

STANDARDS OF THE CALIFORNIA LEMON LAW

Song-Beverly Consumer Warranty Act and Tanner Consumer Protection Act

The following is a brief explanation of most relevant provisions of the California lemon law, included within the Song-Beverly Consumer Warranty Act and, in part, titled the Tanner Consumer Protection Act. The complete text of the lemon law can be found at California Civil Code § 1793.2 *et seq.*

VEHICLES COVERED

The California lemon law covers a “new motor vehicle” (including the chassis cab of a motor home, a dealer-owned vehicle, a “demonstrator”, or other vehicle sold with a manufacturer’s new car warranty) that:

- is used or bought for use primarily for personal, family or household purposes, or
- has a gross vehicle weight under 10,000 pounds and be bought or used primarily for business purposes by any person or business to which at least one¹ but not more than five motor vehicles are registered in California.

In addition, the motor vehicle must have been:

- purchased or leased in California² at retail (not a private sale)³, or
- purchased or leased by a full-time active duty member of the Armed Forces who was stationed or residing in California at the time of purchase or lease or at the time the claim is filed.

The lemon law does not cover any portion of a motor home designed, used or maintained primarily for human habitation; a motorcycle; or a motor vehicle that is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways.

CONSUMERS COVERED

The lemon law covers a “consumer,” defined as:

1. Any individual who buys or leases a new motor vehicle from a person engaged in the business of manufacturing, distributing, selling or leasing new motor vehicles at retail;
2. A lessee for a term exceeding four months; and

¹ *Park City Services, Inc., v. Ford Motor Company, Inc.*, 144 Cal. App. 4th 295 (2006).

² *Cummins, Inc., v. Superior Court*, 36 Cal. 4th 478 (2005); *Davis v. Newmar Corp.*, 136 Cal. App. 4th 275 (2006).

³ *Dagher v. Ford Motor Company*, 238 Cal. App. 4th 905 (2015).

3. Any individual to whom the vehicle is transferred during the duration of a written warranty or who is entitled under applicable state law to enforce the obligations of the warranty.

“Person” means any individual, partnership, corporation, limited liability company, association, or other legal entity that engages in such business.

PROBLEMS COVERED

The lemon law covers vehicle *nonconformities*, which are defined as any vehicle defect or malfunction that:

1. Is covered by the manufacturer’s written new vehicle warranty *and*
2. Substantially impairs⁴ the use, value or safety of the vehicle to the consumer.

The California lemon law does *not* cover vehicle problems that are caused by the unauthorized or unreasonable use of the vehicle after sale. A service contract is not an express warranty within the meaning of the lemon law, and the lemon law does not authorize a repurchase or replacement remedy for breaches of service contracts.⁵

MANUFACTURER’S DUTY TO REPURCHASE OR REPLACE A VEHICLE

If the manufacturer or its representative in California is unable to service or repair a vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer must either replace or repurchase the vehicle. The manufacturer must be provided more than one attempt to repair the vehicle,⁶ and each occasion that an opportunity for repairs is provided counts as an attempt, even if no repairs are actually undertaken.⁷

A consumer does not need to possess or own the vehicle to avail himself or herself of the repurchase or replacement remedies.⁸

REASONABLE NUMBER OF REPAIR ATTEMPTS

The California lemon law establishes a rebuttable presumption that a reasonable number of repair attempts have been made if, within 18 months from delivery to the first retail buyer/lessee or 18,000 miles on the vehicle odometer, whichever comes first, one or more of the following occurs:

⁴ *Lundy v. Ford Motor*, 87 Cal. App. 4th 472 (2001).

⁵ *Gavaldon v. DaimlerChrysler Corp.*, 32 Cal. 4th 1246 (2004).

⁶ *Silvio v. Ford Motor Company*, 109 Cal. App. 4th 1205 (2003).

⁷ *Oregel v. American Isuzu Motors, Inc.*, 90 Cal. App. 4th 1094 (2001).

⁸ *Martinez v. Kia Motors America, Inc.*, 193 Cal. App. 4th 187 (2011).

