TAKE-1

LEMON LAW

XVIII AIRBORNE CORPS LEGAL ASSISTANCE OFFICE

LEMON LAW

Introduction:

The 1987 General Assembly enacted a "lemon law" (N.C. Gen. Stat.§ 20-351.8) to give better remedies to North Carolina consumers who buy or lease a **new** car that is a "lemon." The lemon law does three thing; (1) defines clearly what cars are lemons, (2) spells out exactly the relief to which the purchaser of, or consumer leasing a lemon are entitled, and (3) provides that a manufacturer who unreasonably refuses to grant to the buyer or consumer leasing a lemon the relied to which he is entitled must pay the consumer triple damages and attorney's fees.

1. Q. WHAT VEHICLES ARE COVERED?

A. The lemon law does not apply just to passenger cars. It covers any new motor vehicle other than a house trailer, provided the vehicle does not have a gross vehicle weight of 10,000 pounds or more. Thus, the law covers pickup trucks, motorcycles and most vans, as well as cars. The purpose for which the vehicle is purchased or leased is not relevant. However, any cars purchased or leased prior to October 1, 1987 are not covered by the lemon law.

2. Q. WHEN IS A VEHICLE A LEMON?

A. A vehicle is a lemon if it is "seriously defective" and could not be repaired in a "reasonable number of attempts."

3. Q. WHAT IS THE DEFINITION OF SERIOUSLY DEFECTIVE?

A. A serious defect is "any defect or condition or series of defects or conditions which substantially impairs the value of the motor vehicle to the consumer." The defect must be in a part of the car covered by the manufacturer's express warranty, but is not limited to things which make the car drivable. Leaks, lack of air conditioning or heat, or serious paint problems, among others, could be defects which substantially impair the value of the vehicle to the consumer.

Also, in order for a vehicle to be seriously defective, the defect must have appeared within the period of the express warranty. The lemon law requires all vehicles to have an express warranty of at least twelve months or 12,000 miles. If the express warranty period exceeds 24 months or 24,000 miles, the consumer's right to a replacement or refund is limited to defects which first occur within this period. For warranty defects which occur within the warranty period but after the lemon law's 24 month/24,000 mile limitation, the consumer would have to seek *compensation for failure to repair* if the vehicle is not repaired after a reasonable number of attempts. Compensation for failure to repair is the difference in the value of the vehicle as it is and the value it would have if repaired, or the cost of repairs.

Note that the express warranty on a new motor vehicle stated in a number of miles begins from the date the vehicle is delivered to the consumer. For example, if a demonstration model with a 24,000 mile warranty has 4,000 miles on it when the vehicle is delivered to the consumer; the warranty will remain in effect until the vehicle has 28,000 miles on it.

4. Q. WHAT IS A REASONABLE NUMBER OF ATTEMPTS?

A. The law presumes that "a reasonable number of attempts have been undertaken" to fix the defect if:

1. The same defect has been presented to the manufacturer, or its authorized dealer for repair **four or more times** without success, or

2. The vehicle has been out of service during or while awaiting repair of a defect or series of defects for a **cumulative total of 20 or more business days during any 12 month period of the warranty**, provided that the consumer has notified the manufacturer directly in writing of the existence of the defects or series of defects and allowed the manufacturer a reasonable period, but not more than 15 calendar days, to fix them. This last requirement makes it vital that consumers write the manufacturer directly about the problems early on if the dealer is having trouble getting the defects fixed. Do not let the dealer talk you out of writing the manufacturer directly. You must do this to get your rights under the law.

5. Q. WHAT REMEDIES ARE AVAILABLE TO THE CONSUMER?

A. If the manufacturer has not fixed the vehicle after a reasonable number of attempts (defined above), the purchaser or leasing consumer s entitled to choose a comparable, new replacement vehicle or a refund. The statute is no specific as to what is a comparable new replacement vehicle though it would clearly include an identical make and model. However, the consumer may choose a refund instead of a replacement. The statute is very specific about how to determine the amount of the refund and varies depending on the consumer's status;

A **purchaser** is entitled to a refund of:

1. The full contract price including, but not limited to, charges for undercoating, dealer-preparation and installed options, plus the non-refundable portions of extended warranties and service contracts;

2. All supplemental or collateral charges, including but not limited to, sales tax, license and registration fees, and similar government charges;

3. All finance charges incurred by the consumer after the first report of the defect to the manufacturer, its agent or it authorized dealer; and

4. Any incidental damages and monetary consequential damages*, less a reasonable allowance for the consumer's use of the vehicle**.

