

STANDARDS OF THE WASHINGTON LEMON LAW

The following is a brief explanation of most relevant provisions of the Washington lemon law. The complete text of the lemon law can be found at Rev. Code of Washington §§ 19.118.005 *et seq.*

VEHICLES COVERED

The Washington lemon law covers a *new motor vehicle* that:

1. Is primarily designed for the transportation of persons or property over the public highways;
2. Was originally purchased or leased at retail from a new motor vehicle dealer or leasing company in Washington; and
3. Was initially registered in Washington, or for which a temporary license was issued to a nonresident member of the U.S. armed forces who has applied for out-of-state registration.

New motor vehicle includes a motorcycle with an engine displacement of at least 750 cubic centimeters, a truck with a gross vehicle weight rating of less than 19,000 pounds, the self-propelled vehicle and chassis of a motor home, and a demonstrator or lease-purchase vehicle sold with a manufacturer's warranty.

New motor vehicle also includes a vehicle purchased or leased with a manufacturer's written warranty by a member of the armed forces, regardless of in which state the vehicle was purchased or leased, if (1) the vehicle otherwise meets the definition of a new motor vehicle, and (2) the consumer is a member of the armed forces stationed or residing in Washington at the time the consumer submits a request for arbitration.

The lemon law does not cover a new motor vehicle purchased or leased by a business as part of a fleet of ten or more vehicles at one time or under a single purchase or lease agreement.

CONSUMERS COVERED

The lemon law covers a *consumer*, defined as any person who, during the duration of the *eligibility period* (defined below), has entered into an agreement or contract for the transfer, lease or purchase of a new motor vehicle, other than for purposes of resale or sublease. The lemon law also covers a *subsequent transferee*, defined as a consumer who, within the *eligibility period*, acquires a motor vehicle with an applicable manufacturer's written warranty and where the vehicle otherwise met the definition of a new motor vehicle at the time of original retail sale or lease.

ELIGIBILITY PERIOD

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The lemon law defines *eligibility period* as two years after the date of a new motor vehicle's original delivery to the consumer or the first 24,000 miles of operation, whichever occurs first.

The eligibility period is extended by any time that repair services are not available to the consumer as a direct result of a strike, war, invasion, fire, flood, or other natural disaster.

PROBLEMS COVERED

The lemon law covers any *nonconformity*, defined as a defect, serious safety defect, or condition that does not conform to the warranty and substantially impairs the use, value, or safety of the new motor vehicle.

Nonconformity does not include a defect or condition that is the result of abuse, neglect, or unauthorized modification or alteration of the new motor vehicle.

A serious safety defect is defined as a life-threatening malfunction or nonconformity that impedes the consumer's ability to control or operate the new motor vehicle for ordinary use or reasonable intended purposes or creates a risk of fire or explosion.

A condition is defined as a general problem that results from a defect or malfunction of one or more parts, or their improper installation by the manufacturer, its agents, or the new motor vehicle dealer.

Substantially impair means to render the new motor vehicle unreliable, or unsafe for ordinary use, or to diminish the resale value of the new motor vehicle below the average resale value for comparable vehicles.

Warranty means any implied warranty, any written warranty of the manufacturer, or any affirmation of fact or promise made by the manufacturer in connection with the sale of a new motor vehicle that becomes the basis of the bargain – to the extent that the warranty pertains to the obligations of the manufacturer in relation to (1) materials, (2) workmanship, (3) a modification by a dealer installing the manufacturer's authorized parts or their equivalent for the specific motor vehicle pursuant to the manufacturer approved specifications, and (4) fitness of the motor vehicle for ordinary use or reasonably intended purposes throughout the duration of the eligibility period. For purposes of the lemon law, the manufacturer's written warranty must be at least one year after original delivery to the consumer or the first 12,000 miles of operation, whichever comes first.

MANUFACTURER'S DUTY TO REPAIR

If the new motor vehicle does not conform to the warranty and the consumer reports the nonconformity during either the eligibility period or the coverage period of the applicable manufacturer's written warranty, whichever is less, to the manufacturer, its

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agent or the new motor vehicle dealer that sold the new motor vehicle, then the manufacturer, its agent or dealer must make the necessary repairs to conform the new motor vehicle to the warranty, regardless of whether such repairs are made after the expiration of the eligibility period.

