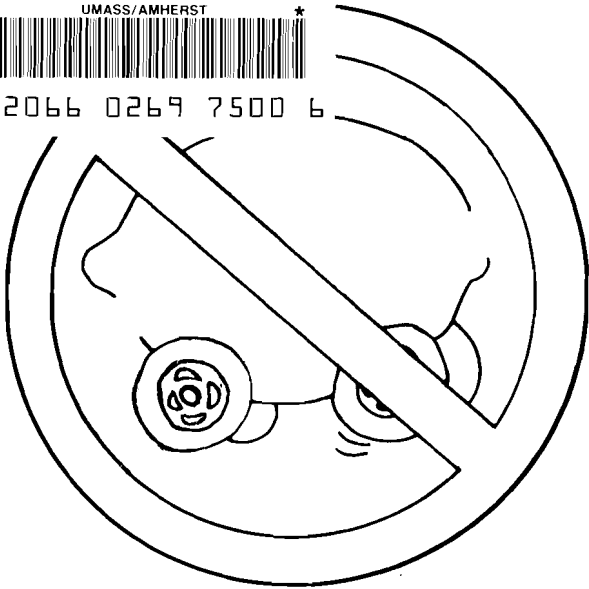


MASS. CONSUMER AFFAIRS DIVISION

# CONSUMER'S GUIDE to the New Car Lemon Law



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Executive Office of  
Consumer Affairs  
and  
Business Regulation

William F. Weld  
GOVERNOR

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1 Ashburton Place

Boston, Massachusetts 02108

4/15/2000

The Massachusetts Lemon Law, M.G.L. c. 90, §7N½, protects consumers who have serious defects in their new cars. The law defines a lemon as a new motor vehicle which has a defect that substantially impairs the use, market value, or safety of the vehicle, and which has not been repaired after a reasonable number of attempts. If a substantial defect still exists or recurs after a reasonable number of repair attempts, the consumer has the right to a refund or a replacement vehicle. Keep in mind that not all car problems are serious enough to qualify under the Lemon Law.

### **VEHICLES COVERED BY THE LEMON LAW**

Any new car, motorcycle, van or truck bought in Massachusetts from a new car dealer for personal or family purposes is covered by the Lemon Law for the “term of protection” — one year or 15,000 miles of use from the date of original delivery, whichever comes first. The law also covers vehicles that are resold during the one year or 15,000 mile term of protection.

### **VEHICLES NOT COVERED**

The following are not covered by the Lemon Law:

- leased vehicles;
- auto homes;
- vehicles built primarily for off-road use;
- any vehicle used primarily for business purposes;

The Lemon Law also does not cover vehicles with the following types of problems:

- defects which do not substantially impair the vehicle’s use, market value, or safety;
- defects caused by owner negligence;
- defects resulting from accident, or vandalism;
- defects resulting from unauthorized repair of the vehicle by a person other than the manufacturer, its agent or authorized dealer.

### **TERM OF PROTECTION**

The term of protection is one year or 15,000 miles of use from the date of original delivery, whichever comes first. This means that the defects you are complaining about and the required repair attempts must occur during this period.

### **SUBSTANTIAL IMPAIRMENT**

The Lemon Law only covers serious defects — those which substantially impair the use, market value or safety of the vehicle. The law does not list the defects which are considered substantial. You must be able to demonstrate specifically how the use, safety or market value of your vehicle is substantially impaired by the defect. For example, to prove market value impairment, you must show that your vehicle is worth at least 10 percent less than it would be without the defect. Although a defect may be annoying, it is not necessarily substantial.

### **REPAIR ATTEMPTS**

Reasonable Number of Repair Attempts: The Lemon Law gives the manufacturer, its agent or authorized dealer a “reasonable number of attempts” to repair the substantial defect. A reasonable number of attempts has been allowed if either of the following happens within one year or 15,000 miles (whichever comes first) after original delivery:

- repair is attempted three or more times for the same substantial defect, and the problem continues or recurs within the term of protection;

**OR**

- repair attempts for any substantial defect or combination of defects total 15 or more business days, not necessarily all at one time.

**NOTE:** A business day is any day that the service department of an authorized dealer is open for business.

**SAMPLE NOTICE OF FINAL OPPORTUNITY  
TO REPAIR**

**SAVE A COPY FOR YOUR RECORDS**

The defect must continue or recur after a reasonable number of repair attempts and still substantially impair your vehicle before you can take the next step in the Lemon Law process — offering the manufacturer a final repair opportunity.

