

Texas Lemon Law Statutes

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TEXAS OCCUPATIONS CODE (CHAPTER 2301, SALE OR LEASE OF MOTOR VEHICLES) (LEMON LAW STATUTES)

Texas Lemon Law General Warranty Complaints

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Texas Lemon Law General Warranty Complaints

Section 2301.204.

The owner of a motor vehicle or the owner's designated agent may make a complaint concerning defects in a motor vehicle which are covered by a manufacturer's, converter's, or distributor's warranty agreement applicable to the vehicle. Any such complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify the defects in the vehicle which are covered by the warranty. The owner may also invoke the Commission's jurisdiction by sending the Commission a copy of the complaint. A hearing may be scheduled on all complaints arising under this subsection which are not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.

Texas Lemon Law Warranty Performance Obligations

Sections 2301.601 through 2301.613

Sec.2301.601.DEFINITIONS. In this subchapter:

1. "Impairment of market value" means a substantial loss in market value caused by a defect specific to a motor vehicle.
2. "Owner" means a person who is entitled to enforce a manufacturer's warranty with respect to a motor vehicle, and who:
 - A. purchased the motor vehicle at retail from a license holder;
 - B. is a lessor or lessee, other than a sublessee, who purchased or leased the vehicle from a license holder;
 - C. is a resident of this state and has registered the vehicle in this state;
 - D. purchased or leased the vehicle at retail and is an active duty member of the United States armed forces stationed in this state at the time a proceeding is commenced under this subchapter; or
 - E. is:
 - I. the transferee or assignee of a person described by Paragraphs (A)-(D);
 - II. a resident of this state; and
 - III. the person who registered the vehicle in this state.
3. "Reasonable allowance for use" means the amount directly attributable to use of a motor vehicle when the vehicle is not out of service for repair.
4. "Serious safety hazard" means a life-threatening malfunction or nonconformity that:
 - A. substantially impedes a person's ability to control or operate a motor vehicle for ordinary use or intended purposes; or

B. creates a substantial risk of fire or explosion.

Sec.2301.602. DUTY OF BOARD.

- a. The board shall cause a manufacturer, converter, or distributor to perform an obligation imposed by this subchapter.
- b. The board shall adopt rules for the enforcement and implementation of this subchapter.

Sec.2301.603. CONFORMANCE WITH WARRANTY REQUIRED.

- a. A manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer's, converter's, or distributor's express warranty.
- b. Subsection (a) applies after the expiration date of a warranty if:
 1. during the term of the warranty, the owner or the owner's agent reported the nonconformity to the manufacturer, converter, or distributor, or to a designated agent or franchised dealer of the manufacturer, converter, or distributor; or
 2. a rebuttable presumption relating to the vehicle is created under Section 2301.605.
- c. This subchapter does not limit a remedy available to an owner under a new motor vehicle warranty that extends beyond the provisions of this subchapter.

Sec.2301.604. REPLACEMENT OF OR REFUND FOR VEHICLE.

- a. A manufacturer, converter, or distributor that is unable to conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts shall reimburse the owner for reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect and:
 1. replace the motor vehicle with a comparable motor vehicle; or
 2. accept return of the vehicle from the owner and refund to the owner the full purchase price, less a reasonable allowance for the owner's use of the vehicle, and any other allowances or refunds payable to the owner.
- b. A refund made for a vehicle for which there is a lienholder shall be made to the owner and lienholder in proportion to each person's interest in the vehicle.
- c. As necessary to promote the public interest, the board by rule:
 1. shall define the incidental costs that are eligible for reimbursement;
 2. shall specify other requirements necessary to determine an eligible cost; and
 3. may set a maximum amount that is eligible for reimbursement, either by type of eligible cost or by a total for all costs.

Sec.2301.605. REBUTTABLE PRESUMPTION--REASONABLE NUMBER OF ATTEMPTS.

- a. A rebuttable presumption that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty is established if:
 1. the same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and:

A. two of the repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and

- B. the other two repair attempts were made in the 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 causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and:
 - A. at least one attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and
 - B. at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt; or
- 3. a nonconformity still exists that substantially impairs the vehicle's use or market value and:
 - A. the vehicle is out of service for repair for a cumulative total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner; and
 - B. at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.
- b. A period or a number of days or miles described by Subsection (a) is extended for any period that repair services are not available to the owner because of:
 - 1. a war, invasion, or strike; or
 - 2. a fire, flood, or other natural disaster.
- c. The 30 days described by Subsection (a)(3)(A) do not include any period during which the manufacturer or distributor lends the owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.

Sec.2301.606.CONDUCT OF PROCEEDINGS.