Upon the consumer's request, the manufacturer or dealer must provide a copy of any report or computer reading compiled by the manufacturer's field or zone representative regarding inspection, diagnosis, or test-drive of the consumer's vehicle, or must provide a copy of any technical service bulletin issued by the manufacturer regarding the year and model of the consumer's vehicle as it pertains to any material, feature, component or the performance thereof.

The dealer must provide to the consumer, after each time the consumer's vehicle is returned from being diagnosed or repaired under the warranty, a fully itemized, legible statement or repair order indicating the diagnosis made and all work performed on the vehicle, including but not limited to a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date and odometer reading when the vehicle was submitted for repair, and the date when the vehicle was made available to the consumer.

MANUFACTURER'S DUTY TO REPURCHASE OR REPLACE A VEHICLE

If the manufacturer, its agent, or the new motor vehicle dealer is unable to conform the new motor vehicle to the warranty by repairing or correcting any nonconformity after a *reasonable number of attempts*, then the manufacturer must replace or repurchase the new motor vehicle at the option of the consumer, and within 40 days after the consumer's written request to the manufacturer's corporate, dispute resolution, zone or regional office.

REASONABLE NUMBER OF REPAIR ATTEMPTS

For a vehicle other than a motor home, a *reasonable number of attempts* is deemed to have been undertaken by the manufacturer, its agent, or the new motor vehicle dealer if, during the eligibility period, any of the following occurs:

1. The same serious safety defect has been subject to diagnosis or repair two or more times, at least one of which is during the coverage period of the applicable manufacturer's written warranty, and the serious safety defect continues to exist;
2. The same nonconformity has been subject to diagnosis or repair four or more times, at least one of which is during the coverage period of the applicable manufacturer's written warranty, and the nonconformity continues to exist;
3. The new motor vehicle is out-of-service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of 30 calendar days, at least 15 of them during the period of the applicable manufacturer's written warranty; or
4. Within a 12-month period, two or more different serious safety defects have each

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been subject to diagnosis or repair one or more times, where at least one attempt for each serious safety defect occurs during the coverage period of the applicable manufacturer's written warranty and within the eligibility period.

A vehicle is "subject to diagnosis or repair" when a consumer presents the vehicle for warranty service at a service and repair facility authorized by the manufacturer or to which the manufacturer or authorized facility has directed the consumer to obtain warranty service. A vehicle has not been "subject to diagnosis or repair" if the consumer refuses to allow the facility to attempt or complete a recommended warranty repair, or demands return of the vehicle before an attempt to diagnose or repair can be completed.

The eligibility period and the 30-day out of service period are extended by any time that repair services are not available to the consumer as a direct result of a strike, war, invasion, fire, flood or other natural disaster.

REASONABLE NUMBER OF REPAIR ATTEMPTS FOR A MOTOR HOME

A reasonable number of attempts for a motor home is deemed to have been undertaken by the motor home manufacturers, their respective agents, or respective new motor vehicle dealers if, during the eligibility period, any of the following occurs:

1. The same serious safety defect has been subject to diagnosis or repair one or more times during the period of coverage of the applicable motor home manufacturer's written warranty, plus a final repair attempt as described below, and the serious safety defect continues to exist;
2. The same nonconformity has been subject to repair three or more times, at least one of which is during the period of coverage of the applicable motor home manufacturer's written warranty, plus a final repair attempt as described below and the nonconformity continues to exist
3. The motor home is out-of-service by reason of diagnosis or repair of one or more nonconformities, including a safety evaluation, for a cumulative total of 60 calendar days, aggregating all motor home manufacturer days out of service, and the motor home manufacturers have had at least one opportunity to coordinate and complete and inspection and any repairs of the vehicle's nonconformities after receipt of notification from the consumer as described below; or
4. Within a 12-month period, two or more different serious safety defects covered by the same manufacturer warranty have each been subject to diagnosis or repair one or more times, where at least one attempt for each serious safety defect occurs during the coverage period of the applicable manufacturer's written warranty and within the eligibility period.

