

South Carolina Lemon Law Statutes

Title 56, Chapter 28

SECTION 56-28-10. Definitions.

As used in this chapter:

- (1) "Consumer" means the purchaser or lessor, other than for purposes of resale, of a motor vehicle normally used for personal, family, or household purposes and subject to the manufacturer's express warranty, and any other person entitled by the warranty to enforce the obligations of the warranty.
- (2) "Manufacturer" means any person, resident, or nonresident, who manufactures or assembles or imports or distributes new motor vehicles which are to be sold in the State.
- (3) "Manufacturer's express warranty" or "warranty" means the written warranty, so labeled, of the manufacturer of a new motor vehicle, including any terms or conditions precedent to the enforcement of obligations under that warranty.
- (4) "Motor vehicle" means a private passenger motor vehicle, as classified by Section 56-3-630, but excluding the living portion of recreational vehicles and off-road vehicles, which is sold and registered in this State.
- (5) A "new motor vehicle" means a private passenger motor vehicle which has been sold to a new motor vehicle dealer by a manufacturer and which has not been used for other than demonstration purposes and on which the original title has not been issued from the new motor vehicle dealer.
- (6) "Nonconformity" means a defect or condition that substantially impairs the use, value, or safety of a motor vehicle, but does not include a defect or condition that results from an accident, modification, or alteration of the motor vehicle by persons other than the manufacturer or its authorized service agent.

SECTION 56-28-20. Manufacturers to provide annual written summaries of certain motor vehicles; forms; records to be made available; penalties.

Every manufacturer, in a format and a form that must be mailed annually to each manufacturer approved by the Administrator of the Department of Consumer Affairs, shall provide a written summary of all motor vehicles repurchased or replaced under this chapter no less than once each calendar year. In addition, every manufacturer shall make available any paperwork, reports, or other information regarding vehicles subject to this chapter upon request by the administrator. Failure to supply either the written summaries of repurchased vehicles or respond to reasonable requests for information by the administrator subjects the manufacturer to an administrative penalty not to exceed one thousand dollars for each violation which the administrator in his discretion may impose.

SECTION 56-28-30. Nonconformity with express warranties; notice required; repairs required.

If a new motor vehicle does not conform to all applicable express warranties within the first twelve months of purchase or the first twelve thousand miles of operation, whichever occurs first, and the consumer reports the nonconformity to the manufacturer or its agent during the term of the express warranties, the manufacturer, or its agent, shall make those repairs as are necessary to conform the vehicle to the express warranties at no cost to the consumer, notwithstanding the fact that the repairs are made after the expiration of the term.

SECTION 56-28-40. Replacement of motor vehicle; refund of purchase price.

If, within the term specified in Section 56-28-30, the manufacturer, through its agents or authorized dealer, is unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use, market value, or safety of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a comparable motor vehicle, or at its option, accept return of the vehicle from the consumer and refund to the consumer the full purchase price as delivered including applicable finance charges, sales taxes, license fees, registration fees, and any other similar governmental charges, less a reasonable allowance for the consumer's use of the vehicle. Refunds must be made to the consumer and lienholder, if any, as their interest may appear on the record of ownership kept by the Division of Motor Vehicles. A reasonable allowance for use must be that amount directly attributable to use by the consumer before his first report of the nonconformity to the manufacturer, agent, or dealer, and must be calculated by multiplying the full purchase price of the vehicle by a fraction having as its denominator one hundred twenty thousand and having as its numerator the number of miles that the vehicle traveled before the first report of nonconformity. The consumer is not entitled to a refund or replacement if:

- (1) the nonconformity does not substantially impair the motor vehicle's use, market value, or safety;
- (2) the nonconformity is the result of abuse, neglect, or modification or alteration of the motor vehicle by the consumer.

SECTION 56-28-50. Presumption of attempts to conform; information to be provided to consumers; obligations of manufacturer; costs and attorney's fees; notice requirements.

(A) It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if:

- (1) the same nonconformity has been subject to repair three or more times by the manufacturer, or its agent, within the express warranty term, but the nonconformity continues to exist; or

(2) the vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days during the express warranty. The term of an express warranty, and the twenty-day period must be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, fire, flood, or other natural disaster.

