

STANDARDS OF THE MICHIGAN LEMON LAW

The following is a brief explanation of most relevant provisions of the Michigan lemon law. The complete text of the lemon law can be found at M.C.L. § 257.1401 *et seq.*

VEHICLES COVERED

The Michigan lemon law covers any motor vehicle designed as a passenger vehicle, sports utility vehicle, pickup truck, or van. The lemon law does not cover buses, trucks, and motor homes.

A “new motor vehicle” is a motor vehicle that is purchased or leased in Michigan or purchased or leased by a resident of Michigan, and that is covered by a manufacturer’s express warranty at the time of purchase or lease. The lemon law covers used motor vehicles transferred during the manufacturer’s express warranty.

CONSUMERS COVERED

The lemon law covers a person who:

1. Purchases or leases a new motor vehicle for personal, family, or household use and not for the purpose of selling or leasing the new motor vehicle to another person;
2. Purchases or leases less than 10 new motor vehicles a year;
3. Purchases or leases 10 or more new motor vehicles a year only if the vehicles are purchased or leased for personal, family, or household use; or
4. Is entitled to enforce the provisions of an express warranty pursuant to the terms of that warranty.

A “person” under the lemon law is a natural person, a sole proprietorship, partnership, corporation, association, unit or agency of government, trust, estate, or other legal entity.

VEHICLE CONVERTERS

The lemon law applies to vehicle converters.

PROBLEMS COVERED

The lemon law covers any defect or condition that impairs the use or value of the new motor vehicle to the consumer or prevents the new motor vehicle from conforming to the manufacturer’s express warranty.

The lemon law does not cover any defect or condition that is the result of a modification not installed or made by or for the manufacturer, or abuse or neglect of the new motor vehicle or damage due to an accident occurring after the new motor vehicle’s purchase or lease.

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MANUFACTURER'S DUTY TO REPAIR

If a new motor vehicle has any defect or condition that impairs the use or value of the new motor vehicle to the consumer or that prevents the new motor vehicle from conforming to the manufacturer's express warranty, the manufacturer or its dealer must repair the defect or condition if the consumer initially reported the defect or condition to the manufacturer or the new motor vehicle dealer within the term of the manufacturer's express warranty or one year from the date of delivery of the new motor vehicle to the original consumer, whichever is earlier.

Any repairs required under this act must be made even if the repairs need to be performed after the expiration of the manufacturer's express warranty. The defect needing repair must be a continuation of the original attempt to repair the defect.

MANUFACTURER'S DUTY TO REPURCHASE OR REPLACE A VEHICLE

The Michigan lemon law requires that a manufacturer repurchase or replace a new motor vehicle if all of the following criteria are met:

1. The new motor vehicle has one or more defects or conditions that impair the use or value of the vehicle to the consumer or that prevent the vehicle from conforming to the manufacturer's express warranty;
2. The defect or condition was reported to the manufacturer or dealer within the period of the manufacturer's express warranty or one year from the date of delivery to the original consumer, whichever is earlier; and
3. The new motor vehicle was subjected to a reasonable number of repair attempts as determined by the *presumption* set out below; and
4. The defect or condition continues to exist¹.

REASONABLE NUMBER OF REPAIR ATTEMPTS

The Michigan lemon law requires that the vehicle was subjected to a reasonable number of repair attempts as determined by the section describing the presumption. A reasonable number of repair attempts is established if either of the following occurs:

1. The same defect or condition that *substantially* impairs the use or value of the motor vehicle to the consumer has been subject to repair four or more times by the manufacturer or new motor vehicle dealer in Michigan within two years of the date of the first repair attempt, and the defect or condition continues to exist; or
2. The defect or condition continues to exist after the vehicle is out of service for 30 or more days or parts of days for repairs to the same defect or condition² during

¹ *Computer Network, Inc. v. AM General Corp.*, 265 Mich. App. 309, 696 N.W.2d 49 (2005).

² *Hines v. Volkswagen of America, Inc.*, 265 Mich. App. 432, 695 N.W.2d 84 (2005); appeal denied, 474 Mich. 956, 706 N.W.2d 740 (2005).

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the term of the manufacturer's express warranty, or within one year from the date of delivery to the original consumer, whichever is earlier.

The *presumption* is irrebuttable; once satisfied, the manufacturer is deemed to have been afforded a reasonable number of attempts to repair a nonconformity.³

The term of the manufacturer's express warranty, the one-year period and the 30 day period are extended if repair services were not available to the consumer because of war, invasion, strike, fire, or other natural disaster.

FINAL REPAIR ATTEMPT

Prior to availing himself or herself of any remedy under the lemon law, the consumer must notify the manufacturer to allow it an opportunity to cure the nonconformity. The notice must be sent in writing by the consumer or his or her representative, by return receipt service, and any time after the third attempt to repair the same nonconformity or after the vehicle has been out of service for at least 25 days in a repair facility.

After receiving the notice, the manufacturer must notify the consumer as soon as reasonably possible of a reasonably accessible repair facility. The manufacturer must repair the defect or condition within 5 business days after the consumer delivers the vehicle to the designated repair facility.

The 5 day period is extended if repair services were not available to the consumer because of war, invasion, strike, fire, or other natural disaster.

