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COMMERCE AND TRADE

Selling and Other Trade Practices: Motor Vehicle Warranty Rights Act

CODE SECTIONS:	O.C.G.A. §§ 10-1-780 to -794 (new)
BILL NUMBER:	HB 1555
ACT NUMBER:	1245
SUMMARY:	The Act provides that a manufacturer of a new motor vehicle with a defect has a limited number of opportunities within a given period of time to correct the defect. If the defect still exists, the manufacturer must repurchase or replace the vehicle. The Act provides that a dissatisfied consumer must appeal to a manufacturer's arbitration panel, a state arbitration panel, and a superior court, in that order. The defective vehicle must be scrapped or sold with a new manufacturer's warranty covering the defect.
EFFECTIVE DATE:	July 1, 1990 (O.C.G.A. § 10-1-789); January 1, 1991 (O.C.G.A. §§ 10-1-780 to -788, §§ 10-1-790 to -795)

History

The Governor's Office of Consumer Affairs (GOCA) became interested in a Georgia lemon law for defective motor vehicles in 1982.[1] Approximately three other states had lemon laws at the time, and these were not working satisfactorily.[2] The GOCA monitored the development of lemon laws, waiting for problems in their operation to be resolved.[3]

In 1985 and 1986, inconsistency in state lemon laws prompted motor vehicle manufacturers to pressure the Federal Trade Commission to call for a negotiated rule-making procedure, involving manufacturers and state consumer protection agencies.[4] The manufacturers' goal was

1. Telephone interview with Jim Hurt, Staff Attorney and Legislative Liaison, Governor's Office for Consumer Affairs (Mar. 23, 1990) [hereinafter Hurt Interview]. Hurt was assigned by Director Barry Reid to research lemon laws in other states. *Id.*

2. *Id.* Lemon laws from Florida, Connecticut, and Maryland were examined by the GOCA initially. *Id.*

3. *Id.*

4. *Id.*

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to arrive at consistent new legislation that would preempt state lemon laws, but the rule-making procedure did not result in a consensus, and negotiations were discontinued.[5] The fact-finding aspect of the procedure, however, revealed information to Georgia's representative from the GOCA about state-run arbitration panels, implemented in several states as part of their lemon laws.[6] Simultaneously, the National Conference of State Legislators began to develop a model lemon law.[7]

Before the passage of Georgia's Motor Vehicle Warranty Rights Act[8] (lemon law), the GOCA referred consumer complaints about warranty problems with defective motor vehicles to manufacturers' panels and used the Fair Business Practices Act when arbitration through the manufacturers' panels was unsatisfactory.[9] In 1989, the GOCA conducted telephone interviews with complaining consumers in Georgia and determined that seventy-five percent were not served adequately by the manufacturers' panels.[10] Dissatisfaction was based on suspicion that the manufacturers' panels were a sham, inappropriate rejection of claims, or unsatisfactory resolution of warranty problems.[11]

In November 1989, when Georgia was one of only four states without a lemon law, the GOCA asked the chair of the House Motor Vehicles Committee to consider sponsoring lemon law legislation.[12] The chair appointed a subcommittee to work with the GOCA and interested parties to draft an acceptable consumer bill.[13]

The best provisions from lemon laws in Washington, Florida, and the Model Lemon Law were merged when the draft bill was formulated.[14] To avoid constitutional equal protection challenges, the GOCA was eager to include provisions for manufacturer appeal mechanisms.[15] The draft bill was mailed to and comments invited from manufacturers, dealer organizations, associations for manufacturers and importers, and the Georgia Consumer Center.[16]

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5. *Id.*

6. *Id.* Jim Hurt was Georgia's representative to the negotiated rule-making procedure. *Id.*

7. *Id.*

8. O.C.G.A. §§ 10-1-780 to -795 (Supp. 1990).

9. Hurt Interview, *supra* note 1.

10. *Id.*; Secrest, *$5 Fee Proposed to Pay for New-Car 'Lemon Law'*, Atlanta J. & Const., Dec. 1, 1989, at E11, col. 4.

