

House Bill 766

By: Representatives Ragas of the 64th, Bordeaux of the 151st and Martin of the 47th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 28 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
2 known as the "Motor Vehicle Warranty Rights Act," so as to change the definitions of new
3 motor vehicle and reasonable offset for use; to provide new provisions for reasonable offset
4 for use in certain lease situations; to clarify consumers' and manufacturers' obligations and
5 appeal rights after a decision by the arbitration panel; to provide for related matters; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 28 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, known as the
10 "Motor Vehicle Warranty Rights Act," is amended by striking paragraphs (11) and (16) of
11 Code Section 10-1-782, relating to definitions, and inserting in lieu thereof the following:

12 "(11) 'New motor vehicle' means any self-propelled vehicle, primarily designed for the
13 transportation of persons or property over the public highways, that was leased or
14 purchased in this state or registered by the original consumer in this state and on which
15 the original motor vehicle title was issued to the lessor or purchaser without having been
16 previously issued to any person other than the selling dealer. The term new motor vehicle
17 includes a demonstrator or lease-purchase, as long as a manufacturer's warranty was
18 issued as a condition of sale. If the motor vehicle is a motor home, this article shall apply
19 to the self-propelled vehicle and chassis, but does not include those portions of the
20 vehicle designated, used, or maintained primarily as ~~a mobile dwelling~~ living quarters,
21 office, or commercial space. The term 'new motor vehicle' does not include motorcycles,
22 ~~or trucks with 10,000 pounds or more gross vehicle weight rating.~~ ~~The term 'new motor~~
23 ~~vehicle' shall not include, or~~ any vehicle on which the title and other transfer documents
24 show a used, rather than new, vehicle. ~~The term 'new motor vehicle' includes a~~
25 ~~demonstrator or lease-purchase, as long as a manufacturer's warranty was issued as a~~
26 ~~condition of sale, unless specifically excluded under this definition."~~

1 "(16) 'Reasonable offset for use' means an amount directly attributable to use by the
 2 consumer before the consumer requests repurchase or replacement by the manufacturer
 3 pursuant to Code Section 10-1-784. The reasonable offset for use shall be computed by
 4 the number of miles that the vehicle traveled before the consumer's request of repurchase
 5 or replacement multiplied by the purchase price and divided by ~~100,000~~ 120,000."

6 SECTION 2.

7 Said article is further amended by striking paragraph (3) of subsection (a) of Code Section
 8 10-1-784, relating to the lemon law and liability of dealers or distributors, and inserting in
 9 lieu thereof a new paragraph (3) to read as follows:

10 "(3) The replacement motor vehicle shall be identical or reasonably equivalent to the
 11 motor vehicle to be replaced. Such replacement shall include payment of all collateral
 12 charges which the ~~consumer~~ lessee or lessor will incur a second time which would not
 13 have been incurred again except for the replacement, and any and all incidental costs
 14 incurred by the ~~consumer~~ lessee or lessor. In the case of a replacement motor vehicle, the
 15 reasonable offset for use shall be paid by the ~~consumer~~ lessor to the manufacturer:
 16 Compensation unless the vehicle's mileage, prior to the lessor's request for placement,
 17 exceeds the number of miles allowed under the lease. In that event, the compensation for
 18 a reasonable offset for use for the excess miles shall be paid by the consumer lessee to
 19 the manufacturer in the event that a replacement motor vehicle is elected. In the case of
 20 a lease where the ~~consumer~~ lessee either has no option to purchase the motor vehicle at
 21 the end of the lease term, or the ~~consumer~~ lessee has an option to purchase the motor
 22 vehicle at the end of the lease term but does not exercise the option, the lessor shall
 23 refund to the ~~consumer~~ lessee the lesser of (A) the offset for use paid by the ~~consumer~~
 24 lessee to the manufacturer at the time of delivery of the replacement vehicle, or (B) the
 25 gain realized by the lessor by reason of the difference, if any, between the anticipated
 26 residual value of the original motor vehicle as determined at the inception of the lease and
 27 the realized value of the replacement motor vehicle at the end of the lease. If the lessor
 28 does not realize any gain from the disposition of the replacement vehicle, there will be
 29 no refund due to the ~~consumer~~ lessee from the lessor. The foregoing rules apply only to
 30 leases where the ~~consumer~~ lessee performs all of the ~~consumer's~~ lessee's obligations
 31 under the lease agreement and the lease terminates upon the scheduled expiration of the
 32 lease term as set forth in the lease agreement or any mutually agreed upon extension of
 33 the lease term. The administrator may provide by rule under Chapter 13 of Title 50, the
 34 'Georgia Administrative Procedure Act,' for determining the manner of calculating the
 35 amount of any further charges or refunds that may apply in the case of leases terminated
 36 prematurely either by the voluntary election of the parties, or involuntarily by the lessor

1 in the event of the lessee's default, the loss or destruction of the vehicle, or for any other
2 reason."

