

Consumer Protection for Military Personnel

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David Elliott
Consumer Protection Division
North Carolina Department of Justice

In 1969, the North Carolina General Assembly enacted G.S. § 75-1.1. Since that time, the North Carolina Attorney General has held powers similar to the Federal Trade Commission when it comes to protecting consumers from Unfair and Deceptive Trade Practice

The Consumer Protection Division exercises the Attorney General=s statutory authority in the areas of consumer protection, antitrust, utilities, and managed care. The Division protects consumers from fraud, deception, price fixing, price gouging, restraint of trade, commercial invasions of privacy, and other unfair and deceptive trade practices. It also represents the using and consuming public in matters before the North Carolina Public Utilities Commission. Finally, it contains the Managed Care Patient Assistance Program, which advises patients experiencing difficulties with their managed care companies.

The primary responsibilities of the Division are: (1) the handling of consumer complaints; (2) investigating and prosecuting violations of the antitrust and consumer protection laws; (3) monitoring, commenting on, and occasionally drafting legislation that impacts North Carolina consumers, both at the state and federal levels; (4) educating North Carolinians about their rights as consumers; and (5) representing the consuming public before the Utilities Commission.

The Division consists of 16 attorneys who specialize in different legal areas, 15 consumer specialists and investigators, 12 support staff, and three receptionists. Since 2001, the Division handled an average of 17,000 written complaints per year. Approximately 100,000 telephone calls and a thousand email message are processed each year.

Every year, the Division receives scores of calls from military personnel who have been victimized by an array of unfair and deceptive practices. Members of the military have and will always be targets, due to the predictable paychecks and job security.

Complaint forms are available by calling (919) 716-6000 or (877) 566-7226 (toll free within N.C.). The forms can also be downloaded from www.ncdoj.com. The completed complaint forms should be mailed to:

North Carolina Department of Justice
Consumer Protection Division
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ID Theft - <http://www.noscamnc.gov>

North Carolina ID Theft Facts

Identity theft occurs when a thief uses personal information like your bank account or Social Security number to open a new account or get a new credit card in your name. By posing as a real person, the thief runs up bills but never pays, often leaving the unsuspecting victim with credit problems. Identity theft costs businesses billions of dollars each year, and it costs consumers their good names.

A DRAMATIC INCREASE

- Nearly 10 million people in the United States are victims of identity theft each year. In North Carolina, approximately 300,000 people are victimized annually. [Identity Theft Survey Report, Federal Trade Commission, September 2003, p. 7]
- Nationwide, the number of victims reporting identity theft has tripled in the past few years. [FTC Report: Figures and Trends on Identity Theft, 2001. FTC Report: Figures and Trends on Identity Theft, 2005.]
- The number of North Carolinians reporting identity theft to the Federal Trade Commission during the same period jumped by 3 ½ times, from 1,656 cases in 2001 to 5,830 in 2005. [FTC Report: Figures and Trends on Identity Theft in North Carolina, 2001. FTC Report: Figures and Trends on Identity Theft in North Carolina, 2005.]
- The Social Security Administration reported a 490% increase in allegations of Social Security number misuse between 1998 and 2001. [GAO Report. Identity Theft: Prevalence and Cost Appear to Be Growing. March 2002.]

COST TO BUSINESSES AND CONSUMERS

- Business loses nearly \$50 billion to identity theft each year. [Identity Theft Survey Report, Federal Trade Commission, September 2003, p. 7]
- Consumer victims lose \$5 billion in out of pocket expenses as they try to restore their good names and credit, an average of \$500 per victim. Victims of what the FTC considers the most serious kind of identity theft – such as those involving opening new accounts in the victim's name – spend \$1,180 and 60 hours on average to try to undo the damage. [Identity Theft Survey Report, Federal Trade Commission, September 2003, p. 43]
- Another study showed that a typical identity theft victim spends \$800 and 175 hours over 23 months to clean up their reputation and erase \$18,000 in fraudulent charges. [CalPIRG. Nowhere to Turn: Victims Speak Out on Identity Theft. May 2000.]
- Many victims suffer in other ways, including being denied credit, being harassed by creditors for bills that aren't really theirs, having their utilities cut off, getting sued, or being arrested for crimes they didn't commit. [GAO Report, Identity Theft: Prevalence and Cost Appear to Be Growing, March 2002; Identity Theft Survey Report, Federal Trade Commission, September 2003]

Guard Personal Information PROTECT YOUR SOCIAL SECURITY NUMBER

- Don't carry your Social Security card in your wallet.
- Give your Social Security Number (SSN) only when absolutely necessary.
- Ask why a SSN is needed, who has access to it, and how it is kept confidential.
- Don't print your SSN or driver's license number on your checks.
- Shred old bank statements, insurance forms, credit applications, etc.

FINANCES

- Limit the number of credit cards you carry.
- Watch billing cycles for missing bills and review monthly statements for odd charges. Contact your creditors if a bill doesn't arrive when expected or includes charges you don't recognize.
- Use automatic deposit for payroll, social security or other federal benefit checks. To sign up for automatic deposit of social security checks and other federal benefit payments, call (800) 333-1795.
- Keep copied credit cards (front and back) in a safe place in case a card is lost or

stolen.

