WEST VIRGINIA CODE CHAPTER 46a ARTICLE 6A

WV Legislature

§46A-6A-1. Legislative declarations.

(1) The Legislature hereby finds and declares as a matter of public policy that the purpose of this article is to place upon the manufacturers of motor vehicles the duty to meet their obligations and responsibilities under the terms of the express warranties extended to the consumers in this state. The Legislature further finds as a matter of public policy that the manufacturer shall bear the total cost of performing any duty or responsibility imposed by their warranties and the provisions of this article.

(2) The Legislature further finds that any agreement under the provisions of article six-a, chapter seventeen-a of this code, or any agreement hereafter amended or entered into between a dealer and manufacturer which would transfer to the dealer any duty, or all or any part of the cost of performing any duty imposed on the manufacturer by the provisions of this article, or which would directly or indirectly charge the dealer for or reduce the payment or reimbursement due the dealer for performing work or furnishing parts required by this article to be provided by either the dealer or manufacturer, so as to shift to the dealer all or any part of the cost of the manufacturer's compliance with this article, to be against public policy, void and unenforceable.

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§46A-6A-2. Definitions.

When used in this article, the following words, terms, and phrases shall have the meaning ascribed to them, except where the context indicates a different meaning:

(1) "Consumer" means:

(A) The purchaser, other than for purposes of resale, of a new motor vehicle used primarily for personal, family, or household purposes, a person to whom the new motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the motor vehicle, and any other person entitled by the terms of the warranty to enforce the obligations of the warranty; or

(B) The purchaser, other than for purposes of resale, of a new vehicle described in paragraph (B), subdivision (4) of this section a person to whom the new vehicle is transferred during the duration of an express warranty applicable to the vehicle, and any other person entitled by the terms of the warranty to enforce the obligations of the warranty;

(2) "Manufacturer" means a person engaged in the business of manufacturing, assembling, or distributing motor vehicles, who will, under normal business conditions during the year, manufacture, assemble, or distribute to dealers at least 10 new motor vehicles;

(3) "Manufacturer's express warranty" and "warranty" mean the written warranty of the manufacturer of a new motor vehicle of its condition and fitness for use, including any terms or conditions precedent to the enforcement of obligations under that warranty; and

(4) "Motor vehicle" means:

(A) Any passenger automobile purchased in this state or registered and titled in this state, including any pickup truck or van registered as a Class A motor vehicle under the provisions of §17A-10-1 *et seq*. of this code, and any self-propelled motor vehicle chassis of a motor home registered as a Class A or Class B motor vehicle under the provisions of §17A-10-1 *et seq*. of this code; or

(B) Any self-propelled vehicle designed primarily for, and used in, the occupation or business of farming, with a horsepower unit of 20 or greater.

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§46A-6A-3. Manufacturer's duty to repair or replace new motor vehicles.

(a) If a new motor vehicle does not conform to all applicable express warranties and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of the express warranties or within a period of one year following the date of original delivery of the new motor vehicle to a consumer, whichever is the longer period, the manufacturer, its agent or its authorized dealer shall make the repairs necessary to conform the vehicle to the express warranties, notwithstanding the fact that the repairs are made after the expiration of the warranty term.

(b) If the manufacturer, its agents or its authorized dealer are unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use or market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the new motor vehicle with a comparable new motor vehicle which does conform to the warranties.

(c) No authorized dealer shall be held liable by the manufacturer for any refunds or vehicle replacements in the absence of evidence indicating that the dealership repairs have been carried out in a manner substantially inconsistent with the manufacturer's instruction. This section does not create any cause of action by a consumer against an authorized dealer.

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§46A-6A-3a. Dealer's duty to disclose repairs to consumer.

All authorized dealers of new motor vehicles shall provide to any consumer a written disclosure of any repairs to a new motor vehicle that have a retail value of five percent of the manufacturer's suggested retail price and were performed after shipment from the manufacturer to the dealer, including damage to the new motor vehicle while in transit.

This disclosure requirement does not apply to identical replacement of stolen or damaged accessories or their components, tires or antennae.

For purposes of this section, a motor vehicle is not a new motor vehicle when it has been previously titled or the motor vehicle has been damaged in such a manner that, were the damage not repaired, the value and usability of the motor vehicle would be substantially impaired.

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§46A-6A-4. Civil action by consumer.

(a) If the nonconformity results in substantial impairment to the use or market value of the new motor vehicle and the manufacturer has not replaced the new motor vehicle pursuant to the provisions of section three of this article, or if the nonconformity exists after a reasonable number of attempts to conform the new motor vehicle to the applicable express warranties, the consumer shall have a cuase of action against the manufacturer, in the circuit court of any county having venue.

