

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10288-MW-19

Short Title: Lemon Law for Emergency Vehicles.

(Public)

Sponsors: Representative Hardister.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO EXPAND THE LEMON LAW PROTECTIONS TO EMERGENCY VEHICLES.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. Article 15A of Chapter 20 of the General Statutes reads as rewritten:

5 "Article 15A.

6 "New Motor Vehicles Warranties Act.

7 "§ 20-351. Purpose.

8 This Article shall provide State and private remedies against motor vehicle manufacturers for
9 persons injured by new motor vehicles failing to conform to express warranties. In the case of a
10 new motor vehicle that is an emergency vehicle, this Article shall require the manufacturer,
11 co-manufacturer, and post-manufacturing modifier to correct defects covered under warranty that
12 are identified and reported within a specified period.

13 "§ 20-351.1. Definitions.

14 As used in this Article:

15 (1a) Authorized entity. – An agency of the State, municipality, or county, or a
16 volunteer fire department or volunteer rescue squad.

17 (1b) Co-manufacturer. – With respect to an emergency vehicle, any person that
18 fabricates the emergency vehicle utilizing a component or components of a
19 new motor vehicle made by a manufacturer, other than modifying an existing
20 standard model of a vehicle manufactured by a manufacturer, which
21 component or components are obtained by the co-manufacturer from the
22 manufacturer to fabricate the vehicle for use as an emergency vehicle prior to
23 an initial retail sale or lease of the emergency vehicle.

24 ~~(1)(1c)~~ "Consumer" means the Consumer. – The purchaser, other than for purposes
25 of resale, or lessee from a commercial lender, lessor, or from a manufacturer
26 or dealer, of a motor vehicle, and any other person entitled by the terms of an
27 express warranty to enforce the obligations of that warranty.

28 (1d) Emergency vehicle. – A fire department vehicle, law enforcement vehicle, or
29 ambulance that is designed and equipped with specialized equipment for
30 responding to an emergency and owned, leased, or used by an authorized
31 entity for responding to an emergency.

32 (2) ~~"Manufacturer"~~ means any Manufacturer. – A person or corporation, resident
33 or nonresident, who manufactures or assembles or imports or distributes new
34 motor vehicles which that are sold in the State of North Carolina. With respect
35 to an emergency vehicle, this term includes within its meaning
36 co-manufacturer and post-manufacturing modifier.



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- 1 (3) ~~"Motor vehicle" includes a~~ Motor vehicle. – a motor vehicle as defined in
2 G.S. 20-4.01 that is sold or leased in this State, but does not include "house
3 trailer" as defined in G.S. 20-4.01 or any motor ~~vehicle-vehicle, other than an~~
4 emergency vehicle, that weighs more than 10,000 pounds.
- 5 (4) ~~"New motor vehicle" means a~~ New motor vehicle. – a motor vehicle for which
6 a certificate of origin, as required by G.S. 20-52.1 or a similar requirement in
7 another state, has never been supplied to a consumer, or which a manufacturer,
8 its agent, or its authorized dealer states in writing is being sold as a new motor
9 vehicle.
- 10 (5) Post-manufacturing modifier. – With respect to an emergency vehicle, a
11 person who modifies the configuration of an existing standard model of a
12 motor vehicle purchased from a manufacturer to adapt the vehicle for use as
13 an emergency vehicle prior to an initial retail sale or lease of the vehicle.
- 14 (6) Warranty. – A warranty, whether express or implied of the manufacturer of a
15 new motor vehicle, or, in the case of a new motor vehicle that is an emergency
16 vehicle of the manufacturer, co-manufacturer, or post-manufacturing
17 modifier, of the vehicle's condition and fitness for use, including any terms or
18 conditions to the enforcement of obligations under the warranty.

19 **"§ 20-351.2. Require repairs; when mileage warranty begins to accrue.**

20 (a) Express warranties for a new motor vehicle shall remain in effect at least one year or
21 12,000 miles. If a new motor vehicle does not conform to all applicable express warranties for a
22 period of one year, or the term of the express warranties, whichever is greater, following the date
23 of original delivery of the motor vehicle to the consumer, and the consumer reports the
24 nonconformity to the manufacturer, its agent, or its authorized dealer during such period, the
25 manufacturer shall make, or arrange to have made, repairs necessary to conform the vehicle to
26 the express warranties, whether or not these repairs are made after the expiration of the applicable
27 warranty period.

28 (b) Any express warranty for a new motor vehicle expressed in terms of a certain number
29 of miles shall begin to accrue from the mileage on the odometer at the date of original delivery
30 to the consumer.