- Destroy receipts that show your entire credit card number. It's illegal for a business to print the full credit card number on the electronically generated customer's receipt.
- Review your Social Security Earnings and Benefits Statement for errors in your yearly salary. To order a statement, call (800) 772-1213.
- "Opt out" of sharing your nonpublic personal information or credit report information with other businesses.

PROTECT PASSWORDS

- Don't carry your personal identification numbers (PIN) in your wallet or purse.
- Don't share PINs or passwords, even with close friends or relatives.
- Avoid using easily available information for your PINs or passwords such as your mother's maiden name, your or your family members' birth dates, your SSN, phone number or a series of consecutive numbers (i.e., 1, 2, 3, 4).
- Choose a different PIN for each account.

North Carolina Department of Justice ☐ 1-877-566-7226 ☐ 9001 Mail Service Center ☐ Raleigh, NC 27699-9001

PROTECT YOUR MAIL

- Call 1 (888) 5-OPT-OUT to stop pre-approved credit card applications.
 - Place outgoing mail into a locked mailbox such as a blue postal service box.
 - Don't leave incoming mail sitting in an unlocked mailbox.
 - Cut down on junk mail by sending a letter or postcard with your first and last name, home address and signature to Mail Preference Service, Direct Marketing Association, PO Box 643, Carmel, NY 10512. (www.dmaconsumers.org)
- Check Your Credit Report

FREE YEARLY CREDIT REPORT

You are entitled to one free credit report each year from each major credit bureau. To get your free report, go to www.annualcreditreport.com or call 1-877-322-8228. To keep track of your credit during the year, request a free report from a different credit bureau every four months. You can purchase additional copies of your credit report directly from the credit bureaus at any time.

What Is a Security Freeze

A 'security freeze' is a new consumer right provided by North Carolina law, enacted as part of Attorney General Roy Cooper's Identity Theft Protection Act of 2005. Placing a security freeze on your credit reports can block an identity thief from opening a new account or obtaining credit in your name. A security freeze, also known as a credit or a file freeze, keeps new creditors from accessing your credit report without your express authorization. If you activate a security freeze, an identity thief cannot take out new credit in your name, even if the thief has your Social Security number or other personal information, because creditors cannot access your credit report. For a short period of time a security freeze is free to North Carolinians impacted by the recent theft of data from the U.S. Department of Veterans Affairs. People affected by that breach have until January 1, 2007, to secure a free credit freeze.

How to Get a Free Security Freeze

To place a freeze, send a letter by certified mail to each of the three credit bureaus that includes the following:

- Full name including middle initial and any suffix (such as Jr.)
- Home addresses for the last five years
- Social Security Number and date of birth
- Two proofs of residence (examples: copy of driver's license, utility bill, insurance statement, bank statement)

- The notification you received about the data theft from the Department of Veterans Affairs. A copy of this letter is available online at http://www.firstgov.gov/veteransinfo_letter.pdf
 - Proof of veteran, military, or national guard status
- Equifax Security Freeze Experian Security Freeze Trans Union Security Freeze
P.O. Box 105788 P. O. Box 9554 P. O. Box 6790
Atlanta, GA 30348 Allen, TX 75013 Fullerton, CA 92834-6790

How to Remove a Security Freeze

Within ten days of a credit bureau placing a security freeze on your credit, the bureau will send you a unique PIN number and instructions on how to lift the freeze temporarily or to remove it permanently. If you want to take out a loan, get a new credit card or apply for a job or certain services, you can lift the security freeze for a certain period of time by notifying the credit bureau according to its procedures. The credit bureau should “thaw” your freeze within three business days of receiving the request.

More Information about a Security Freeze

Credit bureaus must place a freeze on your credit within five business days of receiving your written request. A creditor who requests your file will see a message or code indicating that the report is frozen and may treat your application as incomplete not rejected. The creditor will not see your credit score. Certain entities can continue to access your credit despite the freeze, such as government agencies for purposes of collecting child support payments or taxes and your existing creditors or collection agencies acting on their behalf. Other creditors may also use your information to offer you pre-approved credit.

You can stop most pre-approved credit offers by calling (888) 5-OPT-OUT or by going online at www.optoutprescreen.com. You will still be able to get a free copy of your credit report annually from each credit bureau by visiting www.annualcreditreport.com.

LEGISLATIVE HISTORY

Attorney General Cooper won help for North Carolina military personnel, veterans and other consumers affected by the recent Veterans Affairs security breach. The Act to Protect Military Service Members and Veterans from Identity Theft (S.L. 2006-158) allows people affected by the Veterans Affairs security breach to obtain a free security freeze. These consumers have until January 1, 2007 to secure a free credit freeze.

Automobile Advertising

N.C.G.S. ' 75-1.1ⁱ makes all unfair and deceptive advertisements a violation of North Carolina Law. Virtually all bad automobile advertisements will constitute a violation of N.C.G.S. ' 75-1.1. In addition to unfair and deceptive trade practice violations, there are numerous statutes that address specific advertising practices.

- 1) ' 75-29. Unfair and deceptive trade names; use of term "wholesale" in advertising, etc.ⁱⁱ
- 2) ' 75-32. Representation of winning a prize.ⁱⁱⁱ
- 3) ' 75-33. Representation of eligibility to win a prize.^{iv}
- 4) ' 75-34. Representation of being specially selected.^v
- 5) ' 75-35. Simulation of checks and invoices.^{vi}

The Attorney General has settled approximately twelve automobile advertising cases in the last year. The fines have ranged from \$2,000 to \$25,000. One settlement agreement prevents an advertising agency from advertising in North Carolina for 4 years.

