

STANDARDS OF THE ARKANSAS LEMON LAW

New Motor Vehicle Quality Assurance Act

The following is a brief explanation of most relevant provisions of the Arkansas lemon law. The complete text of the lemon law can be found at Ark. Code Ann. 4-90-401 *et seq.*

VEHICLES COVERED

The Arkansas lemon law covers motor vehicles that are licensed, purchased, or leased in Arkansas and primarily designed for transportation of persons or property over public streets and highways.

The lemon law excludes mopeds, motorcycles, the living facilities of motor homes, vehicles with a G.V.W. rating over 13,000 pounds (other than motor homes), and any vehicle over 10,000 lbs. G.V.W.R. that has been substantially altered after its initial sale from a dealer. Used vehicles might be covered if transferred during the MVQA period.

CONSUMERS COVERED

The lemon law covers:

1. The purchaser or lessee, other than for the purpose of resale or sublease, of a new or previously untitled motor vehicle, provided the motor vehicle is titled and registered as prescribed by law; or
2. Any other "person" entitled to enforce the obligations of a manufacturer's new vehicle warranty during the duration of the Motor Vehicle Quality Assurance period [see definition below], provided the motor vehicle is titled and registered as prescribed by law.

The definition of "person" includes any natural person, a partnership, firm, corporation, association, joint venture, trust, or other legal entity.

PROBLEMS COVERED

The lemon law covers vehicle **nonconformities**. A nonconformity means any specific or generic defect or condition, or any concurrent combination of defects or conditions, that:

1. Substantially impairs the use, market value, or safety of a motor vehicle; or
2. Renders the vehicle nonconforming to the terms of an applicable manufacturer's express warranty or implied warranty of merchantability.

The lemon law provides the manufacturer with an affirmative defense if it can be shown that:

This information is not intended as legal advice. Please direct specific questions to your legal counsel.
Updated 4/13/2012 © 2012, Council of Better Business Bureaus, Inc.

1. The nonconformity, defect, or condition does not substantially impair the use, value or safety of the vehicle; or
2. The nonconformity, defect or condition is the result of an accident, abuse, neglect or unauthorized modification or alteration of the vehicle by persons other than the manufacturer, its agent, or authorized dealer.

THE MOTOR VEHICLE QUALITY ASSURANCE PERIOD

The lemon law establishes a *Motor Vehicle Quality Assurance period*, which will be referred to as the *MVQA period*. The MVQA period is the period of time that:

BEGINS on the date of original delivery of a motor vehicle to a consumer* AND

ENDS 24 months after the date of the original delivery of the vehicle to a consumer, or the first 24,000 miles of operation attributable to the consumer, **WHICHEVER IS LATER.**

MANUFACTURER'S DUTY TO REPAIR

The Arkansas lemon law provides that, if a motor vehicle does not conform to the warranty and the consumer reports the nonconformity to the manufacturer, its agent, or authorized dealer during the MVQA period (see definition above), the nonconformity must be corrected, even if the repairs are made after the expiration of the MVQA period.

NOTICE AND FINAL REPAIR ATTEMPT

After 3 attempts have been made to repair the same nonconformity, or after 1 attempt to repair a nonconformity likely to cause death or serious bodily injury, the consumer must notify the manufacturer **BY CERTIFIED OR REGISTERED MAIL** of the need to repair the nonconformity in order to allow the manufacturer a final attempt to cure the nonconformity.

Within 10 days after receipt of the certified or registered notice from the consumer, the manufacturer must provide the consumer with the opportunity to have the vehicle repaired at a reasonably accessible repair facility. Repairs must be accomplished within 10 days after the vehicle is delivered by the consumer to that repair facility.

Guidance from the Arkansas Attorney General's Office indicates that the requirement for notice and final repair attempt does not apply to a consumer who is not asserting the presumptions that arise after three attempts to the same nonconformity or one attempt to a nonconformity likely to cause death or bodily injury.

The requirement that the manufacturer be given a final attempt to cure the nonconformity does not apply if:

* If the consumer has received a replacement vehicle from the manufacturer, the lemon law rights period begins on the date of delivery of the replacement vehicle to the consumer.