The eligibility period and the 60-day out of service period are extended by any time that repair services are not available to the consumer as a direct result of a strike, war, invasion, fire, flood or other natural disaster.

NOTICE AND OPPORTUNITY TO REPAIR

The consumer must send a written request for replacement or repurchase to the manufacturer's corporate, dispute resolution, zone, or regional office.

For a motor home:

1. Notice of manifestation of one or more serious safety defects to a manufacturer must be provided in writing by the consumer to the motor home manufacturer whose warranty covers the defect or to all manufacturers of the motor home.
2. The consumer must send notices to the manufacturers in writing at their respective corporate, zone, or regional office addresses to allow the manufacturers, agents or dealers an opportunity to coordinate and complete a comprehensive safety evaluation of the motor home. Notice of the manifestation of one or more serious safety defects should be made by the consumer as a unique notice to the manufacturers. The notice may be met by any written notification of a need to repair a defect or condition identified by the consumer as relating to the safety of the motor home with or without a consumer's specific reference to whether the defect is a serious safety defect. Any notice of the manifestation of one or more serious safety defects shall be considered by a manufacturer as a consumer's request for a safety evaluation of the motor home. If the manufacturer, at its option, performs a safety evaluation, the manufacturer must provide a written report to the consumer of the evaluation of the motor home's safety in a timely manner.
3. After one attempt to repair a serious safety defect, or after three attempts to repair the same nonconformity, the consumer must give written notification of the need to repair the nonconformity to each of the motor home manufacturers at their respective corporate, zone or regional office addresses to allow the manufacturers to coordinate and complete a final attempt to cure the nonconformity. Upon receipt of this notice, each of the manufacturers has 15 days to respond and inform the consumer of the location of the facility where the vehicle will be repaired or evaluated. (If a serious safety defect makes the vehicle unsafe to drive, or to the extent the repair facility is more than 100 miles from the motor home location, the motor home manufacturers are responsible for the cost of transporting the vehicle to and from the facility.) After the consumer delivers the motor home to the designated repair facility, the manufacturers have a cumulative total of 30 days to conform the vehicle to the applicable motor home manufacturer's written warranty. This 30-day period may be extended if the consumer agrees in writing. If a motor home manufacturer fails to respond to the consumer or perform repairs within the prescribed time period, that manufacturer is not entitled to a final attempt to cure the nonconformity.
4. If the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities, including a safety evaluation, by the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers for a cumulative total of 30 or more days, aggregating all motor home manufacturer days

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out of service, the consumer must notify each motor home manufacturer in writing at their respective corporate, zone, or regional office addresses to allow the manufacturers, agents or dealers an opportunity to coordinate and complete an inspection and any repairs. Upon receipt of this notice, the manufacturers have 15 days to respond and inform the consumer of the location of the facility where the vehicle will be repaired or evaluated. (If a serious safety defect makes the vehicle unsafe to drive, or to the extent the repair facility is more than 100 miles from the motor home location, the motor home manufacturers are responsible for the cost of transporting the vehicle to and from the facility.) After the consumer delivers the motor home to the designated repair facility, the manufacturers must complete inspection and repairs either within 10 days or before the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities for 60 days, whichever time period is longer. This time period may be extended if the consumer agrees in writing. If a motor home manufacturer fails to respond to the consumer or perform repairs within the prescribed time period, that manufacturer is not entitled to at least one opportunity to inspect and repair the vehicle's nonconformities after receipt of notification from the consumer.

DISPUTE RESOLUTION

The Washington Attorney General must establish a new motor vehicle arbitration board to settle lemon law disputes between consumers and manufacturers. If a manufacturer has established an informal dispute resolution settlement procedure that complies with 16 C.F.R. Part 703, the consumer may choose to first submit a dispute to that procedure.

Before filing an action in court, the consumer must first exhaust the remedy afforded by the Attorney General's new motor vehicle arbitration board or the manufacturer's informal dispute settlement procedure.

TIME PERIOD FOR FILING CLAIMS

A claim must be filed within 30 months from the date of the new motor vehicle's original delivery to a consumer at retail. If the claim involves a motor home, the 30-month period is extended by the amount of time it takes the motor home manufacturers to complete the final repair attempt at the designated repair facility.