(B) The manufacturer must provide information regarding consumer complaint remedies with each new motor vehicle. It is the responsibility of the consumer, or his representative, before availing himself of the provisions of this chapter, to give written notification to the manufacturer of the need for the repair of the nonconformity, in order to allow the manufacturer a final opportunity to cure the alleged defect if the manufacturer has clearly and prominently informed the consumer of the requirement of written notification to the manufacturer at the time of sale. The manufacturer, within ten business days, must notify the consumer of a reasonably accessible repair facility of a franchised new vehicle dealer to conform the new vehicle to the express warranty. After delivery of the new vehicle to an authorized repair facility by the consumer, the manufacturer must attempt immediately to repair the vehicle within a period not to exceed ten business days in order to conform the new motor vehicle to the express warranty. If the manufacturer is unable to repair properly the vehicle within the final ten-business-day period, the manufacturer must replace the vehicle with an identical or reasonably equivalent vehicle or refund the purchase price subject to the provisions of Section 56-28-40.

(C) Upon notification from the consumer that the new vehicle has not been conformed to the express warranty, the manufacturer shall inform the consumer if an informal dispute settlement procedure has been established by the manufacturer as enumerated in Section 56-28-60. However, if prior notice by the manufacturer of an informal dispute settlement procedure has been given, no further notice is required.

(D) Any consumer who finally prevails in any action brought under this chapter, 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 attorney's fees based on actual time expended) and other such costs which are directly attributable to the nonconformity of the motor vehicle determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion determines that such an award of attorney's fees would be inappropriate.

(E) All written notifications required by this section shall be sent by registered, certified, or express mail.

SECTION 56-28-60. Informal dispute settlement procedures.

If a manufacturer has established an informal dispute settlement procedure which substantially complies with Title 16 of the Code of Federal Regulations, Part 703, or if the manufacturer participates in a consumer-industry appeals, arbitration, or mediation

panel or board, whose decisions are binding on the manufacturer, the provisions of Section 56-28-40 concerning refunds or replacement do not apply to any consumer who has not first resorted to those procedures or to the alternate procedure provided in Section 56-28-90.

SECTION 56-28-70. Limitation of actions.

Any action brought under this chapter must be commenced within three years following the date of original delivery of the motor vehicle to the consumer.

SECTION 56-28-80. Construction of chapter; reimbursement from dealer prohibited; exception.

Nothing in this chapter may be construed as imposing any liability on a motor vehicle dealer or creating a cause of action by a consumer against a motor vehicle dealer under Section 56-28-40. The manufacturer shall not charge back or require reimbursement by the dealer for any costs, including, but not limited to, any refunds or vehicle replacements incurred by the manufacturer arising out of this chapter in the absence of evidence that the related repairs had been carried out by the dealer in a manner substantially inconsistent with the manufacturer's published instructions.

SECTION 56-28-90. State arbitration board may be established.

The Administrator of the Department of Consumer Affairs may establish by regulation a state arbitration board consisting of five members appointed by him to serve at his pleasure. The board shall review matters involving manufacturers that have not created an informal dispute settlement procedure that substantially complies with Title 16 of the Code of Federal Regulations, Part 703. The cost of the arbitration board must be borne by the manufacturer of the vehicle purchased or leased by the consumer.

SECTION 56-28-100. Repurchased vehicles not to be resold; exceptions.

Any vehicle required to be repurchased by a manufacturer under this chapter or any other provision of law relating to motor vehicle warranties may not be resold, reassigned, or retransferred, either at wholesale or retail in this State, unless:

(1) The manufacturer notifies the Administrator of the Department of Consumer Affairs within thirty calendar days, in writing, of the vehicle identification number of that motor vehicle, the reason that the vehicle was repurchased, and provides a statement that all necessary repairs and adjustments have been made and that the vehicle meets acceptable operating standards.

(2) The manufacturer provides a written warranty to the subsequent retail purchaser of the vehicle covering the vehicle for twelve months or twelve thousand miles. The warranty must expressly include any component related to the manufacturer's decision to repurchase the vehicle.

(3) The manufacturer shall disclose to any dealer or other wholesale purchaser of the fact that the vehicle was required to be repurchased under this chapter or another provision of law relating to motor vehicle warranties.

SECTION 56-28-110. Notification to subsequent purchasers; penalties for failure to notify.

