

Michigan Lemon Law Statutes

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Michigan Lemon law Act 87 of 1986>

AN ACT regarding warranties on new motor vehicles; to require certain repairs thereto; and to provide remedies for the failure to repair such vehicles. History: 1986, Act 87, Eff. June 25, 1986.

The People of the State of Michigan enact:

Michigan Lemon law MCL 257.1401

NEW MOTOR VEHICLE WARRANTIES

Michigan Lemon law Definitions.

Sec. 1. As used in this act:

1. **"Consumer"** means any of the following, but does not include a lessee of a new motor vehicle:
 1. A person who purchases a new motor vehicle for personal, family, or household use and not for the purpose of selling or leasing the new motor vehicle to another person.
 2. A person who purchases less than 10 new motor vehicles a year.
 3. A person who purchases 10 or more new motor vehicles a year only if the vehicles are purchased for personal, family, or household use.
 4. Any other person entitled to enforce the provisions of an express warranty pursuant to the terms of that warranty.
2. **"Manufacturer"** means any person who manufactures, assembles, or is a distributor of new motor vehicles and includes an agent of a manufacturer but does not include a new motor vehicle dealer.
3. **"Manufacturer's express warranty"** means an express warranty as determined under the uniform commercial code, Act No.174 of the Public Acts of 1962, being sections 440.1101 to 440.1102 of the Michigan Compiled Laws, offered by the manufacturer on a new motor vehicle.
4. **"Motor vehicle"** means a motor vehicle as defined in section 33 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.33 of the Michigan Compiled Laws, that is designed as a passenger vehicle, but does not include a motor home, bus, truck other than a pickup truck or van, or any vehicle designed to travel on less than 4 wheels.
5. **"New motor vehicle"** means a motor vehicle that is purchased in this state or purchased by a resident of this state and is covered by a manufacturer's express warranty at the time of purchase.
6. **"New motor vehicle dealer"** means a person who holds a dealer agreement for the sale of new motor vehicles, who is engaged in the business of purchasing, selling, exchanging, or dealing in new motor vehicles, and who has an established place of business in this state; and an agent thereof.
7. **"Person"** means a natural person, or a sole proprietorship, partnership, corporation, association, unit or agency of government, trust, estate, or other legal entity.
8. **"Resident of this state"** means as follows:
 1. For an individual, that the individual is a legal resident of this state.

2. For a sole proprietorship or partnership, that the sole proprietorship or partnership was created pursuant to the laws of this state and its main office is located in this state.
3. For a corporation, that the corporation is considered to be a domestic corporation and was created under the laws of this state.
4. For an association, that the association was created pursuant to the laws of this state and its main office is located in this state.
5. For a unit or agency of government, that the unit or agency is located in this state.
6. For a trust, estate, or other legal entity, that the trust, estate, or other legal entity was created pursuant to the laws of this state and is located in this state.

History: 1986, Act 87, Eff. June 25, 1986.

Michigan Lemon law MCL 257.1402. Repair of defect or condition; report.

Sec. 2. If a new motor vehicle has any defect or condition that impairs the use or value of the new motor vehicle to the consumer or which prevents the new motor vehicle from conforming to the manufacturer's express warranty, the manufacturer or a new motor vehicle dealer of that type of motor vehicle shall repair the defect or condition as required under section 3 if the consumer initially reported the defect or condition to the manufacturer or the new motor vehicle dealer within 1 of the following time periods, whichever is earlier:

1. During the term the manufacturer's express warranty is in effect.
2. Not later than 1 year from the date of delivery of the new motor vehicle to the original consumer.

History: 1986, Act 87, Eff. June 25, 1986.

Michigan Lemon law MCL 257.1403. Replacement of motor vehicle or refund; allowance for use; reimbursement for towing costs and costs for rental vehicle; consent to replacement of security interest; presumption; performing repairs after expiration of warranty; extension of time for repair services.

Sec. 3.

