

STANDARDS OF THE NEW HAMPSHIRE LEMON LAW

The following is a brief explanation of most relevant provisions of the New Hampshire lemon law. The complete text of the lemon law can be found at New Hampshire Rev. Stat. § 357-D:1 *et seq.*

VEHICLES COVERED

The New Hampshire lemon law covers the following motor vehicles purchased or leased in New Hampshire:

1. A motor vehicle of the private passenger or station wagon type with a gross weight not exceeding 11,000 pounds, that is purchased or leased by a consumer;
2. Any other four-wheel motor vehicle with a gross weight not exceeding 11,000 pounds; and
3. Motorcycles, off-highway recreational vehicles, and snowmobiles.

The lemon law does not cover tractors or mopeds.

“New motor vehicle” is a passenger motor vehicle that is still under the manufacturer’s express warranty. The lemon law covers a used vehicle if still under the manufacturer’s express warranty.

CONSUMERS COVERED

The lemon law covers the following consumers:

1. The purchaser, other than for purposes of resale, of a new motor vehicle;
2. The lessee, other than for purposes of sublease, of a new motor vehicle;
3. Any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle; and
4. Any other person entitled by the terms of the warranty to enforce its obligations.

The lemon law does not cover any governmental entity.

VEHICLE CONVERTERS

The lemon law applies to vehicle converters.

PROBLEMS COVERED

The lemon law covers any *nonconformity*, which it defines as a defect or condition that substantially impairs the use, value, or safety of a motor vehicle, but does not include a defect or condition that results from an accident, abuse, neglect, modification, or alteration of the motor vehicle by persons other than the manufacturer or its authorized service agent.

MANUFACTURER'S DUTY TO REPAIR

If a 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 warranty, then the manufacturer must make or cause to be made the necessary repairs to conform the motor vehicle to the warranties. The necessary repairs must be made even if the term of the warranty has expired.

MANUFACTURER'S DUTY TO REPURCHASE OR REPLACE A VEHICLE

If the manufacturer, its agent or authorized dealer or its delegate is unable to conform the motor vehicle to any express warranty by repairing or correcting any nonconformity after a *reasonable number of attempts*, the manufacturer must, at the option of the consumer, either replace or repurchase the motor vehicle.

The consumer may not pursue a lemon law remedy if the consumer has discontinued finance or lease payments, provided the payments have been discontinued due to the manufacturer's breach of obligation under the lemon law or breach of warranty.

REASONABLE NUMBER OF REPAIR ATTEMPTS

The New Hampshire lemon law establishes a *presumption* that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable warranties if, during the term of the express warranty, either of the following occurs:

1. The same nonconformity, as identified in any written examination or repair order, has been subject to repair at least three times by the manufacturer, its agent or authorized dealer and the same nonconformity continues to exist; or
2. The motor vehicle is out of service for repair of one or more nonconformities for a cumulative total of 30 or more business days.

The attempt at repair must be evidenced by a written examination or repair order issued by the manufacturer, its agent or authorized dealer. The three attempts at repair must be performed by the same agent or authorized dealer unless the consumer shows good cause for taking the motor vehicle to a different agent or authorized dealer. A motor vehicle is not deemed to be out of service if it is available to the consumer for a major part of the day.

The term of any warranty and the 30 day period are extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or other natural disaster. If such an extension of time is necessary for these reasons, the manufacturer must provide for the free use of a motor vehicle to the consumer.

NOTICE AND OPPORTUNITY TO REPAIR

After the third repair attempt to repair or correct the nonconformity, or after the motor vehicle is out of service to repair or correct one or more nonconformities for 30

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cumulative business days, the consumer must notify the manufacturer and lessor in writing of the nonconformity and the consumer's claim for replacement or repurchase. The written notice must be on a form provided by the manufacturer at the time of the motor vehicle's original delivery.

On the written notice, the consumer will elect to use the dispute settlement mechanism established by the manufacturer or the state arbitration board. Arbitration must be held within 40 days after receipt by the manufacturer or the state board of the written notice.

Within this 40 day period, the manufacturer must be given a final opportunity to correct and repair the nonconformity.

DISPUTE RESOLUTION

On the written notice, the consumer will elect to use the dispute settlement mechanism established by the manufacturer or the state arbitration board. The consumer's election of either the manufacturer's mechanism or the state board will preclude his or her recourse to the method not selected.

TIME PERIOD FOR FILING CLAIMS

The consumer may commence a proceeding within one year following the expiration of the express warranty term.

Guidance from the Division of Motor Vehicles' New Motor Vehicle Arbitration Board indicates that, if a consumer withdraws a claim from the dispute settlement mechanism or state arbitration board after the manufacturer repaired the nonconformity that gave rise to the consumer's request for repurchase or replacement during the final repair attempt, the consumer may commence a proceeding within one year following the manufacturer's final repair attempt.

REMEDIES UNDER THE NEW HAMPSHIRE LEMON LAW

REPURCHASE OF OWNED VEHICLES

The New Hampshire 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 as indicated on the purchase contract, including all credits and allowances for any trade-in or down payment;
2. License fees, finance charges, credit charges, registration fees, and any similar charges; and
3. Incidental and consequential damages;
4. Less a reasonable allowance for use.

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

The reasonable allowance for use of motor vehicles other than motorcycles is calculated in accordance with the following formula:

$$\frac{\text{\# miles vehicle traveled attributable to use by the consumer up to the date of the first attempt at repairing the vehicle}}{100,000} \times \text{Purchase Price}$$

For motorcycles and off-highway recreational vehicles, the denominator is 20,000 if the engine size is 250 cubic centimeters or smaller, or 40,000 if the engine size is greater than 250 cubic centimeters.

REPURCHASE OF LEASED VEHICLES

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

To the lessor:

1. The lessor's actual purchase cost, less payments made by the lessee;
2. The freight cost, if applicable;
3. The cost for dealer- or manufacturer-installed accessories, if applicable;
4. Any fee paid to another to obtain the lease; and
5. An additional 5% of the lessor's actual purchase cost, provided instead of any early termination costs.

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To the lessee:

1. The aggregate deposit, including but not limited to all cash payments and trade-in allowances tendered by the lessee to the lessor under the lease agreement;
2. Rental payments previously paid to the lessor by the lessee; and
3. Incidental and consequential damages, if applicable;
4. Less a reasonable allowance for use.

Upon a decision in favor of the lessee, the lease agreement with the lessor and all contractual obligations are terminated. The lessee is not liable for any further costs or charges to the manufacturer or lessor under the lease agreement. The lessor must release the motor vehicle title to the manufacturer upon payment by the manufacturer of the amounts set out in the lemon law.

The reasonable allowance for use of motor vehicles other than motorcycles is calculated in accordance with the following formula:

$$\frac{\text{\# miles vehicle traveled attributable to use by the consumer up to the date of the first attempt at repairing the vehicle}}{100,000} \times \frac{\text{aggregate deposit and rental payments made by the lessee}}{1}$$

For motorcycles, the denominator is 20,000.

REPLACEMENT VEHICLE

The New Hampshire lemon law provides that a replacement vehicle must be a new motor vehicle from the same manufacturer, if available, of comparable worth to the same make and model, with all options and accessories and with appropriate adjustments being allowed for any model year differences. The reasonable allowance for use does not apply to a replacement.