*Incidental damages include, among other things, reasonable expenses for inspecting and transporting the vehicle (e.g., towing expenses), costs to cover alternative transportation (e.g., rental car fees), and hotel expenses if any. Monetary consequential damages generally include the value of lost use.

** The statute defines a "reasonable allowance for use" as that amount directly attributable to use by the consumer prior to his first report of the defect to the manufacturer, its agent, or its authorized dealer, and during any subsequent period when the vehicle is not out of service

because of repair. "Reasonable allowance" is presumed to be the cash price of the vehicle multiplied by a fraction with the denominator 100,000 miles and its numerator the number of miles on the vehicle attributed to the consumer. For example, if the cash price of the vehicle was $20,000 and the purchaser or leasing consumer had driven the car 10,000 miles before getting a refund, the owner would be entitled to the full refund, less 20,000(10,000/100,000) or $2,000.

A **leasing consumer** is entitled to a refund of:

1. All sums previously paid by the leasing consumer under the terms of the lease;

2. All sums previously paid by the leasing consumer in connection with entering into the lease agreement, including but not limited to, any capitalized cost reduction, sales tax, license and registration fees, and similar government charges; and

3. Any incidental and monetary consequential damages.

Because it is the manufacturer that is responsible for the vehicle, the leasing consumer must recover from the manufacturer, not the lessor. The lessor also may recover from the manufacturer. Remedies available to the lessor are described at G.S. § 20-351.3(b) (2).

6. Q. WHAT STEPS SHOULD I TAKE?

A.

1. When you buy your car, read your warranty and owner's manually carefully. Follow all maintenance guidelines.

2. When you notice a defect, take the vehicle to an authorized dealer for repairs as soon as possible. Prepare to leave a detailed list describing each defect each time you take the vehicle in for repair. Keep a copy for yourself.

3. Get repair orders for all warranty work. Ask for detailed repair orders and keep them.

4. Be sure the repair orders show how many days the vehicle was in the shop.

5. Keep a personal record of the number of days the vehicle was in the shop, dates, and mileage.

6. Keep a record of all related expenses, such as towing charges and rental car fees, and save all receipts.

7. After the 3rd repair for the same defect or if the vehicle has been out of service for 20 calendar days, notify the manufacturer and the finance company in writing (if you have not done so already) and send the notification by certified mail, return receipt requested. Ask the manufacturer to have the car fixed. Send a copy to the dealer. You will probably find the address of the manufacturer in your warranty or owner's manual or you can get it from the dealer.

8. Keep copies of all correspondence.

9. Do not return the car or stop making payments. Talk to an attorney if you are at this point.

7. Q. WHAT ABOUT ARBITRATION?

A. Many auto manufactures have established dispute resolution programs for consumers' with warranty problems. Some require you to use these programs **before** you go to court. Some do not. Read your warranty to see if the manufacturer has established a "dispute resolution" program and if you must use it before going to court. Check with the Better Business Bureau or the manufacturer directly to determine if you are required/have the option of dispute resolution. If your warranty requires you to use the dispute resolution program, follow the instructions on your warranty to start the procedure. If you warranty does not require dispute resolution, you may decide you want to try it.

8. Q. WHAT DO I DO AFTER ARBITRATION?

A. If arbitration fails, or if you did not have to use arbitration and did not want to, you should consider seeing a private attorney. Some manufactures, unfortunately, do not take consumer complaints too seriously until they hear from an attorney. Your attorney can advise you best what to do with the car and whether to stop making payments.

The lemon law provides that you can recover triple damages and attorney's fees if the manufacture is found to have unreasonably refused to resolve your complaint.

You may contact the Consumer Protection Section of the Attorney General's Office. The Attorney General's Office can provide you or your attorney with useful information, or can try to mediate your complaint. However, it cannot act as private counsel to individuals. The Attorney General is interested in receiving information from individuals regarding how manufactures handle these matters because the Attorney General can sue to enforce the lemon law when the public interest requires it.

North Carolina Department of Justice

Consumer Protection Section

P.O. Box 629

Raleigh, NC 27602-0629

Telephone: (919) 716-6000

Fax: (919) 716-6050