The North Carolina Lemon Law^{vii}

The ALemon Law[@] defines a consumer as anyone who (1) purchases a motor vehicle for a purpose other than resale; (2) leases a motor vehicle from a commercial lender, lessor, or from a manufacturer or dealer; or (3) is entitled by the terms of an express warranty to enforce the obligations of that warranty.

WHAT VEHICLES ARE COVERED?

The lemon law covers all *new* vehicles that are self-propelled and every vehicle designed to run on the highways that is pulled by a self-propelled vehicle. New cars, pickup trucks, and motorcycles are covered by the lemon law. Most vans are covered as well as any other motor vehicles that do not weigh more than 10,000 pounds. The lemon law does not cover used vehicles, recreational vehicles, mopeds, or house trailers.

WHEN IS A VEHICLE A LEMON?

The law provides that the manufacturer must either replace or buy back, at the consumer=s option, any seriously defective vehicle that cannot be repaired after a reasonable number of attempts. A serious defect is Any defect or condition or series of defects or conditions which substantially impair the value of the motor vehicle to the consumer.@ The defect must be in a part of the vehicle covered by the manufacturer=s express warranty

The defects must have appeared within the express warranty period, which must last at least twelve months or twelve thousand miles. However, the consumer's right to a replacement or refund is limited to defects that first occur no later than 24 months or 24,000 miles following original delivery of the vehicle, even if the warranty lasts longer.

The express warranty on a new motor vehicle stated in a number of miles begins from the date the vehicle is delivered to the consumer. For example, if a demonstrator with a 24,000 mile warranty has 4,000 miles on it when purchased by the consumer, the warranty will remain in effect until the vehicle has reached 28,000 miles.

WHAT IS A REASONABLE NUMBER OF ATTEMPTS?

The law presumes that a reasonable number of attempts have been undertaken to fix the defects if:

- (1) the same defect has been presented to the manufacturer or its authorized dealer for repair 4 or more times without success, or
- (2) if the vehicle has been out of service during or while awaiting repair of a defect or series of defects for a cumulative total of 20 or more business days during any 12 month period of the warranty, provided that the consumer has notified the manufacturer directly *in writing* of the existence of the defects or series of defects and has allowed the manufacturer a reasonable period, but not more than 15 calendar days, to fix them. *This requirement makes it vital that customers write the manufacturer directly about the vehicle's problems early on if the dealer is having trouble getting the problems fixed.*

WHAT AM I ENTITLED TO IF MY VEHICLE IS A LEMON?

If the manufacturer has not fixed your vehicle after a reasonable number of attempts, a purchaser or lessee is entitled to choose a comparable, new replacement vehicle or a refund. The statute is not specific as to what is a comparable new replacement vehicle, though it would clearly appear to include an identical make and model.

The statute is very specific about what a consumer is entitled to if refund is selected.

A new car purchaser is entitled to:

- (1) the full contract price including, but not limited to, charges for undercoating, dealer-preparation and installed options, plus the non-refundable portions of extended warranties and service contracts;
- (2) all collateral charges including, but not limited to, sales tax, license and registration fees, and similar government charges;

- (3) all finance charges incurred by the consumer after he first reports the nonconformity to the manufacturer, its agent, or its authorized dealer; and
- (4) any incidental damages and monetary consequential damages, less a reasonable allowance for the consumer's use of the vehicle.

Incidental damages could include reasonable towing, car rental, and hotel expenses. Monetary consequential damages could include the value of lost use.

A lessee is entitled to a refund as set out in the statute at ' 20-351.3(b).

All refunds are reduced by a reasonable allowance for the use of your vehicle. The statute defines a reasonable allowance for use to be the amount directly attributable to use by the consumer before the date of the third attempt to repair the problem that is the subject of the claim, or the twentieth business day the vehicle is out of service, whichever occurs first. The reasonable allowance is presumed to be the purchase price of the vehicle multiplied by a fraction having as its denominator 120,000 miles and its numerator the number of miles on the vehicle attributed to the consumer. For example, if the purchase price of a vehicle was \$20,000 and it was driven 12,000 miles before the third repair attempt, or before the car was out of service 20 days, a consumer would be entitled to a refund of \$18,000. (\$20,000 minus the reasonable use amount of \$2,000)

$$\mathbf{\$20,000 - \frac{\$20,000 \times 12,000}{120,000} = \$18,000}$$

WHAT STEPS SHOULD CONSUMERS TAKE?

- (1) Consumers should read their warranty and owner's manual carefully and follow all maintenance guidelines.
- (2) Take defective vehicles to an authorized dealer for repairs as soon as possible. Prepare and leave a detailed list describing each defect each time a vehicle is taken in for repair. Consumers should keep a copy of the list of defects.
- (3) Get repair orders for all warranty work. Ask for detailed repair orders and keep them.
- (4) Be sure the repair orders show how many days the vehicle was in the shop.
- (5) Keep a personal record of the number of days the vehicle is in the shop, dates and mileage.
- (6) Keep a record of all related expenses, such as towing charges and rental car fees,

and save receipts.

