

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 Texas Rev. Civ. Stat. Ann. title 14, §§ 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 of 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; and
4. A towable recreational vehicle.

CONSUMERS COVERED

The lemon law covers the following consumers:

1. A person who purchases a motor vehicle at retail from a Texas dealer, and who is entitled to enforce the terms of the manufacturer's warranty;
2. The lessor or lessee (other than a sublessee) who purchased or leased a motor vehicle from a Texas dealer or lessor; or
3. 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 is entitled to enforce the terms of the manufacturer's warranty.

VEHICLE CONVERTERS

The lemon law applies to vehicle converters.

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*. The Texas Department of Transportation has indicated that the nonconformity must continue to exist.

“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 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.

The necessary repairs must be made regardless of whether the applicable warranty period has expired.

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:

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.

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.

NOTICE AND OPPORTUNITY TO REPAIR

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

1. The consumer or a person on behalf of the consumer mailed 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.

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.

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 Transportation 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 Transportation 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;
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 Transportation 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

Purchase
X Price

plus

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

REPURCHASE OF LEASED VEHICLES

The Texas Department of Transportation 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, 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 Transportation 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 Transportation 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%

REPLACEMENT

When replacing a vehicle under the Texas lemon law, the manufacturer must replace the motor vehicle with a comparable motor vehicle. The Texas Department of Transportation indicates on its web site that a replacement award will be reduced for mileage used.

The manufacturer must also 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 Transportation 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.

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