STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1426 By: Duncan

COMMITTEE SUBSTITUTE

An Act relating to contracts; amending 15 O.S. 2001, Section 901, which relates to manufacturer warranties; modifying the motor vehicle return policy; modifying method of determining prior use of vehicle; prohibiting application of certain usage charges under certain conditions; modifying certain condition in which to conform a motor vehicle to applicable express warranties; requiring the Attorney General to make certain written statement; requiring manufacturers to provide certain written statement; specifying method of resale of certain vehicles; providing for recovery of attorney fees; and providing an effective date.

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

SECTION 1. AMENDATORY 15 O.S. 2001, 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~~ at the discretion of the consumer, either accept a 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~~ or replace the motor vehicle with one of the same model and features. If a vehicle of the same model and features cannot be located, a comparable model with comparable features shall be provided to the consumer at no extra cost to the consumer. 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~~ the time the consumer 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~~ presents the motor vehicle to the dealer or manufacturer for correction of the nonconformity not exceeding ten cents ($0.10) per mile driven or ten percent (10%) of the purchase price, whichever is less. Reasonable usage shall not apply if the

consumer chooses to replace the motor vehicle. It shall be an affirmative defense to any claim under this act (1) that an alleged nonconformity does not substantially impair such use and value or (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 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 vehicle is out of service by reason of repair for a cumulative total of ~~forty-five (45)~~ thirty (30) 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~~ thirty-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. The Oklahoma Attorney General shall prepare a written statement explaining the rights of a purchaser under this law. Manufacturers shall provide to each purchaser at the time of original purchase of a new motor vehicle a written statement containing a copy of the statement of the Attorney General.

H. Vehicles returned pursuant to the provisions of this act may not be resold in this state unless:

1. The manufacturer provides the same express warranty it provided the original purchaser, except that the term of the warranty need only last for twelve thousand (12,000) miles or twelve (12) months after the date of resale, whichever is earlier; or

2. The manufacturer provides the consumer with a written statement on a separate piece of paper in all capital type in substantially the following form:

> "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTY AND THE NONCONFORMITY WAS NOT FIXED WITHIN A REASONABLE TIME AS PROVIDED BY OKLAHOMA LAW."

I. Returned vehicles shall not be resold notwithstanding the provisions of subsection H of this section, if a new motor vehicle has been returned pursuant to the provisions of this act or a similar statute in another state because of nonconformity resulting in a complete failure of the braking or steering system likely to cause death or serious bodily injury if the vehicle is driven.

J. In any civil action pursuant to this section wherein the consumer is the prevailing party, the consumer shall recover reasonable attorney fees to be set by the court and to be taxed and collected as costs.

SECTION 2. This act shall become effective November 1, 2005.

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