- (7) After the third repair for the same defect, or if the vehicle has been out of service for 15 business days, notify the manufacturer and the finance company *in writing* and send it certified mail, return receipt requested. Ask the manufacturer to have the vehicle fixed. Send a copy of the letter to the dealer.
- (8) Keep copies of all correspondence.
- (9) Consumers should *not* return the vehicle or stop making payments.
- (10) Consider talking to an attorney.

WHAT ABOUT ARBITRATION?

Many auto manufacturers have established dispute resolution programs for customers with warranty problems. We recommend that consumers contact an attorney to assist with the arbitration process.

It is important to note that in addition to the North Carolina Lemon Law consumers may be able to under the Uniform Commercial Code or Magnuson Moss Warranty Act.

Automobile Repair

The Motor Vehicle Repair Act (G.S. 20-354^{viii}) which went into effect January 1, 2000, provides certain protections for consumers in dealing with auto repair shops when the cost of the repairs exceeds \$350.

- § The Act provides that the consumer should be given a written estimate and sign an authorization for the repair unless the car is dropped off by a third party or at a time when the repair shop is closed.
- § At the time the repair is authorized the consumer has the right to request the used parts be returned or made available for examination, and the consumer must be notified of any storage charges that will accrue if the car is not picked up once the repair is completed.
- § The repair shop may not exceed the amount authorized by more than ten percent without first obtaining authorization from the consumer.
- § If diagnosis is first required, the repair shop must divulge the cost of the diagnosis and contact the consumer for authorization once an estimate for the repair has been determined.

§ **Businesses must provide the consumer with a detailed invoice for the repair, itemizing charges for labor and parts and identifying all parts used as either new, used, or reconditioned.**

§ **Auto repair shops are required to post a sign advising consumers of these provisions.**

Note: This act does not apply in cases where an insurance company is paying for the repairs. There are also exceptions for certain types of vehicles, such as agricultural equipment and vehicles with a GVWR exceeding 26,000 pounds.

i. ' 75-1.1. Methods of competition, acts and practices regulated; legislative policy.

(a) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.

(b) For purposes of this section, "commerce" includes all business activities, however denominated, but does not include professional services rendered by a member of a learned profession.

(c) Nothing in this section shall apply to acts done by the publisher, owner, agent, or employee of a newspaper, periodical or radio or television station, or other advertising medium in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement and when the newspaper, periodical or radio or television station, or other advertising medium did not have a direct financial interest in the sale or distribution of the advertised product or service.

(d) Any party claiming to be exempt from the provisions of this section shall have the burden of proof with respect to such claim. (1969, c. 833; 1977, c. 747, ss. 1, 2.)

ii. ' 75-29. Unfair and deceptive trade names; use of term "wholesale" in advertising, etc.

(a) No person, firm or corporation shall advertise the sale of its merchandise using the term "wholesale" with regard to its sale prices, except as such word may appear in the company or firm name, unless such advertised sale or sales is, or are, to a customer or customers having a certificate of resale issued pursuant to G.S. 105-164.28 and recorded as required by G.S. 105-164.25 or unless the wholesale price is established by an independent agency not engaged in the manufacture, distribution or sale of such merchandise.

No person, firm or corporation shall utilize in any commercial transaction a company or firm name which contains the word "wholesale" unless such person, firm or corporation is engaged principally in sales at wholesale as defined in G.S. 105-164.3. For the purposes of determining whether sales are made principally at wholesale or retail, all sales to employees of any such person, firm or corporation, all sales to organizations subject to refunds pursuant to G.S. 105-164.14, and all exempt sales pursuant to G.S. 105-164.13 shall be considered sales at wholesale. Sales of merchandise for delivery by the seller to the purchaser at a location other than the seller's place of business shall be considered sales at wholesale for the purposes of this section.

(b) The violation of any provision of this section shall be considered an unfair trade practice, as prohibited by G.S. 75-1.1.

(c) This section shall not apply to the sales of farm products, fertilizers, insecticides, pesticides or petroleum. (1973, c. 1392, ss. 1, 2.)

iii. ' 75-32. Representation of winning a prize.

No person, firm or corporation engaged in commerce shall, in connection with the sale or lease or solicitation for the sale or lease of any goods, property, or service, represent that any other person, firm or corporation has won anything of value or is the winner of any contest, unless all of the following conditions are met:

(1) The recipient of the prize must have been selected by a method in which no more than ten percent (10%) of the names considered are selected as winners of any prize;

(2) The recipient of the prize must be given the prize without any obligation; and

(3) The prize must be delivered to the recipient at no expense to him, within 10 days of the representation.

The use of any language that has a tendency to lead a reasonable person to believe he has won a contest or anything of value, including but not limited to "congratulations," and "you are entitled to receive," shall be considered a representation of the type governed by this section. (1979, c. 879, s. 1.)

iv. ' 75-33. Representation of eligibility to win a prize.

