

## CALIFORNIA LEMON LAW – A QUICK GUIDE

Written by Attorney Vadim Liberman

Since the 1980s, California has made available to its consumers a “Lemon Law” relief program known as the Song-Beverly Consumer Act (California Civil Code Section 1793.2). The law, which provides protection for owners of both purchased and leased vehicles, requires that if the manufacturer or its authorized dealer, is unable to service or repair a new motor vehicle to meet the terms of the warranty after a **reasonable number** of repair attempts, the manufacturer is required to promptly replace the vehicle or return the purchase price to the buyer/lessee, who is completely free to choose whether to accept a replacement or a refund. The repurchase amount must also include sales tax, license and registration fees and incidental damages that the buyer may have incurred such as towing or rental car costs. The consumer will be charged for his or her use of the vehicle. The amount that may be charged for use is determined by multiplying the actual price of the new vehicle by a fraction having as its denominator 120,000 and as its numerator the number of miles traveled by the vehicle before it was *first* brought in for correction of the problem. For example, if the car had traveled 12,000 miles before it was first brought in for a repair of the problem, 10% ( $12,000/120,000 = 10\%$ ) of the purchase price will be subtracted from the amount to be reimbursed. There is a common misconception that the law applies only during the first 18 months or 18,000 miles. ***The law applies for the entire period of the warranty.*** For example, if your vehicle is covered by a five-year warranty and you discover a defect after four years, the manufacturer will have to replace the vehicle or reimburse you if the vehicle cannot be fixed after a **reasonable number of attempts** to do so. □

What is considered a reasonable number of repair attempts will depend on the circumstances including the seriousness of the defect. For example, one or two repair attempts may be considered reasonable for serious safety defects such as stalling, defective brakes or leaking fluids. A special provision, often called the "Lemon Law," helps determine what is a reasonable number of repair attempts for problems that substantially impair the use, value, or safety of the vehicle. The "Lemon Law" applies to these problems if they arise during the first 18 months after the consumer received delivery of the vehicle or within the first 18,000 miles on the odometer, whichever occurs first. During the first 18 months or 18,000 miles, the "Lemon Law" presumes that a manufacturer has had a reasonable number of attempts to repair the vehicle if *either* (1) The same problem results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven and the problem has been subject to repair two or more times by the manufacturer, and the consumer has at least once directly notified the manufacturer of the need for the repair of the problem as provided in the warranty or owner's manual or (2) The same problem has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the problem as provided in the warranty or owner's manual or (3) The vehicle is out of service because of the repair of any number of problems by the manufacturer or its agents for a cumulative total of more than 30 days since delivery of the vehicle. But the "Lemon Law" presumption is only a guide and not an absolute rule. A judge or arbitrator can assume that the manufacturer has had a reasonable number of chances to repair the vehicle if all of the conditions are met. The manufacturer, however, has the right to try to prove that it should have the chance to attempt additional repairs, and the consumer

has the right to show that fewer repair attempts are reasonable under the circumstances. □

Lemon law applies to a new motor vehicle that is bought or used primarily for personal, family or household purposes. But in 2001 the law has been expanded to apply to a new motor vehicle with a gross vehicle weight under 10,000 pounds that is bought or used primarily for business purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state. The law discussed above applies to "new motor vehicles." The term "new motor vehicle" includes not only cars but also trucks, SUV's, vans and motorcycles covered by a manufacturer's warranty and used primarily for personal, family or household use. For example, a three-year old used car sold with the remaining two-year portion of a manufacturer's five-year new car warranty would be treated as a new motor vehicle.

One other question often heard from car buyers is whether one has to contact the manufacturer to allow them to fix the problem before beginning the lemon law claim process. The answer is no, because the taking of the vehicle to the authorized dealer for a reasonable number of warranty repairs in itself constitutes notice to the manufacturer. Another question often heard from buyers or lessees is: do I have to first request arbitration with the manufacturer of the vehicle before demanding a replacement or refund? The answer is again no, there is no such requirement. Arbitration usually leads to nothing but an opportunity for the manufacturer to get another shot at repairing your vehicle and therefore sometimes proves to be nothing but a delay tactic. The third common question is: what if I do not want a replacement or refund and want to keep my vehicle instead? You may be entitled to a cash settlement, whereby you can keep your vehicle without having a "Lemon Law Buyback" designation on your title, while getting an amount of money from the manufacturer to compensate you for the defect and other expenses we discussed above.

Therefore even if your vehicle was purchased "used" but is still covered by warranty, even if it has more than 18,000 miles or is older than 18 months and even if it is utilized in your business, you may be eligible for the protections afforded by the Lemon Law of the Song-Beverly Consumer Act.

This article was written by Vadim Liberman, an attorney who for over 20 years has been representing California consumers. He can be reached at his law firm, Liberman Law Group at (877) 399 - 5877 toll free or at (323) 931-5577, or through his website <http://www.la-accidentlawyers.com>