

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1201  
Judiciary II Senate Committee Substitute Adopted 6/6/89

Short Title: Defective Vehicle/Lessee's Remedies.

(Public)

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Sponsors:

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Referred to:

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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) ~~If~~ 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;
- (2) All collateral charges, including but not limited to, sales tax, license and registration fees, and similar government charges;

1 (3) All finance charges incurred by the consumer after he first reports the  
2 nonconformity to the manufacturer, its agent, or its authorized dealer;  
3 and

4 (4) Any incidental damages and monetary consequential ~~damages, less a~~  
5 ~~reasonable allowance for the consumer's use of the vehicle. Refunds~~  
6 ~~shall be made to the consumer, and any lienholders as their interests~~  
7 ~~may appear. A reasonable allowance for use is that amount directly~~  
8 ~~attributable to use by the consumer prior to his first report of the~~  
9 ~~nonconformity to the manufacturer, its agent, or its authorized dealer,~~  
10 ~~and during any subsequent period when the vehicle is not out of~~  
11 ~~service because of repair. "Reasonable allowance" is presumed to be~~  
12 ~~the cash price of the vehicle multiplied by a fraction having as its~~  
13 ~~denominator 100,000 miles and its numerator the number of miles on~~  
14 ~~the vehicle attributed to the consumer. damages.~~

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

23 (1) To the consumer:

24 a. All sums previously paid by the consumer under the terms of  
25 the lease;

26 b. All sums previously paid by the consumer in connection with  
27 entering into the lease agreement, including, but not limited to,  
28 any capitalized cost reduction, sales tax, license and registration  
29 fees, and similar government charges; and

30 c. Any incidental and monetary consequential damages.

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

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

41 (c) Refunds shall be made to the consumer, lessor and any lienholders as their  
42 interests may appear. The refund to the consumer shall be reduced by a reasonable  
43 allowance for the consumer's use of the vehicle. A reasonable allowance for use is that  
44 amount directly attributable to use by the consumer prior to his first report of the

1 nonconformity to the manufacturer, its agent, or its authorized dealer, and during any  
2 subsequent period when the vehicle is not out of service because of repair. 'Reasonable  
3 allowance' is presumed to be the cash price or the lease price, as the case may be, of the  
4 vehicle multiplied by a fraction having as its denominator 100,000 miles and its  
5 numerator the number of miles attributed to the consumer.

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

- 11 (1) That the motor vehicle was returned pursuant to this Article or  
12 pursuant to the applicable law of any other State; and
- 13 (2) The defect or condition or series of defects or conditions which  
14 substantially impaired the value of the motor vehicle to the consumer.

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

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

20 "**§ 20-351.1. Definitions.**

21 As used in this Article:

- 22 (1) 'Consumer' means the purchaser, other than for purposes of resale, or  
23 lessee from a commercial lender, lessor, or from a manufacturer or  
24 dealer, of a motor vehicle, and any other person entitled by the terms  
25 of an express warranty to enforce the obligations of that warranty.
- 26 (2) 'Manufacturer' means any person or corporation, resident or  
27 nonresident, who manufactures or assembles or imports or distributes  
28 new motor vehicles which are sold in the State of North Carolina.
- 29 (3) 'Motor vehicle' includes a motor vehicle as defined in G.S. 20-4.01  
30 which is sold or leased in this State, but does not include 'house trailer'  
31 as defined in G.S. 20-4.01 or any motor vehicle with a gross vehicle  
32 weight of 10,000 pounds or more.
- 33 (4) 'New motor vehicle' means a motor vehicle for which a certificate of  
34 origin, as required by G.S. 20-52.1 or a similar requirement in another  
35 state, has never been supplied to a consumer, or which a manufacturer,  
36 its agent, or its authorized dealer states in writing is being sold as a  
37 new motor vehicle."

38 Sec. 3. This act is effective upon ratification and applies to all motor vehicles  
39 under warranty on or after that date, except for the provisions in G.S. 20-351.3(b) as  
40 provided in this act, which are effective upon ratification, but shall apply to vehicles  
41 leased on or after that date.