

STANDARDS OF THE SOUTH DAKOTA LEMON LAW

The following is a brief explanation of most relevant provisions of the South Dakota lemon law. The complete text of the lemon law can be found at S.D. Codified Laws Ann. § 32-6D-1 *et seq.*

VEHICLES COVERED

The South Dakota lemon law covers any motor vehicle intended primarily for use and operation on the public highways.

The lemon law appears to cover used vehicles, but does not cover motor homes or vehicles with a manufacturer's gross vehicle weight rating of 10,000 pounds or more.

CONSUMERS COVERED

The lemon law covers the following "consumers":

1. The purchaser, for purposes other than resale, of a new or previously untitled motor vehicle used in substantial part for personal, family or household purposes; and
2. 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 does not apply to vehicle converters.

PROBLEMS COVERED

The lemon law covers any "nonconforming condition", which it defines as any condition of a motor vehicle that:

1. Is not in conformity with the terms of an express warranty issued by the manufacturer to a consumer;
2. Significantly impairs the use, value or safety of the motor vehicle; and
3. Occurs or arises solely in the course of the ordinary use of the motor vehicle.

The lemon law does not cover any condition that arises or occurs as a result of abuse, neglect, modification or alteration of the motor vehicle not authorized by the manufacturer, or from any accident or other damage to the motor vehicle that occurs or arises after the motor vehicle was delivered by an authorized dealer to the consumer.

LEMON LAW RIGHTS PERIOD

The lemon law establishes a “lemon law rights period”, which it defines as the period ending one year after the date of the motor vehicle’s original delivery to a consumer, or the first 12,000 miles of operation, whichever occurs first.

MANUFACTURER’S DUTY TO REPAIR

If a motor vehicle does not conform to any applicable express warranty, and the consumer delivers the motor vehicle to the manufacturer or its authorized dealer and reports the nonconforming condition during the lemon law rights period, then the manufacturer must make the necessary repairs to remedy the nonconforming condition.

If notice of the nonconforming condition was first given during the lemon law rights period, the necessary repairs must be made even if the lemon law rights period has expired. However, the manufacturer’s duty to repair the nonconforming condition does not extend beyond two years after the vehicle’s delivery or 24,000 miles, whichever occurs first.

MANUFACTURER’S DUTY TO REPURCHASE OR REPLACE A VEHICLE

If the manufacturer or its authorized dealer is unable after a *reasonable number of attempts* to conform the motor vehicle to any express warranty by repairing or correcting a nonconforming condition that first occurred during the lemon law rights period, the manufacturer must, at the consumer’s option, either replace or repurchase the motor vehicle.

REASONABLE NUMBER OF REPAIR ATTEMPTS

The South Dakota lemon law establishes a *presumption* that a reasonable number of attempts has been undertaken to conform a motor vehicle to the applicable express warranties if, during the period of two years following the motor vehicle’s delivery or 24,000 miles, whichever is earlier, either of the following occurs:

1. The same nonconforming condition was subject to repair attempts four or more times by the manufacturer or its authorized dealers, at least one attempt occurred during the lemon law rights period, plus the manufacturer had a final repair attempt, and the nonconforming condition continues to exist; or
2. The motor vehicle was out of service and in the custody of the manufacturer or an authorized dealer due to repair attempts for a cumulative total of 30 or more calendar days, including the final repair attempt, and at least one repair attempt occurred during the lemon law rights period.

The 30 day period is extended by any period of time during which repair could not be performed because of conditions beyond the control of the manufacturer or authorized dealers, such as war, invasion, strike, fire, flood, or other natural disaster.

NOTICE AND OPPORTUNITY TO REPAIR

Before commencing any civil action, the consumer must notify the manufacturer by certified mail of a nonconforming condition and demand correction or repair. The notice must describe the motor vehicle, nonconforming condition, and all previous attempts to correct the nonconforming condition, including the identities of persons who made the attempts and the times the attempts were made.

If the number of repair attempts that have been undertaken meets the above *presumption* at the time notice is given, the consumer must give the manufacturer a final opportunity to cure the nonconforming condition. Within seven days of receiving the written notice of a nonconforming condition, the manufacturer must notify the consumer of a reasonably accessible repair facility. After the consumer delivers the vehicle to the repair facility, the manufacturer has fourteen days to correct the nonconforming condition and conform the vehicle to the express warranty.

DISPUTE RESOLUTION

If the manufacturer has established an informal dispute settlement procedure conducted within South Dakota that complies with 16 C.F.R. Part 703, then the consumer must first exhaust any remedy afforded by the procedure before instituting a cause of action under the lemon law.

TIME PERIOD FOR FILING CLAIMS

An action must be commenced within three years following the date of the vehicle's original delivery to the consumer.

REMEDIES UNDER THE SOUTH DAKOTA LEMON LAW

REPURCHASE

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

1. The full contract price, including charges for undercoating, dealer preparation and transportation charges, installed options, and the nonrefundable portions of extended warranties and service contracts;
2. All collateral charges, including excise 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 and its authorized dealer; and
4. Incidental damages, including the reasonable cost of alternative transportation during the period that the consumer is without the use of the motor vehicle because of the nonconforming condition;
5. Less a reasonable allowance for the consumer's use of the motor 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 before the first report of the nonconformity to the manufacturer or authorized dealer. The reasonable allowance must be calculated in accordance with the following formula:

$$\begin{array}{rcl} \text{reasonable} & & \# \text{ miles vehicle traveled before} \\ \text{allowance} & = & \text{the first report of nonconformity} \\ \text{for use} & & 100,000 \end{array} \times \begin{array}{l} \text{full} \\ \text{purchase} \\ \text{price} \end{array}$$

REPLACEMENT

When replacing a vehicle under the South Dakota lemon law, the manufacturer must provide a comparable new motor vehicle. The replacement must be accompanied by a refund of all collateral charges, including excise tax, license and registration fees and similar government charges.

The reasonable allowance for use does not apply to a replacement.