REMEDIES UNDER THE WASHINGTON LEMON LAW

REPURCHASE OF AN OWNED VEHICLE

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

1. *Purchase Price.* This is the cash price of the motor vehicle appearing in the sales agreement or contract, including any allowance for a trade-in-vehicle, less the amount of any manufacturer-to-consumer rebate appearing in the agreement or contract that the consumer received or that was applied to reduce the purchase cost. Where the consumer is a subsequent transferee, “purchase price” means the consumer’s subsequent purchase price;
2. *Collateral Charges.* These are any sales related charges including but not limited to sales tax, use tax, arbitration service fees, unused license fees, unused registration fees, unused title fees, finance charges, prepayment penalties, credit disability and credit life insurance costs not otherwise refundable, any other insurance costs prorated for time out of service, transportation charges, dealer preparation charges, or any other charges for service contracts, undercoating, rustproofing, or factory or dealer installed options; and
3. *Incidental Costs.* These are reasonable expenses incurred by the consumer in connection with the repair of the motor vehicle, including any towing charges and the costs of obtaining alternative transportation;
4. Less a reasonable offset for use.

The reasonable offset for use is computed by the following formula:

$$\frac{\text{number of miles traveled directly attributable to use by the consumer between the purchase/lease/in-service date and the date of first attempt to diagnose or repair the nonconformity that results in repurchase/replacement}}{120,000} \times \text{Purchase Price}$$

Where a manufacturer repurchases a vehicle solely due to days out of service, “the number of miles that the vehicle traveled directly attributable to use by the consumer” is limited to the period between the original purchase/in-service date and the date of the 15th cumulative calendar day out of service.

Where the consumer is a second or subsequent purchaser or transferee of the motor vehicle and the manufacturer repurchases the vehicle, “the number of miles that the vehicle traveled directly attributable to use by the consumer” is limited to the period between the date of purchase by or transfer to that consumer and the date of the consumer’s initial attempt to obtain diagnose or repair the nonconformity that results in repurchase.

“Purchase price” for a subsequent purchaser or transferee receiving a repurchase means the consumer’s subsequent purchase price.

If the new motor vehicle is a motorcycle, the denominator is 25,000.

If the new motor vehicle is a motor home, the denominator is 90,000 and “the number of miles that the vehicle traveled directly attributable to use by the consumer” is limited to the period between the original purchase//in-service date and the date of the 30th cumulative calendar day out of service. If the wear and tear on those portions of a motor home designated, used or maintained primarily as a mobile dwelling, office, or commercial space are significantly greater or significantly less than that which could be reasonably expected based on the mileage attributable to the consumer’s use of the motor home, the reasonable offset for use calculation total may be increased or decreased up to a maximum of one-third of the offset total.

REPURCHASE OF A LEASED VEHICLE

The Washington lemon law provides that the manufacturer must pay the following amounts when it repurchases a leased vehicle:

To the Lessor

Pay-off amount. The manufacturer shall make such payment to the lessor as necessary to obtain clear title to the motor vehicle. The pay-off amount does not include any late payment charges, which are the responsibility of the consumer.

To the Lessee

1. *Lease Payments.* This means all payments made by the consumer under the lease, including but not limited to all lease payments, trade-in value or inception payment, and security deposit;
2. *Collateral Charges.* These are any sales related charges including but not limited to sales tax, use tax, arbitration service fees, unused license fees, unused registration fees, unused title fees, finance charges, prepayment penalties, credit disability and credit life insurance costs not otherwise refundable, any other insurance costs prorated for time out of service, transportation charges, dealer preparation charges, or any other charges for service contracts, undercoating, rustproofing, or factory or dealer installed options; and
3. *Incidental Costs.* These are reasonable expenses incurred by the consumer in connection with the repair of the motor vehicle, including any towing charges and the costs of obtaining alternative transportation;
4. Less a reasonable offset for use.

The reasonable offset for use is computed by the following formula:

$$\frac{\text{number of miles traveled directly attributable to use by the consumer between the purchase/lease/in-service date and the date of first attempt to diagnose or repair the nonconformity that results in repurchase/replacement}}{120,000} \times \text{purchase price}$$

Where a manufacturer repurchases a vehicle solely due to days out of service, “the number of miles that the vehicle traveled directly attributable to use by the consumer” is limited to the period between the original lease date and the date of the 15th cumulative calendar day out of service.

