

THE HOUSE OF REPRESENTATIVES  
Monday, April 6, 2009

Committee Substitute for  
ENGROSSED  
Senate Bill No. 812

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 812 - By:  
STANISLAWSKI of the Senate and LIEBMANN of the House.

( consumer protection - creating the Oklahoma Lemon Law – codification –  
noncodification -  
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  
9 express warranty applicable to such motor vehicle, and any other person entitled by the  
10 terms of such warranty to enforce the obligations of the warranty; and

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

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

13           C. If the manufacturer, or its agents or authorized dealers are unable to conform  
14 the motor vehicle to any applicable express warranty by repairing or correcting any  
15 defect or condition which substantially impairs the use and value of the motor vehicle to  
16 the consumer after a reasonable number of attempts, the manufacturer shall ~~replace the~~  
17 ~~motor vehicle with a new motor vehicle or~~, at the discretion of the consumer, either  
18 accept a return of the vehicle from the consumer and refund to the consumer the full  
19 purchase price including all taxes, license, registration fees and all similar governmental  
20 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  
22 comparable model vehicle cannot be agreed upon, the purchase price shall be refunded

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

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

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

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

- 20 1. The same nonconformity has been subject to repair four or more times by the  
21 manufacturer or its agents or authorized dealers within the express warranty term or  
22 during the period of one (1) year following the date of original delivery of the motor

1 vehicle to a consumer, whichever is the earlier date, but such nonconformity continues to  
2 exist; or ~~(2) the~~

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

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

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

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

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

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

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

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

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

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

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

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

- 1           1. Cause the vehicle to be retitled in the name of the manufacturer;
- 2           2. Request the Oklahoma Tax Commission to brand the certificate of title with the
- 3 notation “Lemon Law Buyback”; and
- 4           3. Affix a decal to the vehicle stating the following: “This vehicle was repurchased
- 5 by the manufacturer under the Lemon Law of the State of Oklahoma. The vehicle
- 6 certificate of title has been branded as a ‘Lemon Law Buyback’.”

7           B. The decal shall be permanently and conspicuously affixed to the front door frame

8 of the left side of the vehicle, or if there is no front door frame, then the decal shall be

9 affixed as directed by the Oklahoma Tax Commission. No person shall knowingly

10 remove or alter any decal required by the provisions of this section.

11           SECTION 4.   NEW LAW   A new section of law to be codified in the Oklahoma

12 Statutes as Section 170 of Title 24, unless there is created a duplication in numbering,

13 reads as follows:

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

- 15           1. “Credit reporting agency” means any individual, partnership, corporation,
- 16 limited liability company, trust, estate, cooperative, association or other entity which for
- 17 monetary fees, regularly engages in whole or in part in the practice of assembling or
- 18 evaluating credit information or other information on businesses for the purpose of
- 19 furnishing credit reports and/or assisting businesses with their credit rating, and which
- 20 uses any means or facility of interstate commerce for the purpose of preparing or
- 21 furnishing such reports and any affiliated debt collection agency of such entity, and who
- 22 notifies a business located within this state about information concerning one or more

1 specific incidents of a fraud alert, adverse action or other incident that negatively affects  
2 the business' credit. Credit reporting agency does not include such agency that has a  
3 preexisting relationship with the business to provide credit or credit assistance services;  
4 and

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

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

14 SECTION 5. This act shall become effective November 1, 2009.

15 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND  
16 FINANCIAL SERVICES, dated 04-02-09 - DO PASS, As Amended.