

## **Louisiana Lemon Law Statutes**

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### **LSA-R.S. 51:1941**

#### **§ 1941. Definitions**

The following definitions apply when used in this Chapter:

- (1) “Collateral costs” means sales tax, license fees, and registration fees and any similar governmental charges.
- (2) “Consumer” means:
  - (a) The purchaser, other than for purposes of resale, of a new motor vehicle normally used for personal, family, or household purposes and subject to a manufacturer's express warranty.
  - (b) A person, other than for purposes of resale, to whom a motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle.
  - (c) A person to whom a motor vehicle is leased.
  - (d) Any other person entitled to enforce the warranty.
- (3) “Dealer” means a person authorized by the manufacturer and actively engaged in the business of buying, selling, or exchanging new automobiles, new personal watercraft, new all-terrain vehicles, or new motor homes at retail and who has an established place of business.
- (4) “Manufacturer” means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused motor vehicles.
- (5) “Manufacturer's express warranty” and “warranty” mean the written warranty of the manufacturer of a new motor vehicle of its condition and fitness for use, including any terms or conditions precedent to the enforcement of an obligation under that warranty.
- (6) “Motor vehicle” means a passenger motor vehicle or a passenger and commercial motor vehicle as defined in R.S. 32:1252(13), sold in this state on or after September 1, 1984. “Motor vehicle” shall include a personal watercraft as defined in R.S. 34:855.2 and an all-terrain vehicle as defined in R.S. 32:771(1), sold in this state or still under warranty on or after August 15, 1999, which is used exclusively for personal and not commercial purposes. “Motor vehicle” shall include the chassis and drive train of a motor home as defined in R.S. 32:1252(12), sold in this state or still under warranty on or after August 15, 1999, which is used exclusively for personal and not commercial purposes. For the purposes of this Chapter, the following motor vehicles are excluded:
  - (a) Motor vehicles, except for motor homes, 10,000 GVW or above.
  - (b) Motor vehicles used exclusively for commercial purposes.
- (7) “Nonconformity” means any specific or generic defect or malfunction, or any defect or condition which substantially impairs the use, market value or both of a motor vehicle.

### **LSA-R.S. 51:1942**

#### **§ 1942. Manufacturer's duty to repair; nonconformity**

If a new motor vehicle does not conform to an applicable express warranty, and the consumer reports the nonconformity to the manufacturer or any of its authorized motor vehicle dealers and makes the motor vehicle available for repair before the expiration of the warranty or during a period of one year following the date of the original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent, or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such warranty, notwithstanding the fact that such repairs are made after the expiration of such terms or such one-year period.

## **LSA-R.S. 51:1943**

### **§ 1943. Express warranties; time limit to conform**

A. (1) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if the vehicle is out of service by reason of repair for a cumulative total of forty-five or more calendar days or the same nonconformity has been subject to repair four or more times by the manufacturer, its agent, or its authorized dealer within the warranty term or during a period of one year following the date of the original delivery of the motor vehicle to the consumer, whichever is the earlier date.

(2)(a) Notwithstanding the provisions of Paragraph (1) of this Subsection, in the case of a motor home, the consumer shall provide written notification to the manufacturer of any of the following:

(i) The need to repair the nonconformity.

(ii) Evidence of a cumulative total of at least ninety days of the motor home being out of service.

(iii) Evidence that the same nonconformity has been subject to repair four or more times by the manufacturer, its agent, or its authorized dealer within the warranty term or during a period of one year following the date of the original delivery of the motor vehicle to the consumer, whichever is the earlier date.

(b) Upon such notification, the manufacturer shall have a final attempt to repair the vehicle. The manufacturer shall have five business days upon receipt of such notification to respond to the consumer as to where the motor home may be delivered for repair. The repair facility shall be one which is authorized by the manufacturer to perform the necessary warranty work.

(c) Once delivered, the repair facility shall have ten business days within which to conform the vehicle to the applicable warranty. The time periods provided for in this Paragraph may only be extended if the consumer authorizes such extension in writing.

(3) If a manufacturer fails to respond to the consumer or to perform the repairs within the time periods described in Paragraphs (1) and (2) of this Subsection, such manufacturer shall be deemed to have waived his rights to a final attempt to cure the nonconformity.

