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SENATE BILL NO. 815

Senate Amendments in [] - January 24, 2023

Prefiled December 15, 2022

A BILL to amend and reenact §§ 59.1-207.11 and 59.1-207.13 of the Code of Virginia, relating to Virginia Motor Vehicle Warranty Enforcement Act; definitions.

Patron Prior to Engrossment—Senator Surovell

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-207.11 and 59.1-207.13 of the Code of Virginia are amended and reenacted as follows:

§ 59.1-207.11. Definitions.

As used in this chapter, the following terms shall have the following meanings:

"Collateral charges" means any sales-related or lease-related charges including but not limited to sales tax, license fees, registration fees, title fees, finance charges and interest, transportation charges, dealer preparation charges or any other charges for service contracts, undercoating, rust proofing or installed options, not recoverable from a third party. If a refund involves a lease, "collateral charges" means, in addition to any of the above, capitalized cost reductions, credits and allowances for any trade-in vehicles, fees to another to obtain the lease, and insurance or other costs expended by the lessor for the benefit of the lessee.

"Comparable motor vehicle" means a motor vehicle that is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of purchase or lease with an offset from this value for a reasonable allowance for its use.

"Consumer" means the purchaser, other than for purposes of resale, or the lessee, of a motor vehicle used [(i)] in substantial part for personal, family, or household purposes [or (ii) primarily for business purposes if the purchaser or lessee is a person, partnership, limited liability company, corporation, association, or other legal entity to which not more than five motor vehicles are registered] , and any person to whom such motor vehicle is transferred for the same purposes during the duration of any warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

"Incidental damages" shall have the same meaning as provided in § 8.2-715.

"Lemon law rights period" means the period ending 18 months after the date of the original delivery to the consumer of a new motor vehicle. This shall be the period during which the consumer can report any nonconformity to the manufacturer and pursue any rights provided for under this chapter.

"Lien" means a security interest in a motor vehicle.

"Lienholder" means a person, partnership, association, corporation or entity with a security interest in a motor vehicle pursuant to a lien.

"Manufacturer" means a person, partnership, association, corporation or entity engaged in the business of manufacturing or assembling motor vehicles, or of distributing motor vehicles to motor vehicle dealers.

"Manufacturer's express warranty" means the written warranty, so labeled, of the manufacturer of a new automobile, including any terms or conditions precedent to the enforcement of obligations under that warranty.

"Motor vehicle" means only passenger cars, pickup or panel trucks, motorcycles, autocycles, self-propelled motorized chassis of motor homes, and mopeds, as those terms are defined in § 46.2-100, and demonstrators or leased vehicles with which a warranty was issued. *The term "motor vehicle" also includes a vehicle with a gross vehicle weight under 10,000 pounds that is bought or used primarily for business purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in its name.*

"Motor vehicle dealer" shall have the same meaning as provided in § 46.2-1500.

"Nonconformity" means a failure to conform with a warranty, a defect or a condition, including those that do not affect the driveability of the vehicle, which significantly impairs the use, market value, or safety of a motor vehicle.

"Notify" or "notification" means that the manufacturer shall be deemed to have been notified under this chapter if a written complaint of the defect or defects has been mailed *or sent by electronic mail* to it or it has responded to the consumer ~~in writing~~ *via mail or electronic mail* regarding a complaint, or a

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59 factory representative has either inspected the vehicle or met with the consumer or an authorized dealer
60 regarding the nonconformity.

61 "Reasonable allowance for use" shall not exceed one-half of the amount allowed per mile by the
62 Internal Revenue Service, as provided by regulation, revenue procedure, or revenue ruling promulgated
63 pursuant to § 162 of the Internal Revenue Code, for use of a personal vehicle for business purposes,
64 plus an amount to account for any loss to the fair market value of the vehicle resulting from damage
65 beyond normal wear and tear, unless the damage resulted from nonconformity to any warranty.

66 "Serious safety defect" means a life-threatening malfunction or nonconformity that impedes the
67 consumer's ability to control or operate the new motor vehicle for ordinary use or reasonable intended
68 purposes or creates a risk of fire or explosion.

69 "Significant impairment" means to render the new motor vehicle unfit, unreliable or unsafe for
70 ordinary use or reasonable intended purposes.

