

THE HOUSE OF REPRESENTATIVES
Monday, February 16, 2009

Committee Substitute for
House Bill No. 1009

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1009 - By: DUNCAN of the House.

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

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

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

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

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

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

7 1. "Consumer" means the purchaser, other than for purposes of resale, of a motor
8 vehicle, any person to whom such motor vehicle is transferred during the duration of an

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

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

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

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

1 or replace the motor vehicle with a comparable model acceptable to the consumer. If a
2 comparable model vehicle cannot be agreed upon, the purchase price shall be refunded
3 less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made
4 to the consumer, and lienholder if any, as their interests may appear. A reasonable
5 allowance for use shall be ~~that amount directly attributable to use by the consumer prior~~
6 ~~to his first written report of the nonconformity to the manufacturer, agent or dealer and~~
7 ~~during any subsequent period when the vehicle is not out of service by reason of repair~~
8 the purchase or lease price of the new motor vehicle multiplied by a fraction having as
9 the denominator one hundred twenty thousand (120,000) miles and having as the
10 numerator the miles directly attributable to use by the consumer beyond fifteen
11 thousand (15,000) miles. It shall be an affirmative defense to any claim under this act
12 ~~(1) that:~~

- 13 1. That an alleged nonconformity does not substantially impair such use and value;
14 or ~~(2) that~~
- 15 2. That a nonconformity is the result of abuse, neglect or unauthorized
16 modifications or alterations of a motor vehicle.

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

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

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

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

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

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

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

20 G. The Oklahoma Attorney General shall prepare a written statement explaining
21 the rights of a purchaser under this law. Dealers shall provide to each purchaser at the

1 time of original purchase of a new motor vehicle a written statement containing a copy of
2 the statement of the Attorney General.

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

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

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

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

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

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

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

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

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

8 3. Affix a decal to the vehicle stating the following: "This vehicle was repurchased
9 by the manufacturer under the Lemon Law of the State of Oklahoma. The vehicle
10 certificate of title has been branded as a 'Lemon Law Buyback'."

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

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

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-12-09 - DO PASS,
17 As Amended.