. Reimbursement of towing and rental costs.

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

12
13 4-105-309. Option to retain use of motorcycle.

14 A consumer has the option of retaining the use of any motorcycle
15 returned under this subchapter until the time that the consumer has been
16 tendered a full refund or a replacement motorcycle of comparable value.

17
18 4-105-310. Presumption of reasonable attempts to repair – Extension of
19 time to repair in case of war, invasion, strike, fire, or natural disaster.

20 (a) A rebuttable presumption of a reasonable number of attempts to
21 repair is considered to have been undertaken to correct a nonconformity if:

22 (1) The nonconformity has been subject to repair as provided in
23 § 4-105-306(a), but the nonconformity continues to exist;

24 (2) The motorcycle is out of service by reason of repair, or
25 attempt to repair, any nonconformity for a cumulative total of thirty (30)
26 calendar days; or

27 (3) There have been five (5) or more attempts on separate
28 occasions to repair any nonconformities that together substantially impair
29 the use and value of the motorcycle to the consumer.

30 (b)(1) The thirty (30) calendar days in subdivision (a)(2) of this
31 section shall be extended by any period of time during which repair services
32 are not available as a direct result of war, invasion, strike, fire, flood,
33 or natural disaster.

34 (2) The manufacturer, its agent, or authorized dealer shall
35 provide or make provisions for the free use of a motorcycle to any consumer
36 whose motorcycle is out of service beyond thirty (30) days by reason of

1 delayed repair as a direct result of war, invasion, strike, fire, or natural
 2 disaster.

3 (c) The burden is on the manufacturer to show that the reason for an
 4 extension under subsection (b) of this section was the direct cause for the
 5 failure of the manufacturer, its agent, or authorized dealer to cure any
 6 nonconformity during the time of the event.

7
 8 4-105-311. Diagnosis or repair – Documentation.

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

12 (b)(1)(A) A manufacturer, its agent, or authorized dealer shall
 13 provide a consumer with a written repair order each time the consumer’s
 14 motorcycle is brought in for examination or repair.

15 (B) The written repair order shall include a reference to
 16 each defect, nonconformity, or other complaint brought to the attention of
 17 the manufacturer, its agent, or authorized dealer by the consumer, and each
 18 presentation of the motorcycle by the consumer for a reasonable opportunity
 19 to repair shall be a repair attempt for those defects, nonconformities, or
 20 other complaints noted in the written repair order.

21 (2) The repair order must indicate all work performed on the
 22 motorcycle, including examination of the motorcycle, parts, and labor.

23
 24 4-105-312. Resale of returned nonconforming motorcycle.

25 (a) If a motorcycle has been replaced or repurchased by a manufacturer
 26 as the result of a court judgment, an arbitration award, or any voluntary
 27 agreement entered into between a manufacturer or a manufacturer through its
 28 authorized dealer and a consumer that occurs after a consumer has notified
 29 the manufacturer of the consumer’s desire to utilize the informal dispute
 30 settlement proceeding under this subchapter or a similar law of another
 31 state, the motorcycle may not be resold in Arkansas unless:

32 (1) The manufacturer provides the same express warranty the
 33 manufacturer provided to the original purchaser, except that the term of the
 34 warranty need only last for twelve thousand (12,000) miles or twelve (12)
 35 months after the date of resale, whichever occurs first; and

36 (2) The manufacturer provides a written disclosure, signed by

1 the consumer, indicating that the motorcycle was returned to the manufacturer
 2 because of a nonconformity not cured within a reasonable time as provided by
 3 Arkansas law.

4 (b) The written disclosure required by this section applies to the
 5 first resale to a retail customer of the motorcycle in Arkansas by the
 6 manufacturer or its authorized dealer.

7
 8 4-105-313. Affirmative defenses.

9 It is an affirmative defense to any claim under this subchapter that:

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

12 (2) The nonconformity, defect, or condition is the result of an
 13 accident, abuse, neglect, or unauthorized modification or alteration of the
 14 motorcycle by persons other than the manufacturer, its agent, or authorized
 15 dealer;

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

17 (4) Any other defense allowed by law that may be raised against
 18 the claim.

19
 20 4-105-314. Informal proceeding as precedent.

21 (a)(1) Any manufacturer doing business in this state, entering into
 22 franchise agreements for the sale of its motorcycles in this state, or
 23 offering express warranties on its motorcycles sold or distributed for sale
 24 in this state, shall operate or participate in an informal dispute settlement
 25 proceeding located in the State of Arkansas that complies with the
 26 requirements of this section.

27 (2) The provisions of § 4-105-306(b) concerning refunds or
 28 replacement do not apply to a consumer that has not first used this informal
 29 dispute settlement proceeding before commencing a civil action, unless the
 30 manufacturer allows a consumer to commence an action without first using this
 31 informal dispute settlement proceeding, or unless the manufacturer has failed
 32 to make the disclosure required by § 4-105-304(b).

33 (3)(A) The consumer shall receive adequate written notice from
 34 the manufacturer of the existence of the informal dispute settlement
 35 proceeding.

36 (B) Adequate written notice may include the incorporation

1 of the informal dispute settlement proceeding into the terms of the written
2 warranty to which the motorcycle does not conform.

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

5 (1) The informal dispute settlement proceeding must comply with
6 the minimum requirements of the Federal Trade Commission for informal dispute
7 settlement proceedings as set forth in 16 C.F.R. § 703.1 et seq., as in
8 effect on February 1, 2007, unless any provision of 16 C.F.R. § 703.1 et seq.
9 is in conflict with this subchapter, in which case the provisions of this
10 subchapter shall govern;

11 (2) The informal dispute settlement proceedings must prescribe a
12 reasonable time, not to exceed thirty (30) days after the decision is
13 accepted by the consumer, within which the manufacturer or its agent must
14 fulfill the terms of its decisions;

15 (3)(A) No documents shall be received by any informal dispute
16 settlement proceeding unless those documents have been provided to each of
17 the parties in the dispute at or prior to the informal dispute settlement
18 proceeding, with an opportunity for the parties to comment on the documents
19 either in writing or orally.

20 (B) If a consumer is present during the informal dispute
21 settlement proceeding, the consumer may request postponement of the informal
22 dispute settlement proceeding meeting to allow sufficient time to review any
23 documents presented at the time of the meeting that had not been presented to
24 the consumer prior to the time of the meeting;

25 (4)(A) The informal dispute settlement proceeding shall allow
26 each party to appear and make an oral presentation within the State of
27 Arkansas, unless the consumer agrees to submit the dispute for decision on
28 the basis of documents alone or by telephone, or unless the party fails to
29 appear for an oral presentation after reasonable prior written notice.

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

33 (5) Consumers shall be given an adequate opportunity to contest
34 a manufacturer's assertion that a nonconformity falls within intended
35 specifications for the motorcycle by having the basis of the manufacturer's
36 claim appraised by a technical expert selected and paid for by the consumer

1 prior to the informal dispute settlement proceeding;

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

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

6
7 4-105-315. Enforcement – Exclusivity – Costs and expenses.

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

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

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

18
19 4-105-316. Time limitation for commencement of action.

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

23 (b) When the consumer has commenced an informal dispute settlement
24 proceeding described in § 4-105-314, the two-year period specified in
25 subsection (a) of this section begins to run at the time the informal dispute
26 settlement proceeding is being commenced.

27
28 4-105-317. Deceptive trade practices.

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

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