**Final Repair Attempt:** Once the manufacturer or authorized dealer has made a reasonable number of attempts to repair the substantial defect (three times or 15 business days), and the problem continues or recurs, you must then give the manufacturer (not the dealer) one final opportunity, not to exceed seven business days, to fix the defect. This seven-day period begins when the manufacturer knows or should know that the three repair opportunities or 15 business days out of service limits have been met or exceeded. This is usually the date the manufacturer receives a final repair opportunity letter from you. You may notify the manufacturer of the final opportunity even after the one year or 15,000-mile term of protection ends.

You should send notification of the final opportunity to repair by certified mail, return receipt requested, to the manufacturer's regional office. (See sample.) You may get this address from the Executive Office of Consumer Affairs and Business Regulation at (617) 727-7780 or (617) 727-4061. Notifying the manufacturer directly by mail and keeping copies of your letters is the best way to document that the manufacturer was provided a final repair opportunity.

Make sure you include a daytime phone number in your notice where the manufacturer may reach you or leave a message. You should be prepared to turn over your car to the manufacturer for a repair attempt after you give the final opportunity notice.

The manufacturer may choose not to use this final opportunity to attempt repair. If after the seven business days, the substantial defect has not been repaired, or has been repaired and recurs, you have the right to a refund or replacement under the Lemon Law. If the manufacturer does not comply voluntarily, you may request an arbitration hearing.

Your Home Address  
Your Home Telephone Number  
Your Work Telephone Number  
Date

Name of Manufacturer  
Manufacturer's Address

Dear Sir or Madam:

I believe that my car is a "lemon" under the Massachusetts Lemon Law (Massachusetts General Laws, Ch. 90, §7N½). I am hereby making a written demand for relief under the Lemon Law and the Massachusetts Consumer Protection Act (Massachusetts General Laws, Ch. 93A, §9).

I purchased a (make, model, year of vehicle) on (date) from (name of dealership) in (city, state). The vehicle identification number or VIN number is (vehicle identification number). Since I bought the vehicle, I have had to return it to the dealership a total of (number of times the vehicle was returned to an authorized dealer for repairs) times. My vehicle has been out of service for repairs for a total of (total number of business days the vehicle has been out of service being repaired) business days. My vehicle has been in (name of dealership) for repairs on the following dates for repair of the following defects:

<u>(Date in/out)</u>	<u>(List problems complained of)</u>
(etc.)	(etc.)

I am having the following problems with my vehicle at this time: (list all problems the vehicle currently has).

These remaining defects substantially impair the use, market value or safety of my vehicle. I am hereby allowing you one final repair opportunity. If these repairs are not completed within seven business days of receipt of this letter, I am entitled to a replacement vehicle acceptable to me or a refund calculated in accordance with the Lemon Law.

Failure to comply with the Lemon Law is a violation of Massachusetts General Laws, Ch. 93A, and you may be subject to double or treble damages as well as attorney's fees and court costs if this matter is taken to court.

I look forward to hearing from you soon.

Sincerely,

Your Name

**Right to Repair Records:** If you have a serious problem with a new vehicle, it is very important that you keep complete and accurate records of all contacts with the manufacturer and dealer, and all receipts. You have a right to a dated, itemized bill for any repair work, including warranty repair work, under the Attorney General's Motor Vehicle Regulations (940 CMR 5.00). Be sure to ask for these bills and examine them to be sure the problem you complained about is listed.

## REPLACEMENT

If your vehicle qualifies as a lemon, the manufacturer must offer you either a refund or replacement vehicle. If the manufacturer offers you a replacement vehicle, it must be one that is acceptable to you. You are free to reject a replacement vehicle and demand a refund. **However, you cannot reject a refund and demand a replacement.** If you are given a replacement vehicle under the Lemon Law, a new one year or 15,000 mile term of protection starts from the date of delivery of that replacement vehicle.

**Cost Reimbursed:** If the manufacturer issues a replacement vehicle, it must reimburse you for the following costs:

- transfer of registration fees;
- sales tax resulting from the replacement; and
- unreimbursed towing or rental charges resulting from the defect.

**Refinancing Agreement:** If you financed your car through the manufacturer and you accept a replacement vehicle, you do not have to enter into any refinancing agreement which would create any financial obligations beyond those implied by the original agreement.

## REFUND

If you choose to get a refund, you will receive the full contract price of the vehicle including all credits and allowances for any trade-in vehicle, but a reasonable allowance for use will be

deducted. **NOTE:** If you have driven your vehicle a large number of miles, there will be a large reduction in your refund because of the use allowance.