B. The term of an express warranty shall be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or natural disaster.

C. The provisions in Subsection A of this Section shall be suspended for any period of time during which repair services cannot be performed by the manufacturer, its agents, or authorized dealer because of war, invasion, strike, fire, flood, or natural disaster.

## **LSA-R.S. 51:1944**

### **§ 1944. Motor vehicle replacement or refund**

A. If a nonconformity in a motor home has not been repaired within the time periods provided for in R.S. 32:1943(A)(2), or if after four or more attempts within the express warranty term or during a period of one year following the date of the original delivery to the consumer of a motor vehicle which is not a motor home, whichever is the earlier, the nonconformity has not been repaired or if the vehicle is out of service by reason of repair for a cumulative total of ninety or more calendar days during the warranty period, the manufacturer shall:

(1) Replace the motor vehicle with a comparable new motor vehicle, or, at its option,

(2) Accept return of the motor vehicle and refund the full purchase price plus any amounts paid by the consumer at the point of sale, and all collateral costs less a reasonable allowance for use to the consumer, or any holder of a perfected security interest in the motor vehicle, as their interest may appear, if the transaction was a sale.

B. If the transaction is a lease, the provisions of Paragraph (1) of Subsection A of this Section are applicable or the manufacturer may, if the lessor is willing, accept return of the motor vehicle and reimburse the lessee for all reasonable expenditures in connection with the lease, and further satisfy all conditions of the lease in connection with early termination and related charges. The lessee shall be liable for a reasonable allowance for use of the vehicle prior to the return thereof.

C. A reasonable allowance for use shall be that amount directly attributable to use by the consumer prior to his first notice of nonconformity to the manufacturer, agent, or dealer and during any subsequent period when the vehicle is not out of service by reason of repair.

D. If a manufacturer has established an informal dispute settlement procedure which substantially complies with the provisions of Title 16, Code of Federal Regulations, Part 703, as from time to time amended, the provisions of Subsections A, B and C of this Section concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure.

E. The consumer shall have no more than three years from the date he purchased the motor vehicle or until one year from the end of the warranty period, whichever is longer, in which to file suit against the manufacturer to force compliance with the provisions of this Section.

#### **LSA-R.S. 51:1945**

##### **§ 1945. Transfer of title; time limitation**

At the time of receiving the comparable new motor vehicle or refund under R.S. 51:1944, the consumer, or lessor, where applicable, shall surrender the motor vehicle subject to the nonconformity to the manufacturer together with the certificate of title with all endorsements necessary to transfer title to the manufacturer. The manufacturer shall provide the consumer, or lessor, where applicable, with a comparable new motor vehicle or refund within thirty days after an offer to transfer title in compliance with this Section by the consumer, or lessor, where applicable, or within thirty days after a decision by the informal dispute settlement procedure established by the manufacturer to award a refund or replacement.

#### **LSA-R.S. 51:1945.1**

##### **§ 1945.1. Mandatory disclosure of nonconformity to warranty by sellers**

A. (1) Upon the sale or transfer of title by a manufacturer, its agent, or any dealer of any second-hand motor vehicle, previously returned to a manufacturer for nonconformity to its warranty pursuant to the requirements of this Chapter, the manufacturer shall execute and deliver to the buyer an instrument in writing in a form prescribed by the commissioner setting forth the following information in ten point, all capital type:

"IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER OR DEALER BECAUSE IT DID NOT CONFORM TO ITS WARRANTY AND THE DEFECT OR CONDITION WAS NOT FIXED WITHIN THE TIME PROVIDED BY LOUISIANA LAW."

(2) Such notice that a vehicle was returned to the manufacturer because it did not conform to its warranty shall also be conspicuously printed on the motor vehicle's certificate of title.

B. The failure of a dealer to deliver to the buyer the instrument required by this Section shall constitute a violation of this Chapter and shall be punishable by a fine of not less than five hundred dollars nor more than one thousand dollars for each violation.