1. The manufacturer fails to notify and provide the consumer with the opportunity to have the vehicle repaired at a reasonably accessible repair facility; or
2. The manufacturer fails to perform the repairs within 10 days after the vehicle is delivered by the consumer to the designated repair facility.

MANUFACTURER'S DUTY TO REPURCHASE OR REPLACE A VEHICLE

If the manufacturer, its agent, or authorized dealer has not conformed the motor vehicle to the warranty by repairing or correcting one or more nonconformities that substantially impair the motor vehicle after a reasonable number of attempts, the manufacturer must repurchase or replace the vehicle within 40 days.

REASONABLE NUMBER OF REPAIR ATTEMPTS

The Arkansas lemon law provides a ***rebuttable presumption*** that the manufacturer and its authorized service agent have had a reasonable number of attempts to repair a vehicle if *any* of the following occurs:

1. A nonconformity continues to exist after it has been subject to repair three times by the manufacturer and/or its dealers PLUS a final repair attempt by the manufacturer after receipt of certified or registered mail notice from the consumer;
2. A nonconformity that is likely to cause death or serious bodily injury continues to exist after it has been subject to repair one time by the manufacturer and/or its dealers PLUS a final repair attempt by the manufacturer after receipt of certified or registered mail notice from the consumer;
3. The vehicle is out of service by reason of repair, or attempt to repair, any nonconformity for a cumulative total of 30 calendar days*; or
4. There have been 5 or more attempts, on separate occasions, to repair any nonconformities that together substantially impair the use and value of the vehicle to the consumer.

Guidance from the Arkansas Attorney General's Office indicates that the requirement that the nonconformity continues to exist does not apply to a consumer who is not asserting the presumptions that arise after three attempts to the same nonconformity or one attempt to a nonconformity likely to cause death or bodily injury.

A ***nonrebuttable presumption*** arises if, after the consumer sends the required notice by certified or registered mail, the manufacturer fails to notify and provide the

* This 30-day period is extended by any period of time during which repair services are not available as a direct result of war, invasion, strike, fire, flood, or natural disaster. The manufacturer or dealer must provide for the free use of a vehicle by the consumer after the 30-day period if delay is due to the problems listed above.

consumer with the opportunity to have the vehicle repaired at a reasonably accessible repair facility or the manufacturer fails to perform the repairs within 10 days after the vehicle is delivered by the consumer to the designated repair facility.

A manufacturer, its agent or authorized dealer may not refuse to diagnose or repair any vehicle for the purpose of avoiding liability under the lemon law. A manufacturer, its agent or authorized dealer must provide the consumer with a written repair order each time the vehicle is brought in for examination or repair. The repair order must include reference to each defect, nonconformity, or other complaint brought to the attention of the manufacturer, its agent or authorized dealer. Each presentation of the vehicle by the consumer with a reasonable opportunity to repair the vehicle is considered a repair attempt for the defects, nonconformities or other complaints noted in the repair order.

In the case of a motor home, where 2 or more manufacturers contributed to the construction of the vehicle, it shall be considered a repair attempt only if the facility is authorized by the manufacturer to provide warranty service for the vehicle. If a consumer presents their motor home for repairs at an authorized facility but decides to continue traveling rather than having the repairs done at that time, it does not count as a repair attempt.

DISPUTE RESOLUTION

A manufacturer doing business in Arkansas, entering into franchise agreements for the sale of its vehicles in Arkansas, or offering express warranties on its vehicles sold or distributed in Arkansas must operate or participate in an informal dispute settlement procedure. The informal procedure must be located in Arkansas and must comply with the lemon law.

The lemon law provisions requiring repurchase or replacement of a nonconforming motor vehicle do not apply to a consumer who has not first used the informal procedure before commencing a civil action, unless the manufacturer allows a consumer to forego the procedure or the manufacturer, its agent or authorized dealer has failed to provide the consumer with the Attorney General's description of the consumer's rights and obligations under the lemon law.

TIME PERIOD FOR FILING CLAIMS

An action in court must be commenced within two years following the date that the consumer first reports the nonconformity to the manufacturer, its agent, or authorized dealer, or two years following the date that the consumer files a claim with the informal dispute settlement procedure.

Guidance from the Attorney General's Office indicates that the lemon law does not establish a period for filing claims with BBB AUTO LINE.

