



## **New Hampshire Lemon Law Statute**

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#### **Title 31 - Chapter 357D**

##### **§ 357-D: 1 Intent.**

The legislature finds and declares that manufacturers, distributors and importers of new motor vehicles should be obligated to provide speedy and less costly resolution of automobile warranty problems. Manufacturers should be required to provide in as expeditious a manner as possible a refund of the consumer's purchase price, payments to a lessor and lessee, or a replacement vehicle that is acceptable to the consumer whenever the manufacturer is unable to make the vehicle conform with its applicable warranty. New motor vehicle dealers and used motor vehicle dealers cannot be sued under this chapter.

**Source.** 1991, 222:1, eff. Jan. 1, 1992.

##### **§ 357-D:2 Definitions. - In this chapter:**

1. **"Board"** means the New Hampshire new motor vehicle arbitration board.
2. **"Business day"** means any day during which the service departments of authorized dealers of the manufacturer of the motor vehicle are normally open for business.
3. **"Consumer"** means the purchaser, other than for purposes of resale of a new motor vehicle; the lessee of a new motor vehicle, other than for the purpose of sublease; any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle; or any other person entitled by the terms of the warranty to enforce the obligations of the warranty. "Consumer" shall not include any governmental entity.
4. **"Distributor"** means any person who sells or distributes new or used motor vehicles to motor vehicle dealers or who maintains distributor representatives within this state.

5. **"Early termination costs"** means expenses and obligations incurred by a motor vehicle lessee as a result of an early termination of a written lease agreement and surrender of a motor vehicle to a manufacturer, including penalties for prepayment of finance arrangements.
6. **"Factory branch"** means any branch office maintained by a manufacturer for the purpose of selling, leasing, or offering for sale or lease, vehicles to a distributor or new motor vehicle dealer or for directing or supervising, in whole or in part, factory distributor representatives.
7. **"Lease"** or **"leased"** means a written agreement with a lessee which shall be for the use of a motor vehicle for consideration for a term of 2 or more years.
8. **"Manufacturer"** means any person, resident or nonresident, who manufactures or assembles new motor vehicles, or imports for distribution through distributors of motor vehicles or any partnership, firm, association, joint venture, corporation or trust, resident or nonresident, which is controlled by a manufacturer. The term "manufacturer" includes distributors and factory branches.
9. **"Motor vehicle"** means:
  1. A motor vehicle, as defined in RSA 259:60, of the private passenger or station wagon type with a gross weight not exceeding 9,000 pounds that is purchased or leased by a consumer; or
  2. Any other 4-wheel motor vehicle with a gross weight not exceeding 9,000 pounds, except tractors, off highway recreational vehicles, and mopeds; or
  3. Motorcycles.
10. **"Motor vehicle dealer"** means any person engaged in the business of selling, offering to sell, leasing, soliciting or advertising the sale of new or used motor vehicles or possessing motor vehicles for the purpose of resale either on his own account or on behalf of another, either as his primary business or incidental thereto. However, "motor vehicle dealer" shall not include:
  1. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment, decree or order of any court; or
  2. Public officers while performing their duties as such officers.

11. **"Motor vehicle lessor"** means a person who holds title to a motor vehicle leased to a lessee under written lease agreement for a term of 2 or more years, or who holds the lessor's rights under such an agreement.
12. **"New motor vehicle"** means a passenger motor vehicle which is still under the manufacturer's express warranty.
13. **"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, abuse, neglect, modification, or alteration of the motor vehicle by persons other than the manufacturer or its authorized service agent.
14. **"Warranty"** includes express warranties as defined in the Uniform Commercial Code, RSA 382-A, plus any written warranty of the manufacturer.

**Source.** 1991, 222:1. 1994, 220:1, 2, eff. Jan. 1, 1995.

#### **§ 357-D:3 Enforcement of Warranties.**

1. Every new motor vehicle sold in this state shall conform to all applicable warranties.
2. It shall be the manufacturer's obligation under this chapter to insure that all new motor vehicles sold or leased in this state conform with the manufacturer's express warranties. The manufacturer may delegate responsibility to its agents or authorized dealers provided, however, in the event the manufacturer delegates its responsibility under this chapter to its agents or authorized dealers, it shall compensate the dealer for all work performed by the dealer in satisfaction of the manufacturer's responsibility under this chapter.
3. 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 warranty, the manufacturer shall cause whatever repairs are necessary to conform the vehicle to the warranties, notwithstanding the fact that the repairs are made after the expiration of a warranty term.
4. A manufacturer, its agent or authorized dealer shall not refuse to provide a consumer with a written repair order and shall provide to the consumer, each time the consumer's vehicle is brought in for examination or repair of a defect, a written summary of the complaint and a fully itemized statement indicating all work performed on the vehicle including, but not limited to, examination of the vehicle, parts, and labor.