(a) No person, firm or corporation engaged in commerce shall, in connection with the sale or lease or solicitation for sale or lease of any goods, property or service, represent that another person, firm, and/or

corporation has a chance to receive any prize or item of value without clearly disclosing on whose behalf the contest or promotion is conducted, and all material conditions which a participant must meet. Additionally, each of the following must be clearly and prominently disclosed immediately adjacent to the description of the item or prize to which it relates:

- (1) The actual retail value of each item or prize (the price at which substantial sales of the item were made in the area within the last 90 days, or if no substantial sales were made, the actual cost of the item or prize to the person on whose behalf the contest or promotion is conducted);
- (2) The actual number of each item or prize to be awarded;
- (3) The odds of receiving each item or prize.

It shall be unlawful to make any representation of the type governed by this section, if it has already been determined which items will be given to the person to whom the representation is made.

(b) The provisions of this section shall not apply where (i) all that is asked of participants is that they complete and mail, or deposit at a local retail commercial establishment, an entry blank obtainable locally or by mail, or call in their entry by telephone, and (ii) at no time are participants asked to listen to a sales presentation.

(c) To the extent that representations of the type governed by this section are broadcast by radio or television or carried by cable-television, the required disclosures need not be made, if the required information is made available to interested persons on request without charge or cost to them.

(d) Nothing in this section shall create any liability for acts by the publisher, owner, agent or employee of a newspaper, periodical, radio station, television station, cable-television system or other advertising medium arising out of the publication or dissemination of any advertisement or promotion governed by this section, when the publisher, owner, agent or employee did not know that the advertisement or promotion violated the requirements of this section. (1979, c. 879, s. 1; 1981, c. 806; 1983, c. 721, s. 3.)

v. § 75-34. Representation of being specially selected.

No person, firm or corporation engaged in commerce shall represent that any other person, firm or corporation has been specially selected in connection with the sale or lease or solicitation for sale or lease of any goods, property, or service, unless all of the following conditions are met:

- (1) The selection process is designed to reach a particular type or particular types of person, firm or corporation;
- (2) The selection process uses a source other than telephone directories, city directories, tax listings, voter registration records, purchased mailing lists, or similar common sources of names;
- (3) No more than ten percent (10%) of those considered are selected.

The use of any language that has a tendency to lead a reasonable person to believe he has been specially selected, including but not limited to "carefully selected" and "you have been chosen," shall be considered a representation of the type governed by this selection [section]. (1979, c. 879, s. 1.)

vi. § 75-35. Simulation of checks and invoices.

No person engaged in commerce shall in any manner issue any writing which simulates or resembles: (i) a negotiable instrument; or (ii) an invoice, unless the intended recipient has actually contracted for goods, property, or services for which the issuer seeks proper payment. (1979, c. 879, s. 1.)

vii. § 20-351. Purpose

This Article shall provide State and private remedies against motor vehicle manufacturers for persons injured by new motor vehicles failing to conform to express warranties.

§ 20-351.1. Definitions

As used in this Article:

(1) "Consumer" means the purchaser, other than for purposes of resale, or lessee from a commercial lender, lessor, or from a manufacturer or dealer, of a motor vehicle, and any other person entitled by the terms of an express warranty to enforce the obligations of that warranty.

(2) "Manufacturer" means any person or corporation, resident or nonresident, who manufactures or assembles or imports or distributes new motor vehicles which are sold in the State of North Carolina.

(3) "Motor vehicle" includes a motor vehicle as defined in G.S. 20-4.01 that is sold or leased in this State, but does not include "house trailer" as defined in G.S. 20-4.01 or any motor vehicle that weighs more than 10,000 pounds.

(4) "New motor vehicle" means a motor vehicle for which a certificate of origin, as required by G.S. 20-52.1 or a similar requirement in another state, has never been supplied to a consumer, or which a manufacturer, its agent, or its authorized dealer states in writing is being sold as a new motor vehicle.

20-351.2. Require repairs; when mileage warranty begins to accrue

(a) Express warranties for a new motor vehicle shall remain in effect at least one year or 12,000 miles. If a new motor vehicle does not conform to all applicable express warranties for a period of one year, or the term of the express warranties, whichever is greater, following the date of original delivery of the motor vehicle to the consumer, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during such period, the manufacturer shall make, or arrange to have made, repairs necessary to conform the vehicle to the express warranties, whether or not these repairs are made after the expiration of the applicable warranty period.

(b) Any express warranty for a new motor vehicle expressed in terms of a certain number of miles shall begin to accrue from the mileage on the odometer at the date of original delivery to the consumer.

20-351.3. Replacement or refund; disclosure requirement

(a) When the consumer is the purchaser or a person entitled by the terms of the express warranty to enforce the obligations of the warranty, if the manufacturer is unable, after a reasonable number of attempts, to conform the motor vehicle to any express warranty by repairing or correcting, or arranging for the repair or correction of, any defect or condition or series of defects or conditions which substantially impair the value of the motor vehicle to the consumer, and which occurred no later than 24 months or 24,000 miles following original delivery of the vehicle, the manufacturer shall, at the option of the consumer, replace the vehicle with a comparable new motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the following:

(1) The full contract price including, but not limited to, charges for undercoating, dealer preparation and transportation, and installed options, plus the non-refundable portions of extended warranties and service contracts;

(2) All collateral charges, including but not limited to, sales tax, license and registration fees, and similar government charges;

(3) All finance charges incurred by the consumer after he first reports the nonconformity to the manufacturer, its agent, or its authorized dealer; and

(4) Any incidental damages and monetary consequential damages.