REMEDIES UNDER THE ARKANSAS LEMON LAW

REPURCHASE

Owned Vehicles

The Arkansas lemon law provides that a manufacturer must pay the following amounts when it repurchases an owned vehicle under the lemon law:

1. *Vehicle purchase price.* This means the cash price paid for the vehicle appearing in the sales agreement or contract, including any net allowance given for a trade-in vehicle. Guidance from the Arkansas Attorney General's Office indicates that any document other than the sales agreement or contract may not be considered to determine the cash price.
2. *Collateral charges.* These are defined as additional charges to a consumer wholly incurred as a result of the acquisition of the motor vehicle. They include, but are not limited to:
 - Manufacturer-installed or agent-installed items;
 - Earned finance charges;
 - Sales taxes;
 - Title charges; and
 - Charges for extended warranties provided by the manufacturer, its subsidiary or agent.
3. *Incidental charges.* These are defined as reasonable costs (not including loss of use, loss of income, or personal injury claims) incurred by the consumer which are directly caused by nonconformity or nonconformities that are the subject of the claim. They include, but are not limited to:
 - Towing charges; and
 - Costs of obtaining alternative transportation.
4. Less a reasonable offset for use and a reasonable offset for physical damage to the vehicle.

Refunds must be made to the consumer and lienholder of record, if any, as their interests may appear. At the time of the refund, the consumer or lienholder must furnish to the manufacturer clear title to and possession of the motor vehicle.

Leased Vehicles

The Arkansas lemon law provides that the manufacturer must pay the following amounts when it repurchases a leased vehicle:

To the Lessor:

1. 105% of the lessor's actual purchase costs, minus the total of all deposit and rental payments paid by the lessee to the lessor;
2. *Collateral charges* (see above), if applicable;
3. Any fee paid to another to obtain the lease;
4. Any insurance or other costs expended by the lessor for the benefit of the lessee, and
5. An amount equal to state and local sales taxes, not otherwise included as collateral charges, paid by the lessor when the vehicle was purchased.

To the Lessee:

1. All deposit and rental payments paid by the lessee to the lessor; and
2. *Incidental charges* (see above), if applicable.
3. Less a reasonable offset for use and a reasonable offset for physical damage to the vehicle.

At the time of the refund, the consumer or lessor must furnish to the manufacturer clear title to and possession of the motor vehicle. The consumer's lease agreement with the lessor is terminated upon payment of the refund, and no penalty for early termination can be assessed.

Allowance for the consumer's use of or damage to vehicle

The Arkansas lemon law states that a reasonable offset for the vehicle's use is deducted from the amounts a manufacturer pays to the owner or lessee when it repurchases a vehicle. The reasonable offset for use is determined by the following formula:

$$\frac{\text{Number of miles traveled by vehicle prior to the time the consumer first delivered the vehicle to the manufacturer, agent or dealer for correction of the problem that gave rise to the nonconformity}}{120,000} \times \text{vehicle purchase price (including charges for transportation and manufacturer-installed options)}$$

The Arkansas lemon law also provides that a reasonable offset be made for physical damage sustained to the vehicle while under the ownership of the consumer.

This information is not intended as legal advice. Please direct specific questions to your legal counsel.
Updated 4/13/2012 © 2012, Council of Better Business Bureaus, Inc.

REPLACEMENT

If a manufacturer replaces a vehicle under the Arkansas lemon law, the consumer must receive a replacement vehicle that is identical or reasonably equivalent to the replaced motor vehicle as it existed at the time of original acquisition. The manufacturer must also pay all *collateral* and *incidental charges* (see above).

The consumer is responsible for paying a reasonable offset for use of the vehicle. The reasonable offset for use is determined by the following formula:

$$\frac{\text{Number of miles traveled by vehicle prior to the time the consumer first delivered the vehicle to the manufacturer, agent or dealer for correction of the problem that gave rise to the nonconformity}}{120,000} \times \text{vehicle purchase price (including charges for transportation and manufacturer-installed options)}$$

The Arkansas lemon law also provides that a reasonable offset be made for physical damage sustained to the vehicle while under the ownership of the consumer.

At the time of the replacement, the consumer, lienholder, or lessor must furnish to the manufacturer clear title to and possession of the motor vehicle.