

STANDARDS OF THE TEXAS LEMON LAW

The following is a brief explanation of most relevant provisions of the Texas lemon law. The complete text of the lemon law can be found at Tex. Occ. Code Ann. §§ 2301.001 *et seq.*

VEHICLES COVERED

The Texas lemon law covers a motor vehicle, defined as:

1. Every fully self-propelled vehicle that has two or more wheels and has as its primary purpose the transport of persons or property on a public highway;
2. Every fully self-propelled, titled vehicle that has two or more wheels and has as its primary purpose the off-road transportation of persons or property;
3. An engine, transmission, or rear axle whether or not attached to a vehicle chassis, that is manufactured for installation in a vehicle having as its primary purpose the transport of persons or property on a public highway and having a gross vehicle weight rating of more than 16,000 pounds; or
4. A towable recreational vehicle.

CONSUMERS COVERED

The lemon law covers a “consumer,” defined as a person who is entitled to enforce a manufacturer’s warranty with respect to a motor vehicle, and is one of the following :

1. A person who purchases a motor vehicle at retail from a Texas dealer;
2. The lessor or lessee (other than a sublessee) who purchased or leased a motor vehicle from a Texas dealer or lessor;
3. A person who is a resident of Texas and has registered the vehicle in Texas;
4. A person who purchased or leased the vehicle at retail and is an active member of the U.S. armed forces stationed in Texas at the time the claim is filed; or
5. The transferee or assignee of a retail purchaser, lessor or lessee as described above, as long as the transferee or assignee is a resident of Texas and registered the vehicle in Texas.

PROBLEMS COVERED

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

“Serious safety hazard” is defined as a life-threatening malfunction or nonconformity that substantially impedes a person’s ability to control or operate a motor vehicle for ordinary use or intended purposes or that creates a substantial risk of fire or explosion.

“Impairment of market value” is defined as a substantial loss in market value caused by a defect specific to the motor vehicle.

The lemon law provides manufacturers with an affirmative defense if it can be shown that the nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the motor vehicle, or the nonconformity does not substantially impair the use or market value of the motor vehicle.

MANUFACTURER'S DUTY TO REPAIR

If a new motor vehicle does not conform to the manufacturer's, converter's, or distributor's express warranty, then the manufacturer, converter or distributor must make the necessary repairs.

The necessary repairs must be made after the applicable warranty period has expired if:

1. The consumer or the consumer's agent reports the nonconformity to the manufacturer, converter, or distributor, or any of their agents or franchised dealers during the term of the express warranty;
or
2. The terms of the *presumption* relating to the vehicle (see below) have been met.

MANUFACTURER'S DUTY TO REPURCHASE OR REPLACE A VEHICLE

If the manufacturer, converter, or distributor is unable to conform the motor vehicle to the applicable express warranty by repairing or correcting a nonconformity after a *reasonable number of attempts*, the manufacturer, converter, or distributor must either replace or repurchase the motor vehicle.

REASONABLE NUMBER OF REPAIR ATTEMPTS

The Texas lemon law establishes a *presumption* that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if:

For a new motor vehicle that is sold or leased before September 1, 2017:

1. The same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor, or any of their agents or franchised dealers. Two of the repair attempts must be made within 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to a consumer. The two other repair attempts must be made within 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt;
2. The same nonconformity creates a serious safety hazard and continues to exist after being subject to repair two or more times by the manufacturer, converter, or distributor, or any of their agents or franchised dealers. At least one attempt to repair must be made within 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to a consumer. At least one other attempt must be made within 12 months or 12,000 miles, whichever occurs first, after the first repair attempt; or
3. A nonconformity that substantially impairs the vehicle's use or market value still exists and the vehicle is out of service for repair for a cumulative total of 30 or more days within the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to a consumer. At least two repair attempts must be made within the first 12 months or 12,000 miles following the date of original delivery to a consumer.

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The initial 12 month or 12,000 mile periods, the subsequent 12 month or 12,000 mile periods, and the 30 day period are extended by any period during which repair services are not available because of war, invasion, strike, fire, flood, or other natural disaster.

The 30 day period does not include any period during which the manufacturer or distributor lends a comparable motor vehicle to the consumer during the time of repairs by a franchised dealer.

For a new motor vehicle that is sold or leased on or after September 1, 2017:

1. The same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor, or any of their agents or franchised dealers and the repair attempts were made before the earlier of: (a) the date the express warranty expires; or (b) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to a consumer;
2. The same nonconformity creates a serious safety hazard and continues to exist after being subject to repair two or more times by the manufacturer, converter, or distributor, or any of their agents or franchised dealers, and the repair attempts were made before the earlier of: (a) the date the express warranty expires; or (b) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to a consumer; or
3. A nonconformity that substantially impairs the vehicle's use or market value still exists and the vehicle is out of service for repair for a cumulative total of 30 or more days, and the repair attempts were made before the earlier of: (a) the date the express warranty expires; or (b) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to a consumer.

