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## HOUSE BILL NO. 1151

Offered January 14, 2022

A BILL to amend and reenact §§ 59.1-207.11, 59.1-207.13, and 59.1-207.16 of the Code of Virginia, relating to the Virginia Motor Vehicle Warranty Enforcement Act.

Patron—Adams, D.M.

Committee Referral Pending

## Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-207.11, 59.1-207.13, and 59.1-207.16 of the Code of Virginia are amended and reenacted as follows:

## § 59.1-207.11. Definitions.

As used in this chapter, the following terms shall have the following meanings:

"Collateral charges" means any sales-related or lease-related charges including but not limited to sales tax, license fees, registration fees, title fees, finance charges and interest, transportation charges, dealer preparation charges or any other charges for service contracts, undercoating, rust proofing or installed options, not recoverable from a third party. If a refund involves a lease, "collateral charges" means, in addition to any of the above, capitalized cost reductions, credits and allowances for any trade-in vehicles, fees to another to obtain the lease, and insurance or other costs expended by the lessor for the benefit of the lessee.

"Comparable motor vehicle" means a motor vehicle that is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of purchase or lease with an offset from this value for a reasonable allowance for its use.

"Consumer" means the purchaser, other than for purposes of resale, or the lessee, of a motor vehicle used (i) in substantial part for personal, family, or household purposes or (ii) for business purposes by any business entity that owns or leases no more than five vehicles, and any person to whom such motor vehicle is transferred for the same purposes during the duration of any warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

"Incidental damages" shall have the same meaning as provided in § 8.2-715.

"Lemon law rights period" means the period ending ~~eighteen~~ 18 months after the date of the original delivery to the consumer of a new motor vehicle. This shall be the period during which the consumer can report any nonconformity to the manufacturer and pursue any rights provided for under this chapter.

"Lien" means a security interest in a motor vehicle.

"Lienholder" means a person, partnership, association, corporation or entity with a security interest in a motor vehicle pursuant to a lien.

"Manufacturer" means a person, partnership, association, corporation or entity engaged in the business of manufacturing or assembling motor vehicles, or of distributing motor vehicles to motor vehicle dealers.

"Manufacturer's express warranty" means the written warranty, so labeled, of the manufacturer of a new automobile, including any terms or conditions precedent to the enforcement of obligations under that warranty.

"Motor vehicle" means only passenger cars, pickup or panel trucks, motorcycles, *autocycles*, self-propelled motorized chassis of motor homes and mopeds as those terms are defined in § 46.2-100 and demonstrators or leased vehicles with which a warranty was issued.

"Motor vehicle dealer" shall have the same meaning as provided in § 46.2-1500.

"Nonconformity" means a failure to conform with a warranty, a defect or a condition, including those that do not affect the drivability of the vehicle, which significantly impairs the use, market value, or safety of a motor vehicle.

"Notify" or "notification" means that the manufacturer shall be deemed to have been notified under this chapter if a written complaint of the defect or defects has been mailed to it or it has responded to the consumer in writing regarding a complaint, or a factory representative has either inspected the vehicle or met with the consumer or an authorized dealer regarding the nonconformity.

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

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59 "Serious safety defect" means a life-threatening malfunction or nonconformity that impedes the  
60 consumer's ability to control or operate the new motor vehicle for ordinary use or reasonable intended  
61 purposes or creates a risk of fire or explosion.

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

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

70 **§ 59.1-207.13. Nonconformity of motor vehicles.**

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

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

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

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

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

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

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

100 3. The motor vehicle is out of service due to repair for a cumulative total of ~~thirty~~ 30 calendar days,  
101 unless such repairs could not be performed because of conditions beyond the control of the  
102 manufacturer, its agents or authorized dealers, including war, invasion, strike, fire, flood or other natural  
103 disasters.

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

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

112 E. It shall be the responsibility of the consumer, or his representative, prior to availing himself of the  
113 provisions of this section, to notify the manufacturer of the need for the correction or repair of the  
114 nonconformity, unless the manufacturer has been notified as defined in § 59.1-207.11. If the  
115 manufacturer or factory representative has not been notified of the conditions set forth in subsection B  
116 ~~of this section~~ and any of the conditions set forth in subsection B of ~~this section~~ already exists, the  
117 manufacturer shall be given an additional opportunity, not to exceed ~~fifteen~~ 15 days, to correct or repair  
118 the nonconformity. If notification shall be mailed to an authorized dealer, the authorized dealer shall  
119 upon receipt forward such notification to the manufacturer.

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

121 under any other law.

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

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

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

127 **§ 59.1-207.16. Action to be brought within certain time.**

128 Any action brought under this chapter shall be commenced within ~~eighteen months~~ following the  
129 ~~date of original delivery of the motor vehicle to the consumer~~ *the lemon law rights period*. However,  
130 any consumer whose good faith attempts to settle the dispute pursuant to the informal dispute settlement  
131 provisions of § 59.1-207.15 have not resulted in the satisfactory resolution of the matter shall have (i)  
132 ~~twelve~~ 12 months from the date of the final action taken by the manufacturer in its dispute settlement  
133 procedure, if such procedure was resorted to within ~~eighteen months of delivery~~ *the lemon law rights*  
134 *period*, or (ii) the original ~~eighteen-month period~~ *lemon law rights period*, whichever is longer, to file an  
135 action in the proper court.