

New Mexico Lemon Law Summary

EXECUTIVE SUMMARY	
TIME PERIOD FOR FILING CLAIMS	Not specified. An action must be commenced within 18 months following original delivery to the consumer. If consumer first resorts to an informal dispute settlement procedure, the consumer must file within 90 days following the final action of the informal dispute settlement procedure.
ELIGIBLE VEHICLE	A passenger motor vehicle, including an automobile, pickup truck, motorcycle, and van, that (1) is sold and registered in the state; (2) is normally used for personal, family or household purposes; and (3) has a gross vehicle weight of less than 10,000 pounds.
ELIGIBLE CONSUMER	(1) Purchaser , for the purposes other than resale, of a new or used motor vehicle normally used for personal, family, or household purposes; (2) any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle; and (3) any other person entitled by the terms of the warranty to enforce its obligations. Appears not to cover lessees.
TIME PERIOD FOR FIRST OCCURRENCE OR NOTICE	Earlier of the term of the express warranties or one year following original delivery to a consumer.
TIME PERIOD FOR REASONABLE NUMBER OF ATTEMPTS TO REPAIR	Earlier of the term of the express warranties or one year following original delivery to a consumer.
PRESUMPTION OR DEFINITION	Presumption: during earlier of the express warranty or one year following original delivery, either (1) four or more repair attempts or (2) out of service for 30 or more business days.
NOTICE TO MANUFACTURER	For presumption to apply; prior direct written notification from or on behalf of the consumer.
FINAL OPPORTUNITY TO REPAIR	Not specified.
REASONABLE ALLOWANCE	Both refund and replacement: use by the consumer prior to first report of nonconformity to the manufacturer, agent or dealer, and any subsequent period when motor vehicle not out of service by reason of repair.

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DISPUTE RESOLUTION	Before seeking refund or replacement, consumer must resort to manufacturer's program if it exists and complies with 16 C.F.R. Part 703. Attorney General may determine compliance.
DISCLOSURE TO SUBSEQUENT PURCHASER	Yes.
TITLE BRANDING	No.

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1. Citation	New Mexico Stat. Ann. §§ 57-16A-1 through 57-16A-9.
2. Motor vehicle covered	Covers a passenger motor vehicle, including an automobile, pickup truck, motorcycle, and van, that (1) is sold and registered in the state; (2) is normally used for personal, family or household purposes; and (3) has a gross vehicle weight of less than 10,000 pounds.
3. Consumer covered	(1) The purchaser, for the purposes other than resale, of a new or used motor vehicle normally used for personal, family or household purposes; (2) Any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle; and (3) Any other person entitled by the terms of the warranty to enforce its obligations. Appears not to cover lessees.
4. Nonconformity defined	Not defined. Any defect or condition that substantially impairs the use and market value of the motor vehicle to the consumer is referred to as a <i>nonconformity</i> .
5. Warranty defined	"Express warranty" is any written affirmation of the fact of promise made by a manufacturer to a consumer in connection with the sale of new or used motor vehicles that relates to the nature of the material or workmanship or to a specified level of performance over a specified period of time, including any terms or conditions precedent to the enforcement of obligations pursuant to the warranty. A used motor vehicle dealer shall not exclude, modify, or disclaim the implied warranty of merchantability, or limit remedies for breach of the implied warranty of merchantability before the earlier of 15 days or 500 miles after the vehicle's delivery.
6. Lemon law rights period	Not defined.
7. Manufacturer's obligation to repair	If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent or authorized dealer during the term of the express warranties or a period of one year following the date of the new motor vehicle's original delivery to a consumer, whichever comes first, then the manufacturer, its agent or authorized dealer must make the necessary repairs to conform the vehicle to the express warranties.

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8. Manufacturer's obligation to repurchase or replace	<p>If the manufacturer, its agent, or authorized dealer is unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any nonconformity after a <i>reasonable number of repair attempts</i>, the manufacturer must either replace or repurchase the motor vehicle.</p> <p>[Note: See Section 21 discussing dealer liability for the provisions of the lemon law regarding a used motor vehicle.]</p>
9. Criteria for reasonable number of repair attempts	<p>Presumed if, during the express warranty term or a period of one year following the date of the motor vehicle's original delivery to a consumer, whichever is the earlier date, either of the following occurs:</p> <ol style="list-style-type: none"> (1) The same uncorrected nonconformity has been subject to repair four or more times by the manufacturer, its agents, or authorized dealers, but the nonconformity continues to exist; or (2) The motor vehicle is in the possession of the manufacturer, its agent or authorized dealer for repair for a cumulative total of 30 or more business days, excluding down time for routine maintenance as prescribed by the manufacturer.
10. Notice of nonconformity and final opportunity to repair	<p>The presumption that a reasonable number of repair attempts has been undertaken does not apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and has an opportunity to cure the defect alleged. The manufacturer must provide, either in the warranty or a separate notice, written notice, and instruction to the consumer regarding this notification requirement.</p>
11. Affirmative defenses	<p>It is an affirmative defense that:</p> <ol style="list-style-type: none"> (1) The alleged nonconformity does not substantially impair the use and market value of the motor vehicle; (2) The nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the motor vehicle; (3) A claim by a consumer was not filed in good faith; or (4) Any other affirmative defense allowed by law.
12. Refund	<p>Refund consists of:</p> <ol style="list-style-type: none"> (1) The full purchase price; and (2) All <i>collateral charges</i>, defined as those additional charges to a consumer not directly attributed to a manufacturer's suggested retail price label for a new motor vehicle, including all taxes, license, title and registration fees and other governmental charges related to the purchase of the motor vehicle; (3) Less a reasonable allowance for the consumer's use of the vehicle.
13. Replacement	<p>Replacement is a comparable motor vehicle. The consumer is responsible for paying a reasonable allowance for use.</p>
14. Reasonable allowance	<p>Applies to both a refund and a replacement. A reasonable allowance for use is that amount directly attributable to use by the consumer prior to the first report of the nonconformity to the manufacturer, agent or dealer, and any subsequent period when the motor vehicle is not out of service by reason of repair.</p>
15. Refund of sales tax	<p>Manufacturer refunds sales tax to the consumer. No provision for the manufacturer to obtain a refund of sales tax from the state.</p>

