

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1201
Judiciary II Senate Committee Substitute Adopted 6/6/89
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Short Title: Defective Vehicle/Lessee's Remedies.

(Public)

Sponsors:

Referred to:

April 12, 1989

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE REMEDIES UNDER THE NEW MOTOR VEHICLES
WARRANTIES ACT OF A LESSEE OF A NEW MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-351.3 as amended by Chapter 43 of the 1989 Session
Laws reads as rewritten:

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

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

- (1) The full contract price including, but not limited to, charges for undercoating, dealer preparation and transportation, and installed options, plus the non-refundable portions of extended warranties and service contracts;

- 1 (2) All collateral charges, including but not limited to, sales tax, license
2 and registration fees, and similar government charges;
- 3 (3) All finance charges incurred by the consumer after he first reports the
4 nonconformity to the manufacturer, its agent, or its authorized dealer;
5 and
- 6 (4) Any incidental damages and monetary consequential ~~damages, less a~~
7 ~~reasonable allowance for the consumer's use of the vehicle. Refunds~~
8 ~~shall be made to the consumer, and any lienholders as their interests~~
9 ~~may appear. A reasonable allowance for use is that amount directly~~
10 ~~attributable to use by the consumer prior to his first report of the~~
11 ~~noneonformity to the manufacturer, its agent, or its authorized dealer,~~
12 ~~and during any subsequent period when the vehicle is not out of~~
13 ~~service because of repair. "Reasonable allowance" is presumed to be~~
14 ~~the cash price of the vehicle multiplied by a fraction having as its~~
15 ~~denominator 100,000 miles and its numerator the number of miles on~~
16 ~~the vehicle attributed to the consumer. damages.~~

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

25 (1) To the consumer:

- 26 a. All sums previously paid by the consumer under the terms of
27 the lease;
- 28 b. All sums previously paid by the consumer in connection with
29 entering into the lease agreement, including, but not limited to,
30 any capitalized cost reduction, sales tax, license and registration
31 fees, and similar government charges; and
- 32 c. Any incidental and monetary consequential damages.

33 (2) To the lessor, a full refund of the lease price, plus an additional amount
34 equal to five percent (5%) of the lease price, less eighty-five percent
35 (85%) of the amount actually paid by the consumer to the lessor
36 pursuant to the lease. The lease price means the actual purchase cost
37 of the vehicle to the lessor.

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

43 (c) Refunds shall be made to the consumer, lessor and any lienholders as their
44 interests may appear. The refund to the consumer shall be reduced by a reasonable

1 allowance for the consumer's use of the vehicle. A reasonable allowance for use is that
2 amount directly attributable to use by the consumer prior to his first report of the
3 nonconformity to the manufacturer, its agent, or its authorized dealer, and during any
4 subsequent period when the vehicle is not out of service because of repair. 'Reasonable
5 allowance' is presumed to be the cash price or the lease price, as the case may be, of the
6 vehicle multiplied by a fraction having as its denominator 100,000 miles and its
7 numerator the number of miles attributed to the consumer.

8 (b) (d) If a manufacturer, its agent, or its authorized dealer resells a motor vehicle
9 that was returned pursuant to this Article or any other State's applicable law, regardless
10 of whether there was any judicial determination that the motor vehicle had any defect or
11 that it failed to conform to all express warranties, the manufacturer, its agent, or its
12 authorized dealer shall disclose to the subsequent purchaser prior to the sale:

13 (1) That the motor vehicle was returned pursuant to this Article or
14 pursuant to the applicable law of any other State; and

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

17 Any subsequent purchaser who purchases the motor vehicle for resale with notice of the
18 return, shall make the required disclosures to any person to whom he resells the motor
19 vehicle."

20 Sec. 2. G.S. 20-351.1 as amended by Chapter 43 of the 1989 Session Laws
21 reads as rewritten:

22 **"§ 20-351.1. Definitions.**

23 As used in this Article:

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

28 (2) 'Manufacturer' means any person or corporation, resident or
29 nonresident, who manufactures or assembles or imports or distributes
30 new motor vehicles which are sold in the State of North Carolina.

31 (3) 'Motor vehicle' includes a motor vehicle as defined in G.S. 20-4.01
32 which is sold or leased in this State, but does not include 'house trailer'
33 as defined in G.S. 20-4.01 or any motor vehicle with a gross vehicle
34 weight of 10,000 pounds or more.

35 (4) 'New motor vehicle' means a motor vehicle for which a certificate of
36 origin, as required by G.S. 20-52.1 or a similar requirement in another
37 state, has never been supplied to a consumer, or which a manufacturer,
38 its agent, or its authorized dealer states in writing is being sold as a
39 new motor vehicle."

40 Sec. 3. This act shall become effective October 1, 1989 and shall apply to all
41 motor vehicles under warranty on or after that date.