

ENROLLED SENATE  
BILL NO. 812

By: Stanislawski of the Senate

and

Duncan, Tibbs, Liebmann,  
Kern and Faught of the  
House

An Act relating to consumer protection; creating the Oklahoma Lemon Law; amending 15 O.S. 2001, Section 901, which relates to motor vehicle repairs; modifying definitions; modifying replacement and refund procedures and requirements; modifying provisions concerning reasonable number of repair attempts; requiring the Attorney General to prepare written statement and to post the same on the website; requiring dealers to provide statement to purchasers; providing resale of certain vehicles in this state with exceptions; authorizing consumer to recover certain costs and fees in civil actions; providing for retitling of vehicles; providing for codification; providing for noncodification; and providing an effective date.

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

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

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

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

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

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 Oklahoma 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 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 a comparable new model acceptable to the consumer. If a comparable model vehicle cannot be agreed upon, the purchase price shall be refunded 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~~ the purchase or lease price of the new motor vehicle multiplied by a fraction having as the denominator one hundred twenty thousand (120,000) miles and having as the numerator the miles directly attributable to use by the consumer beyond fifteen thousand (15,000) miles. 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~~ thirty (30) business 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 and place on the Attorney General's website a written statement explaining the rights of a purchaser under this law. The dealer shall provide to the purchaser at the time of the original purchase of a new motor vehicle the written statement prepared by 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 the manufacturer 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, through the licensed dealer, provides the consumer with a written statement on a separate piece of paper that clearly discloses the reason or reasons the vehicle was reacquired by the manufacturer.

I. Notwithstanding the provisions of subsection H of this section, returned vehicles shall not be resold 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 in the civil action, the consumer shall recover all costs and reasonable attorney fees as determined by the court.

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

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

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

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

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

Passed the Senate the 14th day of May, 2009.

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Presiding Officer of the Senate

Passed the House of Representatives the 18th day of May, 2009.

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Presiding Officer of the House  
of Representatives