**Reasonable allowance for use:** For vehicles other than motorcycles, use this formula:

$$\frac{\text{contract price} \times \text{mileage}}{100,000}$$

For example, for a \$10,000 car, truck or van the use allowance is 10 cents per mile:

$$\frac{\$10,000}{100,000} = .10 = 10 \text{ cents per mile}$$

For motorcycles the formula is:

$$\frac{\text{contract price} \times \text{mileage}}{25,000}$$

For example, for a \$10,000 motorcycle the use allowance is 40 cents per mile:

$$\frac{\$10,000}{25,000} = .40 = 40 \text{ cents per mile}$$

**NOTE:** You may keep your vehicle until you have been given a refund or an acceptable replacement vehicle. Miles driven during this time will be included when calculating the reasonable allowance for use.

**Costs Reimbursed:** If the manufacturer issues a refund, it must reimburse you for the following costs:

- sales tax;
- registration fees;
- finance charges on a loan;
- dealer-added options;
- unreimbursed towing or rental charges resulting from the defect;
- unused portion of an extended warranty;
- unused portion of credit insurance;
- defect-related incidental costs; and
- other incidental costs.

### **Refund/Replacement Costs Not Recoverable:**

The following are not reimbursable under the Lemon Law:

- attorney's fees;
- cost of vehicle insurance;
- excise tax;
- time lost from work;
- other consequential damages.

You can get a pro-rated refund of your excise tax from your city or town hall.

## **ASSERTING YOUR RIGHTS**

If the manufacturer will not refund your money or replace the vehicle, you have several options. You may go to arbitration, go to court or seek mediation of your complaint through the Attorney General's Office. Choose the option best suited to your particular problem.

**ARBITRATION:** Arbitration is an inexpensive and informal way to resolve your complaint. In arbitration, the consumer and the manufacturer present evidence about the condition of the vehicle to an impartial person or persons. There are two types of arbitration: state-run and manufacturer-sponsored.

**1. State-run Arbitration:** The state's Lemon Law Arbitration Program hears only Lemon Law cases. To qualify for state-run arbitration, your vehicle must meet the standards outlined in this pamphlet — three repair attempts for the same substantial defect, or a total of 15 business days out of service for repairs of any substantial defect or combination of defects, during the law's term of protection. You must have notified the manufacturer of its final opportunity for repair. If the manufacturer contacts you within seven business days of receipt of the letter, you must allow a final repair during that period. If your vehicle is still substantially impaired in use, market value or safety because the same defect recurs or still exists after that, and the manufacturer does not voluntarily offer a refund or replacement, you can apply for a Lemon Law Arbitration hearing.

The purpose of a state-run arbitration hearing is to determine whether or not your vehicle qualifies for refund or replacement under the Lemon Law. State-run arbitration is "all or nothing." If the arbitrator determines that your vehicle meets the Lemon Law standards, you will be awarded a full refund (less the use allowance and the amount of any previous settlement from the manufacturer) or replacement. If the arbitrator decides that your vehicle is not a "lemon," there will be no award. You may have rights to different remedies under other laws. (However, an arbitrator's finding against you may make further legal action more difficult.) Although you may have a serious problem, the arbitrator cannot order the manufacturer to make a partial refund, attempt additional repairs, or extend the terms of the express warranty.

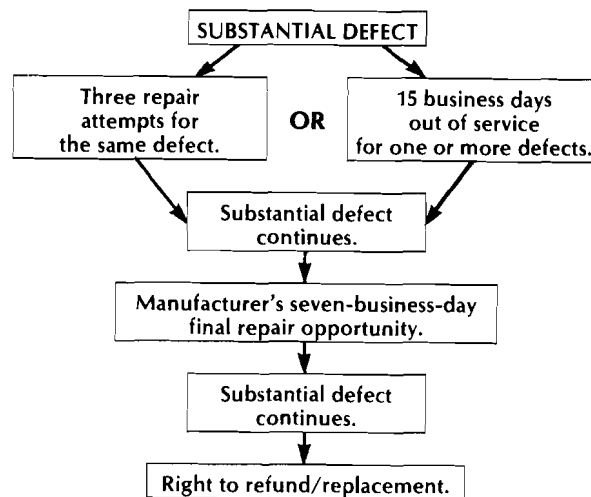
**18-Month Deadline:** The Executive Office of Consumer Affairs and Business Regulation must receive your request for arbitration within 18 months of the date of delivery of the vehicle to you, to require the manufacturer's participation. The request must be made on our official form. If you request state-run arbitration after the eighteenth month of possession, you may have your case arbitrated only if the manufacturer voluntarily agrees to participate. You can request state-run arbitration even if you have already used the manufacturer's own arbitration program.