5. If, after a reasonable number of attempts, the manufacturer, its agent or authorized dealer or its delegate is unable to conform the motor vehicle to any express warranty by repairing or correcting any defect or condition covered by the warranty which substantially impairs the use, market value, or safety of the motor vehicle to the consumer, the manufacturer shall, at the option of the consumer within 30 days of the effective date of the board's order, replace the motor vehicle with a new motor vehicle from the same manufacturer, if available, of comparable worth to the same make and model with all options and accessories with appropriate adjustments being allowed for any model year differences or shall accept return of the vehicle from the consumer and refund to the consumer the full purchase price or to the lessee, in the case of leased vehicles, as provided in paragraph IX. In those instances in which a refund is tendered, the manufacturer shall refund to the consumer the full purchase price as indicated in the purchase contract and all credits and allowances for any trade-in or down payment, license fees, finance charges, credit charges, registration fees, and any similar charges and incidental and consequential damages or, in the case of leased vehicles, as provided in paragraph IX. Refunds shall be made to the consumer and lien holder, if any, as their interests may appear, or to the motor vehicle lessor and lessee as provided in paragraph IX. A reasonable allowance for use shall be that amount directly attributable to use by the consumer prior to the first repair attempt and shall be calculated by multiplying the full purchase price of the vehicle by a fraction having as its denominator 100,000, or for a motorcycle with an engine size of 250 cubic centimeters or smaller 20,000, or for a motorcycle with an engine size greater than 250 cubic centimeters 40,000, and having as its numerator the number of miles that the vehicle traveled prior to the first attempt at repairing the vehicle.
6. It shall be an affirmative defense to any claim under this chapter that an alleged nonconformity does not substantially impair the use, market value, or safety or that the nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by a consumer.
7. It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable warranties if:
  1. The same nonconformity as identified in any written examination or repair order has been subject to repair at least 3 times by the manufacturer, its agent, or authorized dealer within the express warranty term and the same nonconformity continues to exist; or
  2. The vehicle is out of service by reason of repair of one or more nonconformities, defects, or conditions for a cumulative total of 30 or more business days during the term of the express warranty. The term of any warranty and the 30-day period shall be extended by any period of

time during which repair services were not available to the consumer because of war, invasion, strike, fire, flood, or other natural disaster. If an extension of time is necessitated due to these conditions, the manufacturer shall provide for the free use of a vehicle to the consumer whose vehicle is out of service. A vehicle shall not be deemed out of service if it is available to the consumer for a major part of the day.

8. In order for an attempt at repair to qualify for the presumptions of this section, the attempt at repair shall be evidenced by a written examination or repair order issued by the manufacturer, its agent, or its authorized dealer. The presumptions of this section shall only apply to 3 attempts at repair evidenced by written examination or repair orders undertaken by the same agent or authorized dealer, unless the consumer shows good cause for taking the vehicle to a different agent or authorized dealer.
9. In cases in which a refund is tendered by a manufacturer for a leased motor vehicle under paragraph V, the refund and rights of the motor vehicle lessor, lessee, and manufacturer shall be in accordance with the following:
  1. The manufacturer shall provide to the lessee the aggregate deposit and rental payments previously paid to the motor vehicle lessor by the lessee, and incidental and consequential damages, if applicable, minus a reasonable allowance for use. The aggregate deposit shall include, but not be limited to, all cash payments and trade-in allowances tendered by the lessee to the motor vehicle lessor under the lease agreement. The reasonable allowance for use shall be calculated by multiplying the aggregate deposit and rental payments made by the lessee on the motor vehicle by a fraction having as its denominator 100,000 or for a motorcycle 20,000, and having as its numerator the number of miles that the vehicle traveled prior to the first attempt to repair the vehicle.
  2. The manufacturer shall provide to the motor vehicle lessor the aggregate of the following:
    1. The lessor's actual purchase cost, less payments made by the lessee;
    2. The freight cost, if applicable;
    3. The cost for dealer or manufacturer-installed accessories, if applicable;
    4. Any fee paid to another to obtain the lease;

