

## SOUTH DAKOTA LEMON LAW SUMMARY

EXECUTIVE SUMMARY	
<b>TIME PERIOD FOR FILING CLAIMS</b>	Three years following original delivery to the consumer.
<b>ELIGIBLE VEHICLE</b>	Any motor vehicle intended primarily for use and operation on the public highways. Excludes motor homes or vehicles with 10,000 pounds or more GVWR.  Appears to cover used vehicles.
<b>ELIGIBLE CONSUMER</b>	(1) <b>Purchaser</b> , for purposes other than resale, of a new or previously untitled motor vehicle used in substantial part for personal, family or household purposes; and (2) any other person entitled by the terms of the warranty to enforce its obligations.  Appears not to cover a lessee.
<b>TIME PERIOD FOR FIRST OCCURRENCE OR NOTICE</b>	Lemon law rights period (earlier of one year after original delivery to a consumer or 12,000 miles).
<b>TIME PERIOD FOR REASONABLE NUMBER OF ATTEMPTS TO REPAIR</b>	Not specified.
<b>PRESUMPTION OR DEFINITION</b>	<b>Presumption:</b> during earlier of two years following delivery or 24,000 miles, either (1) four or more repair attempts, at least one of which during the lemon law rights period; or (2) out of service for 30 or more calendar days; and at least one attempt during the lemon law rights period.
<b>NOTICE TO MANUFACTURER</b>	Notice by certified mail before commencing action.
<b>FINAL OPPORTUNITY TO REPAIR</b>	If terms of the presumption are met; manufacturer must contact consumer within 7 days after receiving consumer's certified notice; repair within 14 days after delivery of vehicle to repair facility.
<b>REASONABLE ALLOWANCE</b>	Refund only: miles vehicle traveled before first report of nonconformity, divided by 100,000 and multiplied by full purchase price.
<b>DISPUTE RESOLUTION</b>	Before seeking refund or replacement, consumer must resort to manufacturer's program if it complies with 16 C.F.R. Part 703.
<b>DISCLOSURE TO SUBSEQUENT PURCHASER</b>	Yes.
<b>TITLE BRANDING</b>	Yes.

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1. <b>Citation</b>	South Dakota Cod. Laws §§ 32-6D-1 through 32-6D-9.
2. <b>Motor vehicle covered</b>	Covers any motor vehicle intended primarily for use and operation on the public highways. Excludes motor homes or vehicles with a manufacturer's gross vehicle weight rating of 10,000 pounds or more.  Appears to cover used vehicles.
3. <b>Consumer covered</b>	(1) The purchaser, for purposes other than resale, of a new or previously untitled motor vehicle used in substantial part for personal, family or household purposes; and (2) Any other person entitled by the terms of the warranty to enforce its obligations.  Appears not to cover lessees.
4. <b>Nonconformity defined</b>	"Nonconforming condition" is any condition of a motor vehicle that: (1) Is not in conformity with the terms of an express warranty issued by the manufacturer to a consumer; (2) Significantly impairs the use, value or safety of the motor vehicle; and (3) Occurs or arises solely in the course of the ordinary use of the motor vehicle.  Does not include any condition that arises or occurs as a result of abuse, neglect, modification or alteration of the motor vehicle not authorized by the manufacturer, or from any accident or other damage to the motor vehicle that occurs or arises after the motor vehicle was delivered by an authorized dealer to the consumer.
5. <b>Warranty defined</b>	"Express warranty" is a written warranty, so labeled, issued by the manufacturer of a new motor vehicle, including any terms and conditions precedent to the enforcement of obligations under that warranty.
6. <b>Lemon law rights period</b>	The period ending one year after the date of the motor vehicle's original delivery to a consumer, or the first 12,000 miles of operation, whichever occurs first.
7. <b>Manufacturer's obligation to repair</b>	If a motor vehicle does not conform to any applicable express warranty, and the consumer delivers the motor vehicle to the manufacturer or its authorized dealer and reports the nonconforming condition during the lemon law rights period, then the manufacturer must make the necessary repairs to remedy the nonconforming condition.  If notice of the nonconforming condition was first given during the lemon law rights period, the necessary repairs must be made even if the lemon law rights period has expired. However, the manufacturer's duty to repair the nonconforming condition does not extend beyond two years after the vehicle's delivery or 24,000 miles, whichever occurs first.
8. <b>Manufacturer's obligation to repurchase or replace</b>	If the manufacturer or its authorized dealer is unable after a <i>reasonable number of attempts</i> to conform the motor vehicle to any express warranty by repairing or correcting a nonconforming condition that first occurred during the lemon law rights period, the manufacturer must, at the consumer's option, either replace or repurchase the motor vehicle.
9. <b>Criteria for reasonable number of repair attempts</b>	Presumed if, during the period of two years following the motor vehicle's delivery or 24,000 miles, whichever is earlier, either of the following occurs: (1) The same nonconforming condition was subject to repair attempts four or more times by the manufacturer or its authorized dealers, at least one attempt occurred during the lemon law rights period, plus the manufacturer had a final repair attempt, and the nonconforming condition continues to exist; or (2) The motor vehicle was out of service and in the custody of the manufacturer or an authorized dealer due to repair attempts for a cumulative total of 30 or more calendar days, including the final repair attempt, and at least one repair attempt occurred during the lemon law rights period.  The 30 day period is extended by any period of time during which repair could not be performed because of conditions beyond the control of the manufacturer or authorized dealers.

