

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 385
HOUSE BILL 931

AN ACT TO PROVIDE REMEDIES FOR CONSUMERS OF NEW MOTOR
VEHICLES THAT DO NOT CONFORM TO EXPRESS WARRANTIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Article after Article 15 to read:

"ARTICLE 15A.

"New Motor Vehicles Warranties Act.

"§ 20-351. **Purpose.**—This Article shall provide State and private remedies against motor vehicle manufacturers for persons injured by new motor vehicles failing to conform to express warranties.

"§ 20-351.1. **Definitions.**—As used in this Article:

- (1) 'Consumer' means the purchaser, other than for purposes of resale, or lessee from a commercial lender, lessor, or from a manufacturer or dealer, of a motor vehicle, and any other person entitled by the terms of an express warranty to enforce the obligations of that warranty.
- (2) 'Manufacturer' means any person or corporation, resident or nonresident, who manufactures or assembles or imports or distributes new motor vehicles which are sold in the State of North Carolina.
- (3) 'Motor vehicle' includes a motor vehicle as defined in G.S. 20-4.01 which is sold in this State, but does not include 'house trailer' as defined in G.S. 20-4.01 or any motor vehicle with a gross vehicle weight of 10,000 pounds or more.

"§ 20-351.2 **Require repairs.**—Express warranties for a new motor vehicle shall remain in effect at least one year or 12,000 miles. If a new motor vehicle does not conform to all applicable express warranties for a period of one year, or the term of the express warranties, whichever is greater, following the date of original delivery of the motor vehicle to the consumer, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during such period, the manufacturer shall make, or arrange to have made, repairs necessary to conform the vehicle to the express warranties, whether or not these repairs are made after the expiration of the applicable warranty period.

"§ 20-351.3. **Replacement or Refund.**—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;
- (2) all collateral charges, including but not limited to, sales tax, license and registration fees, and similar government charges;
- (3) all finance charges incurred by the consumer after he first reports the nonconformity to the manufacturer, its agent, or its authorized dealer; and
- (4) any incidental damages and monetary consequential damages, less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer, and any lienholders as their interests may appear. A reasonable allowance for use is that amount directly attributable to use by the consumer prior to his first report of the nonconformity to the manufacturer, its agent, or its authorized dealer, and during any subsequent period when the vehicle is not out of service because of repair. 'Reasonable allowance' is presumed to be the cash price of the vehicle multiplied by a fraction having as its denominator 100,000 miles and its numerator the number of miles on the vehicle attributed to the consumer.

"§ 20-351.4. Affirmative defenses.—It is an affirmative defense to any claim under this Article that an alleged nonconformity or series of nonconformities are the result of abuse, neglect, odometer tampering by the consumer or unauthorized modifications or alterations of a motor vehicle.

"§ 20-351.5. Presumption.—(a) It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if:

- (1) the same nonconformity has been presented for repair to the manufacturer, its agent, or its authorized dealer four or more times but the same nonconformity continues to exist; or
- (2) the vehicle was out of service to the consumer during or while awaiting repair of the nonconformity or a series of nonconformities for a cumulative total of 20 or more business days during any 12-month period of the warranty,

provided that the consumer has notified the manufacturer directly in writing of the existence of the nonconformity or series of nonconformities and allowed the manufacturer a reasonable period, not to exceed 15 calendar days, in which to correct the nonconformity or series of nonconformities. The manufacturer must clearly and conspicuously disclose to the consumer in the warranty or owners manual that written notification of a nonconformity is required before a consumer may be eligible for a

refund or replacement of the vehicle and the manufacturer shall include in the warranty or owners manual the name and address where the written notification may be sent. Provided, further, that notice to the manufacturer shall not be required if the manufacturer fails to make the disclosures provided herein.

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

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

"§ 20-351.6. Civil action by the Attorney General.—Whenever, in his opinion, the interests of the public require it, it shall be the duty of the Attorney General upon his ascertaining that any of the provisions of this Article have been violated by the manufacturer to bring a civil action in the name of the State, or any officer or department thereof as provided by law, or in the name of the State on relation of the Attorney General.

"§ 20-351.7. Civil action by the consumer.—A consumer injured by reason of any violation of the provisions of this Article may bring a civil action against the manufacturer; provided, however, the consumer has given the manufacturer written notice of his intent to bring an action against the manufacturer at least 10 days prior to filing such suit. Nothing in this section shall prevent a manufacturer from requiring a consumer to utilize an informal settlement procedure prior to litigation if that procedure substantially complies in design and operation with the Magnuson-Moss Warranty Act, 15 USC § 2301 et seq., and regulations promulgated thereunder, and that requirement is written clearly and conspicuously, in the written warranty and any warranty instructions provided to the consumer.

"§ 20-351.8. Remedies.—In any action brought under this Article, the court may grant as relief:

- (1) a permanent or temporary injunction or other equitable relief as the court deems just;
- (2) monetary damages to the injured consumer in the amount fixed by the verdict. Such damages shall be trebled upon a finding that the manufacturer unreasonably refused to comply with G.S. 20-351.2 or G.S. 20-351.3. The jury may consider as damages all items listed for refund under G.S. 20-351.3;
- (3) a reasonable attorney's fee for the attorney of the prevailing party, payable by the losing party, upon a finding by the court that:
 - a. the manufacturer unreasonably failed or refused to fully resolve the matter which constitutes the basis of such action; or
 - b. the party instituting the action knew, or should have known, the action was frivolous and malicious.

"§ 20-351.9. Dealership liability.—No authorized dealer shall be held liable by the manufacturer for any refunds or vehicle replacements in the absence of evidence indicating that dealership repairs have been carried out in a manner substantially

inconsistent with the manufacturers' instructions. This act does not create any cause of action by a consumer against an authorized dealer.

"§ 20-351.10. **Preservation of other remedies.**—This Article does not limit the rights or remedies which are otherwise available to a consumer under any other law."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 16th day of June, 1987.