VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 59.1-207.11, 59.1-207.13, and 59.1-207.16:1 of the Code of Virginia, relating to Motor Vehicle Warranty Enforcement Act; leased vehicles; penalty.

[S 635]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-207.11, 59.1-207.13, and 59.1-207.16:1 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 in substantial part for personal, family, or household purposes, 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 eighteen 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, self-propelled motorized chassis of motor homes and mopeds as those terms are defined in § 46.2-100 and demonstrators or ~~lease purchase~~ *leased* vehicles with which a warranty was issued.

"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 to it or it has responded to the consumer in writing regarding a complaint, or a factory representative has either inspected the vehicle or met with the consumer or an authorized dealer regarding the nonconformity.

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

"Serious safety defect" means a life-threatening malfunction or nonconformity that impedes the consumer's ability to control or operate the new motor vehicle for ordinary use or reasonable intended

purposes or creates a risk of fire or explosion.

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

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

§ 59.1-207.13. Nonconformity of motor vehicles.

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

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

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

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

B. It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to any warranty and that the motor vehicle is significantly impaired if during the period of eighteen months following the date of original delivery of the motor vehicle to the consumer either:

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

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

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

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

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

E. It shall be the responsibility of the consumer, or his representative, prior to availing himself of the provisions of this section, to notify the manufacturer of the need for the correction or repair of the nonconformity, unless the manufacturer has been notified as defined in § 59.1-207.11. If the manufacturer or factory representative has not been notified of the conditions set forth in subsection B of this section and any of the conditions set forth in subsection B of this section already exists, the manufacturer shall be given an additional opportunity, not to exceed fifteen days, to correct or repair the nonconformity. If notification shall be mailed to an authorized dealer, the authorized dealer shall upon receipt forward such notification to the manufacturer.

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

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

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

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

§ 59.1-207.16:1. Disclosure of returned vehicles; penalty.

A. If a motor vehicle that is returned to the manufacturer or distributor either under this chapter or by judgment, decree, or arbitration award in this or any other state and is then transferred by a manufacturer or distributor to a dealer, licensed under Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2, in Virginia, the manufacturer or distributor shall disclose this information to the Virginia dealer.

B. If the returned vehicle is then made available for resale *or for another lease*, the manufacturer shall, prior to sale *or lease*, disclose in writing in a clear and conspicuous manner, on a separate piece of paper in ten-point capital type, to the Virginia dealer that this motor vehicle was returned to the manufacturer, distributor or factory branch, the nature of the defect which resulted in the return, and the condition of the motor vehicle at the time of transfer to the Virginia dealer. It shall be the responsibility of the dealer that receives this disclosure to give notice of its contents to any prospective purchaser *or lessee* prior to sale *or lease*, and to transfer the disclosure, or a copy thereof, to the next purchaser *or lessee*. A dealer's responsibility under this section shall cease upon the sale *or lease* of the affected motor vehicle to the first purchaser *or lessee* not for resale *or lease*.

C. Any manufacturer or distributor who violates this section of the Motor Vehicle Warranty Enforcement Act shall be guilty of a Class 3 misdemeanor.