

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 752

An Act to amend and reenact § 59.1-207.8 of the Code of Virginia, relating to agricultural equipment; time frame for reporting nonconformities.

[S 1513]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-207.8 of the Code of Virginia is amended and reenacted as follows:

§ 59.1-207.8. Protection against defective agricultural equipment; applicability of chapter.

A. If agricultural equipment does not conform to all applicable express written warranties, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of such express written warranties or during the period of one year following the date of original delivery of the equipment to the first consumer, whichever is the ~~earlier~~ *later* date, the manufacturer, its agent, or its authorized dealers shall make such repairs as are necessary to conform the equipment to such express written warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

B. If the manufacturer or its authorized dealers do not conform the equipment to any applicable express written warranty by repairing or correcting any defect or condition which substantially impairs the use and market value of the equipment to the consumer after a reasonable number of attempts, the manufacturer or its authorized dealer shall replace the equipment with comparable equipment acceptable to the consumer, charging the consumer only a reasonable allowance for the consumer's prior use of the equipment, or accept the return of the equipment from the consumer and refund to the consumer the cash purchase price, including sales tax, license fees, registration fees, and any similar governmental charges, less such a reasonable allowance for prior use. Refunds shall be made to the consumer and lien holder or holder of a security interest, if any, as their interests may appear.

The reasonable allowance for prior use, which shall be no less than the fair rental value of the equipment, shall be the sum of (i) that amount attributable to use by the consumer or others prior to the consumer's first report of the nonconformity to the manufacturer or its authorized dealers, (ii) that amount attributable to use by the consumer or others during any period subsequent to such report when the vehicle is not out of service by reason of repair of the reported nonconformity, and (iii) that amount attributable to use by the consumer of equipment provided by the manufacturer or its authorized dealers while the equipment is out of service by reason of repair of the reported nonconformity.

C. For purposes of this chapter, it shall be presumed that a reasonable number of attempts have been undertaken to conform equipment to the applicable express written warranties if, within the express written warranty term or during the period of one year following the date of the original delivery of the equipment to the first consumer, whichever is the ~~earlier~~ *later* date, (i) the same nonconformity has been subject to repair four or more times by the manufacturer or its authorized dealers, but such nonconformity continues to exist or (ii) the equipment is out of service by reason of repair for a cumulative total of ~~thirty~~ 30 or more calendar days. However, those days shall not be counted when the consumer has been provided by the manufacturer or its authorized dealers with the use of other equipment which performs the same function or has been offered the use of such equipment.

The term of an express written warranty, such one-year period, and such ~~thirty-day~~ 30-day period shall be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or other natural disasters.

D. In no event shall the presumption provided in this section apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and been offered an opportunity to cure the alleged defect. If the address of the manufacturer is not readily available to the consumer, such written notification shall be mailed to an authorized dealer. The authorized dealer shall upon receipt forward such notification to the manufacturer.

E. It shall be an affirmative defense to any claim under this chapter that (i) an alleged nonconformity does not substantially impair such use and market value or (ii) a nonconformity is the result of abuse or neglect, or of modifications or alterations of the equipment not authorized by the manufacturer.

F. Any action brought under this chapter shall be commenced within six months following (i) expiration of the express written warranty term, or (ii) ~~eighteen~~ 18 months following the date of the original delivery of the equipment to the consumer, whichever is the later date.

G. This chapter shall apply to agricultural equipment sold after January 1, 1985.

H. Nothing in this chapter shall in any way limit or impair the rights or remedies which are otherwise available to a consumer under any other law.

I. Any consumer who suffers a loss by reason of a violation of any provision of this chapter may

bring a civil action to enforce such provision.