(b) When consumer is a lessee, if the manufacturer is unable, after a reasonable number of attempts, to conform the motor vehicle to any express warranty by repairing or correcting, or arranging for the repair or correction of, any defect or condition or series of defects or conditions which substantially impair the value of the motor vehicle to the consumer, and which occurred no later than 24 months or 24,000 miles following original delivery of the vehicle, the manufacturer shall, at the option of the consumer, replace the vehicle with a comparable new motor vehicle or accept return of the vehicle from the consumer and refund the following:

(1) To the consumer:

a. All sums previously paid by the consumer under the terms of the lease;

b. All sums previously paid by the consumer in connection with entering into the lease agreement, including, but not limited to, any capitalized cost reduction, sales tax, license and registration fees, and similar government charges; and

c. Any incidental and monetary consequential damages.

(2) To the lessor, a full refund of the lease price, plus an additional amount equal to five percent (5%) of the lease price, less eighty-five percent (85%) of the amount actually paid by the consumer to the lessor pursuant to the lease. The lease price means the actual purchase cost of the vehicle to the lessor.

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

(C) Refunds shall be made to the consumer, lessor, and any lienholders as their interests may appear. The refund to the consumer shall be reduced by a reasonable allowance for the consumer's use of the vehicle. A reasonable allowance for use is calculated from the number of miles used by the consumer up to the date of the third attempt to repair the same nonconformity which is the subject of the claim, or the twentieth cumulative business day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first. The number of miles used by the consumer is multiplied by the purchase price of the vehicle or the lessor's actual lease price, and divided by 120,000.

(d) If a manufacturer, its agent, or its authorized dealer resells a motor vehicle that was returned pursuant to this Article or any other State's applicable law, regardless of whether there was any judicial determination that the motor vehicle had any defect or that it failed to conform to all express warranties, the manufacturer, its agent, or its authorized dealer shall disclose to the subsequent purchaser prior to the sale:

(1) That the motor vehicle was returned pursuant to this Article or pursuant to the applicable law of any other State; and

(2) The defect or condition or series of defects or conditions which substantially impaired the value of the motor vehicle to the consumer.

Any subsequent purchaser who purchases the motor vehicle for resale with notice of the return, shall make the required disclosures to any person to whom he resells the motor vehicle.

20-351.4. Affirmative defenses

It is an affirmative defense to any claim under this Article that an alleged nonconformity or series of nonconformities are the result of abuse, neglect, odometer tampering by the consumer or unauthorized modifications or alterations of a motor vehicle.

20-351.5. Presumption

(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 presented for repair to the manufacturer, its agent, or its authorized dealer four or more times but the same nonconformity continues to exist; or

(2) The vehicle was out of service to the consumer during or while awaiting repair of the nonconformity or a series of nonconformities for a cumulative total of 20 or more business days during any 12-month period of the warranty,

provided that the consumer has notified the manufacturer directly in writing of the existence of the nonconformity or series of nonconformities and allowed the manufacturer a reasonable period, not to exceed 15 calendar days, in which to correct the nonconformity or series of nonconformities. The manufacturer must clearly and conspicuously disclose to the consumer in the warranty or owners manual that written notification of a nonconformity is required before a consumer may be eligible for a refund or replacement of the vehicle and the manufacturer shall include in the warranty or owners manual the name and address where the

written notification may be sent. Provided, further, that notice to the manufacturer shall not be required if the manufacturer fails to make the disclosures provided herein.

(b) The consumer may prove that a defect or condition substantially impairs the value of the motor vehicle to the consumer in a manner other than that set forth in subsection (a) of this section.

(C) The term of an express warranty, the one-year period, and the 20-day period shall be extended by any period of time during which repair services are not available to the consumer because of war, strike, or natural disaster.

§ 20-351.6. Civil action by the Attorney General

Whenever, in his opinion, the interests of the public require it, it shall be the duty of the Attorney General upon his ascertaining that any of the provisions of this Article have been violated by the manufacturer to bring a civil action in the name of the State, or any officer or department thereof as provided by law, or in the name of the State on relation of the Attorney General.

§ 20-351.7. Civil action by the consumer

A consumer injured by reason of any violation of the provisions of this Article may bring a civil action against the manufacturer; provided, however, the consumer has given the manufacturer written notice of his intent to bring an action against the manufacturer at least 10 days prior to filing such suit. Nothing in this section shall prevent a manufacturer from requiring a consumer to utilize an informal settlement procedure prior to litigation if that procedure substantially complies in design and operation with the Magnuson-Moss Warranty Act, 15 USC § 2301 et seq., and regulations promulgated thereunder, and that requirement is written clearly and conspicuously, in the written warranty and any warranty instructions provided to the consumer.

§ 20-351.8. Remedies

In any action brought under this Article, the court may grant as relief:

- (1) A permanent or temporary injunction or other equitable relief as the court deems just;
- (2) Monetary damages to the injured consumer in the amount fixed by the verdict. Such damages shall be trebled upon a finding that the manufacturer unreasonably refused to comply with G.S. 20-351.2 or G.S. 20-351.3. The jury may consider as damages all items listed for refund under G.S. 20-351.3;
- (3) A reasonable attorney's fee for the attorney of the prevailing party, payable by the losing party, upon a finding by the court that:
 - a. The manufacturer unreasonably failed or refused to fully resolve the matter which constitutes the basis of such action; or

§ 20-351.9. Dealership liability

No authorized dealer shall be held liable by the manufacturer for any refunds or vehicle replacements in the absence of evidence indicating that dealership repairs have been carried out in a manner substantially inconsistent with the manufacturers' instructions. This Article does not create any cause of action by a consumer against an authorized dealer.