Every subsequent purchaser must be notified by the seller of the fact that the vehicle was required to be repurchased under the terms of this chapter or another provision of law relating to motor vehicle warranties. Failure to notify properly any purchaser of the requirements of this section subjects the seller to an administrative penalty to be imposed by the administrator up to a maximum of five hundred dollars for each vehicle.

South Dakota Lemon Law Statutes

Title 32, Chapter 32-6D-1 - 11

§ 32-6D-1. Definitions.

Terms used in this chapter mean:

(1) "Consumer," the purchaser, other than for purposes of resale, of a new or previously untitled motor vehicle used in substantial part for personal, family or household purposes, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty;

(2) "Express warranty," a written warranty, so labeled, issued by the manufacturer of a new motor vehicle, including any terms or conditions precedent to the enforcement of obligations under that warranty;

(3) "Lemon law rights period," the period ending one year after the date of the original delivery of a motor vehicle to a consumer or the first twelve thousand miles of operation, whichever first occurs;

(4) "Manufacturer," the person, firm or corporation engaged in the business of manufacturing, importing or distributing motor vehicles to be made available to a motor vehicle dealer for retail sale;

(5) "Motor vehicle," every vehicle intended primarily for use and operation on the public highways which is self-propelled. The term does not apply to any motor home or to any motor vehicle having a manufacturer's gross vehicle weight rating of ten thousand pounds or more;

(6) "Motor vehicle dealer" or "authorized dealer," any person operating under a dealer agreement from a manufacturer and licensed pursuant to chapter 32-6B;

(7) "Nonconforming condition," any condition of a motor vehicle which is not in conformity with the terms of any express warranty issued by the manufacturer to a consumer and which significantly impairs the use, value or safety of the motor vehicle and occurs or arises solely in the course of the ordinary use of the motor vehicle, and which does not arise or occur as a result of abuse, neglect, modification or alteration of the motor vehicle not authorized by the manufacturer, nor from any accident or other damage to the motor vehicle which occurs or arises after the motor vehicle was delivered by an authorized dealer to the consumer;

(8) "Notice of a nonconforming condition," a written statement delivered to the manufacturer and which describes the motor vehicle, the nonconforming condition, and all previous attempts to correct such nonconforming condition by identifying the person who made the attempt and the time the attempt was made.

§ 32-6D-2. Notice of nonconforming condition - Timeliness - Obligation to repair.

If a new motor vehicle does not conform to any applicable express warranty and the consumer delivers the motor vehicle to the manufacturer or its authorized dealer and gives notice of the nonconforming condition during the lemon law rights period, the manufacturer of the motor vehicle shall make the necessary repairs to the motor vehicle to remedy any such nonconforming condition. The repairs are required even after the expiration of the lemon law rights period if notice of the nonconforming condition was first given during the lemon law rights period. However, the manufacturer's obligation to repair the nonconforming condition does not extend beyond the period of twenty-four months following delivery of the vehicle or twenty-four thousand miles, whichever occurs first.

§ 32-6D-3. Replacement of unreparable vehicle - Refund.

If, after reasonable attempts, the manufacturer or its authorized dealer is unable to conform the motor vehicle to any express warranty by repairing or correcting a nonconforming condition of the motor vehicle which first occurred during the lemon law rights period, the manufacturer shall, at the option of the consumer, replace the motor vehicle with a comparable new motor vehicle or shall accept return of the vehicle from the consumer and refund to the consumer the following:

- (1) The full contract price including charges for undercoating, dealer preparation and transportation charges, and installed options, plus the nonrefundable portions of extended warranties and service contracts;
- (2) All collateral charges, including excise tax, license and registration fees and similar government charges;
- (3) All finance charges incurred by the consumer after he first reported the nonconformity to the manufacturer or its authorized dealer; and
- (4) Any incidental damages which shall include the reasonable cost of alternative transportation during the period that the consumer is without the use of the motor vehicle because of the nonconforming condition.

§ 32-6D-4. Allowance for use of vehicle offset against monetary recovery.

Refunds shall be made to the consumer and any lien holders, as their interests may appear. There shall be offset against any monetary recovery of the consumer a reasonable allowance for the consumer's use of the vehicle. A reasonable allowance for use is that amount directly attributable to use by the consumer before his first report of the nonconformity to the manufacturer or authorized dealer and shall be calculated by multiplying the full purchase price of the motor vehicle by a fraction having as its

denominator one hundred thousand and having as its numerator the number of miles that the vehicle traveled before the first report of nonconformity.