1. If a defect or condition which was reported to the manufacturer or new motor vehicle dealer pursuant to section 2 continues to exist and the new motor vehicle has been subject to a reasonable number of repairs as determined under subsection (3), the manufacturer shall within 30 days have the option to either replace the new motor vehicle with a comparable replacement motor vehicle currently in production and acceptable to the consumer or accept return of the vehicle and refund to the consumer the full purchase price including the cost of any options or other modifications installed or made by or for the manufacturer, and the amount of all other charges made by or for the manufacturer, less a reasonable allowance for the consumer's use of the vehicle not exceeding 10 cents per mile driven at the time of the initial report of the same defect or conditions or 10% of the purchase price of the vehicle, whichever is less, and less an amount equal to any appraised damage that is not attributable to normal use or to the defect or condition. A reasonable allowance for use is that amount directly attributable to use by the consumer and any previous consumer prior to his or her first report of a defect or condition that impairs the use or value of the new motor vehicle to the manufacturer, its agents, or the new motor vehicle dealer. Whenever a vehicle is replaced or refunded under the provisions of this section, in those instances in which towing services and rental vehicles were not made available without cost to the consumer, the manufacturer shall also

reimburse the consumer for those towing costs and reasonable costs for a comparable rental vehicle that were incurred as a direct result of the defect or condition.

2. The provisions of this act shall not affect the obligations of a consumer under a loan or sales contract or the secured interest of any secured party. The secured party shall consent to the replacement of the security interest with a corresponding security interest on a replacement motor vehicle which is accepted by the consumer in exchange for the motor vehicle having a defect or condition pursuant to subsection (1), if the replacement motor vehicle is comparable in value to the original motor vehicle. If for any reason the security interest in the new motor vehicle having a defect or condition pursuant to subsection (1) is not able to be replaced with a corresponding security interest on a new motor vehicle accepted by the consumer, the consumer shall accept a refund. Refunds required under this subsection or subsection (1) shall be made to the consumer and the secured party, if any, as their interests exist at the time the refund is to be made.
3. It shall be presumed that a reasonable number of attempts have been undertaken to repair any defect or condition if 1 of the following occurs:
 1. The same defect or condition that substantially impairs the use or value of the new motor vehicle to the consumer has been subject to repair a total of 4 or more times by the manufacturer or new motor vehicle dealer and the defect or condition continues to exist. Any repair performed on the same defect made pursuant to subsection (4) shall be included in calculating the number of repairs under this section. The consumer or his or her representative, prior to availing himself or herself of a remedy provided under subsection (1), and any time after the third attempt to repair the same defect or condition, shall give written notification, by return receipt service, to the manufacturer of the need for repair of the defect or condition in order to allow the manufacturer an opportunity to cure the defect or condition. The manufacturer shall notify the consumer as soon as reasonably possible of a reasonably accessible repair facility. After delivery of the vehicle to the designated repair facility, the manufacturer shall have 5 business days to repair the defect or condition.
 2. The new motor vehicle is out of service because of repairs for a total of 30 or more days or parts of days during the term of the manufacturer's express warranty, or within 1 year from the date of delivery to the original consumer, whichever is earlier. It shall be the responsibility of the consumer, or his or her representative, prior to availing himself or herself of a remedy provided under subsection (1), and after the vehicle has been out of service for at least 25 days in a repair facility, to give written notification by return receipt service to the manufacturer of the need for repair of the defect or condition in order to allow the manufacturer an opportunity to cure the defect or condition. The manufacturer shall notify the consumer as soon as reasonably possible of a reasonably accessible repair facility. After delivery of the vehicle to the designated repair facility, the manufacturer shall have 5 business days to repair the defect or condition.
4. Any repairs required to be made under this act shall be made even if the repairs cannot be performed until after the expiration of the manufacturer's express warranty.

5. The term of an express warranty, and the 1-year, 30-day, and 5-day periods of time provided for in this section shall be extended because repair services were not available to the consumer because of war; invasion; strike; or fire, flood, or other natural disaster.

History: 1986, Act 87, Eff. June 25, 1986.

Michigan Lemon law 257.1404 Other legal remedies not limited or prohibited.

Sec. 4. Nothing in this act shall be construed to limit or prohibit any other legal remedy of a consumer regarding a breach of a manufacturer's express warranty or an implied warranty for a new motor vehicle. History: 1986, Act 87, Eff. June 25, 1986.

