

Delaware Lemon Law

Title 6, Subtitle II, Chapter 50, Sections 5001 - 5009

§ 5001. Definitions.

As used in this chapter:

(1) "Consumer" means the purchaser, other than for purposes of resale, of an automobile; a person to whom an automobile is transferred during the duration of an express warranty applicable to the automobile; or any other person entitled by the terms of the warranty to enforce the obligations of the warranty.

(2) "Dealer" means a person actively engaged in the business of buying, selling or exchanging automobiles at retail and who has an established place of business.

(3) "Manufacturer" means a person engaged in the business of manufacturing, assembling or distributing automobiles, who will, under normal business conditions during the year, manufacture, assemble or distribute to dealers at least 10 new automobiles.

(4) "Manufacturer's express warranty" or "warranty" means the written warranty of the manufacturer of a new automobile of its condition and fitness for use, including any terms or conditions precedent to the enforcement of obligations under that warranty.

(5) "Automobile" means any passenger motor vehicle, except motorcycles, which is leased or bought in Delaware or registered by the Division of Motor Vehicles in the Department of Public Safety except the living facilities of motor homes.

(6) "Nonconformity" means a defect or condition which substantially impairs the use, value or safety of an automobile.

(7) "Lien" means a security interest in an automobile.

(8) "Lienholder" means a person with a security interest in an automobile pursuant to a lien.

(64 Del. Laws, c. 173, § 1; 66 Del. Laws, c. 36, § 1.)

§ 5002. Duty to repair nonconforming automobiles.

If a new automobile does not conform to the manufacturer's express warranty, and the consumer reports the nonconformity to the manufacturer or its agent or dealer during the term of the warranty or during the period of 1 year following the date of original delivery of an automobile to the consumer, whichever is earlier, the manufacturer shall make, or arrange with its dealer or agent to make, within a reasonable period of time, all repairs necessary to conform the new automobile to the warranty, notwithstanding that the repairs or corrections are made after the expiration of the term of the warranty or the 1-year period.

(64 Del. Laws, c. 173, § 1.)

§ 5003. Remedies upon failure to repair.

(a) If the manufacturer, its agent or its authorized dealer does not conform the automobile to any applicable express warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer shall either replace the automobile with

a comparable new automobile acceptable to the consumer or repurchase the automobile from the consumer and refund to the consumer the full purchase, including all credits and allowances for any trade-in vehicle; provided, however, that the consumer shall have the unqualified right to decline a replacement automobile and to demand instead a repurchase.

(b) In instances in which an automobile is replaced by a manufacturer under this section, said manufacturer shall accept return of the automobile and reimburse the consumer for any incidental costs, including dealer preparation fees, fees for transfer of registration, sales taxes or other charges or fees incurred by the consumer as a result of such replacement. In instances in which an automobile which was financed by the manufacturer or its subsidiary or agent is replaced under this section, said manufacturer, subsidiary or agent shall not require the consumer to enter into any refinancing agreement for a replacement automobile which would create any financial obligations upon such consumer beyond those created by the original financing agreement.

(c) In instances in which a refund is tendered under this section, the manufacturer shall accept return of the automobile from the consumer and shall reimburse the consumer for related purchase costs, including sales taxes, registration fees and dealer preparation fees, less:

(1) A reasonable allowance for the consumer's use of the automobile, not to exceed the full purchase price of the automobile multiplied by a fraction which consists of the number of miles driven before the consumer first reported the nonconformity to the manufacturer, its agent or dealer divided by 100,000 miles; and

(2) A reasonable allowance for damage not attributable to normal wear and tear, but not to include damage resulting from a nonconformity.

(d) Refunds shall be made to the consumer, and lienholder, if any, as their interests may appear.

(e) No authorized dealer shall be held liable by the manufacturer for any refunds or automobile replacements in the absence of evidence indicating that dealership repairs have been carried out in a manner inconsistent with the manufacturer's instructions.

(64 Del. Laws, c. 173, § 1; 66 Del. Laws, c. 36, § 3.)

§ 5004. Presumptions.

(a) It shall be presumed that a reasonable number of attempts have been undertaken to conform a new automobile to the manufacturer's express warranty if, within the warranty term or during the period of 1 year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date:

(1) Substantially the same nonconformity has been subject to repair or correction 4 or more times by the manufacturer, its agents or its dealers and the nonconformity continues to exist; or

(2) The automobile is out of service by reason of repair or correction of a nonconformity by the manufacturer, its agents or its dealers for a cumulative total of more than 30

calendar days since the original delivery of the motor vehicle to the consumer. This 30-day limit shall commence with the first day on which the consumer presents the automobile to the manufacturer, its agent or dealer for service of the nonconformity and a written document describing the nonconformity is prepared by the manufacturer, its agent or dealer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer, its agents or its dealers, including war, invasion, strike, fire, flood or other natural disaster.