Where the consumer is a second or subsequent lessee of the motor vehicle and the manufacturer repurchases the vehicle, “the number of miles that the vehicle traveled directly attributable to use by the consumer” is limited to the period between the date of lease by that consumer and the date of the consumer’s initial attempt to obtain diagnose or repair the nonconformity that results in repurchase.

The “purchase price” for a leased vehicle means the actual written capitalized cost disclosed to the consumer as contained in the lease agreement. If there is no disclosed capitalized cost in the lease agreement, the “purchase price” is the manufacturer’s suggested retail price including manufacturer-installed accessories or items of optional equipment displayed on the manufacturer label. Purchase price excludes any manufacturer-to-consumer rebate appearing in the agreement or contract that the consumer received or that was applied to reduce the purchase cost.

If the new motor vehicle is a motorcycle, the denominator is 25,000.

If the new motor vehicle is a motor home, the denominator is 90,000 and “the number of miles that the vehicle traveled directly attributable to use by the consumer” is limited to the period between the original lease date and the date of the 30th cumulative calendar day out of service. If the wear and tear on those portions of a motor home designated, used or maintained primarily as a mobile dwelling, office, or commercial space are significantly greater or significantly less than that which could be reasonably expected based on the mileage attributable to the consumer’s use of the motor home, the reasonable offset for use calculation total may be increased or decreased up to a maximum of one-third of the offset total.

REPLACEMENT

The Washington lemon law provides that a replacement motor vehicle must be identical or reasonably equivalent to the vehicle being replaced as the vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options.

The manufacturer is responsible for sales tax, license and registration fees for the replacement vehicle. The manufacturer must also refund any incidental costs, as defined above.

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If the consumer accepts a replacement motor vehicle, the consumer must compensate the manufacturer for a reasonable offset for use. The reasonable offset for use is computed by the following formula:

$$\frac{\text{number of miles traveled directly attributable to use by the consumer between the purchase/lease/in-service date and the date of first attempt to diagnose or repair the nonconformity that results in repurchase/replacement}}{120,000} \times \text{purchase price}$$

Where a manufacturer replaces a vehicle solely due to days out of service, “the number of miles that the vehicle traveled directly attributable to use by the consumer” is limited to the period between the original purchase/lease/in-service date and the date of the 15th cumulative calendar day out of service.

Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the manufacturer replaces the vehicle, “the number of miles that the vehicle traveled directly attributable to use by the consumer” is calculated from the date of the original purchase, lease, or in-service date and the date of the first attempt to diagnose or repair the nonconformity that results in replacement.

Where a manufacturer replaces a vehicle solely due to days out of service and the consumer is a second or subsequent purchaser, lessee or transferee, “the number of miles that the vehicle traveled directly attributable to use by the consumer” is calculated from the date of the original purchase/lease/in-service date and the date of the 15th cumulative calendar day out of service.

The “purchase price” for a leased vehicle means the actual written capitalized cost disclosed to the consumer as contained in the lease agreement. If there is no disclosed capitalized cost in the lease agreement, the “purchase price” is the manufacturer’s suggested retail price including manufacturer-installed accessories or items of optional equipment displayed on the manufacturer label. Purchase price excludes any manufacturer-to-consumer rebate appearing in the agreement or contract that the consumer received or that was applied to reduce the purchase cost.

“Purchase price” for a subsequent purchaser or transferee receiving a replacement means the original purchase price.

If the new motor vehicle is a motorcycle, the denominator is 25,000.

If the new motor vehicle is a motor home, the denominator is 90,000 and “the number of miles that the vehicle traveled directly attributable to use by the consumer” is limited to the period between the original purchase/lease/in-service date and the date of the 30th cumulative calendar day out of service. If the wear and tear on those portions of a motor home designated, used or maintained primarily as a mobile dwelling, office, or commercial space are significantly greater or significantly less than that which could be reasonably expected based on the mileage attributable to the consumer’s use of the motor home, the reasonable offset for use calculation total may be increased or decreased up to a maximum of one-third of the offset total.

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