

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1009

By: Duncan

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5  
6 AS INTRODUCED

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

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

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

24 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:

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

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

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

22        C. If the manufacturer, or its agents or authorized dealers are  
23 unable to conform the motor vehicle to any applicable express  
24 warranty by repairing or correcting any defect or condition which

1 substantially impairs the use and value of the motor vehicle to the  
2 consumer after a reasonable number of attempts, the manufacturer  
3 shall ~~replace the motor vehicle with a new motor vehicle or~~, at the  
4 discretion of the consumer, either accept a return of the vehicle  
5 from the consumer and refund to the consumer the full purchase price  
6 including all taxes, license, registration fees and all similar  
7 governmental fees, excluding interest, ~~less a reasonable allowance~~  
8 ~~for the consumer's use of the vehicle~~ or replace the motor vehicle  
9 with a motor vehicle of the same model and features. If a motor  
10 vehicle with the same model and features cannot be located, a  
11 comparable model with comparable features shall be provided to the  
12 consumer at no extra cost to the consumer. Refunds shall be made to  
13 the consumer, and lienholder if any, as their interests may appear.  
14 A reasonable allowance for use shall be ~~that amount directly~~  
15 ~~attributable to use by the consumer prior to his first written~~  
16 ~~report of the nonconformity to the manufacturer, agent or dealer and~~  
17 ~~during any subsequent period when the vehicle is not out of service~~  
18 ~~by reason of repair~~ the purchase or lease price of the new motor  
19 vehicle multiplied by a fraction having as the denominator one  
20 hundred thousand (100,000) miles and having as the numerator the  
21 miles directly attributable to use by the consumer and any previous  
22 consumer prior to the first report made by the consumer of a defect  
23 or condition that impairs the use or value of the new motor vehicle  
24 plus all mileage directly attributable to use by a consumer beyond

1 twenty-five thousand (25,000) miles. Reasonable usage shall not  
2 apply if the consumer chooses to replace the motor vehicle. It  
3 shall be an affirmative defense to any claim under this act ~~(1)~~  
4 that:

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

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

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

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

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

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

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

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

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

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

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

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

6       2. The manufacturer provides the consumer with a written  
7 statement on a separate piece of paper in all capital letters in  
8 substantially the following form:

9               "IMPORTANT: THIS VEHICLE HAS BEEN BRANDED A  
10               LEMON LAW BUYBACK BECAUSE IT DID NOT CONFORM TO  
11               THE EXPRESS WARRANTY OF THE MANUFACTURER AND THE  
12               NONCONFORMITY WAS NOT FIXED WITHIN A REASONABLE  
13               TIME AS PROVIDED BY OKLAHOMA LAW."

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

21       J. Attorney fees and costs of litigation shall be awarded as  
22 provided for by the Oklahoma Consumer Protection Act.

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 A. 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;

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

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

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

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

52-1-5045            GRS            11/05/08