

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1413

By: Joyner

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5
6 AS INTRODUCED

7 An Act relating to consumer protection; enacting the
8 Home Appliance Lemon Law; defining terms; requiring
9 repair to home appliance that does not conform to all
10 express warranties; prescribing replacement or refund
11 if home appliance cannot be repaired; providing
12 affirmative defenses; requiring written notification;
13 providing for presumption of reasonable attempts to
14 repair; requiring Attorney General to prepare written
15 statement and post it on website; requiring retail
16 dealers to provide statement to consumers; providing
17 resale of certain home appliances in this state with
18 exceptions; authorizing consumer to recover certain
19 costs and fees in civil actions; providing for
20 codification; providing for noncodification; and
21 providing an effective date.

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

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

25 This act shall be known and may be cited as the "Home Appliance
26 Lemon Law".

27 SECTION 2. NEW LAW A new section of law to be codified
28 in the Oklahoma Statutes as Section 905 of Title 15, unless there is
29 created a duplication in numbering, reads as follows:

1 A. As used in this section:

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

7 2. "Home appliance" means any refrigerator, freezer, range,
8 oven, stove, microwave oven, washer, dryer, dishwasher, garbage
9 disposal, trash compactor, or room air conditioner normally used or
10 sold for personal, family, or household purposes. The term excludes
11 any single product with a wholesale price to the retail seller of
12 less than Two Hundred Dollars (\$200.00).

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

1 C. If the manufacturer or its agents or authorized retail
2 dealers are unable to conform the home appliance to any applicable
3 express warranty by repairing or correcting any defect or condition
4 which substantially impairs the use and value of the home appliance
5 to the consumer after a reasonable number of attempts, the
6 manufacturer shall either accept a return of the home appliance from
7 the consumer and refund to the consumer the full purchase price
8 including all taxes, less a reasonable allowance for the consumer's
9 use of the home appliance or replace the home appliance with a
10 comparable new model acceptable to the consumer. If a comparable
11 model cannot be agreed upon, the purchase price shall be refunded
12 less a reasonable allowance for the consumer's use of the home
13 appliance. A reasonable allowance for use shall be the purchase
14 price of the new home appliance multiplied by a fraction having as
15 the denominator the number of days in the warranty term and having
16 as the numerator the number of days after delivery of the home
17 appliance to the consumer beyond sixty (60) days.

18 D. It shall be an affirmative defense to any claim under this
19 section:

20 1. That an alleged nonconformity does not substantially impair
21 such use and value; or

22 2. That a nonconformity is the result of abuse, neglect or
23 unauthorized modifications or alterations of a home appliance.

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1 E. In no event shall the presumption described in subsection F
2 of this section apply against a manufacturer unless the manufacturer
3 has received prior direct written notification from or on behalf of
4 the consumer and has had an opportunity to cure the defect alleged.

5 F. It shall be presumed that a reasonable number of attempts
6 have been undertaken to conform a home appliance to the applicable
7 express warranties, if:

8 1. The same nonconformity has been subject to repair four or
9 more times by the manufacturer or its agents or authorized retail
10 dealers within the express warranty term or during the period of one
11 (1) year following the date of original delivery of the home
12 appliance to a consumer, whichever is the earlier date, but the
13 nonconformity continues to exist; or

14 2. The home appliance is out of service by reason of repair for
15 a cumulative total of thirty (30) business days during such term or
16 during such period, whichever is the earlier date.

17 The term of an express warranty, the one-year period and the
18 thirty-day period shall be extended by any period of time during
19 which repair services are not available to the consumer because of a
20 war, invasion, strike, fire, flood or other natural disaster.

21 G. Nothing in this section shall in any way limit the rights or
22 remedies which are otherwise available to a consumer under any other
23 law.

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

7 I. The Oklahoma Attorney General shall prepare and place on the
8 Attorney General's website a written statement explaining the rights
9 of a purchaser under this section. The retail dealer shall provide
10 to the purchaser at the time of the original purchase of a new home
11 appliance the written statement prepared by the Attorney General.

12 J. Home appliances returned pursuant to the provisions of this
13 section shall not be resold in this state unless:

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

18 2. The manufacturer, through the retail dealer, provides the
19 consumer with a written statement on a separate piece of paper that
20 clearly discloses the reason or reasons the home appliance was
21 reacquired by the manufacturer.

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

3 SECTION 3. This act shall become effective November 1, 2011.

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