

STANDARDS OF THE LOUISIANA LEMON LAW

The following is a brief explanation of most relevant provisions of the Louisiana lemon law. The complete text of the lemon law can be found at Louisiana Rev. Stat. Ann. § 51:1941 *et seq.*

VEHICLES COVERED

The Louisiana lemon law covers motor vehicles, defined as:

1. Passenger motor vehicles and passenger/commercial motor vehicles (meaning any motor driven car, van, or truck required to be registered and that is used or designed to be used for transporting passengers or goods for public, private, commercial, or for-hire purposes) sold in Louisiana;
2. Personal watercraft and all-terrain vehicles that are used exclusively for personal and not commercial purposes and are sold in Louisiana or still under warranty on or after August 15, 1999; or
3. The chassis and drive train of motor homes sold in Louisiana or still under warranty on or after August 15, 1999.

The lemon law appears to cover used vehicles, but does not cover motor vehicles with a 10,000 GVW or above (except for motor homes) and motor vehicles used exclusively for commercial purposes.

CONSUMERS COVERED

The lemon law covers the following consumers:

1. The purchaser, for purposes other than resale, of a motor vehicle normally used for personal, family or household purposes and subject to a manufacturer's express warranty;
2. A person to whom the new motor vehicle is transferred for purposes other than resale and for personal, family or household purposes during the duration of an express warranty applicable to the motor vehicle;
3. A person to whom a motor vehicle is leased; or
4. Any other person entitled to enforce the warranty.

PROBLEMS COVERED

The lemon law covers any *nonconformity*, which is defined as any specific or generic defect or malfunction, or any defect or condition that substantially impairs the use and/or market value of a motor vehicle.

MANUFACTURER'S DUTY TO REPAIR A VEHICLE

If a motor vehicle does not conform to an applicable express warranty, and the consumer reports the nonconformity to the manufacturer or an authorized dealer and makes the vehicle available for repair before the expiration of the warranty or during a period of one year following the date of the motor vehicle's original delivery to a consumer, whichever is earlier, then the manufacturer, its agent or authorized dealer

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must make the necessary repairs to conform the motor vehicle to the warranty. The necessary repairs must be made even if the warranty or the one year period has expired.

MANUFACTURER'S DUTY TO REPURCHASE OR REPLACE A VEHICLE

The manufacturer must repurchase or replace a motor vehicle (other than a motor home) if either of the following occurs:

1. The nonconformity is not repaired after four or more attempts within the warranty term or within one year of the vehicle's original delivery to the consumer, whichever is earlier, or
2. The vehicle is out of service by reason of repair for cumulative total of 90 or more calendar days during the warranty period.¹

The manufacturer must replace or repurchase a motor home if it is unable to repair a nonconformity as provided in the provision creating the *presumption* for motor homes.

The manufacturer must provide the consumer or lessor with a replacement or refund within 30 days after an offer to transfer title by the consumer or lessor, or within 30 days after a decision by the informal dispute settlement procedure.

REASONABLE NUMBER OF REPAIR ATTEMPTS

The manufacturer must repurchase or replace a motor vehicle (other than a motor home) if either of the following occurs:

1. The nonconformity is not repaired after four or more attempts within the warranty term or within one year of the vehicle's original delivery to the consumer, whichever is earlier, or
2. The vehicle is out of service by reason of repair for cumulative total of 90 or more calendar days during the warranty period.

The lemon law also provides for a *presumption* that a reasonable number of attempts has been undertaken to conform a motor vehicle (other than a motor home) to the applicable express warranties if, before the expiration of the warranty or during a period of one year following the date of the motor vehicle's original delivery to a consumer, whichever is earlier, either of the following occurs:

1. The same nonconformity is subject to repair four or more times by the manufacturer, its agent or authorized dealer; or
2. The vehicle is out of service by reason of repair for a cumulative total of 45 or more calendar days.

¹ *Chaudoir v. Porsche Cars of North America*, 667 So.2d 569 (La. App. 3 Cir. 12/6/95); *Johns v. American Isuzu Motors, Inc.*, 622 So. 2d 1208 (La.App. 2 Cir. 1993); *Rhodes v. All Star Ford, Inc.*, 599 So. 2d 812 (La. App. 1 Cir. 1992); *Vincent v. Hyundai Corp.*, 633 So. 2d 240 (La. App. 1 Cir. 1993)

Note: This *presumption* does not appear to alter the manufacturer's obligation to repurchase or replace a nonconforming motor vehicle as described in the previous section.

