

STANDARDS OF THE NEW MEXICO LEMON LAW Motor Vehicle Quality Assurance Act

The following is a brief explanation of most relevant provisions of the New Mexico lemon law. The complete text of the lemon law can be found at New Mexico Stat. Ann. § 57-16A-1 *et seq.*

VEHICLES COVERED

The New Mexico lemon law covers passenger motor vehicles, including automobiles, pickup trucks, motorcycles and vans, that are sold and registered in the state; are normally used for personal, family or household purposes; and have a gross vehicle weight of less than 10,000 pounds.

CONSUMERS COVERED

The lemon law covers the following “consumers”:

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

The lemon law appears not to cover a lessee.

VEHICLE CONVERTERS

The lemon law applies to vehicle converters.

PROBLEMS COVERED

The New Mexico lemon law covers any defect or condition that substantially impairs the use and market 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 a nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the 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 a period of one year following the date of the motor vehicle’s original delivery to a consumer, whichever comes first, then the manufacturer, its agent or authorized dealer must make the necessary repairs to conform the vehicle to the express warranties.

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MANUFACTURER'S DUTY TO REPURCHASE OR REPLACE A VEHICLE

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

REASONABLE NUMBER OF REPAIR ATTEMPTS

The New Mexico 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, during the express warranty term or a period of one year following the date of the motor vehicle's original delivery to a consumer, whichever is the earlier date, either of the following occurs:

1. The same uncorrected nonconformity has been subject to repair four or more times by the manufacturer, its agents or authorized dealers, but the nonconformity continues to exist; or
2. The motor vehicle is in the possession of the manufacturer, its agent or authorized dealer for repair for a cumulative total of 30 or more business days, excluding down time for routine maintenance as prescribed by the manufacturer.

The term of an express warranty, the one year period and 30 day period are extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike or fire, flood or other natural disaster.

NOTICE AND OPPORTUNITY TO REPAIR

The presumption that a reasonable number of repair attempts has been undertaken does not apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer, and has an opportunity to cure the defect alleged. The manufacturer must provide, either in the warranty or a separate notice, written notice and instruction to the consumer regarding this notification requirement.

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 that complies with 16 C.F.R. Part 703. The Attorney General may investigate and determine whether the informal dispute settlement procedure is fair and impartial and conforms to the requirements of 16 C.F.R. Part 703.

TIME PERIOD FOR FILING CLAIMS

An action must be commenced within the later of (1) 18 months following the date of the vehicle's original delivery to a consumer, or (2) if the consumer resorts to an informal dispute settlement procedure, 90 days following the procedure's final action.

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USED MOTOR VEHICLES

The lemon law prohibits a used motor vehicle dealer from excluding, modifying or disclaiming the implied warranty of merchantability, or limiting remedies for breach of the implied warranty of merchantability before the earlier of 15 days or 500 miles after the vehicle's delivery. A used motor vehicle dealer who limits the implied warranty of merchantability of a used motor vehicle renders the purchase agreement voidable. The maximum liability of a seller is limited to the purchase price paid for the used motor vehicle, to be refunded to the consumer or lender, as applicable, in exchange for return of the vehicle, unless the seller knew or should have known of the defect given the circumstances in which the vehicle was acquired or sold and the seller did not disclose that defect. A consumer or seller aggrieved by a used motor vehicle transaction must pursue a remedy under the Uniform Commercial Code.

REMEDIES UNDER THE NEW MEXICO LEMON LAW

REPURCHASE

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

1. The full purchase price; and
2. All *collateral charges*, defined as those additional charges to a consumer not directly attributed to a manufacturer's suggested retail price label for a new motor vehicle, including all taxes, license, title and registration fees and other governmental charges related to the purchase of the motor vehicle;
3. Less a reasonable allowance for the consumer's use of the vehicle.

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 report of the nonconformity to the manufacturer, agent or dealer, and any subsequent period when the motor vehicle is not out of service by reason of repair.

REPLACEMENT

When replacing a new motor vehicle under the New Mexico lemon law, the manufacturer must replace with an identical or reasonably equivalent motor vehicle.

The consumer is responsible for a reasonable allowance for use. 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, agent or dealer, and any subsequent period when the motor vehicle is not out of service by reason of repair.