#### **LSA-R.S. 51:1946**

##### **§ 1946. Other remedies**

Nothing in this Chapter shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

**LSA-R.S. 51:1947**

**§ 1947. Attorney fees**

If the motor vehicle does not conform to applicable express warranties after the consumer has complied with the requirements of this Chapter, the consumer shall be entitled to reasonable attorney fees actually incurred if a judgment is rendered in part or whole in his favor.

**LSA-R.S. 51:1948**

**§ 1948. Manufacturer's duty to provide reimbursement for temporary replacement vehicle; penalties**

A. Whenever a motor vehicle which is covered by a manufacturer's express warranty is tendered by a consumer to the dealer from whom it was purchased or exchanged for the repair of any defect, malfunction, or nonconformity to which the warranty is applicable and at least one of the following conditions exists, the manufacturer shall provide directly to the consumer for the duration of the repair period a rental vehicle reimbursement of up to twenty dollars per day:

(1) The repair period exceeds ten work days, including the day on which the motor vehicle is tendered to the dealer for repair.

(2) The defect, malfunction, or nonconformity is the same for which the motor vehicle has been tendered to the dealer for repair on two previous occasions.

B. The provisions of this Section regarding a manufacturer's duty shall extend only for the period of the length of the manufacturer's express warranty or for two years, whichever period of time occurs first.

C. For violations of the provisions of Subsection A, the consumer shall be entitled to recover from the manufacturer for damages incurred and reasonable attorney fees actually incurred; however, in no event shall the amount of damages awarded be less than two hundred dollars. The provisions of this Section will become effective as to cars sold after January 1, 1987, and will not be in effect in case of war, work stoppages, and natural disasters beyond the control of the manufacturer that would prevent the timely repair or parts delivery to a dealer.

D. This Section shall not apply to personal watercraft or all-terrain vehicles tendered to a manufacturer for repair.

E. This Section shall not apply to motor homes tendered to a manufacturer for repair.

**LSA-R.S. 51:1949**

**§ 1949. Disclosure by seller**

It shall be an unfair and deceptive trade practice within the meaning of R.S. 51:1405(A) for any person to sell a motor vehicle of 1980 or later model from which the emission controls have been removed, disconnected, or otherwise rendered inoperable without disclosing such fact to the potential buyer prior to the sale of the vehicle. Any person aggrieved by a violation of this Chapter shall have a right of action regardless of whether the sale is a commercial or consumer transaction.

**Note: The following information was excerpted from a brochure provided by the Louisiana State Bar Association.**

This brochure, prepared by the Member Services Committee of the Louisiana State Bar Association, is issued to inform and provide general information, not to advise. If you have a specific legal problem, you should not try to apply or interpret the law without the aid of a trained expert who knows the fact, because the facts may change the application of the law. In 1984 the Louisiana Legislature enacted Louisiana's "Lemon Law." This law is located in Louisiana Revised Statutes 5:1941 et. seq.

Under this law a consumer who purchases or leases a new motor vehicle for personal, family or household purposes has certain remedies against the manufacturer and seller of the automobile if the vehicle does not conform to an applicable express warranty.

To benefit from this law you must:

- Report the nonconformity to the manufacturer or any of its authorized motor vehicle dealers;
- Make the motor vehicle available for repair before the expiration of the warranty or during a period of one year following the date of the original delivery of the motor vehicle to you, whichever is the earlier date.

The manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to the warranty.

### **Refund Entitlement**

If after four or more attempts within the express warranty term or during a period of one year following the date of the original delivery of the motor vehicle to you, whichever is earlier, the nonconformity has not been repaired or if the vehicle is out of service by reason of repair for a cumulative total of 30 or more days during the warranty period, the manufacturer shall do one of two things:

1. Replace the motor vehicle with a comparable new motor vehicle, or, at its option;
2. Accept return of the motor vehicle and refund the full purchase price plus any amounts paid by the consumer at the point of sale, and all collateral costs less a reasonable allowance for use. Reasonable Allowance For Use According to the statute, a reasonable allowance for use shall be that directly attributable to use by the consumer prior to the first notice of nonconformity to the manufacturer, agent or dealer and during any subsequent period where the vehicle is not out of service by reason of repair.

### **Manufacturer's Refusal To Replace Or Refund**

If the manufacturer refuses to replace the vehicle or refund the money, first determine if the manufacturer has established an informal dispute settlement procedure. If so, you must follow that procedure before the Louisiana Lemon law will apply.