The *presumption* applies to a *motor home* if the consumer provides written notification to the manufacturer of:

1. The need to repair the nonconformity;
2. Evidence of a cumulative total of at least 90 days out of service; or
3. Evidence that the same nonconformity has been subject to repair four or more times by the manufacturer, its agent or authorized dealer within the warranty term or during a period of one year following the date of the motor home's original delivery to a consumer, whichever is earlier.

Upon such notification, the manufacturer has a final attempt to repair the motor home. Within 5 business days after receipt of the notification, the manufacturer must respond to the consumer with an authorized repair facility to which the motor home may be delivered for repair. The repair facility must conform the motor home to the applicable warranty within 10 business days after the motor home is delivered to that facility.

If the manufacturer fails to respond to the consumer within 5 business days or to perform the repairs within 10 business days, the manufacturer is deemed to have waived its rights to a final attempt to cure the nonconformity.

The term of an express warranty is extended by any period during which repairs are unavailable to the consumer because of a war, invasion, strike, fire, flood or other natural disaster. The provisions in the *presumption* are suspended for any period of time during which repair services cannot be performed by the manufacturer, its agents or authorized dealer because of war, invasion, strike, fire, flood, or natural disaster.

MANUFACTURER'S OTHER DUTIES UNDER THE LEMON LAW

The manufacturer must reimburse the consumer up to \$20 per day for a rental vehicle for the duration of the repair period whenever the following occurs:

1. The motor vehicle is covered by a manufacturer's express warranty;
2. The consumer brings the motor vehicle to the dealer from whom the motor vehicle was purchased;
3. For repair of any defect, malfunction, or nonconformity to which the warranty is applicable; and
4. Either the repair period exceeds ten working days or the same defect, malfunction, or nonconformity has been subject to repair on two previous occasions.

This provision applies during the length of the manufacturer's express warranty or for two years, whichever expires first. The reimbursement requirement is not in effect in case of war, work stoppages, and natural disasters beyond the control of the manufacturer that would prevent the timely repair or parts delivery to a dealer.

This provision does not apply to any personal watercraft, all-terrain vehicle, or motor home that is tendered to a manufacturer for repair.

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DISPUTE RESOLUTION

If the manufacturer has established an informal dispute settlement procedure that substantially complies with 16 C.F.R. Part 703, the provisions requiring refund or replacement do not apply unless the consumer has first resorted to the informal dispute settlement procedure.

TIME PERIOD FOR FILING CLAIMS

An action must be commenced within the later of (1) three years from the date the consumer purchased the motor vehicle, or (2) one year from the end of the warranty period. For lessees, a claim under an informal dispute resolution program must be filed within the term of the lease.²

² *Guidry v. Ford Motor Co.*, 868 So. 2d 945 (La. Ct. App. 2004)

REMEDIES UNDER THE LOUISIANA LEMON LAW

REPURCHASE OF OWNED VEHICLE

The Louisiana lemon law sets out the following amounts that a manufacturer must pay when it repurchases an owned motor vehicle under the lemon law:

1. The full purchase price;
2. Any amounts paid by the consumer at the point of sale, which case law indicates may include finance charges³ and
3. All collateral costs, defined as sales tax, license and registration fees, and any similar governmental charges;
4. Less a reasonable allowance for use to the consumer.

Refunds must be made to the consumer and lienholder, if any, as their interests may appear.

The reasonable allowance for use is that amount directly attributable to use by the consumer prior to the first notice of the nonconformity to the manufacturer, agent or dealer, and during any subsequent period when the vehicle is not out of service by reason of repair.

REPURCHASE OF LEASED VEHICLE

The Louisiana lemon law provides that a manufacturer repurchasing a leased motor vehicle under the lemon law must reimburse the lessee for all reasonable expenditures in connection with the lease, including any conditions of the lease in connection with early termination and related charges.

The lessee is responsible for a reasonable allowance for the lessee's use of the motor vehicle. The reasonable allowance for use is that amount directly attributable to use by the lessee prior to the first notice of the nonconformity to the manufacturer, agent or dealer, and during any subsequent period when the vehicle is not out of service by reason of repair.

REPLACEMENT

When replacing a vehicle under the Louisiana lemon law, the manufacturer must provide a comparable new motor vehicle. The reasonable allowance for use does not apply to a replacement.

³ *Williams v. Chrysler Corp.*, 530 So. 2d 1214 (La. Ct. App. 1988)