

ARTICLE 10

MOTOR VEHICLE WARRANTIES

42-10-101. Definitions.

42-10-102. Repairs to conform vehicle to warranty.

42-10-103. Failure to conform vehicle to warranty - replacement or return of vehicle.

42-10-104. Affirmative defenses.

42-10-105. Limitations on other rights and remedies.

42-10-106. Applicability of federal procedures.

42-10-107. Statute of limitations.

42-10-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle normally used for personal, family, or household purposes, any person to whom such motor vehicle is transferred for the same purposes during the duration of a manufacturer's express warranty for such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

(2) "Motor vehicle" means a self-propelled private passenger vehicle, including pickup trucks and vans, designed primarily for travel on the public highways and used to carry not more than ten persons, which is sold to a consumer in this state; except that the term does not include motor homes as defined in section 42-1-102 (57) or vehicles designed to travel on three or fewer wheels in contact with the ground.

(3) "Warranty" means the written warranty, so labeled, of the manufacturer of a new motor vehicle, including any terms or conditions precedent to the enforcement of obligations under that warranty.

42-10-102. Repairs to conform vehicle to warranty.

If a motor vehicle does not conform to a warranty and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of such warranty or during a period of one year following the date of the original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent, or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such warranty, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

42-10-103. Failure to conform vehicle to warranty - replacement or return of vehicle.

(1) If the manufacturer, its agent, or its authorized dealer is unable to conform the motor vehicle to the warranty by repairing or correcting the defect or condition which substantially impairs the use and market value of such motor vehicle after a reasonable number of attempts, the manufacturer shall, at its option, replace the motor vehicle with a comparable motor vehicle or accept return of the motor vehicle from the consumer and refund to the consumer the full purchase price, including the sales tax, license fees, and registration fees and any similar governmental charges, less a reasonable allowance for the consumer's use of the motor vehicle. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use by the consumer and any previous consumer prior to the consumer's first written report of the nonconformity to the manufacturer, agent, or dealer and during any subsequent period when the vehicle is not out of service by reason of repair.

(2) (a) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the warranty if:

(I) The same nonconformity has been subject to repair four or more times by the manufacturer, its agent, or its authorized dealer within the warranty term or during a period of one year following the date of the original delivery of the motor vehicle to the consumer, whichever is the earlier date, but such nonconformity continues to exist; or

(II) The motor vehicle is out of service by reason of repair for a cumulative total of thirty or more business days of the repairer during the term specified in subparagraph (I) of this paragraph (a) or during the period specified in said subparagraph (I), whichever is the earlier date.

(b) For the purposes of this subsection (2), the term of a warranty, the one-year period, and the thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, or fire, flood, or other natural disaster.

(c) In no event shall a presumption under paragraph (a) of this subsection (2) apply against a manufacturer unless the manufacturer has received prior written notification by certified mail from or on behalf of the consumer and has been provided an opportunity to cure the defect alleged. Such defect shall count as one nonconformity subject to repair under subparagraph (I) of paragraph (a) of this subsection (2).

(d) Every authorized motor vehicle dealer shall include a form, containing the manufacturer's name and business address, with each motor vehicle owner's manual on which the consumer may give written notification of any defect, as such notification is required by paragraph (c) of this subsection (2), and the form shall clearly and conspicuously disclose that written notification by certified mail of the nonconformity is required, in order for the consumer to obtain remedies under this article.

(3) The court shall award reasonable attorney fees to the prevailing side in any action brought to enforce the provisions of this article.

42-10-104. Affirmative defenses.

(1) It shall be an affirmative defense to any claim under this article that:

- (a) An alleged nonconformity does not substantially impair the use and market value of a motor vehicle; or
- (b) A nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the motor vehicle by a consumer.

42-10-105. Limitations on other rights and remedies.

Nothing in this article shall in any way limit the rights or remedies which are otherwise available to a consumer under any other state law or any federal law. Nothing in this article shall affect the other rights and duties between the consumer and a seller, lessor, or lienholder of a motor vehicle or the rights between any of them. Nothing in this article shall be construed as imposing a liability on any authorized dealer with respect to a manufacturer or creating a cause of action by a manufacturer against its authorized dealer; except that failure by an authorized dealer to properly prepare a motor vehicle for sale, to properly install options on a motor vehicle, or to properly make repairs on a motor vehicle, when such preparation, installation, or repairs would have prevented or cured a nonconformity, shall be actionable by the manufacturer.

42-10-106. Applicability of federal procedures.

If a manufacturer has established or participates in an informal dispute settlement procedure which substantially complies with the provisions of part 703 of title 16 of the code of federal regulations, as from time to time amended, the provisions of section 42-10-103 (1) concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure.

42-10-107. Statute of limitations.

Any action brought to enforce the provisions of this article shall be commenced within six months following the expiration date of any warranty term or within one year following the date of the original delivery of a motor vehicle to a consumer, whichever is the earlier date; except that the statute of limitations shall be tolled during the period the consumer has submitted to arbitration under section 42-10-106.