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CHAPTER 28

Enforcement of Motor Vehicle Express Warranties

**SECTION 56‑28‑10.** Definitions.

 As used in this chapter:

 (1) “Consumer” means the purchaser or lessor, other than for purposes of resale, of a motor vehicle normally used for personal, family, or household purposes and subject to the manufacturer’s express warranty, and any other person entitled by the warranty to enforce the obligations of the warranty.

 (2) “Manufacturer” means any person, resident, or nonresident, who manufactures or assembles or imports or distributes new motor vehicles which are to be sold in the State.

 (3) “Manufacturer’s express warranty” or “warranty” means the written warranty, so labeled, of the manufacturer of a new motor vehicle, including any terms or conditions precedent to the enforcement of obligations under that warranty.

 (4) “Motor vehicle” means a private passenger motor vehicle, as classified by Section 56‑3‑630, but excluding the living portion of recreational vehicles and off‑road vehicles, which is sold and registered in this State.

 (5) A “new motor vehicle” means a private passenger motor vehicle which has been sold to a new motor vehicle dealer by a manufacturer and which has not been used for other than demonstration purposes and on which the original title has not been issued from the new motor vehicle dealer.

 (6) “Nonconformity” means a defect or condition that substantially impairs the use, value, or safety of a motor vehicle, but does not include a defect or condition that results from an accident, modification, or alteration of the motor vehicle by persons other than the manufacturer or its authorized service agent.

HISTORY: 1989 Act No. 142, Section 1; 1996 Act No. 459, Section 242.

**SECTION 56‑28‑20.** Manufacturers to provide annual written summaries of certain motor vehicles; forms; records to be made available; penalties.

 Every manufacturer, in a format and a form that must be mailed annually to each manufacturer approved by the Administrator of the Department of Consumer Affairs, shall provide a written summary of all motor vehicles repurchased or replaced under this chapter no less than once each calendar year. In addition, every manufacturer shall make available any paperwork, reports, or other information regarding vehicles subject to this chapter upon request by the administrator. Failure to supply either the written summaries of repurchased vehicles or respond to reasonable requests for information by the administrator subjects the manufacturer to an administrative penalty not to exceed one thousand dollars for each violation which the administrator in his discretion may impose.

HISTORY: 1989 Act No. 142, Section 1.

**SECTION 56‑28‑30.** Nonconformity with express warranties; notice required; repairs required.

 If a new motor vehicle does not conform to all applicable express warranties within the first twelve months of purchase or the first twelve thousand miles of operation, whichever occurs first, and the consumer reports the nonconformity to the manufacturer or its agent during the term of the express warranties, the manufacturer, or its agent, shall make those repairs as are necessary to conform the vehicle to the express warranties at no cost to the consumer, notwithstanding the fact that the repairs are made after the expiration of the term.

HISTORY: 1989 Act No. 142, Section 1.

**SECTION 56‑28‑40.** Replacement of motor vehicle; refund of purchase price.

 If, within the term specified in Section 56‑28‑30, the manufacturer, through its agents or authorized dealer, is unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use, market value, or safety of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a comparable motor vehicle, or at its option, accept return of the vehicle from the consumer and refund to the consumer the full purchase price as delivered including applicable finance charges, sales taxes, license fees, registration fees, and any other similar governmental charges, less a reasonable allowance for the consumer’s use of the vehicle. Refunds must be made to the consumer and lienholder, if any, as their interest may appear on the record of ownership kept by the Department of Motor Vehicles. A reasonable allowance for use must be that amount directly attributable to use by the consumer before his first report of the nonconformity to the manufacturer, agent, or dealer, and must be calculated by multiplying the full purchase price of the vehicle by a fraction having as its denominator one hundred twenty thousand and having as its numerator the number of miles that the vehicle traveled before the first report of nonconformity. The consumer is not entitled to a refund or replacement if:

 (1) the nonconformity does not substantially impair the motor vehicle’s use, market value, or safety;

 (2) the nonconformity is the result of abuse, neglect, or modification or alteration of the motor vehicle by the consumer.

HISTORY: 1989 Act No. 142, Section 1.

Code Commissioner’s Note

Pursuant to the direction to the Code Commissioner in 2003 Act No. 51, Section 18, “Department of Motor Vehicles” was substituted for “Division of Motor Vehicles” in the second sentence of the introductory paragraph.

**SECTION 56‑28‑50.** Presumption of attempts to conform; information to be provided to consumers; obligations of manufacturer; costs and attorney’s fees; notice requirements.

 (A) It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if:

 (1) the same nonconformity has been subject to repair three or more times by the manufacturer, or its agent, within the express warranty term, but the nonconformity continues to exist; or

 (2) the vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days during the express warranty. The term of an express warranty, and the twenty‑day period must be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, fire, flood, or other natural disaster.