- a. The director under board rules shall conduct hearings and issue final orders for the implementation and enforcement of this subchapter. An order issued by the director under this subchapter is considered a final order of the board.
- b. In a hearing before the director under this subchapter, a manufacturer, converter, or distributor may plead and prove as an affirmative defense to a remedy under this subchapter that a nonconformity:
 - 1. is the result of abuse, neglect, or unauthorized modification or alteration of the motor vehicle; or
 - 2. does not substantially impair the use or market value of the motor vehicle.
- c. The director may not issue an order requiring a manufacturer, converter, or make a refund or to replace a motor vehicle unless:
 - 1. the owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity 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.
- d. A proceeding under this subchapter must be commenced not later than six months after the earliest of:
 1. the expiration date of the express warranty term; or
 2. the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.

Sec.2301.607. EXHAUSTION OF ADMINISTRATIVE REMEDIES; RIGHT TO SUE.

- a. A refund or replacement under this subchapter because a motor vehicle is alleged to not conform to an express warranty is not available to the owner of the vehicle unless the owner has exhausted the administrative remedies provided by this subchapter.
- b. A refund or replacement under this subchapter is not available to a party in an action against a seller under Chapter 2 or 17, Business & Commerce Code, but is available in an action against a manufacturer, converter, or distributor brought under Chapter 17, Business & Commerce Code, after the owner has exhausted the administrative remedies provided by this subchapter.
- c. If the administrative law judge does not issue a proposal for decision and recommend to the director a final order before the 151st day after the date a complaint is filed under this subchapter, the director shall provide written notice by certified mail to the complainant and to the manufacturer, converter, or distributor of the expiration of the 150-day period and of the complainant's right to file a civil action. The board shall extend the 150-day period if a delay is requested or caused by the person who filed the complaint.
- d. Notwithstanding a requirement of this section that administrative remedies be exhausted, a person who receives notice under Subsection (c) may file a civil action against any person named in the complaint.
- e. The failure to issue notice under Subsection (c) does not affect a person's right to bring an action under this chapter.
- f. This subchapter does not limit a right or remedy otherwise available to an owner under another law.
- g. A contractual provision that excludes or modifies a remedy provided by this subchapter is prohibited and is void as against public policy unless the exclusion or modification is made under a settlement agreement between the owner and the manufacturer, converter, or distributor.

Sec. 2301.608. ASSESSMENT OF COSTS FOR REPLACEMENT OR REFUND.

- a. In an order issued under this subchapter, the director shall name the person responsible for paying the cost of any refund or replacement. A manufacturer, converter, or distributor may not cause a franchised dealer to directly or indirectly pay any money not specifically ordered by the director.
- b. If the director orders a manufacturer, converter, or distributor to make a refund or replace a motor vehicle under this subchapter, the director may order the franchised dealer to reimburse the owner, lienholder, manufacturer, converter, or distributor only for an item or option added to the vehicle by the dealer to the extent that the item or option contributed to the defect that served as the basis for the order.

- c. In a case involving a leased vehicle, the director may terminate the lease and apportion allowances or refunds, including the reasonable allowance for use, between the lessee and lessor of the vehicle.

Sec.2301.609. JUDICIAL REVIEW.

- a. A party to a proceeding before the director under this subchapter that is affected by a final order of the director is entitled to judicial review of the order under the substantial evidence rule in a district court of Travis County.
- b. Judicial review is subject to Chapter 2001, Government Code, to the extent that chapter is not inconsistent with this chapter.

Sec.2301.610. DISCLOSURE STATEMENT.

- a. A manufacturer, distributor, or converter that has been ordered to repurchase or replace a vehicle shall, through its franchised dealer, issue a disclosure statement stating that the vehicle was repurchased or replaced by the manufacturer, distributor, or converter under this subchapter. The statement must accompany the vehicle through the first retail purchase following the issuance of the statement and must include the board's toll-free telephone number that will enable the purchaser to obtain information about the condition or defect that was the basis of the order for repurchase or replacement.
- b. The manufacturer, distributor, or converter must restore the cause of the repurchase or replacement to factory specifications and issue a new 12-month, 12,000-mile warranty on the vehicle.
- c. The board shall adopt rules for the enforcement of this section.
- d. The board shall maintain a toll-free telephone number to provide information to a person who requests information about a condition or defect that was the basis for repurchase or replacement by an order of the director. The board shall maintain an effective method of providing information to a person who makes a request.

Sec.2301.611. ANNUAL REPORT ON REPURCHASED OR REPLACED VEHICLES.

- a. The department shall publish an annual report on the motor vehicles ordered repurchased or replaced under this subchapter.
- b. The report must list the number of vehicles by brand name and model and include a brief description of the conditions or defects that caused the repurchase or replacement.
- c. The department shall make the report available to the public and may charge a reasonable fee to cover the cost of the report.

Sec.2301.612. OPEN RECORDS EXCEPTION.

Information filed with the board under this subchapter is not a public record and is not subject to release under Chapter 552, Government Code, until the complaint is finally resolved by order of the board.

Sec.2301.613. NOTICE TO BUYER.

- a. The department shall prepare, publish, and distribute information concerning an owner's rights under this subchapter. The retail seller of a new motor vehicle shall conspicuously post a copy of the information in the area where its customers usually pay for repairs.
- b. The failure to provide notice as required by this section is a violation of this chapter.

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 attorneys' 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.