

TITLE 13. COMMERCIAL TRANSACTIONS
OHIO UNIFORM COMMERCIAL CODE CHAPTER 1345.
CONSUMER SALES PRACTICES
NONCONFORMING NEW MOTOR VEHICLE LAW

§ 1345.71. Definitions

As used in sections 1345.71 to 1345.78 of the Revised Code:

(A) "Consumer" means any of the following:

(1) The purchaser, other than for purposes of resale, of a motor vehicle;

(2) Any lessee of a motor vehicle in a contractual arrangement under which a charge is made for the use of the vehicle at a periodic rate for a term of thirty days or more, and title to the vehicle is in the name of a person other than the user;

(3) Any person to whom the motor vehicle is transferred during the duration of the express warranty that is applicable to the motor vehicle;

(4) Any other person who is entitled by the terms of the warranty to enforce the warranty.

(B) "Manufacturer" and "distributor" have the same meanings as in section 4517.01 of the Revised Code, and "manufacturer" includes a remanufacturer as defined in that section.

(C) "Express warranty" and "warranty" mean the written warranty of the manufacturer or distributor of a new motor vehicle concerning the condition and fitness for use of the vehicle, including any terms or conditions precedent to the enforcement of obligations under that warranty.

(D) "Motor vehicle" means any passenger car or noncommercial motor vehicle or those parts of any motor home that are not part of the permanently installed facilities for cold storage, cooking and consuming of food, and for sleeping but does not mean any mobile home or recreational vehicle, or any manufactured home as defined in section 3781.06 of the Revised Code.

(E) "Nonconformity" means any defect or condition that substantially impairs the use, value, or safety of a motor vehicle to the consumer and does not conform to the express warranty of the manufacturer or distributor.

(F) "Full purchase price" means both of the following:

(1) In the case of a sale, the contract price for the motor vehicle, including charges for transportation, undercoating, dealer-installed options and accessories, dealer services, dealer preparation, and delivery charges; all finance, credit insurance, warranty, and service contract charges incurred by the consumer; and all sales tax, license and registration fees, and other government charges.

(2) In the case of a lease, the capitalized cost reduction, security deposit, taxes, title fees, all monthly lease payments, the residual value of the vehicle, and all finance, credit insurance, warranty, and service contract charges incurred by the consumer.

(G) "Buyback" means a motor vehicle that has been replaced or repurchased by a manufacturer as the result of a court judgment, a determination of an informal dispute settlement mechanism, or a settlement agreed to by a consumer regardless of whether it is in the context of a court, an informal

dispute settlement mechanism, or otherwise, in this or any other state, in which the consumer has asserted that the motor vehicle does not conform to the warranty, has presented documentation to establish that a nonconformity exists pursuant to section 1345.72 or 1345.73 of the Revised Code, and has requested replacement or repurchase of the vehicle.

(H) "Mobile home," "motor home," "noncommercial motor vehicle," "passenger car," and "recreational vehicle" have the same meanings as in section 4501.01 of the Revised Code.

HISTORY: 142 v H 232 (Eff 10-22-87); 147 v S 142 (Eff 3-30-99); 148 v H 21. Eff 9-15-99. § 1345.72. Duty to repair nonconforming new motor vehicles; consumer's options when repairs unsuccessful

(A) If a new motor vehicle does not conform to any applicable express warranty and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during the period of one year following the date of original delivery or during the first eighteen thousand miles of operation, whichever is earlier, the manufacturer, its agent, or its authorized dealer shall make any repairs as are necessary to conform the vehicle to such express warranty, notwithstanding the fact that the repairs are made after the expiration of the appropriate time period.

(B) If the manufacturer, its agent, or its authorized dealer is unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any nonconformity after a reasonable number of repair attempts, the manufacturer, at the consumer's option and subject to division (D) of this section, either shall replace the motor vehicle with a new motor vehicle acceptable to the consumer or shall accept return of the vehicle from the consumer and refund each of the following:

(1) The full purchase price;

(2) All incidental damages, including, but not limited to, any fees charged by the lender or lessor for making or canceling the loan or lease, and any expenses incurred by the consumer as a result of the nonconformity, such as charges for towing, vehicle rental, meals, and lodging.

(C) Nothing in this section imposes any liability on a new motor vehicle dealer or creates a cause of action by a buyer against a new motor vehicle dealer.

(D) Sections 1345.71 to 1345.78 of the Revised Code do not affect the obligation of a consumer under a loan or retail installment sales contract or the interest of any secured party, except as follows:

(1) If the consumer elects to take a refund, the manufacturer shall forward the total sum required under division (B) of this section by an instrument jointly payable to the consumer and any lienholder that appears on the face of the certificate of title or the lessor. Prior to disbursing the funds to the consumer, the lienholder or lessor may deduct the balance owing to it, including any fees charged for canceling the loan or the lease and refunded pursuant to division (B) of this section, and shall immediately remit the balance if any, to the consumer and cancel the lien or the lease.

