

Stricken language would be deleted from and underlined language would be added to present law.

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As Engrossed: S3/4/19 S3/13/19
A Bill

SENATE BILL 450

By: Senators B. Johnson, Rice

By: Representatives Richmond, Bentley, D. Douglas, Eubanks, Sullivan, Vaught, Watson

For An Act To Be Entitled

AN ACT TO ESTABLISH THE ARKANSAS NEW FARM MACHINERY
QUALITY ASSURANCE ACT; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE ARKANSAS NEW FARM
MACHINERY QUALITY ASSURANCE ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 4, Chapter 96, is amended to add an additional subchapter to read as follows:

Subchapter 3 – Arkansas New Farm Machinery Quality Assurance Act

4-96-301. Title.

This subchapter shall be known and may be cited as the "Arkansas New Farm Machinery Quality Assurance Act".

4-96-302. Definitions.

As used in this subchapter:

(1) "Authorized dealer" means an individual, corporation, or limited liability company authorized by the manufacturer or distributor to sell, barter, or exchange a particular make of new farm machinery;

(2) "Collateral charges" means any reasonable additional charge to a consumer not directly attributable to the aggregate purchase price of the farm machinery;

(3) "Comparable farm machinery" means an identical or reasonable



replacement piece of farm machinery;

(4) "Consumer" means a purchaser or lessee of new farm machinery, other than for purposes of resale, or a person entitled to enforce the obligations of the warranty during the duration of the farm machinery quality assurance period;

(5)(A) "Farm machinery" means self-propelled equipment or machinery typically used for agricultural purposes that is purchased or leased for the first time from a manufacturer, distributor, or an authorized dealer.

(B) "Farm machinery" includes farm machinery propelled by power other than physical power if the farm machinery is not an off-road vehicle, an all-terrain vehicle, as defined under § 27-21-102, equipment under twenty-five horsepower (25 h.p.), lawn tractors, or lawn mowers;

(6) "Farm machinery quality assurance period" means a period of time that:

(A) Begins:

(i) On the date of original delivery of farm machinery; or

(ii) In the case of a replacement piece of farm machinery provided by a manufacturer to a consumer under this subchapter, on the date of delivery of the replacement vehicle to the consumer; and

(B) Ends twelve (12) months after the date of the original delivery of the farm machinery to a consumer, or the first six hundred (600) hours of operation attributable to the consumer, whichever is earlier;

(7) "Nonconformity" means any condition of farm machinery that:

(A) Does not conform with the terms of an express warranty issued by a manufacturer to a consumer;

(B) Significantly impairs the use, value, or safety of the farm machinery; and

(C) Does not arise or occur as a result of abuse or neglect, including without limitation failure to operate and maintain the farm machinery according to the manufacturer's operator manual and recommended maintenance of the farm machinery;

(8) "Reasonable allowance for consumer use" means an amount attributable to use by a consumer:

(A) Before the consumer's first report of the

nonconformity to the manufacturer or authorized dealer of the farm machinery;

(B) During any period of use of the farm machinery subsequent to the first report of nonconformity if the farm machinery is not out of service by reason of repair of the reported nonconformity; and

(C) Of the farm machinery provided by the manufacturer or its authorized dealer while the farm machinery is out of service by reason of repair of the reported nonconformity, but not less than the fair lease value of the farm machinery;

(9)(A) "Seller" means a retail seller of the farm machinery as evidenced by the purchase order or lease agreement, that may be a dealer, distributor, manufacturer, or manufacturer's agent; and

(10)(A) "Warranty" means a written warranty, as labeled, issued by a manufacturer of new farm machinery or an affirmation of fact or promise made by the manufacturer, including any terms or conditions precedent to the enforcement of obligations under that warranty in connection with the sale or lease of farm machinery to a consumer concerning the nature of the material or workmanship that affirms or promises that the material or workmanship is free of defects or will meet a specified level of performance.

(B) "Warranty" does not include a statement or expression made by an authorized dealer.

4-96-303. Disclosure by seller

(a)(1) When a consumer purchases or leases farm machinery from a seller, the seller shall at the time of purchase or lease transaction:"

(A) Provide to the consumer a written statement that adequately discloses and explains the rights and obligations of a consumer under this subchapter;

(B) Obtain a signed acknowledgment from the consumer of the receipt of the written statement described in subdivision (a)(1)(A) of this section; and

(C) For self-propelled farm machinery, maintain copies of the consumer's signed acknowledgment for at least the period equal to the term of coverage of the manufacturer's warranty.

(2) It is a violation of this subchapter for a seller to fail to provide to a consumer the written statement required under subdivision (a)(1)(A) of this section.

(b)(1) The Consumer Protection Division of the office of the Attorney General shall prepare and make available, in either print or by electronic form, a written statement as described in subdivision (a)(1)(A) of this section that includes the telephone number of the division that the consumer can call to obtain information regarding his or her rights and obligations under this subchapter.

(2) It is a violation of this subchapter for a seller to fail to provide to a consumer the written statement described in subdivision (b)(1) of this section.

(c) For each failure of the seller to provide to a consumer the written statement required under this section or failure to retain a signed acknowledgement form, the seller shall be liable to the state for a civil penalty of not less than twenty-five dollars (\$25.00) but no more than one thousand dollars (\$1,000).

