

STANDARDS OF THE NORTH CAROLINA LEMON LAW

The following is a brief explanation of most relevant provisions of the North Carolina lemon law. The complete text of the lemon law can be found at North Carolina Gen. Stat. section 20-351 *et seq.*

VEHICLES COVERED

The North Carolina lemon law covers any new motor vehicle or new motorcycle, sold or leased in the state. The lemon law does not cover used vehicles, mopeds, house trailers, or any motor vehicle (1) purchased or leased before October 1, 2005 that has a gross vehicle weight of 10,000 pounds or more or (2) purchased or leased on or after October 1, 2005 that weighs more than 10,000 pounds.

CONSUMERS COVERED

The lemon law covers the following consumers:

1. The purchaser, other than for purposes of resale, of a motor vehicle;
2. The lessee of a motor vehicle from a commercial lender, lessor or manufacturer or dealer; and
3. Any other person entitled by the terms of an express warranty to enforce its obligations.

PROBLEMS COVERED

The lemon law covers any defect, condition, or series of defects or conditions that substantially impairs the value 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 an alleged nonconformity or series of nonconformities is the result of abuse, neglect, odometer tampering by the consumer, or unauthorized modifications or alterations of a motor vehicle.

MANUFACTURER'S DUTY TO REPAIR A VEHICLE

If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent or authorized dealer during the term of the express warranties or during a period of one year following the date of the motor vehicle's original delivery to the consumer, whichever is greater, then the manufacturer must make or arrange to have made the necessary repairs to conform the vehicle to the express warranties.

The necessary repairs must be made even after the expiration of the term of the express warranties or the one year period.

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Express warranties must be in effect for at least one year or 12,000 miles. The mileage limit of express warranties begins to accrue from the mileage on the odometer at the date of original delivery to the consumer.

MANUFACTURER’S DUTY TO REPURCHASE OR REPLACE A VEHICLE

If the manufacturer is unable to conform the motor vehicle to any applicable express warranty by repairing or correcting, or arranging for the repair or correction of, any nonconformity after a *reasonable number of repair attempts*, and the nonconformity occurred no later than two years or 24,000 miles following the motor vehicle’s original delivery, then the manufacturer must, at the option of the consumer, either replace or repurchase the motor vehicle.

REASONABLE NUMBER OF REPAIR ATTEMPTS

The North Carolina lemon law establishes a *presumption* that a reasonable number of repair attempts has been undertaken to conform a motor vehicle to the applicable express warranties if either of the following occurs:

1. The same nonconformity has been presented for repair to the manufacturer, its agent or authorized dealer four or more times but the nonconformity continues to exist; or
2. The motor vehicle was out of service to the consumer during or while awaiting repair of the nonconformity or a series of nonconformities for a cumulative total of 20 or more business days during any one year period of the warranty.

The express warranty term, one year period, and 20 day period are extended by any period of time during which repair services are not available to the consumer because of war, strike, or natural disaster.

The consumer may prove that a defect or condition substantially impairs the value of the motor vehicle to the consumer in a manner other than the terms of the *presumption* set out above.

NOTICE AND FINAL REPAIR ATTEMPT

The lemon law contains two provisions for written notice from the consumer to the manufacturer:

1. If the consumer wishes to rely on the *presumption* of a reasonable number of repair attempts, the consumer must notify the manufacturer directly in writing of the existence of the nonconformity or series of nonconformities, and allow the manufacturer a reasonable period no longer than 15 calendar days to correct the nonconformity or series of nonconformities. The 15 calendar day period begins upon the manufacturer’s receipt of the notice of nonconformity.¹

¹ Hardison v. Kia Motors America, Inc., 226 N.C.App. 22, 738 S.E.2d 814 (2013)

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This notice requirement applies if the manufacturer clearly and conspicuously discloses to the consumer in the warranty or owners manual that written notification of a nonconformity is required before a consumer may be eligible for a refund or replacement. The manufacturer must also include in the warranty or owners manual the name and address where written notification may be sent.

2. A consumer bringing a civil action against the manufacturer must give the manufacturer written notice of his intent to bring the action at least 10 days prior to filing the suit.