The 24 months or 24,000 miles, and the 30 day period are extended for any period that repair services are not available to the consumer because of war, invasion, strike, fire, flood, or other natural disaster.

The 30 day period does not include any period during which the manufacturer or distributor lends a comparable motor vehicle to the consumer during the time of repairs by a franchised dealer.

NOTICE AND OPPORTUNITY TO REPAIR

The manufacturer, converter, or distributor will not be required to replace or repurchase a vehicle unless:

1. The consumer, a person on behalf of the consumer, or the Texas Department of Motor Vehicles provided written notice of the alleged nonconformity or defect to the manufacturer, converter or distributor; and
2. The manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity.

DISPUTE RESOLUTION

A consumer may not file an action seeking refund or replacement unless the consumer has first exhausted the administrative remedies through the state-operated arbitration program.

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TIME PERIOD FOR FILING CLAIMS

A proceeding must be commenced within six months following the earlier of (1) expiration of the express warranty term, or (2) 24 months or 24,000 miles following the date of the vehicle's original delivery to a consumer.

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Texas

REMEDIES UNDER THE TEXAS LEMON LAW

REPURCHASE OF OWNED VEHICLES

The Texas lemon law provides that a manufacturer must pay the following amounts when it repurchases an owned vehicle under the lemon law:

1. The full purchase price. The Texas Department of Motor Vehicles indicates this means the amount of the total purchase price of the vehicle, including sales taxes and title, registration and documentary fees, but not including the amount of any interest or finance charge or insurance premiums; and
2. Reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect. The Texas Department of Motor Vehicles has defined reimbursable incidental expenses as including but not limited to:
 - (a) alternate transportation;
 - (b) towing;
 - (c) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter or dealer regarding the vehicle;
 - (d) meals and lodging necessitated by the vehicle's failure during out-of-town trips;
 - (e) loss or damage to personal property;
 - (f) attorney fees if the complainant retains counsel after notification that the respondent is represented by counsel; and
 - (g) items or accessories added to the vehicle at or after purchase, taking into consideration the permanent nature, functionality and value added by the items or accessories and whether the items or accessories are original equipment manufacturer (OEM) parts or non-OEM parts;
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 must be that amount directly attributable to use of the motor vehicle when the vehicle is not out of service for repair. The Texas Department of Motor Vehicles has established a presumption that a motor vehicle has a useful life of 120,000 miles, and has defined reasonable allowance for use to be the following except in cases where the preponderance of the evidence shows that the vehicle has a longer or shorter expected useful life than 120,000 miles:

a) # miles vehicle traveled from delivery to consumer until first report of defect or condition leading to repurchase ----- 120,000	X	Purchase Price		
plus				
b) # miles vehicle traveled after date of first report of defect or condition leading to repurchase through date of the hearing ----- 120,000	X	Purchase Price	X	50%

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If the motor vehicle is substantially damaged or if there is an adverse change in the motor vehicle's condition beyond ordinary wear and tear, from the date of the hearing to the date of repurchase, and the parties are unable to agree on an amount allowed for such damage or condition, either party may request reconsideration by the final order authority (e.g., the arbitrator) of the repurchase price contained in the final order (e.g., the decision).

REPURCHASE OF LEASED VEHICLES

The Texas Department of Motor Vehicles has set out the following amounts that a manufacturer must pay when it repurchases a leased vehicle under the lemon law:

To the lessee

1. All lease payments previously paid by the lessee to the lessor under the terms of the lease;
2. All sums previously paid to the lessor in connection with entering into the lease agreement, including but not limited to any capitalized cost reduction, down payment, trade-in, or similar cost; and
3. Sales tax, license and registration fees, and other documentary fees, if applicable; and
4. Reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect. The Texas Department of Motor Vehicles has defined reimbursable incidental expenses as including but not limited to:
 - (a) alternate transportation;
 - (b) towing;
 - (c) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter or dealer regarding the vehicle;
 - (d) meals and lodging necessitated by the vehicle's failure during out-of-town trips;
 - (e) loss or damage to personal property;
 - (f) attorney fees if the complainant retains counsel after notification that the respondent is represented by counsel; and
 - (g) items or accessories added to the vehicle at or after purchase, taking into consideration the permanent nature, functionality and value added by the items or accessories and whether the items or accessories are original equipment manufacturer parts or non-OEM parts;
5. Less a reasonable allowance for the consumer's use of the vehicle.

