

## **STANDARDS OF THE MONTANA LEMON LAW New Motor Vehicle Warranty Act**

The following is a brief explanation of most relevant provisions of the Montana lemon law. The complete text of the lemon law can be found at Mont. Code Ann. 61-4-501 *et seq.*

### **CONSUMERS COVERED**

The Montana lemon law covers the purchaser or lessee, other than for purposes of resale or lease, of a passenger motor vehicle used for personal, family, or household purposes that has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or alterations.

This includes any person to whom the passenger motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the passenger motor vehicle and any other person entitled by the terms of the warranty to enforce the obligations of the warranty.

### **VEHICLES COVERED**

The lemon law defines “motor vehicle” as a vehicle, including the nonresidential portion of a motor home, propelled by its own power, designed primarily to transport persons or property upon the public highways, and sold or registered in this state.

“Motor vehicle” excludes a truck with 15,000 pounds or more gross vehicle weight rating; or components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for residential purposes.

### **PROBLEMS COVERED**

The lemon law covers any defect or condition that substantially impairs the use and market value or safety of the motor vehicle to the consumer. This is referred to as a *nonconformity*.

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

1. The alleged nonconformity does not substantially impair the use, market value or safety of the motor vehicle; or
2. The nonconformity is the result of abuse, neglect, or unauthorized modification or alteration of the motor vehicle by the consumer.

### **PERIOD OF TIME COVERED BY MONTANA LEMON LAW**

The lemon law defines the *warranty period* as the period ending 2 years after the date of the original delivery of a new motor vehicle to the consumer, or during the first 18,000 miles of operation, whichever is earlier.

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## **MANUFACTURER'S DUTY TO REPAIR**

If a consumer notifies in writing the manufacturer or its agent, during the lemon law *warranty period*, that a new motor vehicle does not conform to all applicable express warranties, the manufacturer shall repair the motor vehicle at no cost to the consumer.

The manufacturer must clearly and conspicuously disclose to the consumer in the warranty or owner's manual that written notification of a nonconformity is required, and must provide the name and address to which such notice must be sent.

## **MANUFACTURER'S DUTY TO REPLACE OR REPURCHASE A MOTOR VEHICLE**

If the manufacturer or its agent or authorized dealer is unable to correct a nonconformity after a *reasonable number of repair attempts* during the lemon law *warranty period*, the manufacturer must replace or repurchase the new motor vehicle.

## **REASONABLE NUMBER OF REPAIR ATTEMPTS**

The Montana lemon law creates a **presumption** that a manufacturer has had a *reasonable number of repair attempts* if, during the lemon law *warranty period*, either of the following occurs:

1. The same nonconformity has been subject to repair four or more times by the manufacturer, or its agent or authorized dealer and the nonconformity continues to exist; or
2. The vehicle is out of service because of the nonconformity for a cumulative total of 30 or more business days after notification to the manufacturer, agent or dealer.

The lemon law *warranty period* is extended by any period of time during which repair services are not available due to war, invasion, strike, fire, flood, or other natural disaster.

## **NOTICE AND OPPORTUNITY TO REPAIR**

The above presumption applies against a manufacturer only if the manufacturer has received prior written notification from or on behalf of the consumer and has had an opportunity to cure the defect or condition.

The manufacturer must clearly and conspicuously disclose to the consumer in the warranty or owner's manual that written notification of a nonconformity is required before the consumer is eligible for a refund or replacement, and must provide the name and address to which such notice must be sent.

## **DISPUTE RESOLUTION**

The lemon law provisions requiring repurchase or replacement of a nonconforming motor vehicle do not apply to a consumer who has not first used an informal dispute

settlement procedure if the procedure is certified by the Department of Justice to be in substantial compliance with the provisions of 16 C.F.R. Part 703.

If the manufacturer has not established an informal dispute settlement procedure that is certified by the Department of Justice, the consumer may bring a grievance before the Department of Justice's arbitration procedure.

### **TIME PERIOD FOR FILING CLAIMS**

Not specified. The Department of Justice has approved the following filing period: A claim must be filed with BBB AUTO LINE within one year after the expiration of the earlier of (1) two years after the date of the vehicle's original delivery to a consumer, or (2) the first 18,000 miles of operation.

## REMEDIES UNDER THE MONTANA LEMON LAW

### REPURCHASE

The Montana lemon law provides that a manufacturer shall pay the following amounts when it repurchases a vehicle under the lemon law:

1. The full *purchase price*;
2. *Reasonable collateral charges*, meaning all governmental charges, including but not limited to sales tax, property tax, license and registration fees, and fees in lieu of tax; and
3. *Reasonable incidental damages*, meaning expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected; any commercially reasonable charges, expenses or commissions in connection with effecting cover; and any other reasonable expense incident to the breach;
4. Less a reasonable allowance for the consumer's use of the vehicle.

The refund is paid to the consumer and lienholder, if any, in proportion to their interests.

The reasonable allowance for use is an amount directly attributable to use of the motor vehicle by the consumer and any previous consumers prior to the first written notice of the nonconformity to the manufacturer or its agent and during any subsequent period when the vehicle is not out of service for repair. The lemon law provides the following formula to compute the reasonable allowance for use:

$$\text{reasonable allowance for use} = \frac{\text{number of miles the vehicle traveled prior to the manufacturer's acceptance of the vehicle}}{100,000} \times \frac{\text{total contract price of the vehicle}}{\text{the vehicle}}$$

[Note that BBB AUTO LINE arbitrators may use the **mileage at the time of the hearing** in this formula instead of the mileage at the time of the manufacturer's acceptance of the vehicle's return.]

### REPLACEMENT

The Montana lemon law provides that manufacturer replace the vehicle with a new motor vehicle of the same model, style and value unless for reasons of lack of availability such replacement is impossible, in which case the manufacturer shall replace it with a comparable motor vehicle. The reasonable allowance for use does not apply to a replacement.

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