§ 20-351.10. Preservation of other remedies

This Article does not limit the rights or remedies which are otherwise available to a consumer under any other law.

viii. Article 15B. North Carolina Motor Vehicle Repair Act. § 20-354. Short title.

This act shall be known and may be cited as the "North Carolina Motor Vehicle Repair Act."

20-354.1. Scope and application.

This act shall apply to all motor vehicle repair shops in North Carolina, except:

- (1) Any motor vehicle repair shop of a municipal, county, State, or federal government when carrying out the functions of the government.
- (2) Any person who engages solely in the repair of any of the following:
 - a. Motor vehicles that are owned, maintained, and operated exclusively by that person for that person's own use.
 - b. For-hire vehicles which are rented for periods of 30 days or less.
- (3) Any person who repairs only motor vehicles which are operated principally for agricultural or horticultural pursuits on farms, groves, or orchards and which are operated on the highways of this State only incidentally en route to or from the farms, groves, or orchards.
- (4) Motor vehicle auctions or persons in the performance of motor vehicle repairs solely for motor vehicle auctions.
- (5) Any motor vehicle repair shop in the performance of a motor vehicle repair if the cost of the repair does not exceed three hundred fifty dollars (\$350.00).
- (6) Any person or motor vehicle repair shop in the performance of repairs on commercial construction equipment or motor vehicles that have a GVWR of at least 26,001 pounds.
- (7) When a third party has waived in writing the right to receive written estimates from the motor vehicle repair shop; the third party indicates to the motor vehicle repair shop that the repairs will be paid for by the third party under an insurance policy, service contract, mechanical breakdown contract, or manufacturer's warranty; and the third party further indicates that the customer's share of the cost of repairs, if any, will not exceed three hundred fifty dollars (\$350.00). (1999-437, s. 1; 2001-298, s. 1.)

20-354.2. Definitions.

As used in this act:

- (1) "Customer" means the person who signs the written repair estimate or any other person whom that person designates as a person who may authorize repair work.
- (2) "Employee" means an individual who is employed full time or part time by a motor vehicle repair shop and performs motor vehicle repairs.
- (3) "Motor vehicle" means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor-powered vehicle, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power, or watercraft or aircraft.
- (4) "Motor vehicle repair" means all maintenance of and modification and repairs to motor vehicles and the diagnostic work incident to those repairs, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, and other work customarily undertaken by motor vehicle repair shops. Motor vehicle repair does not include the sale or installation of tires when authorized by the customer.
- (5) "Motor vehicle repair shop" means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to:
 - a. Mobile motor vehicle repair shops.
 - b. Motor vehicle and recreational vehicle dealers.
 - c. Garages.
 - d. Service stations.
 - e. Self-employed individuals.
 - f. Truck stops.
 - g. Paint and body shops.
 - h. Brake, muffler, or transmission shops.
 - i. Shops doing glasswork.

Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is

not a motor vehicle repair shop. (1999-437, s. 1.)

† 20-354.3. Written motor vehicle repair estimate and disclosure statement required.

(a) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed three hundred fifty dollars (\$350.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. The written repair estimate shall also include a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and a statement indicating the daily charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed.

(b) The information required by subsection (a) of this section need not be provided if the customer waives in writing his or her right to receive a written estimate. A customer may waive his or her right to receive any written estimates from a motor vehicle repair shop for a period of time specified by the customer in the waiver.

(c) Except as provided in subsection (e) of this section, a copy of the written repair estimate required by subsection (a) of this section shall be given to the customer before repair work is begun.

(d) If the customer leaves his or her motor vehicle at a motor vehicle repair shop during hours when the shop is not open, or if the motor vehicle repair shop reasonably believes that an accurate estimate of the cost of repairs cannot be made until after the diagnostic work has been completed, or if the customer permits the shop or another person to deliver the motor vehicle to the shop, there shall be an implied partial waiver of the written estimate; however, upon completion of the diagnostic work necessary to estimate the cost of repair, the shop shall notify the customer as required by G.S. 20-354.5(a).

(e) Nothing in this section shall be construed to require a motor vehicle repair shop to give a written estimate price if the motor vehicle repair shop does not agree to perform the requested repair. (1999-437, s. 1; 2001-298, s. 2.)

† 20-354.4. Charges for motor vehicle repair estimate; requirement of waiver of rights prohibited.

(a) Before proceeding with preparing an estimate, the shop shall do both of the following:

(1) Disclose to the customer the amount, if any, of the charge for preparing the estimate.

(2) Obtain a written authorization to prepare an estimate if there is a charge for that estimate.

(b) It is a violation of this Article for any motor vehicle repair shop to require that any person waive his or her rights provided in this Article as a precondition to the repair of his or her vehicle by the shop or to impose or threaten to impose any charge which is clearly excessive in relation to the work involved in making the price estimate for the purpose of inducing the customer to waive his or her rights provided in this Article. (1999-437, s. 1.)