To the lessor

1. 105% of the actual price paid by the lessor for the vehicle
2. Any tax, title, license and documentary fees paid by the lessor and as evidenced in a bill of sale, bank draft demand, tax collector's receipt, or similar instrument;
3. Any amount or fee, if any, paid by the lessor to secure the lease or interest in the lease;

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4. Less all payments made by the lessee.

Refunds must be made to the lessee, lessor, and any lienholder as their interests may appear. The motor vehicle must be returned to the manufacturer, converter or distributor with clear title upon payment of these amounts. The lessor must transfer title of the motor vehicle to the manufacturer, converter or distributor as necessary to effectuate the lessee's rights under the lemon law. The lease must be terminated without any penalty to the lessee.

The reasonable allowance for use must be that amount directly attributable to use of the motor vehicle when the vehicle is not out of service for repair. The Texas Department of Motor Vehicles has established a presumption that a motor vehicle has a useful life of 120,000 miles, and has defined reasonable allowance for use to be the following except in cases where the preponderance of the evidence shows that the vehicle has a longer or shorter expected useful life than 120,000 miles:

a) # miles vehicle traveled from delivery to consumer until first report of defect or condition leading to repurchase ----- 120,000	X	Actual price paid by the lessor for the vehicle
plus		
b) # miles vehicle traveled after date of first report of defect or condition leading to repurchase through date of the hearing ----- 120,000	X	Actual price paid by the lessor for the vehicle
		X 50%

If the motor vehicle is substantially damaged or if there is an adverse change in the motor vehicle's condition beyond ordinary wear and tear, from the date of the hearing to the date of repurchase, and the parties are unable to agree on an amount allowed for such damage or condition, either party may request reconsideration by the final order authority (e.g., the arbitrator) of the repurchase price contained in the final order (e.g., the decision).

REPLACEMENT

When replacing a vehicle under the Texas lemon law, the manufacturer must replace the motor vehicle with a comparable motor vehicle.

The manufacturer, converter, or distributor shall:

1. Promptly authorize the exchange of the consumer's motor vehicle with the consumer's choice of any comparable motor vehicle; and

2. Instruct the dealer to contract the sale of the selected comparable motor vehicle with the consumer as follows:

(a) The sales price of the comparable motor vehicle shall be the vehicle's Manufacturer's Suggested Retail Price (MSRP/DSRP, as applicable);

(b) The trade-in value of the consumer's motor vehicle shall be the MSRP/DRSP, as applicable, at the time of the original transaction, less a reasonable allowance for the consumer's use of the consumer's motor vehicle; and

(c) The use allowance for replacement relief shall be calculated as follows:

The reasonable allowance for use must be that amount directly attributable to use of the motor vehicle when the vehicle is not out of service for repair. The Texas Department of Motor Vehicles has established a presumption that a motor vehicle has a useful life of 120,000 miles, and has defined reasonable allowance for use to be the following except in cases where the preponderance of the evidence shows that the vehicle has a longer or shorter expected useful life than 120,000 miles:

(i) # miles vehicle traveled from delivery to consumer until first report of defect or condition leading to repurchase through the date of the hearing ----- 120,000	X	Purchase Price	
plus			
(ii) # miles vehicle traveled after date of first report of defect or condition leading to repurchase through date of the hearing ----- 120,000	X	Purchase Price	X 50%

3. Reimburse the consumer for reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect. The Texas Department of Motor Vehicles has defined reimbursable incidental expenses as including but not limited to:

- (a) alternate transportation;
- (b) towing;
- (c) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter or dealer regarding the vehicle;
- (d) meals and lodging necessitated by the vehicle's failure during out-of-town trips;
- (e) loss or damage to personal property;
- (f) attorney fees if the complainant retains counsel after notification that the respondent is represented by counsel; and

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- (g) items or accessories added to the vehicle at or after purchase, taking into consideration the permanent nature, functionality and value added by the items or accessories and whether the items or accessories are original equipment manufacturer parts or non-OEM parts.
4. Upon any replacement of a consumer's motor vehicle, the consumer shall be responsible for payment or financing of the usage allowance of the consumer's vehicle, any outstanding liens on the consumer's vehicle, and applicable taxes and fees associated with the new sale, excluding documentary fees.
- (A) If the comparable motor vehicle has a higher MSRP/DSRP, as applicable, than the complainant's vehicle, the complainant shall be responsible at the time of sale to pay or finance the difference in the two vehicles' MSRPs/DSRPs, as applicable, to the manufacturer, converter or distributor.
- (B) If the comparable motor vehicle has a lower MSRP/DSRP, as applicable, than the complainant's vehicle, the complainant will be credited the difference in the MSRP/DSRP, as applicable, between the two motor vehicles. The difference credited shall not exceed the amount of the calculated usage allowance for the complainant's vehicle.
5. The consumer is responsible for obtaining financing, if necessary, to complete the replacement.