(b) The presumption provided in this section shall not apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and has had an opportunity to repair or correct the nonconformity; provided, however, that if the manufacturer does not directly attempt or arrange with its dealer or agent to repair or correct the nonconformity, the manufacturer may not defend a claim by a consumer under this chapter on the ground that the agent or dealer failed to properly repair or correct the nonconformity or that the repairs or corrections made by the agent or dealer caused or contributed to the nonconformity.

(64 Del. Laws, c. 173, § 1; 66 Del. Laws, c. 36, § 4.)
§ 5005. Costs and attorney's fees in breach of warranty actions.

In any court action brought under this chapter by a consumer against the manufacturer of an automobile, or the manufacturer's agent or authorized dealer, based upon the alleged breach of an express warranty made in connection with the sale of such automobile, the court, in its discretion, may award to the plaintiff his costs and reasonable attorney's fees or, if the court determines that the action is brought in bad faith or is frivolous in nature, may award reasonable attorney's fees to the defendant.

(64 Del. Laws, c. 173, § 1; 66 Del. Laws, c. 36, § 5.)
§ 5006. Affirmative defense to claim.

It shall be an affirmative defense to a claim under this chapter that the alleged nonconformity does not substantially impair the use, value or safety of the new automobile or that the nonconformity is the result of abuse or neglect or of unauthorized modifications or alterations of the new automobile by anyone other than the manufacturer, its agent or dealer.

(64 Del. Laws, c. 173, § 1.)
§ 5007. Informal dispute settlement procedure.

(a) If a manufacturer has established an informal settlement procedure that has a certificate of approval by the Division of Consumer Protection, the remedies provided by this chapter shall not be available to any consumer who has not first resorted to such procedure. In the event a manufacturer's informal dispute settlement procedure does not have a certificate of approval from the Division of Consumer Protection, a consumer may immediately and directly seek the remedies provided by this chapter.

(b) The Division of Consumer Protection shall annually evaluate the operation of informal dispute settlement procedures established by manufacturers and shall issue an annual certificate of approval to those manufacturers whose procedures comply with Title 16, Code of Federal Regulations, Part 703 and with subsections (c), (d) and (e) of this section. The Division of Consumer Protection shall suspend the certification of, or decertify, any informal dispute settlement which no longer complies with said provisions.

(c) Any manufacturer who has established an informal settlement procedure shall file with the Division of Consumer Protection a copy of each decision of the informal dispute settlement procedure within 30 days after the decision is rendered.

(d) In order to obtain the certification of the Division of Consumer Protection, a manufacturer's informal dispute settlement procedure shall not convene any informal dispute settlement hearing or meeting outside the State and shall refrain from any practices which:

(1) Delay a decision in any dispute beyond 65 days after the date on which the consumer initially resorts to the informal dispute settlement procedure by written notification that a dispute exists; or

(2) Delay performance of remedies awarded in a settlement beyond 30 days after receipt of notice of the consumer's acceptance of the decision; provided, however, that such time limits shall not include periods of time when the consumer or the consumer's car is unavailable for the remedies specified in the settlement; or

(3) Require the consumer to make the automobile available more than once for inspection by a manufacturer's representative or more than once for repair of the same nonconformity; or

(4) Fail to consider in decisions any remedies provided by this chapter, such remedies to include:

a. Repair, replacement and refund;

b. Reimbursement for related purchase costs; or

(5) Require the consumer to take any action or assume any obligation not specifically authorized under the provisions of Title 16, Code of Federal Regulations, Part 703.

(e) A manufacturer desiring annual certification of an informal dispute settlement procedure shall make application to the Division of Consumer Protection on forms developed by, and shall provide such information as required by, the Division of Consumer Protection.

(64 Del. Laws, c. 173, § 1; 66 Del. Laws, c. 36, § 6; 69 Del. Laws, c. 291, § 98(c).) § 5008. Remedies cumulative.

Nothing in this chapter shall in any way limit the rights or remedies available to a consumer under Subtitle I of this title.

(64 Del. Laws, c. 173, § 1.) § 5009. Enforcement.

In addition to any remedies the consumer may have at law or in equity, a violation of this chapter shall be an unlawful practice as defined in § 2513 of this title. The Division of Consumer Protection shall promulgate rules and regulations in order to implement the purposes of this chapter.

(64 Del. Laws, c. 173, § 1; 66 Del. Laws, c. 36, § 7; 69 Del. Laws, c. 291, § 98(c).)