(b) In any action under this section, the consumer may be awarded all or any portion of the following:

(1) Revocation of acceptance and refund of the purchase price, including, but not limited to, sales tax, license and registration fees, and other reasonable expenses incurred for the purchase of the new motor vehicle, or if there be no such revocation of acceptance, damages for diminished value of the motor vehicle;

(2) Damages for the cost of repairs reasonably required to conform the motor vehicle to the express warranty;

(3) Damages for the loss of use, annoyance or inconvenience resulting from the nonconformity, including, but not limited to, reasonable expenses incurred for replacement transportation during any period when the vehicle is not out of service by reason of the nonconformity or by reason of repair; and

(4) Reasonable attorney fees.

(c) It is an affirmative defense to any claim under this section (i) that an alleged nonconformity does not substantially impair the use or market value or (ii) that a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle by anyone other than the manufacturer, its agent or its authorized dealer.

(d) An action brought under this section by the consumer must be commenced within one year of the expiration of the express warranty term.

(e) The cause of action provided for in this section shall be available only against the manufacturer.

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§46A-6A-5. Presumption of reasonable number of attempts; extension of warranty term when repair services unavailable.

(a) It is presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties, if the same nonconformity has been subject to repair three or more times by the manufacturer, its agents or its authorized dealers within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to the consumer, whichever is the earlier date, and the nonconformity continues to exist, or the vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days during the term or during the one-year period, whichever is the earlier date.

(b)If the nonconformity results in a condition which is likely to cause death or serious bodily injury if the vehicle is driven, it is presumed that a reasonable number of attempts have been undertaken to conform the vehicle to the applicable express warranties if the nonconformity has been subject to repair at least once by the manufacturer within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, and the nonconformity continues to exist.

(c) The presumption that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties applies against a manufacturer only if the manufacturer has received prior written notification from or on behalf of the consumer and has had at least one opportunity to cure the defect alleged.

(d) The term of an express 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 a war, invasion, strike or fire, flood or other natural disaster.

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§46A-6A-6. Written statement to be provided to consumer.

At the time of purchase the manufacturer, either directly or through its agent or its authorized dealer, must provide the consumer a written statement on a separate piece of paper, in ten point all capital type, in substantially the following form:"IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER STATE LAW TO REPLACEMENT OR TO COMPENSATION. HOWEVER, TO BE ENTITLED TO REPLACEMENT OR TO COMPENSATION, YOU MUST FIRST NOTIFY THE MANUFACTURER OF THE PROBLEM IN WRITING AND PROVIDE THE MANUFACTURER AN OPPORTUNITY TO REPAIR THE VEHICLE."

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§46A-6A-7. Resale of returned motor vehicle.

If a new motor vehicle has been returned under section three of this article or a similar statute of another state, it may not be resold in this state unless the manufacturer corrects the nonconformity and provides the consumer with a written statement on a separate piece of paper in ten point all capital type, in substantially the following form:"IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTY AND THE NONCONFORMITY WAS NOT CURED WITHIN A REASONABLE TIME AS PROVIDED BY WEST VIRGINIA LAW.": Provided, That no manufacturer shall require by agreement or otherwise, either directly or indirectly, that any of its authorized dealers in this state accept such a motor vehicle for resale.

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§46A-6A-8. Third party dispute resolution process; attorney general to promulgate rules and regulations.

(a) The Attorney General of the State of West Virginia shall promulgate rules and regulations for the establishment and qualification of a third party dispute mechanism or mechanisms for the resolution of warranty disputes between the consumer and the manufacturer, its agent or its authorized dealer. Such mechanisms shall be under the supervision of the division of consumer protection in the office of the Attorney General, and shall meet or exceed the minimum requirements of the informal dispute settlement mechanism as provided by the Magnuson-Moss Warranty Federal Trade Commission Improvement Act (Public Law 93-637) and rules and regulations lawfully promulgated thereunder effective January 1, 1984.

(b) If a qualified third party dispute resolution process exists and the consumer receives timely notification in writing of the availability of the third party process with a description of its operation and effect, the cause of action under section four of this article may not be asserted by the consumer until after the consumer has initially resorted to the third party process. Notification of the availability of the third party process must be timely to the consumer. If a qualified third party dispute resolution process does not exist, or if the consumer is dissatisfied with the third party decision, or if the manufacturer, its agent or its authorized dealer fails to promptly fulfill the terms of the third party decision, the consumer may assert a cause of action under section four of this article.

(c) Any period of limitation of actions under any federal or West Virginia laws with respect to any consumer shall be tolled for the period between the date a complaint is filed with a third party dispute resolution process and the date of its decision or the date before which the manufacturer, its agent or its authorized dealer is required by the decision to fulfill its terms, whichever occurs later.

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§46A-6A-9. Other remedies available.

Nothing in this article shall be construed to limit any right or remedy which is otherwise available to a consumer or authorized dealer of a manufacturer under any other law.

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