71 "Warranty" means any implied warranty or any written warranty of the manufacturer, or any
72 affirmations of fact or promise made by the manufacturer in connection with the sale or lease of a
73 motor vehicle that become part of the basis of the bargain. The term "warranty" pertains to the
74 obligations of the manufacturer in relation to materials, workmanship, and fitness of a motor vehicle for
75 ordinary use or reasonable intended purposes throughout the duration of the lemon law rights period as
76 defined under this section.

77 **§ 59.1-207.13. Nonconformity of motor vehicles.**

78 A. If the manufacturer, its agents or authorized dealers do not conform the motor vehicle to any
79 applicable warranty by repairing or correcting any defect or condition, including those that do not affect
80 the driveability of the vehicle, which significantly impairs the use, market value, or safety of the motor
81 vehicle to the consumer after a reasonable number of attempts during the lemon law rights period, the
82 manufacturer shall:

83 1. Replace the motor vehicle with a comparable motor vehicle acceptable to the consumer, or

84 2. Accept return of the motor vehicle and refund to the consumer, lessor, and any lienholder as their
85 interest may appear the full contract price, including all collateral charges, incidental damages, less a
86 reasonable allowance for the consumer's use of the vehicle up to the date of the first notice of
87 nonconformity that is given to the manufacturer, its agents or authorized dealer. Refunds or replacements
88 shall be made to the consumer, lessor or lienholder, if any, as their interests may appear. The consumer
89 shall have the unconditional right to choose a refund rather than a replacement vehicle and to drive the
90 motor vehicle until he receives either the replacement vehicle or the refund. The subtraction of a
91 reasonable allowance for use shall apply to either a replacement or refund of the motor vehicle. Mileage,
92 expenses, and reasonable loss of use necessitated by attempts to conform such motor vehicle to the
93 express warranty may be recovered by the consumer.

94 A1. In the case of a replacement of or refund for a leased vehicle, in addition to any other damages
95 provided in this chapter, the motor vehicle shall be returned to the manufacturer and the consumer's
96 written lease shall be terminated by the lessor without penalty to the consumer. The lessor shall transfer
97 title to the manufacturer as necessary to effectuate the consumer's rights pursuant to this chapter,
98 whether the consumer chooses vehicle replacement or a refund.

99 B. It shall be presumed that a reasonable number of attempts have been undertaken to conform a
100 motor vehicle to any warranty and that the motor vehicle is significantly impaired if during the lemon
101 law rights period either:

102 1. The same nonconformity has been subject to repair three or more times by the manufacturer, its
103 agents or its authorized dealers and the same nonconformity continues to exist;

104 2. The nonconformity is a serious safety defect and has been subject to repair one or more times by
105 the manufacturer, its agent or its authorized dealer and the same nonconformity continues to exist; or

106 3. The motor vehicle is out of service due to repair for a cumulative total of 30 calendar days, unless
107 such repairs could not be performed because of conditions beyond the control of the manufacturer, its
108 agents or authorized dealers, including war, invasion, strike, fire, flood or other natural disasters.

109 C. The lemon law rights period shall be extended if the manufacturer has been notified but the
110 nonconformity has not been effectively repaired by the manufacturer, or its agent, by the expiration of
111 the lemon law rights period.

112 D. The manufacturer shall clearly and conspicuously disclose to the consumer, in the warranty or
113 owner's manual, that written notification of the nonconformity to the manufacturer is required before the
114 consumer may be eligible for a refund or replacement of the vehicle under this chapter. The
115 manufacturer shall include with the warranty or owner's manual the name and address to which the
116 consumer shall send such written notification.

117 E. It shall be the responsibility of the consumer, or his representative, prior to availing himself of the
118 provisions of this section, to notify the manufacturer of the need for the correction or repair of the
119 nonconformity, unless the manufacturer has been notified as defined in § 59.1-207.11. If the
120 manufacturer or factory representative has not been notified of the conditions set forth in subsection B

121 and any of the conditions set forth in subsection B already exists, the manufacturer shall be given an
122 additional opportunity, not to exceed 15 days, to correct or repair the nonconformity. If notification shall
123 be mailed *or sent via electronic mail* to an authorized dealer, the authorized dealer shall upon receipt
124 forward such notification to the manufacturer.

125 F. Nothing in this chapter shall be construed to limit or impair the rights and remedies of a consumer
126 under any other law.

127 G. It is an affirmative defense to any claim under this chapter that:

128 1. An alleged nonconformity does not significantly impair the use, market value, or safety of the
129 motor vehicle; or

130 2. A nonconformity is the result of abuse, neglect or unauthorized modification or alteration of a
131 motor vehicle by a consumer.

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