Decisions are generally issued within 45 days of acceptance of a request for arbitration and are binding on the manufacturer, unless overturned by a court in an appeal. Within 21 days of the decision, manufacturers must either issue the award or file an appeal. Late payment of awards or frivolous appeals can result in a judge awarding double damages to the consumer.

**Applications for State-run Arbitration:** Applications are available from the Executive Office of Consumer Affairs and Business Regulation. (See the "For Help" section of this pamphlet for addresses and phone numbers.)

Please note that there is a \$45.00 filing fee which you will be required to pay before your case is accepted and a hearing scheduled. Do not send payment for the fee when you first file your claim. If the arbitrator rules in your favor, the manufacturer will include reimbursement of this fee in your arbitration award. More information on the filing fee is included with the Request for Arbitration form.

## OUTLINE OF THE LEMON LAW PROCESS



2. **Manufacturer-sponsored Arbitration:** You may request manufacturer-sponsored arbitration for Lemon Law defects, as well as other less serious problems. A manufacturer cannot require you to use its arbitration program, but if you choose to use it, the arbitrator or panel does not have to apply the Lemon Law standards. The arbitrator can order partial refunds as well as full ones. Most manufacturers are bound by the decisions of their arbitration programs. If you are dissatisfied with the results of manufacturer-sponsored arbitration, you may request state-run arbitration. For specific information on your manufacturer's arbitration program, contact its zone or regional office.

3. **Court:** You have the right to proceed to court if you have met the Lemon Law's requirements and the manufacturer refuses to refund your money or replace your vehicle with one that is acceptable to you, or if you are not satisfied with your arbitration decision.

Failure to comply with the Lemon Law is an unfair and deceptive act under the Massachusetts Consumer Protection Act, Ch. 93A, which may entitle you to double or treble damages, plus court costs and reasonable attorney's fees.

If you are considering court action, you should consult an attorney. You or your attorney must begin by sending the manufacturer a 30-Day Demand Letter, a procedural requirement of chapter 93A, section 9.

## FOR HELP

### Information on your rights under the Lemon Law:

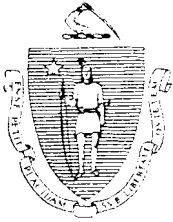
Executive Office of Consumer Affairs and  
Business Regulation  
One Ashburton Place, Room 1411  
Boston, MA 02108 (617) 727-7780

### State-Run Arbitration Information/Application Forms:

Lemon Law Arbitration Program  
Executive Office of Consumer Affairs and  
Business Regulation  
One Ashburton Place, Room 1411  
Boston, MA 02108 (617) 727-4061

### To File a Complaint Against a Dealer or Manufacturer:

Consumer Protection Division  
Department of the Attorney General  
One Ashburton Place, 19th floor  
Boston, MA 02108 (617) 727-8400



Commonwealth of Massachusetts  
Executive Office of Consumer Affairs  
One Ashburton Place  
Boston, Massachusetts 02108

WILLIAM F. WELD  
GOVERNOR

ARGEO PAUL CELLUCCI  
LIEUTENANT GOVERNOR

GLORIA CORDES LARSON  
SECRETARY

617 / 727-7755

NEW CAR LEMON LAW 1991

Enclosed you will find the New Car Lemon Law pamphlet. Please review the Guide carefully. It outlines which vehicles qualify for a refund as well as the arbitration process if the manufacturer will not give you a refund.

The Lemon Law Arbitration program is administered by the American Arbitration Association. The cost to file is \$300.00, but if you win, the filing fee will be reimbursed by the manufacturer.

Information on your rights under the Lemon Law:

Executive Office of Consumer Affairs  
One Ashburton Place, Room 1411  
Boston, MA 02108  
(617) 727-7780

Consumer Protection Division  
Department of the Attorney General  
131 Tremont Street  
Boston, MA 02111  
(617) 727-8400

If you filed a case or need hearing information:

American Arbitration Association  
133 Federal Street  
Boston, MA 02110  
(617) 451-6600

**Lemon Law Arbitration Program**  
**Commonwealth of Massachusetts**  
**Executive Office of Consumer Affairs**  
**and Business Regulation**  
**One Ashburton Place, Boston, MA 02108**