5. An amount equal to 5 percent of the lessor's actual purchase cost as prescribed in subparagraph IX(b)(1). The amount in this subparagraph shall be instead of any early termination costs.
10. The lessee's lease agreement with the motor vehicle lessor and all contractual obligations shall be terminated upon a decision of the board in favor of the lessee. The lessee shall not be liable for any further costs or charges to the manufacturer or motor vehicle lessor under the lease agreement.
11. The motor vehicle lessor shall release the motor vehicle title to the manufacturer upon the payment by the manufacturer under the provisions of this section.
12. The board shall give notice to the motor vehicle lessor of the lessee's filing of a request for arbitration under this chapter and shall notify the motor vehicle lessor of the date, time and place scheduled for a hearing before the board. The motor vehicle lessor shall provide testimony and evidence necessary to the arbitration proceedings. Any decision of the board shall be binding upon the motor vehicle lessor.

**Source.** 1991, 222:1. 1992, 282:15, eff. Jan. 1, 1993.

#### **§ 357-D:4 Procedure to Obtain Refund or Replacement.**

1. After the third attempt at repair or correction of the nonconformity, defect or condition, or after the vehicle is out of service by reason of repair of one or more nonconformities, defects or conditions for a cumulative total of 30 or more business days as provided in this chapter, the consumer shall notify the manufacturer along with a clear and conspicuous disclosure notice of the rights of the consumer under this chapter at the time the new motor vehicle is delivered, of the nonconformity, defect or condition and the consumer's election to proceed under this chapter. The forms shall be made available by the manufacturer to the New Hampshire new motor vehicle arbitration board, and any other public or nonprofit agencies that shall request them. Forms and notices shall be in a form prescribed by rule of the department of justice and shall not include window stickers. The consumer shall, in the notice, elect whether to use the dispute settlement mechanism or the arbitration provisions established by the manufacturer or to proceed under the New Hampshire new motor vehicle arbitration board as established under this chapter. The consumer's election of whether to proceed before the board or the manufacturer's dispute settlement mechanism shall preclude his recourse to the method not selected.
2. A consumer shall not pursue a remedy under this chapter if he has discontinued financing or lease payments, if the payments have been discontinued due to the

manufacturer's breach of obligation under this chapter or due to a breach of the manufacturer's warranties.

3. A consumer who elects to proceed before the board shall pay a filing fee of \$ 50 and the manufacturer shall pay a filing fee of \$ 250. Such fees shall be retained by the department of safety and used to defray costs associated with the work of the board, including per diem costs of board members and any other administrative expenses.
4. Arbitration of the consumer's complaint, either through the manufacturer's dispute settlement mechanism or the board, shall be held within 40 days of receipt by the manufacturer or the board and the manufacturer of the consumer's notice electing the remedy of arbitration unless the consumer or the manufacturer has good cause for an extension of time, not to exceed an additional 30-day period. If the extension of time is requested by the manufacturer, the manufacturer shall provide free use of a vehicle to the consumer if the consumer's vehicle is out of service. In the event the consumer elects to proceed in accordance with the manufacturer's dispute settlement mechanism and the arbitration of the dispute is not held within 40 days of the manufacturer's receipt of the consumer's notice and the manufacturer is not able to establish good cause for the delay, the consumer shall be entitled to receive the relief requested under this chapter.
5. Within the 40-day period set forth in paragraph IV, the manufacturer shall have one final opportunity to correct and repair the defect which the consumer claims entitles him to a refund or replacement vehicle. If the consumer is satisfied with the corrective work done by the manufacturer or his delegate, the arbitration proceedings shall be terminated without prejudice to the consumer's right to request that arbitration be recommended as provided in RSA 357-D:11, I(b) if the repair proves unsatisfactory.
6. The manufacturer shall refund the reasonable allowance provided for in RSA 357-D:3, V or IX, or make the replacement required by the board within 30 days of a decision of the board or within 15 days of final adjudication.

**Source.** 1991, 222:1. 1994, 220:3, eff. Jan. 1, 1995.

**§ 357-D:5 New Motor Vehicle Arbitration Board Established; Administrative Attachment; Rulemaking; Decisions.**

1. There is created a New Hampshire new motor vehicle arbitration board consisting of 5 members and 3 alternate members to be appointed by the governor and council. Terms of members shall be for 3 years. Board members may be appointed for no more than 2 terms. One member and one alternate of

the board shall be new car dealers in New Hampshire, one member and one alternate shall be persons knowledgeable in automobile mechanics, and 3 members and one alternate shall be persons who represent consumers and have no direct involvement in the design, manufacture, distributions, sales or service of motor vehicles or their parts. Three members of the board shall constitute a quorum. Members shall be paid \$50 per diem plus mileage.