† 20-354.5. Notification of charges in excess of repair estimate; prohibited charges; refusal to return vehicle prohibited; inspection of parts.

(a) In the event that any of the following applies, the customer shall be promptly notified by telephone, telegraph, mail, or other means of the additional repair work and estimated cost of the additional repair work:

(1) The written repair estimate contains only an estimate for diagnostic work necessary to estimate the cost of repair and such diagnostic work has been completed.

(2) A determination is made by a motor vehicle repair shop that the actual charges for the repair work will exceed the written estimate by more than ten percent (10%).

(3) An implied partial waiver exists for diagnostic work, and the diagnostic work has been completed.

When a customer is notified, he or she shall, orally or in writing, authorize, modify, or cancel the order for repair.

(b) If a customer cancels the order for repair or, after diagnostic work is performed, decides not to have the repairs performed, and if the customer authorizes the motor vehicle repair shop to reassemble the motor vehicle, the shop shall expeditiously reassemble the motor vehicle in a condition reasonably similar to the condition in which it was received.

After cancellation of the repair order or a decision by the customer not to have repairs made after diagnostic work has been performed, the shop may charge for and the customer is obligated to pay the cost of repairs actually completed that were authorized by the written repair estimate as well as the cost of diagnostic work

and teardown, the cost of parts and labor to replace items that were destroyed by teardown, and the cost to reassemble the component or the vehicle, provided the customer was notified of these possible costs in the written repair estimate or at the time the customer authorized the motor vehicle repair shop to reassemble the motor vehicle.

(c) It is a violation of this Article for a motor vehicle repair shop to charge more than the written estimate and the amount by which the motor vehicle repair shop has obtained authorization to exceed the written estimate in accordance with subsections (a) or (b) of this section, plus ten percent (10%).

(d) It is a violation of this Article for any motor vehicle repair shop to refuse to return any customer's motor vehicle because the customer refused to pay for repair charges that exceed a written estimate and any amounts authorized by the customer in accordance with subsection (a) or (b) of this section by more than ten percent (10%), provided that the customer has paid the motor vehicle repair shop the amount of the estimate and the amounts authorized by the customer in accordance with subsections (a) and (b) of this section, plus ten percent (10%).

(e) Upon request made at the time the repair work is authorized by the customer, the customer is entitled to inspect parts removed from his or her vehicle or, if the shop has no warranty arrangement or exchange parts program with a manufacturer, supplier, or distributor, have them returned to him or her. A motor vehicle repair shop may discard parts removed from a customer's vehicle or sell them and retain the proceeds for the shop's own account if the customer fails to take possession of the parts at the shop within two business days after taking delivery of the repaired vehicle. (1999-437, s. 1; 2001-298, ss. 3, 4.)

† 20-354.6. Invoice required of motor vehicle repair shop.

The motor vehicle repair shop shall provide each customer, upon completion of any repair, with a legible copy of an invoice for such repair. The invoice shall include the following information:

(1) A statement indicating what was done to correct the problem or a description of the service provided.

(2) An itemized description of all labor, parts, and merchandise supplied and the costs of all labor, parts, and merchandise supplied. No itemized description is required to be provided to the customer for labor, parts, and merchandise supplied when a third party has indicated to the motor vehicle repair shop that the repairs will be paid for under a service contract, under a mechanical breakdown contract, or under a manufacturer's warranty, without charge to the customer.

(3) A statement identifying any replacement part as being used, rebuilt, or reconditioned, as the case may be. (1999-437, s. 1; 2001-298, s. 5; 2002-159, s. 32.)

† 20-354.7. Required disclosure; signs; notice to customers.

A sign, at least 24 inches on each side, shall be posted in a manner conspicuous to the public. The sign shall contain:

(1) That the consumer has a right to receive a written estimate or to waive receipt of that estimate if the cost of repairs will exceed three hundred fifty dollars (\$350.00).

(2) That the consumer may request, at the time the work order is taken, the return or inspection of all parts that have been replaced during the motor vehicle repair. (1999-437, s. 1.)

† 20-354.8. Prohibited acts and practices.

It shall be a violation of this Article for any motor vehicle repair shop or employee of a motor vehicle repair shop to do any of the following:

(1) Charge for repairs which have not been expressly or impliedly authorized by the customer.

(2) Misrepresent that repairs have been made to a motor vehicle.

(3) Misrepresent that certain parts and repairs are necessary to repair a vehicle.

(4) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great damage to the vehicle.

(5) Fraudulently alter any customer contract, estimate, invoice, or other document.

(6) Fraudulently misuse any customer's credit card.

(7) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading, related to this Article.

(8) Make fraudulent promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle.

(9) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to his or her insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop.

(10) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer.

(11) Refuse to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work.

(12) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in a manner that does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year.

(13) Perform any other act that is a violation of this Article or that constitutes fraud or misrepresentation under this Article. (1999-437, s. 1.)

† 20-354.9. Remedies.

Any customer injured by a violation of this Article may bring an action in the appropriate court for relief. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorneys' fees. The customer may also bring an action for injunctive relief in the appropriate court. A violation of this Article is not punishable as a crime; however, this Article does not limit the rights or remedies which are otherwise available to a consumer under any other law. (1999-437, s. 1.)

† † 20-354.10 through 20-355. Reserved for future codification purposes.

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