DISPUTE RESOLUTION

The manufacturer may require that the consumer first utilize the informal dispute settlement procedure before bringing an action under the lemon law if:

1. The procedure complies with 16 C.F.R. Part 703, and
2. The manufacturer has clearly and conspicuously written this requirement into the written warranty and any warranty instructions provided to the consumer.

TIME PERIOD FOR FILING CLAIMS

Not specified in the lemon law. BBB AUTO LINE will accept a lemon law claim if it is filed within four years from the date the alleged defect is discovered.

REMEDIES UNDER THE NORTH CAROLINA LEMON LAW

REPURCHASE OF AN OWNED VEHICLE

The North Carolina 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 contract price, including but not limited to charges for undercoating, dealer preparation and transportation, installed options, and the non-refundable portions of extended warranties and service contracts;
2. All collateral charges, including but not limited to sales tax, license and registration fees, and similar government charges;
3. All finance charges incurred by the consumer after the first report of the nonconformity to the manufacturer, its agent or authorized dealer; and
4. Any incidental damages and monetary consequential damages;
5. Less a reasonable allowance for the consumer's use of the vehicle.

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

For vehicles purchased before October 1, 2005, the reasonable allowance for use is that amount directly attributable to use by the consumer prior to the first report of the nonconformity to the manufacturer, its agent or authorized dealer, and during any subsequent period when the vehicle is not out of service because of repair. The reasonable allowance is presumed to be an amount calculated in accordance with the following formula:

$$\frac{\text{Number of miles attributable to the consumer}}{100,000} \quad \times \quad \text{Cash Price}$$

For vehicles purchased on or after October 1, 2005, the reasonable allowance for use is calculated in accordance with the following formula:

$$\frac{\begin{array}{l} \text{Number of miles used by the consumer up to the} \\ \text{date of the third attempt to repair the same nonconformity} \\ \text{which is the subject of the claim,} \\ \text{or the twentieth cumulative business day when the vehicle is} \\ \text{out of service by reason of repair of } \underline{\text{one or more}} \\ \underline{\text{nonconformities, whichever occurs first}} \end{array}}{120,000} \quad \times \quad \begin{array}{l} \text{Vehicle} \\ \text{purchase} \\ \text{price} \end{array}$$

REPURCHASE OF A LEASED VEHICLE

The North Carolina lemon law sets out the following amounts that a manufacturer must pay when it repurchases a leased motor vehicle under the lemon law:

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To the lessee:

1. All sums previously paid by the consumer under the terms of the lease;
2. All sums previously paid by the consumer in connection with entering into the lease agreement, including but not limited to any capitalized cost reduction, sales tax, license and registration fees, and similar government charges; and
3. Any incidental and monetary consequential damages;
4. Less a reasonable allowance for the consumer's use of the vehicle.

To the lessor:

1. 105% of the actual purchase cost of the vehicle to the lessor;
2. Less 85% of the amount actually paid by the consumer to the lessor pursuant to the lease.

Refunds must be made to the consumer and lessor as their interests may appear. The consumer's written lease must be terminated by the lessor without any penalty to the consumer. The lessor must transfer title of the motor vehicle to the manufacturer as necessary to effectuate the consumer's rights under the lemon law.

For vehicles leased before October 1, 2005, the reasonable allowance for use is that amount directly attributable to use by the consumer prior to the first report of the nonconformity to the manufacturer, its agent or authorized dealer, and during any subsequent period when the vehicle is not out of service because of repair. The reasonable allowance is presumed to be an amount calculated in accordance with the following formula:

$$\frac{\text{Number of miles attributable to the consumer}}{100,000} \times \text{Actual purchase cost of the vehicle to the lessor}$$

For vehicles leased on or after October 1, 2005, the reasonable allowance for use is calculated in accordance with the following formula:

$$\frac{\text{Number of miles used by the consumer up to the date of the third attempt to repair the same nonconformity which is the subject of the claim, or the twentieth cumulative business day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first}}{120,000} \times \text{Lessor's actual lease price}$$

REPLACEMENT

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

In the replacement of a leased vehicle, the lessor must transfer title of the motor vehicle to the manufacturer as necessary to effectuate the consumer's rights under the lemon law.

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