

STANDARDS OF THE VERMONT LEMON LAW

The following is a brief explanation of most relevant provisions of the Vermont lemon law. The complete text of the lemon law can be found at 9 V.S.A. Vermont Statutes Annotated §§ 4170 *et seq.*

VEHICLES COVERED

The Vermont lemon law covers a passenger motor vehicle purchased, leased or registered in the state.

The lemon law does not cover tractors, motorized highway building equipment, road-making appliances, snowmobiles, motorcycles, motor-driven cycles, the living portion of recreational vehicles, or trucks with a gross vehicle weight rating over 12,000 pounds.

CONSUMERS COVERED

The lemon law covers the following “consumers”:

1. The purchaser, other than for purposes of resale, of a motor vehicle still under the manufacturer’s express warranty;
2. The lessee, other than for purposes of sub-lease, of a motor vehicle still under the manufacturer’s express warranty and that has not been previously leased by another person;
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 government entity, or any business or commercial enterprise that registers or leases three or more motor vehicles.

VEHICLE CONVERTERS

The lemon law applies to vehicle converters.

PROBLEMS COVERED

The lemon law covers any defect or condition covered by the manufacturer’s express warranty that substantially impairs the use, market value or safety 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 the alleged nonconformity does not substantially impair the use, market value or safety, or that the nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by a consumer.

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, the manufacturer must cause to be made the necessary repairs to conform the motor vehicle to the express warranties, even after expiration of the warranty term.

MANUFACTURER'S DUTY TO REPURCHASE OR REPLACE A VEHICLE

If the manufacturer, its agents 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 shall, at the option of the consumer, either replace or repurchase the motor vehicle.

A consumer cannot pursue a remedy under the lemon law if he or she has discontinued financing or lease payments.

REASONABLE NUMBER OF REPAIR ATTEMPTS

The Vermont lemon law establishes a *presumption* that a reasonable number of repair attempts have been undertaken to conform a motor vehicle to the applicable warranties if 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, at least the first repair attempt occurs within the express warranty term, and the same nonconformity continues to exist; or
2. The motor vehicle is out of service by reason of repair of one or more nonconformities for a cumulative total of 30 or more calendar days during the express warranty term. A motor vehicle is not out of service if it is available to the consumer for a major part of the day.

For purposes of the *presumption*, repair attempts must be evidenced by a written examination or repair order issued by the manufacturer, its agent or authorized dealer. The repair attempts must be undertaken by the same agent or authorized dealer unless the consumer shows good cause for taking the vehicle to a different agent or authorized dealer.

The term of an express 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 a war, invasion, strike fire, flood or other natural disaster. If an extension is required because of any of these conditions, the manufacturer shall provide for the free use of a motor vehicle to the consumer whose vehicle is out of service.

NOTICE AND OPPORTUNITY TO REPAIR

After reasonable attempt at repair or correction of the nonconformity, defect or condition, or after the motor vehicle is out of service by reason of repair of one or more nonconformities for 30 or more calendar days, the consumer shall notify the manufacturer (and lessor, if applicable) in writing of the nonconformity and the consumer's claim for replacement or repurchase. The written notice must be on a form prescribed by the Arbitration Board provided by the manufacturer at the time of the motor vehicle's original delivery. The Demand for Arbitration is also available from www.lemonlaw.vermont.gov or by contacting the Board at 802-828-2943.

Within the written notice, the consumer will elect to use the dispute settlement mechanism or arbitration provisions established by the manufacturer or the state arbitration board. Arbitration must be held within 45 days after the manufacturer's or dispute resolution mechanism's receipt of the written notice, unless the consumer or manufacturer has good cause for an extension of time not to exceed 30 days. Receipt is defined as when supporting documentation from the consumer is complete. Within the 45 day period, the manufacturer shall have a final opportunity to correct and repair the nonconformity. Any right to a final repair attempt is waived if the manufacturer does not complete it at least five days prior to a hearing.

DISPUTE RESOLUTION

On the written notice provided to the manufacturer, the consumer must elect to use the dispute settlement mechanism or arbitration provisions established by the manufacturer or the state arbitration board. The election to proceed before the manufacturer's mechanism or the state arbitration board precludes the consumer's recourse to the method not selected.

TIME PERIOD FOR FILING CLAIMS

An action must be commenced within one year following the expiration of the express warranty term, either by time or mileage, whichever occurs first.

REMEDIES UNDER THE VERMONT LEMON LAW

REPURCHASE OF AN OWNED VEHICLE

The Vermont 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 in the purchase contract, including all credits and allowances for any trade-in or downpayment;
2. Finance charges, credit charges, registration fees and any similar charges; and
3. Incidental and consequential damages;
4. 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.

Any Vermont motor vehicle purchase and use tax paid by the consumer will be refunded in the proportionate amount by the State to the consumer. To receive a refund, the consumer must file a claim with the Department of Motor Vehicles within 90 days of the effective date of the arbitration decision.

The reasonable allowance for use is that amount directly attributable to use by the consumer prior to the first repair attempt, and is calculated in accordance with the following formula:

$$\frac{\text{number of miles prior to the first repair attempt}}{100,000} \times \text{purchase price}$$

REPURCHASE OF A LEASED VEHICLE

The Vermont 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 lessee:

1. Aggregate deposit previously paid to the lessor by the lessee, 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 the consumer's use of the vehicle (including adding mileage over the lease allowance to first repair mileage when applicable); and
5. Less allocated payments for purchase and use tax.

This information is not intended as legal advice. Please direct specific questions to your legal counsel.
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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.

Any Vermont motor vehicle purchase and use tax will be refunded in the proportionate amount by the state to whomever paid the tax. To receive a refund, the consumer must file a claim with the Department of Motor Vehicles within 90 days of the effective date of the arbitration decision.

The lessee's lease agreement with the lessor and all contractual obligations are terminated, and the lessee is not liable for any further costs or charges to the manufacturer or lessor under the lease agreement as of the order's effective date. 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 and identified within the arbitration decision.

The reasonable allowance for use is that amount directly attributable to use by the consumer prior to the first repair attempt, and is calculated in accordance with the following formula:

$$\frac{\text{number of miles prior to the first repair attempt}}{\text{number of miles allowed in the lease contract}} \times \frac{\text{aggregate deposit and rental payments made by lessee}}{\text{made by lessee}}$$

Any miles in excess of those allowed in the lease contract are added to the mileage at the first repair attempt or first day out of service in the above formula.

REPLACEMENT

The Vermont lemon law provides that a replacement vehicle 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.

In the replacement of a leased vehicle, the lease agreement shall be amended to incorporate a collateral change with appropriate adjustments for any model year difference or excess mileage as applicable.