§ 32-6D-5. Reasonable attempts to correct nonconforming condition.

It is presumed that reasonable attempts to correct a nonconforming condition have been allowed by the consumer if, during the period of twenty-four months following delivery of the vehicle or twenty-four thousand miles, whichever first occurs, either of the following events occurred:

(1) The same nonconforming condition was subject to repair attempts four or more times by the manufacturer, or its authorized dealers, at least one of which occurred during the lemon law rights period, plus a final attempt by the manufacturer, and the same nonconforming condition continues to exist; or

(2) The motor vehicle was out of service and in the custody of the manufacturer or an authorized dealer due to repair attempts including the final repair attempt, one of which occurred during the lemon law rights period, for a cumulative total of thirty calendar days, unless the repair could not be performed because of conditions beyond the control of the manufacturer or authorized dealers, such as war, invasion, strike, fire, flood or other natural disaster.

§ 32-6D-6. Civil action against manufacturer.

A consumer sustaining damages as a proximate consequence of the failure by a manufacturer to perform its obligations imposed under this chapter may bring a civil action against the manufacturer to enforce the provisions of this chapter. Prior to the commencement of any such proceeding a consumer shall give notice of a nonconforming condition by certified mail to the manufacturer and demand correction or repair of the nonconforming condition. If at the time the notice of a nonconforming condition is given to the manufacturer, a presumption has arisen that reasonable attempts to correct a nonconforming condition have been allowed, the manufacturer shall be given a final opportunity to cure the nonconforming condition. The manufacturer shall within seven calendar days of receiving the written notice of nonconforming condition notify the consumer of a reasonably accessible repair facility. After delivery of the new vehicle to the authorized repair facility by the consumer, the manufacturer shall attempt to correct the nonconforming condition and conform the vehicle to the express warranty within a period not to exceed fourteen calendar days. If a manufacturer has established an informal dispute settlement procedure conducted within the state which is in compliance with federal rules and regulations, a consumer shall first exhaust any remedy afforded to the consumer under the informal dispute procedure of the manufacturer before a cause of action may be instituted under the provisions of this chapter.

§ 32-6D-7. Affirmative defenses to claim against manufacturer.

It is an affirmative defense to any claim against the manufacturer under this chapter that:

(1) An alleged nonconforming condition does not significantly impair the use, market value or safety of the motor vehicle; or

(2) A nonconforming condition is a result of abuse, neglect, or any modification or alteration of a motor vehicle by a consumer that is not authorized by the manufacturer.

§ 32-6D-8. Attorney fees.

If the manufacturer has breached its obligations imposed under this chapter, the consumer may recover, in addition to the remedy provided under §§ 32-6D-2 to 32-6D-5, inclusive, an additional award for reasonable attorney fees.

§ 32-6D-9. Resale of returned vehicle.

If a motor vehicle has been returned to the manufacturer under the provisions of this chapter or a similar statute of another state, whether as the result of a legal action or as the result of an informal dispute settlement proceeding, it may not be resold in this state unless:

(1) The manufacturer discloses in writing to the subsequent purchaser the fact that the motor vehicle was returned under the provisions of this chapter and the nature of the nonconformity to the vehicle warranty; and

(2) The manufacturer returns the title of the motor vehicle to the department of revenue advising of the return of the motor vehicle under provisions of this chapter with an application for title in the name of the manufacturer. The department shall brand the title issued to the manufacturer and all subsequent titles to the motor vehicle with the following statement: "This vehicle was returned to the manufacturer because it did not conform to its warranty."

§ 32-6D-10. Liability of dealer.

Nothing in this chapter imposes any liability upon a motor vehicle dealer or authorized dealer or creates a cause of action by a consumer against a motor vehicle dealer or authorized dealer. No manufacturer may charge back or require reimbursement by a motor vehicle dealer or authorized dealer for any costs, including any refunds or vehicle replacements, incurred by the manufacturer arising out of this chapter.

§ 32-6D-11. Time limit for action.

Any action brought under this chapter against the manufacturer shall be commenced within three years following the date of original delivery of the motor vehicle to the consumer.