

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 1009

By: Duncan

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7 COMMITTEE SUBSTITUTE

8 An Act relating to contracts; creating the Oklahoma Lemon Law; amending 15
9 O.S. 2001, Section 901, which relates to manufacturer warranties; modifying
10 motor vehicle return policy; modifying method of determining prior use of
11 vehicle; modifying certain time limitation; requiring the Attorney General to
12 make certain written statement; prohibiting resale of certain vehicles; providing
13 exception; requiring manufacturers to provide certain written statement to
14 consumer; specifying method of resale of certain vehicles; providing for
15 attorney fees and costs; providing procedures for manufacturers to retitle certain
16 vehicles; providing for codification; providing for noncodification; and
17 providing an effective date.

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

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

21 This act shall be known and may be cited as the "Oklahoma Lemon Law".

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

23 Section 901. A. As used in this ~~aet~~ section:

24 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

1 applicable to such motor vehicle, and any other person entitled by the terms of such warranty to
2 enforce the obligations of the warranty; and

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

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

14 C. If the manufacturer, or its agents or authorized dealers are unable to conform the motor
15 vehicle to any applicable express warranty by repairing or correcting any defect or condition which
16 substantially impairs the use and value of the motor vehicle to the consumer after a reasonable number
17 of attempts, the manufacturer shall ~~replace the motor vehicle with a new motor vehicle or, at the~~
18 discretion of the consumer, either accept a return of the vehicle from the consumer and refund to the
19 consumer the full purchase price including all taxes, license, registration fees and all similar
20 governmental fees, excluding interest, less a reasonable allowance for the consumer's use of the vehicle
21 or replace the motor vehicle with a comparable model acceptable to the consumer. If a comparable
22 model vehicle cannot be agreed upon, the purchase price shall be refunded less a reasonable allowance
23 for the consumer's use of the vehicle. Refunds shall be made to the consumer, and lienholder if any, as
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1 their interests may appear. A reasonable allowance for use shall be ~~that amount directly attributable to~~
2 ~~use by the consumer prior to his first written report of the nonconformity to the manufacturer, agent or~~
3 ~~dealer and during any subsequent period when the vehicle is not out of service by reason of repair~~ the
4 purchase or lease price of the new motor vehicle multiplied by a fraction having as the denominator
5 one hundred twenty thousand (120,000) miles and having as the numerator the miles directly
6 attributable to use by the consumer beyond fifteen thousand (15,000) miles. It shall be an affirmative
7 defense to any claim under this act ~~(1) that:~~

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

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

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

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

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

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

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

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

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

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

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

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

17 2. The manufacturer provides the consumer with a written statement on a separate piece of paper
18 that clearly discloses the reason or reasons the vehicle was reacquired by the manufacturer.

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

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

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

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

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

11 2. Request the Oklahoma Tax Commission to brand the certificate of title with the notation
12 “Lemon Law Buyback”; and

13 3. Affix a decal to the vehicle stating the following: “This vehicle was repurchased by the
14 manufacturer under the Lemon Law of the State of Oklahoma. The vehicle certificate of title has been
15 branded as a ‘Lemon Law Buyback’.”

16 B. The decal shall be permanently and conspicuously affixed to the front door frame of the left
17 side of the vehicle, or if there is no front door frame, then the decal shall be affixed as directed by the
18 Oklahoma Tax Commission. No person shall knowingly remove or alter any decal required by the
19 provisions of this section.

20 SECTION 4. This act shall become effective November 1, 2009.

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