3 **SECTION 3.**

4 Said article is further amended by striking subsection (c) of Code Section 10-1-786, relating
5 to the new motor vehicle arbitration panel, and inserting in lieu thereof a new subsection (c)
6 to read as follows:

7 "(c) A consumer shall exhaust any certified informal dispute resolution settlement
8 procedure under Code Section 10-1-793 and the new motor vehicle arbitration panel
9 remedy before filing any superior court action pursuant to Code Section ~~10-1-788~~
10 10-1-787.

11 **SECTION 4.**

12 Said article is further amended by striking subsections (f), (g), and (h) of Code Section
13 10-1-787, relating to arbitration procedure, and inserting in lieu thereof new subsections (f),
14 (g), (h), (i), and (j) to read as follows:

15 "(f) The panel's decision shall be sent by certified mail or statutory overnight delivery,
16 return receipt requested, to the consumer and to the manufacturer and shall contain written
17 findings of fact and the rationale for the decision.

18 (g) If the final panel decision is in favor of the consumer, the manufacturer must, within
19 40 calendar days of the date of the decision, comply with the terms of the decision.
20 Compliance occurs on the date the consumer receives delivery of an acceptable
21 replacement motor vehicle or the refund specified in the arbitration award. In any civil
22 action arising under this article and relating to a dispute arbitrated before the panel, any
23 decision by the panel is admissible in evidence. If the consumer rejects ~~The consumer~~
24 must reject the panel's decision he or she must do so in writing by certified mail or
25 statutory overnight delivery, return receipt requested, addressed to the panel and to the
26 manufacturer within 30 40 days of receipt the date of the panel's decision, or he or she
27 shall be deemed to have accepted the panel's decision. ~~The panel shall immediately notify~~
28 the manufacturer by certified mail or statutory overnight delivery, return receipt requested,
29 whether the consumer has accepted, rejected, or has been deemed to have accepted. The
30 consumer shall have 40 calendar days from the date of the decision to request a trial de
31 novo in superior court of the arbitration decision.

32 (g)(h) A decision is final unless a request for trial de novo is filed by either party. Upon
33 receipt of the panel's notice, the manufacturer shall have 40 calendar days from the date
34 of the decision to comply with the arbitration panel decision or to file a petition of appeal
35 to request a trial de novo of the arbitration panel's decision in superior court. If the

1 manufacturer requests a trial de novo, the court may require the manufacturer to post
 2 security for the consumer's financial loss due to the passage of time for review. At the
 3 time the ~~petition of appeal~~ request for trial de novo is filed, the manufacturer shall send, by
 4 certified mail or statutory overnight delivery, a conformed copy of such petition to the
 5 administrator.

6 ~~(h)~~(i) If, at the end of the 40 calendar day period, neither compliance with nor a ~~petition~~
 7 ~~to appeal~~ request for trial de novo the panel's decision has occurred, the administrator may
 8 impose a fine of up to \$1,000.00 per day against the manufacturer until compliance occurs
 9 or until a maximum penalty of double the value of the vehicle or \$100,000.00, whichever
 10 is less, accrues. If the manufacturer can provide clear and convincing evidence either that
 11 any delay or failure was beyond its control, or that any delay was acceptable to the
 12 consumer, the fine shall not be imposed. If the manufacturer fails to provide such evidence
 13 or fails to pay the fine, the administrator may initiate proceedings against the manufacturer
 14 for failure to pay any accrued fine and may initiate proceedings on behalf of the state to
 15 require specific performance of an arbitration decision under this article. The administrator
 16 shall deposit any fines in the state treasury.

17 (j) If the manufacturer requests a trial de novo and the consumer prevails at such trial, the
 18 judgment may include collateral charges, continuing incidental charges, attorney's fees,
 19 and expenses of litigation."

20 SECTION 5.

21 Said article is further amended by striking Code Section 10-1-788, relating to arbitration
 22 decision appeals, and inserting in lieu thereof a new Code section to read as follows:

23 "10-1-788.

24 ~~(a) After the manufacturer has received notice of the consumer's acceptance or rejection,~~
 25 ~~the consumer or the manufacturer shall have 40 days to request a trial de novo of the~~
 26 ~~arbitration decision in superior court.~~

27 ~~(b) If the manufacturer appeals, the court may require the manufacturer to post security for~~
 28 ~~the consumer's financial loss due to the passage of time for review.~~

29 ~~(c) If the manufacturer appeals and the consumer prevails, recovery may include the~~
 30 ~~monetary value of the award, collateral charges, continuing incidental costs, if any, and~~
 31 ~~attorney's fees and costs. Reserved."~~

32 SECTION 6.

33 Said article is further amended by striking subsection (c) of Code Section 10-1-789, relating
 34 to consumer fees for operating the arbitration program, and inserting in lieu thereof a new
 35 subsection (c) to read as follows:

1 "(c) It is the intent of the General Assembly that any consumer who, on or after July 1,
2 1990, but prior to January 1, 1991, pays or should have paid the fee designated in this Code
3 section shall be entitled to utilize the remedies provided in Code Sections 10-1-786; and
4 10-1-787, ~~and 10-1-788~~ in addition to any other remedies which exist in law or in equity
5 regarding defective automobiles, notwithstanding the effective dates of this article or the
6 effective dates of any provisions of this article."

7 **SECTION 7.**

8 All laws and parts of laws in conflict with this Act are repealed.