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2 92nd General Assembly
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4

As Engrossed: S3/4/19

A Bill

SENATE BILL 450

5 By: Senators B. Johnson, Maloch, Rice
6 By: Representatives Richmond, Bentley, D. Douglas, Eubanks, Sullivan, Vaught, Watson
7

For An Act To Be Entitled

8 AN ACT TO ESTABLISH THE ARKANSAS NEW FARM MACHINERY
9 QUALITY ASSURANCE ACT; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO ESTABLISH THE ARKANSAS NEW FARM
12 MACHINERY QUALITY ASSURANCE ACT.
13

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
15

16 SECTION 1. Arkansas Code Title 4, Chapter 96, is amended to add an
17 additional subchapter to read as follows:
18

19 Subchapter 3 – Arkansas New Farm Machinery Quality Assurance Act

20 4-96-301. Title.

21 This subchapter shall be known and may be cited as the "Arkansas New
22 Farm Machinery Quality Assurance Act".
23

24 4-96-302. Definitions.

25 As used in this subchapter:

26 (1) "Authorized dealer" means an individual, corporation, or
27 limited liability company authorized by the manufacturer or distributor to
28 sell, barter, or exchange a particular make of new farm machinery;
29

30 (2) "Buyer" means a person, corporation, or limited liability
31 company that purchases new farm machinery to be used for agricultural
32 purposes that is entitled by the terms of a warranty to enforce the
33 obligations of the warranty;
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1 (3) "Collateral charges" means any additional charge to a buyer
2 or consumer not directly attributable to the aggregate purchase price of a
3 manufacturer for farm machinery;

4 (4) "Comparable farm machinery" means an identical or reasonable
5 replacement piece of farm machinery;

6 (5) "Consumer" means a purchaser or lessee of farm machinery,
7 other than for purposes of resale, or a person entitled to enforce the
8 obligations of the warranty during the duration of the farm machinery quality
9 assurance period.

10 (6)(A) "Farm machinery" means self-propelled equipment or
11 machinery used for agricultural purposes that is being transferred for the
12 first time from a manufacturer, distributor, or an authorized dealer.

13 (B) "Farm machinery" includes farm machinery propelled by
14 power other than physical power if the farm machinery is not an off-road
15 vehicle, an all-terrain vehicle, as defined under § 27-21-102, or equipment
16 under twenty-five horsepower (25 hp), as well as all lawn tractors or lawn
17 mowers;

18 (7) "Nonconformity" means any condition of farm machinery that:

19 (A) Does not conform with the terms of an express warranty
20 issued by a manufacturer to a consumer;

21 (B) Significantly impairs the use, value, or safety of the
22 farm machinery; and

23 (C) Does not arise or occur as a result of abuse or
24 neglect, including without limitation failure to operate and maintain the
25 farm machinery according to the manufacturer's operator manual and
26 recommended maintenance of the farm machinery;

27 (8) "Reasonable allowance for consumer use" means an amount
28 attributable to use by a consumer:

29 (A) Before the consumer's first report of the
30 nonconformity to the manufacturer or authorized dealer of the farm machinery;

31 (B) During any period of use of the farm machinery
32 subsequent to the first report of nonconformity if the farm machinery is not
33 out of service by reason of repair of the reported nonconformity; and

34 (C) Of the farm machinery provided by the manufacturer or
35 its authorized dealer while the farm machinery is out of service by reason of
36 repair of the reported nonconformity, but not less than the fair lease value

1 of the farm machinery; and

2 (9)(A) "Warranty" means a written warranty, as labeled, issued
3 by a manufacturer of new farm machinery or an affirmation of fact or promise
4 made by the manufacturer, including any terms or conditions precedent to the
5 enforcement of obligations under that warranty in connection with the sale or
6 lease of farm machinery to a consumer concerning the nature of the material
7 or workmanship that affirms or promises that the material or workmanship is
8 free of defects or will meet a specified level of performance.

9 (B) "Warranty" does not include a statement or expression
10 made by an authorized dealer.

11
12 4-96-303. Notice.

13 (a)(1) When a consumer purchases or leases farm machinery from a
14 manufacturer or an authorized dealer, the manufacturer, an agent of the
15 manufacturer, or the authorized dealer, shall at the time of purchase:

16 (A) Provide to the consumer a written notice statement
17 that complies with §§ 4-90-401 et seq. that explains the rights and
18 obligations of a consumer under this subchapter;

19 (B) Obtain a signed acknowledgment from the consumer of
20 the receipt of the written statement described in subdivision (a)(1)(A) of
21 this section; and

22 (C) For self-propelled farm machinery, maintain copies of
23 the consumer's signed acknowledgment for at least five (5) years.

24 (2) It is a violation of this subchapter for a manufacturer, an
25 agent of a manufacturer, a distributor, or an authorized dealer to fail to
26 provide to a consumer the written statement required under subdivision
27 (a)(1)(A) of this section.

28 (b)(1) The Consumer Protection Division of the office of the Attorney
29 General shall prepare a written statement as described in subdivision
30 (a)(1)(A) of this section that includes the telephone number of the division
31 that the consumer can call to obtain information regarding his or her rights
32 and obligations under this subchapter.

33 (2) It is a violation of this subchapter for a manufacturer, an
34 agent of a manufacturer, a distributor, or an authorized dealer to fail to
35 provide to a consumer the written statement described in subdivision (b)(1)
36 of this section.

