

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1290

By: Turner

AS INTRODUCED

An Act relating to contracts; amending 15 O.S. 1991, Section 901, which relates to motor vehicle warranty repair; providing for certain settlement offers by consumer; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 15 O.S. 1991, Section 901, is amended to read as follows:

Section 901. A. As used in this act:

1. "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty; and

2. "Motor vehicle" means any motor-driven vehicle required to be registered under the Motor Vehicle License and Registration Act, Sections 22 et seq. of Title 47 of the Oklahoma Statutes, excluding vehicles above ten thousand (10,000) pounds gross vehicle weight and the living facilities of motor homes.

B. For the purposes of this act, if a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity, directly in writing, to the manufacturer, its agent or its authorized dealer during the term of such express warranties or during the period of one (1) year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized

dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

C. If the manufacturer, or its agents or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a new motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all taxes, license, registration fees and all similar governmental fees, excluding interest, less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer, and lienholder if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use by the consumer prior to his first written report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the vehicle is not out of service by reason of repair. It shall be an affirmative defense to any claim under this act ~~(1) that:~~

1. That an alleged nonconformity does not substantially impair such use and value; or ~~(2) that~~

2. That a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle.

In no event shall the presumption described in this subsection apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and has had an opportunity to cure the defect alleged.

D. It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if ~~(1) the:~~

1. The same nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the express warranty term or during the period of one (1) year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but such nonconformity continues to exist; or ~~(2) the~~

2. The vehicle is out of service by reason of repair for a cumulative total of forty-five (45) or more calendar days during such term or during such period, whichever is the earlier date.

The term of an express warranty, such one-year period and such forty-five-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike or fire, flood or other natural disaster.

E. Nothing in this act shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

F. If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of Title 16, Code of Federal Regulations, Part 703, as from time to time amended, the provisions of subsection C of this section concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure.

G. A consumer may make an offer of settlement in writing to the manufacturer of the motor vehicle regarding any disputes under this section. If the manufacturer does not accept the offer of settlement of the consumer and the consumer obtains a judgment greater than the offer made to the manufacturer of the motor vehicle, the consumer shall be entitled to recover reasonable litigation costs and reasonable attorney fees incurred by the consumer. Such costs and fees may be added to the judgment entered in favor of the consumer. In addition, if the judgment is not obtained within three (3) years of the offer of settlement, the

consumer will be entitled to prejudgment interest on the damages awarded, not to exceed ten percent (10%) per year.

SECTION 2. This act shall become effective November 1, 2001.

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