11. Hurt Interview, *supra* note 1.

12. Telephone interview with Representative Bill H. Barnett, Vice-Chair, House Motor Vehicles Committee, House District No. 10 (Mar. 23, 1990) [hereinafter Barnett Interview]. The chair of the House Motor Vehicles Committee is Representative Jerry Jackson. *Id.*

13. *Id.*

14. Hurt Interview, *supra* note 1. Jim Hurt wrote the merged version of the bill. *Id.*

15. *Id.*

16. *Id.*

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The House subcommittee and the GOCA held meetings with interested parties to arrive at a consensus on the legislation.[17] On points where no agreement could be reached, the chair of the House Motor Vehicle Committee made decisions about what the bill would provide.[18]

The sponsors of the Act included the leadership of the House Motor Vehicles Committee and a representative who sponsored a Lemon Law in the 1989 session of the General Assembly.[19]

HB 1555

As summarized in House floor debate, the Motor Vehicle Warranty Rights Act[20] provides relief to car owners who buy a lemon by giving them recourse when the car cannot be repaired by the manufacturer.[21] The Act amends Code title 10, chapter 1 by adding a new article 28.[22]

The intent of the Act is to ensure that consumers are advised of their warranty rights and to create remedies.[23] Under new Code section 10-1-783, dealers must give consumers written statements explaining their rights, procedures, and remedies.[24]

The Act provides that a manufacturer must pay for repair of a motor vehicle if, within twelve months or 12,000 miles after delivery, the consumer reports a defect, a life-threatening malfunction, or a condition that significantly diminishes the use, value, or safety of the vehicle.[25] The manufacturer or dealer must give itemized statements and reports of repair work to the consumer[26] and may not refuse to repair the vehicle to avoid liability.[27]

Under new Code section 10-1-784, if the manufacturer or dealer cannot repair the vehicle after a reasonable number of attempts, he has one final chance to cure the defect: seven days to advise the consumer of an accessible repair shop and another fourteen days to

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17. *Id.*; Barnett Interview, *supra* note 12.

18. Hurt Interview, *supra* note 1; Barnett Interview, *supra* note 12.

19. *Id.*; Barnett Interview, *supra* note 12. Representative William S. Jackson sponsored a previous Lemon Law bill. *Id.*

20. O.C.G.A. § 10-1-780 (Supp. 1990).

21. *Law Makers '90* (WGTV television broadcast, Feb. 9, 1990) (videotape available in Georgia State University College of Law Library). Representative Jerry Jackson, first sponsor, presented the bill. *Id.*

22. O.C.G.A. §§ 10-1-780 to -795 (Supp. 1990).

23. O.C.G.A. § 10-1-781 (Supp. 1990).

24. O.C.G.A. § 10-1-783(b) (Supp. 1990).

25. O.C.G.A. § 10-1-783(c) (Supp. 1990).

26. O.C.G.A. § 10-1-783(e) (Supp. 1990).

27. O.C.G.A. § 10-1-783(f) (Supp. 1990).

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perform the repair.[28] If the defect still exists, the manufacturer must replace or repurchase the vehicle.[29]

The Act presumes a reasonable number of repair attempts has occurred if: (1) an unsuccessful repair attempt occurred during the Lemon Law period and involved a life-threatening braking or steering malfunction; (2) two unsuccessful repair attempts occurred during a period of twenty-four months or 24,000 miles after delivery, one of which was during the Lemon Law period, and both involved another kind of life-threatening malfunction or nonconformity; (3) three unsuccessful repair attempts occurred during a period of twenty-four months or 24,000 miles after delivery, one of which was during the Lemon Law period, and all involved the same nonconformity; or (4) during a period of twenty-four months or 24,000 miles after delivery, the vehicle was under repair and out of service for at least thirty days, fifteen of these days occurring during the Lemon Law period.[30]