Consult your attorney to be sure you do not waive any of your rights.

### **Attorney's Fees Entitlement**

The statute provides that, if you comply with the requirements of the Louisiana Lemon law and you are successful, you are entitled to reasonable attorney's fees actually incurred.

#### **Time Limit For New Vehicle Refund**

If you win the case, you must return the nonconforming vehicle and the certificate of title to the manufacturer, who then has 30 days to replace the vehicle or refund your money.

If you win after a decision by the informal dispute settlement procedure, the manufacturer has 30 days after the decision to replace or refund.

Always consult an attorney to make certain of your particular rights and remedies under the law.

### **The Magnuson-Moss Warranty Act**

The Magnuson-Moss Warranty Act is a Federal Law that protects the buyer of any product which costs more than \$25 and comes with an express written warranty. This law applies to any product that you buy that does not perform as it should.

Your car is a major investment, rationalized by the peace of mind that flows from its expected dependability and safety. Accordingly, you are entitled to expect an automobile properly constructed and regulated to provide reasonably safe, trouble-free, and dependable transportation – regardless of the exact make and model you bought. Unfortunately, sometimes these principles

do not hold true and defects arise in automobiles. Although one defect is not actionable, repeated defects are as there exists a generally accepted rule that unsuccessful repair efforts render the warrantor liable. Simply put, there comes a time when “enough is enough” – when after having to take your car into the shop for repairs an inordinate number of times and experiencing all of the attendant inconvenience, you are entitled to say, ‘That’s all,’ and revoke, notwithstanding the seller’s repeated good faith efforts to fix the car. The rationale behind these basic principles is clear: once your faith in the vehicle is shaken, the vehicle loses its real value to you and becomes an instrument whose integrity is impaired and whose operation is fraught with apprehension. The question thus becomes when is “enough”?

As you know, enough is never enough from your warrantor’s point of view and you should simply continue to have your defective vehicle repaired – time and time again. However, you are not required to allow a warrantor to tinker with your vehicle indefinitely in the hope that it may eventually be fixed. Rather, you are entitled to expect your vehicle to be repaired within a reasonable opportunity. To this end, both the federal Moss Warranty Act, and the various state “lemon laws,” require repairs to your vehicle be performed within a reasonable opportunity.

Under the Magnuson-Moss Warranty Act, a warrantor should perform adequate repairs in at least two, and possibly three, attempts to correct a particular defect. Further, the Magnuson-Moss Warranty Act’s reasonableness requirement applies to your vehicle as a whole rather than to each individual defect that arises. Although most of the Lemon Laws vary from state to state, each individual law usually require a warrantor to cure a specific defect within four to five attempts or the automobile as a whole within thirty days. If the warrantor fails to meet this obligation, most of the lemon laws provide for a full refund or new replacement vehicle. Further, this reasonable number of attempts/reasonable opportunity standard, whether it be that of the Magnuson-Moss Warranty Act or that of the Lemon Laws, is akin to strict liability – once this threshold has been met, the continued existence of a defect is irrelevant and you are still entitled to relief.

One of the most important parts of the Magnuson-Moss Warranty Act is its fee shifting provision. This provision provides that you may recover the attorney fees incurred in the prosecution of your case if you are successful – independent of how much you actually win. That rationale behind this fee shifting provision is twofold: (1) to ensure you will be able to vindicate your rights without having to expend large sums on attorney's fees and (2) because automobile manufacturers are able to write off all expenses of defense as a legitimate business expense, whereas you, the average consumer, obviously does not have that kind of economic staying power. Most of the Lemon Laws contain similar fee shifting provisions.

You may also derive additional warranty rights from the Uniform Commercial Code; however, the Code does not allow you in most states to recover your attorney fees and is also not as consumer friendly as the Magnuson-Moss Warranty Act or the various state lemon laws.

*The narrative information on Magnuson-Moss, UCC and Louisiana lemon laws on these pages is provided by Marshall Meyers, attorney.*

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### **Uniform Commercial Code Summary**

The Uniform Commercial Code or UCC has been enacted in all 50 states and some of the territories of the United States. It is the primary source of law in all contracts dealing with the sale of products. The TARR refers to Tender, Acceptance, Rejection, Revocation and applies to different aspects of the consumer's "relationship" with the purchased goods.