1 (c) A manufacturer, a distributor, or an authorized dealer that
2 violates this subchapter is liable to the state for a civil penalty of not
3 less than twenty-five dollars (\$25.00) but no more than one thousand dollars
4 (\$1,000) per violation.

5 (d)(1) A manufacturer, an agent of a manufacturer, a distributor, or
6 an authorized dealer shall clearly and conspicuously disclose to the
7 consumer, in the warranty or owner's manual, that written notice of a
8 nonconformity is required before the buyer may be eligible for a refund or
9 replacement of the farm machinery.

10 (2) A manufacturer, an agent of the manufacturer, a distributor,
11 or an authorized dealer shall provide the consumer with conspicuous notice of
12 the address and phone number for the manufacturer, distributor, or authorized
13 dealer at the time of acquisition of farm machinery to which the buyer shall
14 send notification of a nonconformity.

15 (e)(1) If farm machinery does not conform to any applicable express
16 warranties and the consumer provides written notice by certified mail to the
17 manufacturer, distributor, or authorized dealer demanding correction or
18 repair of the nonconformity during the term of the express warranty or during
19 the one-year period following the date of original delivery of the farm
20 machinery to the consumer, whichever period expires earlier, the
21 manufacturer, agent of a manufacturer, distributor, or an authorized dealer
22 shall make any necessary repairs to conform the farm machinery to the express
23 warranties, notwithstanding the fact that the repairs are made after the
24 expiration of the term of the express warranty or the one-year period
25 described in this subdivision (e)(1).

26 (2) For self-propelled farm machinery, this section is limited
27 to warranty coverage for the engine, transmission, and power train.

28 (f) This subchapter applies to farm machinery sold on or after January
29 1, 2020.

30
31 4-96-304. Right to repair.

32 After notice is provided under § 4-96-303, a manufacturer, a
33 distributor, or an authorized dealer shall have the right to repair a
34 nonconformity of farm machinery:

35 (1)(A) Three (3) times for the same repair issue or thirty (30)
36 days out of service for the same issue under this subchapter.

1 (B) The cost of three (3) repairs shall equal at least
2 thirty percent (30%) of total purchase price of the farm machinery in order
3 to trigger recourse under this subchapter; or

4 (2)(A) Five (5) times for all issues or sixty (60) days of out
5 of service time.

6 (B) The cost of five (5) repairs under subdivision (2)(A)
7 of this section shall be equal to at least fifty percent (50%) of the total
8 purchase price of the farm machinery in order to trigger recourse under this
9 subchapter.

10 (C) Days of out of service time do not count for the
11 purposes of subdivision (1)(A) of this section if the authorized dealer
12 provides comparable farm machinery.

13
14 4-96-305. Refund or replacement.

15 (a) If a manufacturer, an agent of a manufacturer, a distributor, or
16 an authorized dealer does not conform farm machinery to the warranty as
17 required under § 4-96-303, after notice of the nonconformity under § 4-96-303
18 by repairing or correcting one (1) or more nonconformities that substantially
19 impair the farm machinery after a reasonable number of attempts, then, within
20 thirty (30) days, the manufacturer or distributor shall:

21 (1) At the time of receipt of payment of a reasonable offset for
22 use by the consumer, replace the farm machinery with comparable farm
23 machinery acceptable to the consumer; or

24 (2) Repurchase the farm machinery from the buyer or lessor and
25 refund to the buyer or lessor the full purchase price or lease price, less:

26 (A) A reasonable allowance for consumer use; and

27 (B) A reasonable offset for physical damage sustained by
28 the farm machinery while under the ownership of the consumer.

29 (b) The replacement or refund under subsection (a) of this section
30 shall include payment of all collateral charges and reasonably incurred
31 incidental charges.

32 (c) A buyer has an unconditional right to choose a refund rather than
33 a replacement under this subchapter.

34 (d) At the time of the refund or replacement, a consumer, lien holder,
35 or lessor shall furnish clear title to and possession of the farm machinery
36 to the manufacturer, distributor, or authorized dealer.

1 (e) The amount of reasonable allowance for consumer use is determined
2 by the fair lease value of the farm machinery.

3
4 4-96-306. Affirmative defenses.

5 It is an affirmative defense to a claim under this subchapter that:

6 (1) A defect or condition does not substantially impair the use,
7 value, or safety of the farm machinery;

8 (2) A nonconformity is the result of an accident, abuse,
9 neglect, or unauthorized modification or alteration of the farm machinery by
10 a person other than the manufacturer, agent of a manufacturer, distributor,
11 or an authorized dealer;

12 (3) A claim by the consumer was not filed in good faith; or

13 (4) If there are any other defense allowed by law that may be
14 raised against the claim.

15
16 4-96-307. Enforcement – Exclusivity – Costs and expenses.

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

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

21 (c)(1) A consumer who prevails in a legal proceeding under this
22 subchapter is entitled to recover, as part of the judgment, a sum equal to
23 the aggregate amount of costs and expenses, including attorney's fees.

24 (2) The attorney's fees shall be:

25 (A) Based on actual time expended by the attorney; and

26 (B) Based on charges reasonably incurred by the consumer
27 for or in connection with the commencement and prosecution of the action as
28 determined by the court.

29
30 4-96-308. Action – Limitation.

31 An action brought under this subchapter shall commence within two (2)
32 years following the date a buyer first reports the nonconformity to a
33 manufacturer, an agent of a manufacturer, a distributor, or an authorized
34 dealer.

/s/B. Johnson

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