If the manufacturer or dealer elects replacement, he must provide a reasonably similar new vehicle and must pay any collateral charges associated with the acquisition and incidental costs for repair expenses, towing, and alternate transportation.[31] The consumer must reimburse the manufacturer for use of the vehicle.[32]

If the failure to repair involves a leased vehicle, the Act provides that the lessor may elect a replacement or repurchase of the vehicle, but must reimburse the consumer for his investment if repurchase is elected.[33] The original HB 1555 contained few provisions for lease situations;[34] such language was inserted in the House committee substitute at the request of representatives of lessors.[35]

New Code section 10-1-784(d) provides that dealers and distributors are not liable for repurchase or replacement of defective vehicles or associated costs.[36] The administrator of the state arbitration program is authorized to enforce the obligations imposed on dealers and

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28. O.C.G.A. § 10-1-784(a)(1) (Supp. 1990). The manufacturer loses his final opportunity to cure the defect if he does not advise the consumer of an appropriate repair shop or does not make the repair. *Id.*

29. *Id.*

30. O.C.G.A. § 10-1-784(b) (Supp. 1990). The Lemon Law period is defined as a period of 12 months or 12,000 miles after delivery, whichever is first. O.C.G.A. § 10-1-784(c) (Supp. 1990). Nonconformity is defined as "a defect, a serious safety defect, or a condition that substantially impairs the use, value, or safety" of a vehicle. O.C.G.A. § 10-1-782(13) (Supp. 1990). A serious safety defect is defined as "a life-threatening malfunction or nonconformity." O.C.G.A. § 10-1-782(19) (Supp. 1990).

31. O.C.G.A. § 10-1-784(a)(3) (Supp. 1990).

32. *Id.*

33. O.C.G.A. § 10-1-784(a)(2) (Supp. 1990).

34. HB 1555, as introduced, 1990 Ga. Gen. Assem.

35. Hurt Interview, *supra* note 1. HB 1555 (HCS), 1990 Ga. Gen. Assem.

36. O.C.G.A. § 10-1-784(d) (Supp. 1990).

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distributors by new article 28 under the Fair Business Practices Act.[37] Consumers usually may not obtain civil or equitable remedies from dealers or distributors.[38] Such remedies are available, however, if dealers or distributors knowingly resell a vehicle with a serious safety defect without correcting it and do not issue a warranty of correction.[39]

A manufacturer, dealer, or distributor may resell a vehicle with a serious safety defect as scrap, or may correct the defect and sell the vehicle with a new written warranty.[40] A manufacturer may resell a vehicle with an uncorrected nonconformity that is not a serious safety defect if he gives the dealer, distributor, or other transferee a written description of the nonconformity and that description is subsequently given to the consumer.[41] A manufacturer may correct the nonconformity and resell the vehicle if he gives a written description of the nonconformity, the correction, and an express warranty of twelve months or 12,000 miles for the correction.[42]

If the consumer and the manufacturer are unable to resolve their warranty and repair dispute, the Act provides arbitration mechanisms.[43] The operation of these arbitration mechanisms was a source of opposition to the bill.[44] Consumers desired to go straight to state arbitration panels and bypass manufacturers' arbitration procedures.[45] The House Motor Vehicles Committee feared that if manufacturers' panels were not required as a first step in arbitration, all consumers would complain directly to the state panels, driving up the cost of the state program.[46] A Senate Industry and Labor Committee amendment made participation in the manufacturers' panels optional.[47] Although the bill with the committee amendment passed the Senate, the Senate committee amendment failed in the House.[48] The Senate then passed the final bill without the amendment.[49]

The Act now provides authorization to an administrator to form state arbitration panels[50] and to certify manufacturers' in-house informal dispute resolution settlement mechanisms.[51] Further, the Act allows

