

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 812

By: Stanislawski of the  
Senate

3  
4 and

Liebmann of the House  
5  
6  
7

8 ( Consumer Protection Act - providing exception -  
9 codification -

10 effective date )  
11  
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13 AUTHOR: Add the following House Coauthor: Tibbs

14 AMENDMENT NO. 1. Strike the stricken title, enacting clause and  
entire bill and insert  
15

16 "An Act relating to consumer protection; creating the  
17 Oklahoma Lemon Law; amending 15 O.S. 2001, Section  
18 901, which relates to motor vehicle repairs;  
19 modifying definitions; modifying replacement and  
20 refund procedures and requirements; requiring the  
21 Attorney General to prepare written statement;  
22 requiring dealers to provide statement to  
23 purchasers; providing resale of certain vehicles in  
24 this state with exceptions; authorizing consumer to  
recover certain costs and fees in civil actions;  
providing for retitling of vehicles; defining terms;  
requiring credit reporting agencies that provide  
certain notification to provide information free of  
charge in certain circumstances; authorizing  
reasonable charge in certain circumstances;  
providing for codification; providing for  
noncodification; and providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law not to be  
3 codified in the Oklahoma Statutes reads as follows:

4 Sections 2 and 3 of this act shall be known and may be cited as  
5 the "Oklahoma Lemon Law".

6 SECTION 2. AMENDATORY 15 O.S. 2001, Section 901, is  
7 amended to read as follows:

8 Section 901. A. As used in this ~~act~~ section:

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

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

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

1 is the earlier date, the manufacturer, its agent or its authorized  
2 dealer shall make such repairs as are necessary to conform the  
3 vehicle to such express warranties, notwithstanding the fact that  
4 such repairs are made after the expiration of such term or such  
5 one-year period.

6 C. If the manufacturer, or its agents or authorized dealers are  
7 unable to conform the motor vehicle to any applicable express  
8 warranty by repairing or correcting any defect or condition which  
9 substantially impairs the use and value of the motor vehicle to the  
10 consumer after a reasonable number of attempts, the manufacturer  
11 shall ~~replace the motor vehicle with a new motor vehicle or, at the~~  
12 discretion of the consumer, either accept a return of the vehicle  
13 from the consumer and refund to the consumer the full purchase price  
14 including all taxes, license, registration fees and all similar  
15 governmental fees, excluding interest, less a reasonable allowance  
16 for the consumer's use of the vehicle or replace the motor vehicle  
17 with a comparable model acceptable to the consumer. If a comparable  
18 model vehicle cannot be agreed upon, the purchase price shall be  
19 refunded less a reasonable allowance for the consumer's use of the  
20 vehicle. Refunds shall be made to the consumer, and lienholder if  
21 any, as their interests may appear. A reasonable allowance for use  
22 shall be ~~that amount directly attributable to use by the consumer~~  
23 ~~prior to his first written report of the nonconformity to the~~  
24 ~~manufacturer, agent or dealer and during any subsequent period when~~

1 ~~the vehicle is not out of service by reason of repair~~ the purchase  
2 or lease price of the new motor vehicle multiplied by a fraction  
3 having as the denominator one hundred twenty thousand (120,000)  
4 miles and having as the numerator the miles directly attributable to  
5 use by the consumer beyond fifteen thousand (15,000) miles. It  
6 shall be an affirmative defense to any claim under this act ~~(1)~~  
7 ~~that:~~

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

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

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

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

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

1        2. The vehicle is out of service by reason of repair for a  
2 cumulative total of ~~forty five (45) or more calendar~~ thirty (30)  
3 business days during such term or during such period, whichever is  
4 the earlier date.

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

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

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

19        G. The Oklahoma Attorney General shall prepare a written  
20 statement explaining the rights of a purchaser under this law.  
21 Dealers shall provide to each purchaser at the time of original  
22 purchase of a new motor vehicle a written statement containing a  
23 copy of the statement of the Attorney General.

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

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

8 2. The manufacturer, through the licensed dealer, provides the  
9 consumer with a written statement on a separate piece of paper that  
10 clearly discloses the reason or reasons the vehicle was reacquired  
11 by the manufacturer.

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

19 J. In any civil action pursuant to this section wherein the  
20 consumer is the prevailing party in the civil action, the consumer  
21 shall recover all costs and reasonable attorney fees as determined  
22 by the court.

1 SECTION 3. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 901.1 of Title 15, unless there  
3 is created a duplication in numbering, reads as follows:

4 Any manufacturer who reacquires or assists a dealer or  
5 lienholder to reacquire a motor vehicle registered in this state,  
6 prior to any sale, lease, or transfer of the vehicle in this state,  
7 or prior to exporting the vehicle to another state for sale, lease,  
8 or transfer if the vehicle was registered in this state and  
9 reacquired pursuant to this law shall:

10 1. Cause the vehicle to be retitled in the name of the  
11 manufacturer; and

12 2. Request the Oklahoma Tax Commission to brand the certificate  
13 of title with the notation "Lemon Law Buyback".

14 SECTION 4. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 170 of Title 24, unless there is  
16 created a duplication in numbering, reads as follows:

17 A. For purposes of this section, the following definitions  
18 shall apply:

19 1. "Credit reporting agency" means any individual, partnership,  
20 corporation, limited liability company, trust, estate, cooperative,  
21 association or other entity which for monetary fees, regularly  
22 engages in whole or in part in the practice of assembling or  
23 evaluating credit information or other information on businesses for  
24 the purpose of furnishing credit reports and/or assisting businesses

1 with their credit rating, and which uses any means or facility of  
2 interstate commerce for the purpose of preparing or furnishing such  
3 reports and any affiliated debt collection agency of such entity,  
4 and who notifies a business located within this state about  
5 information concerning one or more specific incidents of a fraud  
6 alert, adverse action or other incident that negatively affects the  
7 business' credit. Credit reporting agency does not include such  
8 agency that has a preexisting relationship with the business to  
9 provide credit or credit assistance services; and

10 2. "Business" means any sole proprietorship, partnership,  
11 corporation, or limited liability company located within this state.

12 B. Any credit reporting agency that notifies a business located  
13 in this state that there is information concerning one or more  
14 specific incidents of a fraud alert, adverse action or other  
15 incident that negatively affects the credit of the business, shall  
16 provide such information free of charge to the business if the  
17 business requests such information within thirty (30) days after  
18 receipt of the notification. If the business does not request such  
19 information within thirty (30) days, then the credit reporting  
20 agency may impose a reasonable charge for the information if the  
21 business later chooses to purchase it.

22 SECTION 5. This act shall become effective November 1, 2009."  
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1 Passed the House of Representatives the 21st day of April, 2009.

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4 Presiding Officer of the House of  
Representatives

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6 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2009.

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9 Presiding Officer of the Senate