DISPUTE RESOLUTION

The provisions of the lemon law do not apply to any consumer who has not first resorted to a manufacturer's informal dispute settlement procedure if the procedure:

1. Complies with the Magnuson-Moss Warranty Act and 16 C.F.R. Part 703, then the consumer must first resort to the informal dispute settlement procedure;
2. Requires the manufacturer to be bound by a decision that the consumer agrees to;
3. Provides that the consumer is not obligated to accept the decision and may pursue the remedies provided by the lemon law; and
4. Requires the manufacturer to begin the process of implementing any final settlement not more than 30 days after the settlement has been reached.

³ *Ayer v. Ford Motor Co.*, 200 Mich. App. 337, 503 N.W.2d 767 (1993); *Telly's, Inc. v. Land Rover North America, Inc.*, 2001 Mich. App. LEXIS 1413 (2001).

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TIME PERIOD FOR FILING CLAIMS

Not specified. Assuming that the UCC statute of limitations applies, a claim must be filed with BBB AUTO LINE within four years from the date the alleged defect is discovered.

REMEDIES UNDER THE MICHIGAN LEMON LAW

REPURCHASE OF OWNED VEHICLE

The Michigan lemon law provides that the manufacturer must refund the following amounts when repurchasing an owned vehicle:

1. *Purchase price of the vehicle.* This is the actual vehicle sales price listed on the buyer's order including any cash payment by the consumer, and the sum equal to any allowance for any trade-in excluding debt from any other transaction as well as any manufacturer or consumer discount, rebate, or incentive appearing in the agreement or contract that the consumer received or that was applied to reduce the purchase cost.

The refund will also include any sales tax, license and registration fees, and similar government charges not elsewhere paid by the consumer; the cost of any options or other modifications installed or made by or for the manufacturer, and the amount of all other charges made by or for the manufacturer.

2. *Towing and rental costs.* If towing services and rental vehicles were not made available without cost to the consumer, the manufacturer must also reimburse the consumer for towing costs and reasonable costs for a comparable rental vehicle that were incurred as a direct result of the defect or condition.
3. *Less a reasonable allowance for the consumer's use of the vehicle.*
4. *Less an amount equal to any appraised damage that is not attributable to normal use or to the defect or condition.*

A refund is made to the consumer and the secured party, if any, as their interests exist at the time the refund is to be made.

REPURCHASE OF A LEASED VEHICLE

The Michigan lemon law provides that the manufacturer must refund the following amounts when repurchasing a leased vehicle:

1. *Lease price.* This is the actual vehicle sales price paid by the lessor including any cash payment by the consumer, and the sum equal to any allowance for any trade-in excluding debt from any other transaction as well as any manufacturer or consumer discount, rebate, or incentive appearing in the agreement or contract that the consumer received or that was applied to reduce the purchase cost.

The refund will also include any sales tax, license and registration fees, and similar government charges not included elsewhere paid by the lessor on behalf of the lessee; the cost of any options or other modifications installed or made by or for the manufacturer; and the amount of all other charges made by or for the manufacturer.

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2. *Towing and rental costs.* If towing services and rental vehicles were not made available without cost to the consumer, the manufacturer shall also reimburse the consumer for towing costs and reasonable costs for a comparable rental vehicle that were incurred as a direct result of the defect or condition.
3. Less a *reasonable allowance for the consumer's use of the vehicle.*
4. Less an amount equal to any appraised damage that is not attributable to normal use or to the defect or condition.

A refund is made to the consumer and the secured party, if any, as their interests exist at the time the refund is to be made. The lessor must be notified if a refund is made to a lessee, and may not assess a fee for early termination of a lease under the lemon law.

USAGE DEDUCTION

The Michigan lemon law provides that a reasonable allowance for the consumer's use of the vehicle be deducted from any repurchase award. A reasonable allowance for use is defined as the following formula:

$$\frac{\text{Miles directly attributable to use by the consumer and any previous consumer before the first report of a defect or condition that substantially impairs the use or value of the vehicle, plus all miles beyond 25,000 miles}}{100,000} \times \text{purchase or lease price}$$

If the vehicle did not provide reliable transportation for ordinary personal and household use for any period beyond the first 25,000 mileage usage period of the vehicle, the arbitrator may reduce the vehicle usage deduction for mileage beyond the first 25,000 mileage use period only for the period beyond the 25,000 mileage usage period that the arbitrator determines that the vehicle did not provide useful transportation for ordinary personal or household use. To determine if the vehicle did not provide useful transportation the arbitrator must consider all of the following:

1. The number of repairs.
2. The cost of repairs.
3. The number of days the vehicle was out of service.
4. Whether the vehicle's need for repairs significantly affected the consumer's ability to use the vehicle for personal and household functions.

REPLACEMENT

When replacing a vehicle under the Michigan lemon law, the manufacturer must provide a comparable replacement motor vehicle currently in production and acceptable to the consumer. The reasonable allowance for use does not apply to a replacement.

If the replacement motor vehicle is comparable in value to the original motor vehicle, the secured party must consent to the replacement of the security interest with a

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corresponding security interest on the replacement motor vehicle. If a leased vehicle is replaced, the lease agreement may not be altered except with respect to the identification of the vehicle.

If for any reason the security interest in the motor vehicle having the defect or condition is not able to be replaced with a corresponding security interest on a replacement motor vehicle, the consumer must accept a refund.

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