(2) If the consumer elects to take a new motor vehicle, the manufacturer shall notify any lienholder noted on the certificate of title under section 4505.13 of the Revised Code or the lessor. If both the lienholder or the lessor and the consumer consent to finance or lease the new motor vehicle obtained through the exchange in division (B) of this section, the lienholder or the lessor shall release the lien on or surrender the title to the nonconforming motor vehicle after it has obtained a lien on or title to the new motor vehicle. If the existing lienholder or lessor does not finance or lease the new motor vehicle, it has no obligation to discharge the note or cancel the lien on or surrender the title to the nonconforming motor vehicle until the original indebtedness or the lease terms are satisfied.

§ 1345.73. Presumption of reasonable number of attempts to repair

It shall be presumed that a reasonable number of attempts have been undertaken by the manufacturer, its dealer, or its authorized agent to conform a motor vehicle to any applicable express warranty if, during the period of one year following the date of original delivery or during the first eighteen thousand miles of operation, whichever is earlier, any of the following apply:

(A) Substantially the same nonconformity has been subject to repair three or more times and either continues to exist or recurs;

(B) The vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days;

(C) There have been eight or more attempts to repair any nonconformity;

(D) There has been at least one attempt to repair a nonconformity that results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven, and the nonconformity either continues to exist or recurs.

HISTORY: 142 v H 232 (Eff 10-22-87); 148 v H 21. Eff 9-15-99. § 1345.74. Written statements of consumer's rights and of work performed

(A) At the time of purchase, the manufacturer, either directly or through its agent or its authorized dealer, shall provide to the consumer a written statement on a separate piece of paper, in ten-point type, all capital letters, in substantially the following form: **IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER STATE LAW TO A REPLACEMENT OR TO COMPENSATION.**

In the case of a leased motor vehicle, the written statement described in this division shall be provided to the consumer by the manufacturer, either directly or through the lessor, at the time of execution of the lease agreement.

(B) The manufacturer or authorized dealer shall provide to the consumer, each time the motor vehicle of the consumer is returned from being serviced or repaired, a fully itemized written statement indicating all work performed on the vehicle, including, but not limited to, parts and labor as described in the rules adopted pursuant to section 1345.77 of the Revised Code.

HISTORY: 142 v H 232 (Eff 10-22-87); 148 v H 21. Eff 9-15-99.

§ 1345.75. Civil action for loss due to noncompliance

(A) Any consumer may bring a civil action in a court of common pleas or other court of competent jurisdiction against any manufacturer if the manufacturer fails to comply with section 1345.72 of the Revised Code and, in addition to the relief to which the consumer is entitled under that section, shall be entitled to recover reasonable attorney's fees and all court costs.

(B) The remedies in sections 1345.71 to 1345.78 of the Revised Code are in addition to remedies otherwise available to consumers under law.

(C) Any action brought under division (A) of this section shall be commenced within five years of the date of original delivery of the motor vehicle. Any period of limitation of actions under any federal or Ohio laws with respect to any consumer shall be tolled for the period that begins on the date that a complaint is filed with an informal dispute resolution mechanism established pursuant to section

1345.77 of the Revised Code and ends on the date of the decision by the informal dispute resolution mechanism.

(D) It is an affirmative defense to any claim under this section that a nonconformity is the result of abuse, neglect, or the unauthorized modification or alteration of a motor vehicle by anyone other than the manufacturer, its agent, or its authorized dealer.

§ 1345.76. Conditions for resale or lease of buyback

(A) A buyback may not be resold or leased in this state unless each of the following applies:

(1) The manufacturer provides the same express warranty that was provided to the original consumer, except that the term of the warranty shall be the greater of either of the following:

- (a) Twelve thousand miles or twelve months after the date of resale, whichever is earlier;
- (b) The remaining term of any manufacturer's original warranty.

(2) The manufacturer provides to the consumer, either directly or through its agent or its authorized dealer, and prior to obtaining the signature of the consumer on any document, a written statement on a separate piece of paper, in ten-point type, all capital letters, in substantially the following form:

WARNING: THIS VEHICLE PREVIOUSLY WAS SOLD AS NEW. IT WAS RETURNED TO THE MANUFACTURER OR ITS AGENT IN EXCHANGE FOR A REPLACEMENT VEHICLE OR REFUND AS A RESULT OF THE FOLLOWING DEFECT(S) OR CONDITION(S):

- 1.....
- 2.....
- 3.....
- 4.....
- 5.....

.....

DATE BUYER'S SIGNATURE

The manufacturer shall list each defect or condition on a separate line of the written statement provided to the consumer.