**TENDER** - The tender provisions of the Uniform Commercial Code contained in Section 2-601 provide that the buyer is entitled to reject any goods that fail in any respect to conform to the

contract. Unfortunately, new cars are often technically complex and their innermost workings are beyond the understanding of the average new car buyer. The buyer, therefore, does not know whether the goods are then conforming.

**ACCEPTANCE** - The new car buyer accepts the goods believing and expecting that the manufacturer will repair any problem he has with the goods under the warranty.

**REJECTION** - The new car buyer may discover a problem with the vehicle within the first few miles of his purchase. This would allow the new car buyer to reject the goods. If the new car buyer discovers a defect in the car within a reasonable time to inspect the vehicle, he may reject the vehicle. This period is not defined. On the one hand, the buyer must be given a reasonable time to inspect and that reasonable time to inspect will be held as an acceptance of the vehicle. The Courts will decide this reasonable time to inspect based on the knowledge and experience of the buyer, the difficulty in discovering the defect, and the opportunity to discover the defect. The following is an example of a case of rejection: Mr. Zabriskie purchase a new 1966 Chevrolet Biscayne. After picking up the car on Friday evening, while en route to his home 2.5 miles away, and within 7/10ths of a mile from the dealership, the car stalled and stalled again within 15 feet. Thereafter, the car would only drive in low gear. The buyer rejected the vehicle and stopped payment on his check. The dealer contended that the buyer could not reject the car because he had driven it around the block and that was his reasonable opportunity to inspect. The New Jersey Court said;

To the layman, the complicated mechanisms of today's automobile are a complete mystery. To have the automobile inspected by someone with sufficient expertise to disassemble the vehicle in order to discover latent defects before the contract is signed, is assuredly impossible and highly impractical. Consequently, the first few miles of driving become even more significant to the excited new car buyer. This is the buyer's first reasonable opportunity to enjoy his new vehicle to see if it conforms to what it was represented to be and whether he is getting what he bargained for. How long the buyer may drive the new car under the guise of inspection of new goods is not an issue in the present case because 7/10th of a mile is clearly within the ambit of a reasonable opportunity to inspect. *Zabriskie Chevrolet, Inc. v. Smith*, 240 A. 2d 195(1968)

It is suggested that Courts will tend to excuse use by consumers if possible.

**REVOCATION** - What happens when the consumer has used the new car for a lengthy period of time? This is the typical lemon car case. The UCC provides that a buyer may revoke his acceptance of goods whose non-conformity substantially impairs the value of the goods to him when he has accepted the goods without discovery of a non-conformity because it was difficult to discover or if he was assured that non-conformities would be repaired. Of course, the average new car buyer does not learn of the nonconformity until hundreds of thousands of miles later. And because quality is job one, and manufacturers are competing on the basis of their warranties, the consumer always is assured that any nonconformities he does discover will be remedied. What is a nonconformity substantially impairing the value of the vehicle?

1. A nonconformity may include a number of relatively minor defects whose cumulative total adds up to a substantial impairment. This is the "Shake Faith" Doctrine first stated in the *Zabriskie* case. "For a majority of people the purchase of a new car is a major investment, rationalized by the peace of mind that flows from its dependability and safety. Once their faith is shaken, the vehicle loses not only its real value in their eyes, but becomes an instrument whose integrity is substantially impaired and whose operation is fraught with apprehension".

2. A substantial nonconformity may include a failure or refusal to repair the goods under the warranty. In *Durfee V. Rod Baxter Imports*, the Minnesota Court held that the Saab owner that was plagued by a series of annoying minor defects and stalling, which were never repaired after a number of attempts, could revoke, "if repairs are not successfully undertaken within a reasonable time", the consumer may elect to revoke.
3. Substantial Non Conformity and Louisiana Lemon laws often define what may be considered a substantial impairment. These definitions have been successfully used to flesh out the substantial impairment in the UCC.

*Additional narrative information on Magnusson-Moss, UCC and Louisiana lemon laws on these pages is provided by T. Michael Flinn, attorney.*