31 **"§ 20-351.3. Replacement or refund; disclosure requirement.**

32 (a) When the consumer is the purchaser or a person entitled by the terms of the express
33 warranty to enforce the obligations of the warranty, if the manufacturer is unable, after a
34 reasonable number of attempts, to conform the motor vehicle to any express warranty by
35 repairing or correcting, or arranging for the repair or correction of, any defect or condition or
36 series of defects or conditions which substantially impair the value of the motor vehicle to the
37 consumer, and which occurred no later than 24 months or 24,000 miles following original
38 delivery of the vehicle, the manufacturer shall, at the option of the consumer, replace the vehicle
39 with a comparable new motor vehicle or accept return of the vehicle from the consumer and
40 refund to the consumer all of the following:

- 41 (1) The full contract price ~~including, but not limited to,~~ including charges for
42 undercoating, dealer preparation and transportation, and installed options,
43 plus the non-refundable portions of extended warranties and service
44 ~~contracts; contracts.~~
- 45 (2) All collateral charges, ~~including but not limited to,~~ including sales tax, license
46 and registration fees, and similar government ~~charges; charges.~~
- 47 (3) All finance charges incurred by the consumer after he first reports the
48 nonconformity to the manufacturer, its agent, or its authorized ~~dealer;~~
49 and dealer.
- 50 (4) Any incidental damages and monetary consequential damages.

1 (b) When consumer is a lessee, if the manufacturer is unable, after a reasonable number
2 of attempts, to conform the motor vehicle to any express warranty by repairing or correcting, or
3 arranging for the repair or correction of, any defect or condition or series of defects or conditions
4 which substantially impair the value of the motor vehicle to the consumer, and which occurred
5 no later than 24 months or 24,000 miles following original delivery of the vehicle, the
6 manufacturer shall, at the option of the consumer, replace the vehicle with a comparable new
7 motor vehicle or accept return of the vehicle from the consumer and refund all of the following:

8 (1) To the consumer:

9 a. All sums previously paid by the consumer under the terms of the
10 ~~lease;~~lease.

11 b. All sums previously paid by the consumer in connection with entering
12 into the lease ~~agreement, including, but not limited to, agreement,~~
13 including any capitalized cost reduction, sales tax, license and
14 registration fees, and similar government ~~charges; and~~charges.

15 c. Any incidental and monetary consequential damages.

16 (2) To the lessor, a full refund of the lease price, plus an additional amount equal
17 to five percent (5%) of the lease price, less eighty-five percent (85%) of the
18 amount actually paid by the consumer to the lessor pursuant to the lease. The
19 lease price means the actual purchase cost of the vehicle to the lessor.

20 In the case of a refund, the leased vehicle shall be returned to the manufacturer and the consumer's
21 written lease shall be terminated by the lessor without any penalty to the consumer. The lessor
22 shall transfer title of the motor vehicle to the manufacturer as necessary to effectuate the
23 consumer's rights pursuant to this Article, whether the consumer chooses vehicle replacement or
24 refund.

25 (c) Refunds shall be made to the consumer, lessor, and any lienholders as their interests
26 may appear. The refund to the consumer shall be reduced by a reasonable allowance for the
27 consumer's use of the vehicle. A reasonable allowance for use is calculated from the number of
28 miles used by the consumer up to the date of the third attempt to repair the same nonconformity
29 which is the subject of the claim, or the twentieth cumulative business day when the vehicle is
30 out of service by reason of repair of one or more nonconformities, whichever occurs first. The
31 number of miles used by the consumer is multiplied by the purchase price of the vehicle or the
32 lessor's actual lease price, and divided by 120,000.

33 (d) If a manufacturer, its agent, or its authorized dealer resells a motor vehicle that was
34 returned pursuant to this Article or any other State's applicable law, regardless of whether there
35 was any judicial determination that the motor vehicle had any defect or that it failed to conform
36 to all express warranties, the manufacturer, its agent, or its authorized dealer shall disclose all of
37 the following information to the subsequent purchaser prior to the sale:

38 (1) That the motor vehicle was returned pursuant to this Article or pursuant to the
39 applicable law of any other ~~State; and~~State.

40 (2) The defect or condition or series of defects or conditions which substantially
41 impaired the value of the motor vehicle to the consumer.

42 Any subsequent purchaser who purchases the motor vehicle for resale with notice of the return,
43 shall make the required disclosures to any person to whom ~~he resells~~the reseller sells the motor
44 vehicle.

