

## **STANDARDS OF THE WEST VIRGINIA LEMON LAW**

The following is a brief explanation of most relevant provisions of the West Virginia lemon law. The complete text of the lemon law can be found at West Virginia Code 46A-6A-1 *et seq.*

### **VEHICLES COVERED**

The West Virginia lemon law covers a “motor vehicle,” meaning a passenger automobile purchased in West Virginia or registered and titled in West Virginia. This includes a pickup truck or van registered as a Class A motor vehicle, and any self-propelled chassis of a motor home registered as a Class A or Class B motor vehicle.

Class A registration applies to motor vehicles of passenger type and trucks with a gross weight of not more than ten thousand pounds. Class B registration applies to motor vehicles designated as trucks with a gross weight of more than ten thousand pounds, truck tractors or road tractors.

### **CONSUMERS COVERED**

The lemon law covers the following *consumers*:

1. The purchaser, other than for purposes of resale, of a new motor vehicle that is used primarily for personal, family, or household purposes;
2. A person to whom the new motor vehicle is transferred for the same purposes 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.

### **PROBLEMS COVERED**

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

The lemon law provides an affirmative defense if it can be shown that the alleged nonconformity does not substantially impair the use or market value of the vehicle, or the nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations by anyone other than the manufacturer, its agent, or authorized dealers.

### **MANUFACTURER’S DUTY TO REPAIR**

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 within the term of the express warranties or within a period of one year following the date of the motor vehicle’s original delivery to a consumer, *whichever is the longer period*, then the manufacturer, its agent or dealer must make the necessary repairs to conform the motor vehicle to the express warranties. The necessary repairs must be made even if the warranty term has expired.

All authorized dealers must provide to any consumer a written disclosure of any repairs to a new motor vehicle that have a retail value of 5% of the manufacturer’s suggested retail price and were performed after shipment from the manufacturer to the dealer, including damage to the new motor vehicle while in transit. This does not apply to

identical replacement of stolen or damaged accessories or their components, tires, or antennae.

### **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 a nonconformity after a *reasonable number of attempts*, then the manufacturer must replace the new motor vehicle.

If the manufacturer does not replace the vehicle, the consumer may sue the manufacturer for repurchase of the vehicle.

### **REASONABLE NUMBER OF REPAIR ATTEMPTS**

The West Virginia lemon law establishes a *presumption* that a reasonable number of attempts have been undertaken to conform the new motor vehicle to the applicable express warranties if, within the term of the express warranties or within one year following the date of the motor vehicle's original delivery to a consumer, *whichever is earlier*, any of the following occurs:

1. The same nonconformity has been subject to repair three or more times by the manufacturer, its agents or authorized dealers, and the nonconformity continues to exist;
2. A nonconformity that results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven, has been subject to repair at least once by the manufacturer and the nonconformity continues to exist; or
3. The motor vehicle is out of service by reason of repair for a cumulative total of 30 or more calendar days.

The term of an express warranty, the one-year period and the thirty day period are extended by any period during which repairs are unavailable 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 attempts has been undertaken applies against a manufacturer only if the manufacturer has received prior written notification from or on behalf of the consumer, and has had at least one opportunity to cure the defect alleged.

### **DISPUTE RESOLUTION**

A consumer may not assert a cause of action under the lemon law unless the consumer initially resorts to a third party dispute resolution process if:

1. The West Virginia Attorney General has certified that the third party dispute resolution process complies with 16 C.F.R. Part 703 and with the lemon law and regulations; and
2. The consumer received timely notification in writing of the availability of the third party dispute resolution process with a description of its operation and effect.

## **TIME PERIOD FOR FILING CLAIMS**

An action must be commenced within one year of the expiration of the express warranty term. This period of limitation does not run for the period between the date the consumer files a complaint with a third party dispute resolution process and the date of its decision or the date by which the manufacturer is required by the decision to fulfill its terms, whichever occurs later.

## **REMEDIES UNDER THE WEST VIRGINIA LEMON LAW**

### **REPURCHASE**

The West Virginia lemon law sets out the following amounts that a manufacturer must pay when it repurchases a vehicle under the lemon law:

1. The purchase price, including but not limited to sales tax, license fees, registration fees, and other reasonable expenses incurred for the purchase of the vehicle;
2. Damages for the cost of repairs reasonably required to conform the vehicle to the express warranty; and
3. Damages for loss of use, annoyance, or inconvenience resulting from the nonconformity, including reasonable expenses incurred for replacement transportation during any period when the vehicle is out of service by reason of the nonconformity or by reason of repair.

### **REPLACEMENT**

When replacing a vehicle under the West Virginia lemon law, the manufacturer must provide a comparable new motor vehicle.