Michigan Lemon law 257.1405 Informal dispute settlement procedure.

Sec. 5. If a manufacturer has established or participates in an informal dispute settlement procedure, the provisions of this act shall not apply to any consumer who has not first resorted to such procedure, if such procedure does all of the following:

1. Complies with the Magnuson-Moss warranty--federal trade commission improvement act, Public Law 93-637, 88 Stat. 2183, and 16 C.F.R. 703 (1975). An informal dispute settlement procedure which the federal trade commission rules does not comply with 16 C.F.R. 703 (1975) shall be considered as not meeting the requirements of this subdivision.
2. Requires that the manufacturer is bound by any decision reached if the consumer agrees to it.
3. Provides that the consumer is not obligated to accept the decision and may pursue the remedies provided for under this act.
4. Requires the manufacturer to initiate the process necessary to implement any final settlement not more than 30 days after the settlement has been reached.

History: 1986, Act 87, Eff. June 25, 1986.

Michigan Lemon law 257.1406 Defects or conditions to which act inapplicable.

Sec. 6. This act does not apply to any defect or condition that is the result of either of the following:

1. Any modification or modifications not installed or made by or for the manufacturer.
2. Abuse or neglect of the new motor vehicle or damage due to an accident which occurred after the new motor vehicle was purchased by the consumer.

History: 1986, Act 87, Eff. June 25, 1986.

Michigan Lemon law 257.1407 Waiver of rights and remedies prohibited; recovery of costs, expenses, and attorneys' fees.

Sec. 7.

1. Any rights and remedies provided a consumer under this act may not be waived.
2. A consumer who prevails in any action brought under this act may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses, including attorneys' fees based on actual time expended by the attorney, determined by the court to have been reasonably incurred by the consumer for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

History: 1986, Act 87, Eff. June 25, 1986

Michigan Lemon law 257.1408 Written statement to be included with title; type size; form.

Sec. 8. The secretary of state shall include with any title for a new motor vehicle a written statement, in 10-point boldface type, in substantially the following form: "IMPORTANT: IF THIS VEHICLE IS DEFECTIVE YOU MAY BE ENTITLED UNDER STATE LAW TO

REPLACEMENT OF IT OR A REFUND OF ITS PURCHASE PRICE. TO OBTAIN REPLACEMENT OR A REFUND YOU MUST FIRST REPORT THE DEFECT IN WRITING TO THE MANUFACTURER AND YOU MAY BE REQUIRED TO FIRST ARBITRATE THE DISPUTE. IN ORDER TO PROTECT YOUR RIGHTS UNDER THIS LAW, YOU SHOULD:

1. KEEP COPIES OF ALL CORRESPONDENCE TO AND FROM THE MANUFACTURER AND THE DEALER.
2. KEEP COPIES OF ALL WORK ORDERS FOR REPAIRS ON THE VEHICLE INCLUDING THE DATE(S) THE WORK WAS PERFORMED AND THE MILEAGE ON THE VEHICLE AT THE TIME OF REPAIR.
3. FOLLOW ALL REQUIREMENTS OF THE WARRANTY, INCLUDING ANY REQUIREMENT THAT THE REPAIRS MUST BE DONE BY AN AUTHORIZED DEALER SPECIFIED BY THE MANUFACTURER. IF YOU HAVE ANY QUESTIONS REGARDING YOUR RIGHTS UNDER THIS LAW, CONSULT AN ATTORNEY OR OTHER QUALIFIED INDIVIDUAL."

History: 1986, Act 87, Eff. June 25, 1986.

Michigan Lemon law 257.1409 Applicability of act.

Sec. 9. This act shall apply to all new motor vehicles that are sold to the original consumer on or after the effective date of this act. History: 1986, Act 87, Eff. June 25, 1986.

Michigan Lemon law 257.1410 Effect.

Sec. 10. This act shall take effect 60 days after its enactment. History: 1986, Act 87, Eff. June 25, 1986.

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 Michigan lemon laws on these pages is provided by Marshall Meyers, attorney.

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.

REVOCAION - 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 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 Michigan lemon laws on these pages is provided by T. Michael Flinn, attorney.