(d)(1) A seller shall clearly and conspicuously disclose to the consumer that written notice of a nonconformity is required before the buyer may be eligible for a refund or replacement of the farm machinery.

(2) At the time of acquisition of farm machinery, a seller shall provide the consumer with conspicuous notice of the address and phone number for the manufacturer, distributor, or authorized dealer at the time of acquisition of farm machinery to which the buyer shall send notification of a nonconformity.

(e)(1) If farm machinery does not conform to any applicable express warranties and the consumer provides written notice by certified mail to the manufacturer, distributor, or authorized dealer demanding correction or repair of the nonconformity during the term of the express warranty or during the farm machinery quality assurance period, whichever period expires earlier, the manufacturer, agent of a manufacturer, distributor, or an authorized dealer shall make any necessary repairs to conform the farm machinery to the express warranties, notwithstanding the fact that the repairs are made after the expiration of the term of the express warranty or farm machinery quality assurance period.

(2) For self-propelled farm machinery, this section is limited to warranty coverage for the engine, transmission, and power train.

(f) This subchapter applies to farm machinery sold on or after January 1, 2020.

4-96-304. Right to repair.

After notice is provided under § 4-96-303, a manufacturer, a distributor, or an authorized dealer shall have the right to repair a nonconformity of farm machinery:

(1)(A) Three (3) times for the same repair issue or thirty (30) days out of service for the same issue under this subchapter.

(B) The cost of three (3) repairs shall equal at least thirty percent (30%) of total purchase price of the farm machinery in order to trigger recourse under this subchapter; or

(2)(A) Five (5) times for all issues or sixty (60) days of out of service time.

(B) The cost of five (5) repairs under subdivision (2)(A) of this section shall be equal to at least fifty percent (50%) of the total purchase price of the farm machinery in order to trigger recourse under this subchapter.

(C) Days of out of service time do not count for the purposes of subdivision (1)(A) of this section if the authorized dealer provides comparable farm machinery.

4-96-305. Refund or replacement.

(a) If a manufacturer, an agent of a manufacturer, a distributor, or an authorized dealer does not conform farm machinery to the warranty as required under § 4-96-303, after notice of the nonconformity under § 4-96-303 by repairing or correcting one (1) or more nonconformities that substantially impair the farm machinery after a reasonable number of attempts, then, within thirty (30) days, the manufacturer or distributor shall:

(1) At the time of receipt of payment of a reasonable offset for use by the consumer, replace the farm machinery with comparable farm machinery acceptable to the consumer; or

(2) Repurchase the farm machinery from the buyer or lessor and refund to the buyer or lessor the full purchase price or lease price, less:

(A) A reasonable allowance for consumer use; and

(B) A reasonable offset for physical damage sustained by the farm machinery while under the ownership of the consumer.

(b) The replacement or refund under subsection (a) of this section

shall include payment of all collateral charges and reasonably incurred incidental charges.

(c) A buyer has an unconditional right to choose a refund rather than a replacement under this subchapter.

(d) At the time of the refund or replacement, a consumer, lien holder, or lessor shall furnish clear title to and possession of the farm machinery to the manufacturer, distributor, or authorized dealer.

(e) The amount of reasonable allowance for consumer use is determined by the fair lease value of the farm machinery.

4-96-306. Affirmative defenses.

It is an affirmative defense to a claim under this subchapter that:

(1) A defect or condition does not substantially impair the use, value, or safety of the farm machinery;

(2) A nonconformity is the result of an accident, abuse, neglect, or unauthorized modification or alteration of the farm machinery by a person other than the manufacturer, agent of a manufacturer, distributor, or an authorized dealer;

(3) A claim by the consumer was not filed in good faith; or

(4) If there are any other defense allowed by law that may be raised against the claim.

4-96-307. Enforcement – Exclusivity – Costs and expenses.

(a) A consumer may bring a civil action to enforce this subchapter in a court of competent jurisdiction.

(b) This subchapter does not limit the rights and remedies that are otherwise available to a consumer under any applicable law.

(c)(1) A consumer who prevails in a legal proceeding under this subchapter is entitled to recover, as part of the judgment, a sum equal to the aggregate amount of costs and expenses, including attorney's fees.

(2) The attorney's fees shall be:

(A) Based on actual time expended by the attorney; and

(B) Based on charges reasonably incurred by the consumer for or in connection with the commencement and prosecution of the action as determined by the court.

4-96-308. Action – Limitations.

(a) A legal action brought under this subchapter shall commence within two (2) years following the date a buyer first reports the nonconformity to a manufacturer, an agent of a manufacturer, a distributor, or an authorized dealer.

(b)(1) Before filing a legal action in court concerning the enforcement of the rights and remedies available to the consumer under this subchapter, the consumer and the manufacturer, distributor, or authorized dealer shall, in good faith, attempt to resolve all issues and claims in dispute through the use of an impartial, third-party mediator certified by the Arkansas Alternative Dispute Resolution Commission, if the seller has provided the required disclosures under § 4-96-303.

(2) The consumer and the manufacturer shall equally bear all costs and expenses of mediation, unless agreed otherwise.

(3) However, if the seller has not provided the required disclosure under § 4-96-303, the consumer is not required to utilize mediation before commencement of any legal action to enforce the consumer's rights under this subchapter.

/s/B. Johnson