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37. *Id.*
38. *Id.*
39. O.C.G.A. §§ 10-1-785(a), 10-1-784(d) (Supp. 1990).
40. O.C.G.A. § 10-1-785(d) (Supp. 1990).
41. O.C.G.A. § 10-1-785(c) (Supp. 1990).
42. O.C.G.A. § 10-1-785(d) (Supp. 1990).
43. O.C.G.A. § 10-1-786(c) (Supp. 1990).
44. Hurt Interview, *supra* note 1; Barnett Interview, *supra* note 12.
45. Barnett Interview, *supra* note 12.
46. Hurt Interview, *supra* note 1.
47. HB 1555 (SCA), 1990 Ga. Gen. Assem.
48. Final Composite Status Sheet, Mar. 9, 1990.
49. *Id.*
50. O.C.G.A. § 10-1-786(a) (Supp. 1990).
51. O.C.G.A. § 10-1-793(c) (Supp. 1990).

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the administrator to set rules for implementation of the Act[52] and for conduct of both arbitration panels under the Georgia Administrative Procedure Act.[53] Under new Code section 10-1-787(a), the administrator decides whether a consumer complaint is eligible for assignment to a state panel.[54]

A consumer must first participate in a certified manufacturer's informal dispute resolution settlement procedure.[55] If dissatisfied with the results, the consumer may appeal to the state arbitration panel and finally to the superior court.[56] A manufacturer may affirmatively defend against the complaint by showing that the nonconformity does not make the vehicle unreliable or unsafe or diminish its resale value significantly, or that the consumer caused the nonconformity.[57]

A dissatisfied manufacturer or consumer has forty days to appeal the state board's decision to the superior court.[58] If the manufacturer fails to comply or appeal within that period, the administrator may set a fine of $1,000 per day up to twice the value of the vehicle or $100,000, whichever is less.[59] The administrator may proceed in court against the manufacturer who defaults on the fine for the amount of the fine or for specific performance of the state panel's decision.[60] The consumer's recovery, if the manufacturer appeals and loses, may include the money value of the award, collateral charges, incidental costs, attorneys' fees, and court costs.[61]

The Act provides for funding of the state arbitration program by requiring the dealer to charge three dollars for each sale or lease, two dollars of which is refunded to the state.[62]

The two major points of opposition to the lemon law legislation were based on the manufacturers' claims that the legislation was not needed because their in-house arbitration panels were performing adequately, and the controversy between manufacturers and dealers about the extent to which dealers would be liable to manufacturers for negligent repairs.[63] The chair of the House Motor Vehicles Committee relied on the GOCA consumer dissatisfaction reports in determining that the legislation was needed and decided that dealers must bear some responsibility for poor warranty work.[64]

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52. O.C.G.A. § 10-1-786(d) (Supp. 1990).
53. O.C.G.A. § 10-1-786(b) (Supp. 1990).
54. O.C.G.A. § 10-1-787(a) (Supp. 1990).
55. O.C.G.A. § 10-1-786(c) (Supp. 1990).
56. *Id.*
57. O.C.G.A. § 10-1-787(e) (Supp. 1990).
58. O.C.G.A. § 10-1-788(a) (Supp. 1990).
59. O.C.G.A. § 10-1-787(h) (Supp. 1990).
60. *Id.*
61. O.C.G.A. § 10-1-788(c) (Supp. 1990).
62. O.C.G.A. § 10-1-789(a) (Supp. 1990).
63. Hurt Interview, *supra* note 1; Barnett Interview, *supra* note 12.
64. Hurt Interview, *supra* note 1.

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The original HB 1555[65] did not include the recommendations from the Georgia Consumer Center, because the comments were received by the House committee after the bill was read in the House.[66] The committee substitute incorporated many of the Center's proposed changes.[67]

C. Adkison

65. HB 1555, as introduced, 1990 Ga. Gen. Assem.
66. *Id.*
67. Hurt Interview, *supra* note 1.

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