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REASONABLE NUMBER OF REPAIR ATTEMPTS (continued)

1. The same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven **and** the nonconformity has been subject to repair two or more times by the manufacturer or its agents, **and** the consumer has at least once directly notified the manufacturer of the need for repair;
2. The same nonconformity has been subject to repair four or more times by the manufacturer or its agents **and** the consumer has at least once directly notified the manufacturer of the need for repair; **or**
3. The vehicle has been out of service more than 30 calendar days (cumulative) since delivery by reason of repair of one or more nonconformities by the manufacturer or its agent (such as an authorized dealer).

The 30-day limit is extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The consumer is required to directly notify the manufacturer pursuant to paragraphs (1) and (2) only if the manufacturer has clearly and conspicuously disclosed to the consumer, in the warranty or owner's manual, the provisions of the lemon law and the direct notice requirement.

REMEDIES UNDER THE CALIFORNIA LEMON LAW

REPURCHASE OF OWNED VEHICLES

The California lemon law provides that the manufacturer must refund to the purchaser the following amounts when repurchasing an owned vehicle under the lemon law:

1. *Purchase price.* The actual price paid for the vehicle, including any charges for transportation and manufacturer-installed options, but not including charges for nonmanufacturer items installed by a dealer or the consumer;
2. *Collateral charges.* Official fees associated with the sale of the vehicle, including sales tax, license fees, and registration fees; and
3. *Incidental damages.* Reasonable expenses incident to the vehicle problem for which the manufacturer is repurchasing the vehicle, not including charges for which the consumer is justly responsible. Incidental damages include but are not limited to the following:
 - ♦ Reasonable repair, towing and rental car costs actually incurred by the consumer.
 - ♦ Prepayment penalties, early termination charges and earned finance charges, if actually paid, incurred, or to be incurred by the consumer.

The California lemon law, and regulations issued by the state to further explain lemon law requirements, provide that an arbitrator may make a deduction for the buyer's use of the vehicle by using the following formula:

$$\text{deduction} = \frac{\text{use} \quad \# \text{ miles driven by the consumer prior to first} \\ \text{of the nonconformity that led to the repurchase}}{120,000} \times \text{purchase price}$$

REPURCHASE OF LEASED VEHICLES

Although the California lemon law does not provide specific remedies for the repurchase of a leased vehicle, the following has been approved by the California Arbitration Review Program as appropriate remedies:

To the Lessor:

1. The pay-off amount due pursuant to the lease agreement;
2. Minus the amount of any security deposit held by the lessor;
3. Minus the amount of any refund due to the lessor for the unexpired term of a service contract or insurance included in the lease agreement.

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California

To the Lessee:

1. *Collateral charges.* Official fees paid by the lessee including sales tax, license fees, and registration fees;
2. *Incidental damages.* Reasonable expenses incident to the vehicle problem for which the manufacturer is repurchasing the vehicle, not including charges for which the consumer is justly responsible. Incidental damages include but are not limited to the following:
 - ♦ Reasonable repair, towing and rental car costs actually incurred by the consumer, and
 - ♦ Prepayment penalties, early termination charges and earned finance charges, if actually paid, incurred, or to be incurred by the consumer;
3. Base monthly payments (total monthly payment minus collateral charges) made by the lessee to the lessor up to the time of repurchase;
4. The amount of any trade-in or deposit made by the lessee (capitalized cost reduction); and
5. The amount of any security deposit held by the lessor.

The California lemon law, and regulations issued by the state to further explain lemon law requirements, provide that an arbitrator may make a deduction for the lessee's use of the vehicle by using the following formula:

$$\text{use deduction} = \frac{\text{\# miles driven by the consumer prior to first delivery to the manufacturer/dealer for repair of the nonconformity that led to the repurchase}}{120,000} \times \text{purchase price}$$

REPLACEMENT

The lemon law provides that a replacement vehicle must be new and substantially identical to the vehicle replaced. The replacement vehicle must be accompanied by all express and implied warranties that normally accompany new motor vehicles of that kind.

When replacing a vehicle, the manufacturer must pay for collateral charges incurred in connection with the replacement vehicle. The manufacturer does not have to pay for collateral charges incurred in connection with the purchase of the original vehicle. In addition, the manufacturer must reimburse the purchaser for any reasonable incidental damages.

If a vehicle is replaced, the consumer may be required to pay for the vehicle's use in accordance with the formula set out under the above *Repurchase* sections.