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16. Enhanced damages	Not specified.
17. Attorney's fees	A consumer who prevails in an action under the lemon law is entitled to receive reasonable attorneys' fees and court costs from the manufacturer. If a consumer does not prevail in such an action and brings that action for frivolous reasons or in bad faith, the manufacturer is entitled to receive reasonable attorneys' fees and court costs from the consumer.
18. Statute of limitations	An action must be commenced within 18 months after the date of the vehicle's original delivery to the buyer. In addition, if the consumer resorts to an informal dispute settlement procedure, an action may be brought within 90 days following the final action of the procedure.
19. Manufacturer-sponsored arbitration	If the manufacturer has established or participates in an informal dispute settlement procedure that complies with 16 C.F.R. Part 703, then the provisions requiring refund or replacement do not apply unless the consumer has first resorted to the informal dispute settlement procedure. The Attorney General may investigate and determine that the informal dispute settlement procedure is fair and impartial and conforms with the requirements of 16 C.F.R. Part 703.
20. State-sponsored arbitration	Not specified.
21. Dealer liability	Any consumer who seeks enforcement of the lemon law is foreclosed from pursuing any Uniform Commercial Code remedy. A used motor vehicle dealer who limits the implied warranty of merchantability of a used motor vehicle or limits the remedies for a breach of the warranty before 15 days or 500 miles after delivery, whichever is earlier, renders the purchase agreement voidable. The maximum liability of a seller is limited to the purchase price paid for the used motor vehicle, to be refunded to the consumer or lender, as applicable, in exchange for return of the vehicle, unless the seller knew or should have known of the defect given the circumstances in which the vehicle was acquired or sold and the seller did not disclose that defect. A consumer or seller aggrieved by a used motor vehicle transaction must pursue a remedy under the Uniform Commercial Code.
22. Restrictions on resale of returned vehicles	A motor vehicle that has not been properly repaired under any state's lemon law may not be resold in New Mexico unless the manufacturer provides full written disclosure to the prospective buyer of the reason for the return. A manufacturer, agent, authorized dealer or used motor vehicle dealer that has been ordered by judgment or decree to replace or repurchase or that has replaced or repurchased a motor vehicle pursuant to the lemon law must, before offering the motor vehicle for resale, attach to the motor vehicle written notification indicating that the motor vehicle has been replaced or repurchased. A consumer or a used motor vehicle dealer may bring a cause of action against a person who removes the notification from the motor vehicle, unless the manufacturer, agent or authorized dealer or a used motor vehicle dealer, before completion of the sale, has provided the purchaser with written notification by the manufacturer, dealer, or agent of the dealer, that the motor vehicle has been replaced or repurchased.
23. Point of sale notice of lemon law rights	Not specified. The manufacturer shall provide written notice and instruction to the consumer, either in the warranty or a separate notice, of the obligation to file this written notification before invoking the remedies available pursuant to the lemon law.

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NEW MEXICO LEMON LAW SUMMARY**24. Limitation on
waiver**

Not specified. A consumer of a used motor vehicle may waive the implied warranty of merchantability only for a particular defect in the vehicle and only if all of the following conditions are satisfied:

(1) the used motor vehicle dealer fully and accurately discloses to the consumer that because of circumstances unusual to the business of the used motor vehicle dealer, the used motor vehicle has a particular defect;

(2) the consumer agrees to buy the used motor vehicle after disclosure of the defect; and

(3) before the sale, the consumer indicates agreement to the waiver by signing and dating the following conspicuous statement that is printed on the first page of the sales agreement in boldface ten-point or larger type and that is written in the language in which the presentation was made:

“Attention consumer: sign here only if the dealer has told you that this vehicle has the following problem(s) and you agree to buy the vehicle on those terms: [lists problems].”

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