2. The board shall be administratively attached to the department of safety under RSA 21-G:10.
3. The board shall adopt rules, pursuant to RSA 541-A, to implement the provisions of this chapter.
4. The board shall hold a hearing within 40 days of receipt of a complaint, unless an extension of time has been granted by the board under RSA 357-D:4, IV, and shall render a decision within 30 days of the conclusion of a hearing. The board shall have the authority to issue only damages as are provided by this chapter.

**Source.** 1991, 222:1. 1994, 220:4, 5, eff. Jan. 1, 1995.

#### **§ 357-D:6 Appeal From Board's Decision.**

1. The decision of the board shall be final and shall not be modified or vacated unless, on appeal to the superior court, a party to the arbitration proceeding proves, by clear and convincing evidence, that:
  1. The award was procured by corruption, fraud or other undue means.
  2. There was evident partiality by the board or corruption or misconduct by the board prejudicing the rights of any party.
  3. The board exceeded its powers.
  4. The board refused to postpone a hearing after being shown sufficient cause to do so, refused to hear evidence material to the controversy, or otherwise conducted the hearing contrary to the rules adopted by the board so as to prejudice substantially the rights of a party.
2. A party to the arbitration proceeding shall not pursue an appeal until a final decision has been rendered by the board. Any appeal shall be filed with the superior court within 30 days of the date of the written board decision.

#### **§ 357-D:7 Unfair and Deceptive Acts and Practices.**



Failure of the manufacturer or distributor to comply with a decision of the board shall constitute an unfair or deceptive act or practice under RSA 358-A:2.

**Source.** 1991, 222:1, eff. Jan. 1, 1992.

#### **§ 357-D:8 Dealer's Liability.**

Nothing in this chapter imposes any liability on a franchised motor vehicle dealer or creates a cause of action by a consumer against a dealer, except for written express warranties made by the dealer apart from the manufacturer's warranties. A dealer shall not be made a party defendant in any action involving or relating to this chapter, except as provided in this section. 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 from this chapter.

**Source.** 1991, 222:1, eff. Jan. 1, 1992.

#### **§ 357-D:9 Notification to Consumers; Rulemaking by Department of Justice.**

Beginning with the model year following July 1, 1992, the manufacturer of every motor vehicle sold in this state shall provide a clear and conspicuous written notice of the consumer's rights under this chapter as provided under RSA 357-D:4 at the time of the delivery of every such new motor vehicle in this state. The manufacturer shall provide the consumer with a self-addressed notice in a form developed in accordance with rules adopted by the department of justice under RSA 541-A and sufficient to notify the manufacturer of the consumer's election to proceed under this chapter. The manufacturer shall not delegate this responsibility to its authorized dealers. The manufacturer of every new motor vehicle sold in this state shall also provide a clear and conspicuous notice that informs consumers of their rights under this chapter.

**Source.** 1991, 222:1, eff. Jan. 1, 1992.

#### **§ 357-D:10 Costs and Attorney's Fees.**

In any action by a consumer against the manufacturer or distributor of a motor vehicle based upon the alleged breach of an express warranty made in connection with the sale or lease of such motor vehicle, the court, in its discretion, may award to the plaintiff costs and reasonable attorney's fees. If the court determines that the action was brought with no substantial justification, it may award costs and reasonable attorney's fees to the defendant.

**Source.** 1991, 222:1, eff. Jan. 1, 1992.

#### **§ 357-D:11 Limitations on Actions.**

1. Any proceeding initiated under the provisions of this chapter shall be commenced within one year following the later of:
  1. The expiration of the express warranty term; or
  2. The manufacturer's final repair attempt of the nonconformity, as provided in RSA 357-D:4, V which gave rise to the consumer's request that the vehicle be replaced or the money refunded.
2. Nothing in this chapter shall in any way limit the rights or remedies which are otherwise available to a consumer under any other provision of law.

**Source.** 1994, 220:7, eff. Jan. 1, 1995.

**§ 357-D:12 Sale of Defective Motor Vehicles.**

1. For purposes of this section "a serious safety defect" means a life-threatening malfunction or nonconformity that impedes the consumer's ability to control or operate the motor vehicle for ordinary use or reasonable intended purposes or creates a risk of fire or explosion.
2. Any manufacturer or its agent or authorized dealer is prohibited from reselling in New Hampshire any vehicle determined or adjudicated by the board as having a serious safety defect.

**Source.** 1994, 395:1, eff. Jan. 1, 1995.

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