(B) Notwithstanding the provisions of division (A) of this section, if a new motor vehicle has been returned under the provisions of section 1345.72 of the Revised Code or a similar law of another state because of a nonconformity likely to cause death or serious bodily injury if the vehicle is driven, the motor vehicle may not be sold, leased, or operated in this state.

(C) A manufacturer that takes possession of a buyback shall obtain the certificate of title for the buyback from the consumer, lienholder, or the lessor. The manufacturer and any subsequent

transferee, within thirty days and prior to transferring title to the buyback, shall deliver the certificate of title to the clerk of the court of common pleas and shall make application for a certificate of title for the buyback. The clerk shall issue a buyback certificate of title for the vehicle on a form, prescribed by the registrar of motor vehicles, that bears or is stamped on its face with the words "BUYBACK: This vehicle was returned to the manufacturer because it may not have conformed to its warranty." in * black boldface letters in an appropriate location as determined by the registrar. The buyback certificate of title shall be assigned upon transfer of the buyback, for use as evidence of ownership of the buyback and is transferable to any person. Every subsequent certificate of title, memorandum certificate of title, or duplicate copy of a certificate of title or memorandum certificate of title issued for the buyback also shall bear or be stamped on its face with the words "BUYBACK: This vehicle was returned to the manufacturer because it may not have conformed to its warranty." in * black boldface letters in the appropriate location.

The clerk of the court of common pleas shall charge a fee of five dollars for each buyback certificate of title, duplicate copy of a buyback certificate of title, memorandum buyback certificate of title, and notation of any lien on a buyback certificate of title. The clerk shall retain two dollars and twenty-five cents of the fee charged for each buyback certificate of title, four dollars and seventy-five cents of the fee charged for each duplicate copy of a buyback certificate of title, all of the fees charged for each memorandum buyback certificate of title, and four dollars and twenty-five cents of the fee charged for each notation of a lien.

The remaining two dollars and seventy-five cents charged for the buyback certificate of title, the remaining twenty-five cents charged for the duplicate copy of a buyback certificate of title, and the remaining seventy-five cents charged for the notation of any lien on a buyback certificate of title shall be paid to the registrar in accordance with division (A) of section 4505.09 of the Revised Code, who shall deposit it as required by division (B) of that section.

(D) No manufacturer that applies for a certificate of title for a buyback shall fail to clearly and unequivocally inform the clerk of the court of common pleas to whom application for a buyback certificate of title for the motor vehicle is submitted that the motor vehicle for which application for a buyback certificate of title is being made is a buyback and that the manufacturer, its agent, or its authorized dealer is applying for a buyback certificate of title for the motor vehicle and not a certificate of title.

HISTORY: 142 v H 232 (Eff 10-22-87); 148 v H 21. Eff 9-15-99.

NOTES: FOOTNOTE * So in enrolled bill, division (C).

§ 1345.77. Rules for informal dispute resolution mechanism

(A) The attorney general shall adopt rules for the establishment and qualification of an informal dispute resolution mechanism to provide for the resolution of warranty disputes between the consumer and the manufacturer, its agent, or its authorized dealer. The mechanism shall be under the supervision of the division of consumer protection of the office of the attorney general and shall meet or exceed the minimum requirements for an informal dispute resolution mechanism as provided by the "Magnuson-Moss Warranty Federal Trade Commission Improvement Act," 88 Stat. 2183, 15 U.S.C. 2301, and regulations adopted thereunder.

(B) If a qualified informal dispute resolution mechanism exists and the consumer receives timely notification, in writing, of the availability of the mechanism with a description of its operation and effect, the cause of action under section 1345.75 of the Revised Code may not be asserted by the consumer until after the consumer has initially resorted to the informal dispute resolution mechanism. If such a mechanism does not exist, if the consumer is dissatisfied with the decision produced by the

mechanism, or if the manufacturer, its agent, or its authorized dealer fails to promptly fulfill the terms determined by the mechanism, the consumer may assert a cause of action under section 1345.75 of the Revised Code.

(C) Any violation of a rule adopted pursuant to division (A) of this section is an unfair and deceptive act or practice as defined by section 1345.02 of the Revised Code.

HISTORY: 142 v H 232. Eff 10-22-87.

§ 1345.78. Violations concerning buybacks

(A) Failure to comply with section 1345.76 of the Revised Code, in connection with a consumer transaction as defined in division (A) of section 1345.01 of the Revised Code, is an unfair and deceptive act or practice in violation of division (A) of section 1345.02 of the Revised Code.

(B) The attorney general shall investigate any alleged violation of division (D) of section 1345.76 of the Revised Code and, in an appropriate case, may bring an appropriate action in a court of competent jurisdiction, charging a manufacturer with a violation of that division.