45 **"§ 20-351.4. Affirmative defenses.**

46 It is an affirmative defense to any claim under this Article that an alleged nonconformity or
47 series of nonconformities are the result of abuse, neglect, odometer tampering by the consumer
48 or unauthorized modifications or alterations of a motor vehicle.

49 **"§ 20-351.5. Presumption.**

50 (a) It is presumed that a reasonable number of attempts have been undertaken to conform
51 a motor vehicle to the applicable express warranties ~~if~~if either of the following occurs:

- 1 (1) The same nonconformity has been presented for repair to the manufacturer,
2 its agent, or its authorized dealer four or more times but the same
3 nonconformity continues to ~~exist~~; or exist.
- 4 (2) The vehicle was out of service to the consumer during or while awaiting repair
5 of the nonconformity or a series of nonconformities for a cumulative total of
6 20 or more business days during any 12-month period of the ~~warranty~~;
7 ~~provided that the warranty and the~~ consumer has notified the manufacturer
8 directly in writing of the existence of the nonconformity or series of
9 nonconformities and allowed the manufacturer a reasonable period, not to
10 exceed 15 calendar days, in which to correct the nonconformity or series of
11 nonconformities. The manufacturer must clearly and conspicuously disclose
12 to the consumer in the warranty or owners manual that written notification of
13 a nonconformity is required before a consumer may be eligible for a refund or
14 replacement of the vehicle and the manufacturer shall include in the warranty
15 or owners manual the name and address where the written notification may be
16 sent. ~~Provided, further, that notice~~ Notice to the manufacturer shall not be
17 required if the manufacturer fails to make ~~the disclosures provided herein~~ this
18 disclosure.

19 (b) The consumer may prove that a defect or condition substantially impairs the value of
20 the motor vehicle to the consumer in a manner other than that set forth in subsection (a) of this
21 section.

22 (c) The term of an express warranty, the one-year period, and the 20-day period shall be
23 extended by any period of time during which repair services are not available to the consumer
24 because of war, strike, or natural disaster.

25 "**§ 20-351.6. Civil action by the Attorney General.**

26 Whenever, in ~~his opinion~~, the opinion of the Attorney General the interests of the public
27 require it, it shall be the duty of the Attorney General ~~upon his~~ upon ascertaining that any of the
28 provisions of this Article have been violated by the manufacturer to bring a civil action in the
29 name of the State, or any officer or department ~~thereof~~ of the State as provided by law, or in the
30 name of the State on relation of the Attorney General.

31 "**§ 20-351.7. Civil action by the consumer.**

32 A consumer injured by reason of any violation of the provisions of this Article may bring a
33 civil action against the manufacturer; provided, however, the consumer has given the
34 manufacturer written notice of ~~his~~ the consumer's intent to bring an action against the
35 manufacturer at least 10 days prior to filing such suit. Nothing in this section shall prevent a
36 manufacturer from requiring a consumer to utilize an informal settlement procedure prior to
37 litigation if that procedure substantially complies in design and operation with the
38 Magnuson-Moss Warranty Act, ~~15 USC § 2301 et seq.~~ 15 U.S.C. §§ 2301-2312, and regulations
39 promulgated ~~thereunder~~, under this act, and that requirement is written clearly and conspicuously,
40 in the written warranty and any warranty instructions provided to the consumer.

41 "**§ 20-351.8. Remedies.**

42 In any action brought under this Article, the court may grant as ~~relief~~ relief any of the
43 following:

- 44 (1) A permanent or temporary injunction or other equitable relief as the court
45 deems ~~just~~; just.
- 46 (2) Monetary damages to the injured consumer in the amount fixed by the verdict.
47 Such damages shall be trebled upon a finding that the manufacturer
48 unreasonably refused to comply with G.S. 20-351.2 or G.S. 20-351.3. The
49 jury may consider as damages all items listed for refund ~~under G.S.~~
50 ~~20-351.3~~; under G.S. 20-351.3.

- 1 (3) ~~A reasonable attorney's fee for the attorney of~~ Reasonable attorneys' fees to
2 the prevailing party, payable by the losing party, upon a finding by the court
3 ~~that~~ of either of the following:
4 a. The manufacturer unreasonably failed or refused to fully resolve the
5 matter which constitutes the basis of such ~~action;~~ or action.
6 b. The party instituting the action knew, or should have known, the action
7 was frivolous and malicious.

8 "

9 **SECTION 2.** This act becomes effective July 1, 2021.