

**EHB 1426**

**THE STATE SENATE**  
**Tuesday, April 12, 2005**

**ENGROSSED**

**House Bill No. 1426**

ENGROSSED HOUSE BILL NO. 1426 - By: DUNCAN, WESSELHOFT and SHERRER  
of the House and EASLEY of the Senate.

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

1 vehicles above ten thousand (10,000) pounds gross vehicle weight and  
2 the living facilities of motor homes.

3 B. For the purposes of this act, if a new motor vehicle does  
4 not conform to all applicable express warranties, and the consumer  
5 reports the nonconformity, directly in writing, to the manufacturer,  
6 its agent or its authorized dealer during the term of such express  
7 warranties or during the period of one (1) year following the date  
8 of original delivery of the motor vehicle to a consumer, whichever  
9 is the earlier date, the manufacturer, its agent or its authorized  
10 dealer shall make such repairs as are necessary to conform the  
11 vehicle to such express warranties, notwithstanding the fact that  
12 such repairs are made after the expiration of such term or such  
13 one-year period.

14 C. If the manufacturer, or its agents or authorized dealers are  
15 unable to conform the motor vehicle to any applicable express  
16 warranty by repairing or correcting any defect or condition which  
17 substantially impairs the use and value of the motor vehicle to the  
18 consumer after a reasonable number of attempts, the manufacturer  
19 shall ~~replace the motor vehicle with a new motor vehicle or~~ at the  
20 discretion of the consumer, either accept a return of the vehicle  
21 from the consumer and refund to the consumer the full purchase price  
22 including all taxes, license, registration fees and all similar  
23 governmental fees, excluding interest, ~~less a reasonable allowance~~

1 ~~for the consumer's use of the vehicle~~ or replace the motor vehicle  
2 with one of the same model and features. If a vehicle of the same  
3 model and features cannot be located, a comparable model with  
4 comparable features shall be provided to the consumer at no extra  
5 cost to the consumer. Refunds shall be made to the consumer, and  
6 lienholder if any, as their interests may appear. A reasonable  
7 allowance for use shall be that amount directly attributable to use  
8 by the consumer prior to ~~his~~ the time the consumer first ~~written~~  
9 ~~report of the nonconformity to the manufacturer, agent or dealer and~~  
10 ~~during any subsequent period when the vehicle is not out of service~~  
11 ~~by reason of repair~~ presents the motor vehicle to the dealer or  
12 manufacturer for correction of the nonconformity not exceeding ten  
13 cents (\$0.10) per mile driven or ten percent (10%) of the purchase  
14 price, whichever is less. Reasonable usage shall not apply if the  
15 consumer chooses to replace the motor vehicle. It shall be an  
16 affirmative defense to any claim under this act (1) that an alleged  
17 nonconformity does not substantially impair such use and value or  
18 (2) that a nonconformity is the result of abuse, neglect or  
19 unauthorized modifications or alterations of a motor vehicle. In no  
20 event shall the presumption described in this subsection apply  
21 against a manufacturer unless the manufacturer has received prior  
22 direct written notification from or on behalf of the consumer and  
23 has had an opportunity to cure the defect alleged.

1 D. It shall be presumed that a reasonable number of attempts  
2 have been undertaken to conform a motor vehicle to the applicable  
3 express warranties, if (1) the same nonconformity has been subject  
4 to repair four or more times by the manufacturer or its agents or  
5 authorized dealers within the express warranty term or during the  
6 period of one (1) year following the date of original delivery of  
7 the motor vehicle to a consumer, whichever is the earlier date, but  
8 such nonconformity continues to exist or (2) the vehicle is out of  
9 service by reason of repair for a cumulative total of ~~forty-five~~  
10 ~~(45)~~ thirty (30) or more calendar days during such term or during  
11 such period, whichever is the earlier date. The term of an express  
12 warranty, such one-year period and such ~~forty-five-day~~ thirty-day  
13 period shall be extended by any period of time during which repair  
14 services are not available to the consumer because of a war,  
15 invasion, strike or fire, flood or other natural disaster.

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

19 F. If a manufacturer has established an informal dispute  
20 settlement procedure which complies in all respects with the  
21 provisions of Title 16, Code of Federal Regulations, Part 703, as  
22 from time to time amended, the provisions of subsection C of this

1 section concerning refunds or replacement shall not apply to any  
2 consumer who has not first resorted to such procedure.

3 G. The Oklahoma Attorney General shall prepare a written  
4 statement explaining the rights of a purchaser under this law.  
5 Manufacturers shall provide to each purchaser at the time of  
6 original purchase of a new motor vehicle a written statement  
7 containing a copy of the statement of the Attorney General.

8 H. Vehicles returned pursuant to the provisions of this act or  
9 a similar statute in another state may not be resold in this state  
10 unless:

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

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

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

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

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

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

12        COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-5-05 - DO PASS,  
13        As Coauthored.