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10. <b>Notice of nonconformity and final opportunity to repair</b>	<p>Before commencing any civil action, the consumer must notify the manufacturer by certified mail of a nonconforming condition and demand correction or repair. The notice must describe the motor vehicle, nonconforming condition, and all previous attempts to correct the nonconforming condition, including the identities of persons who made the attempts and the times the attempts were made.</p> <p>If the number of repair attempts that have been undertaken meets the <i>presumption</i> at the time notice is given, the consumer must give the manufacturer a final opportunity to cure the nonconforming condition. Within seven days of receiving the written notice of a nonconforming condition, the manufacturer must notify the consumer of a reasonably accessible repair facility. After the consumer delivers the vehicle to the repair facility, the manufacturer has fourteen days to correct the nonconforming condition and conform the vehicle to the express warranty.</p>
11. <b>Affirmative defenses</b>	<p>It is an affirmative defense that:</p> <ol style="list-style-type: none"> <li>(1) The alleged nonconforming condition does not significantly impair the use, market value or safety of the motor vehicle; or</li> <li>(2) The nonconforming condition is the result of abuse, neglect, or any modification or alteration of the motor vehicle by a consumer that is not authorized by a manufacturer.</li> </ol>
12. <b>Refund</b>	<p>Refund consists of:</p> <ol style="list-style-type: none"> <li>(1) The full contract price, including charges for undercoating, dealer preparation and transportation charges, installed options, and the nonrefundable portions of extended warranties and service contracts;</li> <li>(2) All collateral charges, including excise tax, license and registration fees, and similar government charges;</li> <li>(3) All finance charges incurred by the consumer after the first report of the nonconformity to the manufacturer and its authorized dealer; and</li> <li>(4) Incidental damages, including the reasonable cost of alternative transportation during the period that the consumer is without the use of the motor vehicle because of the nonconforming condition;</li> <li>(5) Less a reasonable allowance for the consumer's use of the motor vehicle.</li> </ol>
13. <b>Replacement</b>	<p>Replacement is a comparable new motor vehicle. The replacement must be accompanied by a refund of all collateral charges, including excise tax, license and registration fees and similar government charges.</p>
14. <b>Reasonable allowance</b>	<p>Applies to a refund only. A reasonable allowance for the consumer's use of the motor vehicle is that amount directly attributable to use by the consumer before the first report of the nonconformity to the manufacturer or authorized dealer. The reasonable allowance must be calculated in accordance with the following formula:</p> $\frac{\text{miles vehicle traveled before the first report of nonconformity}}{100,000} \times \text{full purchase price}$
15. <b>Refund of sales tax</b>	<p>Manufacturer refunds sales tax to the consumer. No provision for the manufacturer to obtain a refund of sales tax from the state.</p>
16. <b>Enhanced damages</b>	<p>Not specified.</p>
17. <b>Attorney's fees</b>	<p>If the manufacturer has breached its lemon law obligations, the consumer may recover an additional award for reasonable attorney fees.</p>
18. <b>Statute of limitations</b>	<p>An action must be commenced within three years following the date of the vehicle's original delivery to the consumer.</p>
19. <b>Manufacturer-sponsored arbitration</b>	<p>If the manufacturer has established an informal dispute settlement procedure conducted within South Dakota that complies with 16 C.F.R. Part 703, then the consumer must first exhaust any remedy afforded by the procedure before instituting a cause of action under the lemon law.</p>

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<b>20. State-sponsored arbitration</b>	Not specified.
<b>21. Dealer liability</b>	Nothing in the lemon law imposes any liability on a dealer, or creates a cause of action by a consumer against a dealer. No manufacturer may charge back or require reimbursement by a dealer for any costs, including refunds or vehicle replacements, incurred by the manufacturer arising out of the lemon law.
<b>22. Restrictions on resale of returned vehicles</b>	<p>A motor vehicle that has been returned to the manufacturer under any state's lemon law, whether as the result of a legal action or as the result of an informal dispute settlement proceeding, may not be resold in South Dakota unless:</p> <p>(1) The manufacturer discloses in writing to the subsequent purchaser the fact that the motor vehicle was returned under the lemon law and the nature of the nonconformity to the vehicle warranty; and</p> <p>(2) The manufacturer returns the title of the motor vehicle to the Department of Revenue advising of the return under the lemon law, with an application for title in the name of the manufacturer. The Department will brand the title issued to the manufacturer and all subsequent titles to the motor vehicle with the following statement:</p> <p style="padding-left: 40px;">This motor vehicle was returned to the manufacturer because it did not conform to its warranty.</p>
<b>23. Point of sale notice of lemon law rights</b>	Not specified.
<b>24. Limitation on waiver</b>	Not specified.

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