 (B) The manufacturer must provide information regarding consumer complaint remedies with each new motor vehicle. It is the responsibility of the consumer, or his representative, before availing himself of the provisions of this chapter, to give written notification to the manufacturer of the need for the repair of the nonconformity, in order to allow the manufacturer a final opportunity to cure the alleged defect if the manufacturer has clearly and prominently informed the consumer of the requirement of written notification to the manufacturer at the time of sale. The manufacturer, within ten business days, must notify the consumer of a reasonably accessible repair facility of a franchised new vehicle dealer to conform the new vehicle to the express warranty. After delivery of the new vehicle to an authorized repair facility by the consumer, the manufacturer must attempt immediately to repair the vehicle within a period not to exceed ten business days in order to conform the new motor vehicle to the express warranty. If the manufacturer is unable to repair properly the vehicle within the final ten‑business‑day period, the manufacturer must replace the vehicle with an identical or reasonably equivalent vehicle or refund the purchase price subject to the provisions of Section 56‑28‑40.

 (C) Upon notification from the consumer that the new vehicle has not been conformed to the express warranty, the manufacturer shall inform the consumer if an informal dispute settlement procedure has been established by the manufacturer as enumerated in Section 56‑28‑60. However, if prior notice by the manufacturer of an informal dispute settlement procedure has been given, no further notice is required.

 (D) Any consumer who finally prevails in any action brought under this chapter, may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorney’s fees based on actual time expended) and other such costs which are directly attributable to the nonconformity of the motor vehicle determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion determines that such an award of attorney’s fees would be inappropriate.

 (E) All written notifications required by this section shall be sent by registered, certified, or express mail.

HISTORY: 1989 Act No. 142, Section 1.

**SECTION 56‑28‑60.** Informal dispute settlement procedures.

 If a manufacturer has established an informal dispute settlement procedure which substantially complies with Title 16 of the Code of Federal Regulations, Part 703, or if the manufacturer participates in a consumer‑industry appeals, arbitration, or mediation panel or board, whose decisions are binding on the manufacturer, the provisions of Section 56‑28‑40 concerning refunds or replacement do not apply to any consumer who has not first resorted to those procedures or to the alternate procedure provided in Section 56‑28‑90.

HISTORY: 1989 Act No. 142, Section 1.

**SECTION 56‑28‑70.** Limitation of actions.

 Any action brought under this chapter must be commenced within three years following the date of original delivery of the motor vehicle to the consumer.

HISTORY: 1989 Act No. 142, Section 1.

**SECTION 56‑28‑80.** Construction of chapter; reimbursement from dealer prohibited; exception.

 Nothing in this chapter may be construed as imposing any liability on a motor vehicle dealer or creating a cause of action by a consumer against a motor vehicle dealer under Section 56‑28‑40. The manufacturer shall not charge back or require reimbursement by the dealer for any costs, including, but not limited to, any refunds or vehicle replacements incurred by the manufacturer arising out of this chapter in the absence of evidence that the related repairs had been carried out by the dealer in a manner substantially inconsistent with the manufacturer’s published instructions.

HISTORY: 1989 Act No. 142, Section 1.

**SECTION 56‑28‑90.** State arbitration board may be established.

 The Administrator of the Department of Consumer Affairs may establish by regulation a state arbitration board consisting of five members appointed by him to serve at his pleasure. The board shall review matters involving manufacturers that have not created an informal dispute settlement procedure that substantially complies with Title 16 of the Code of Federal Regulations, Part 703. The cost of the arbitration board must be borne by the manufacturer of the vehicle purchased or leased by the consumer.

HISTORY: 1989 Act No. 142, Section 1.

**SECTION 56‑28‑100.** Repurchased vehicles not to be resold; exceptions.

 Any vehicle required to be repurchased by a manufacturer under this chapter or any other provision of law relating to motor vehicle warranties may not be resold, reassigned, or retransferred, either at wholesale or retail in this State, unless:

 (1) The manufacturer notifies the Administrator of the Department of Consumer Affairs within thirty calendar days, in writing, of the vehicle identification number of that motor vehicle, the reason that the vehicle was repurchased, and provides a statement that all necessary repairs and adjustments have been made and that the vehicle meets acceptable operating standards.

 (2) The manufacturer provides a written warranty to the subsequent retail purchaser of the vehicle covering the vehicle for twelve months or twelve thousand miles. The warranty must expressly include any component related to the manufacturer’s decision to repurchase the vehicle.

 (3) The manufacturer shall disclose to any dealer or other wholesale purchaser of the fact that the vehicle was required to be repurchased under this chapter or another provision of law relating to motor vehicle warranties.

HISTORY: 1989 Act No. 142, Section 1.

**SECTION 56‑28‑110.** Notification to subsequent purchasers; penalties for failure to notify.

 Each subsequent purchaser must be notified by the seller of the fact that the vehicle was required to be repurchased pursuant to the terms of this chapter or another provision of law relating to motor vehicle warranties. If a seller fails properly to notify a purchaser of the requirements of this section, the department may impose an administrative penalty up to a maximum of five hundred dollars for each vehicle. A seller aggrieved by the action of the department may seek review by filing a request for a contested case hearing with the Administrative Law Court.

HISTORY: 1989 Act No. 142, Section 1; 2005 Act No. 128, Section 17, eff July 1, 2005.

Editor’s Note

2005 Act No. 128, Section 27, provides as follows:

“This act takes effect on July 1, 2005, and applies to all licensing and administrative hearings involving the South Carolina Department of Consumer Affairs.”

Effect of Amendment

The 2005 amendment rewrote this section to refer to contested case hearings before the Administrative Law Court.