



## **West Virginia Lemon Law Statute**

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### **West Virginia Lemon Law Chapter 46a, § 6A 1-9**

#### **CHAPTER 46A, ARTICLE 6A CONSUMER PROTECTION – NEW MOTOR VEHICLE WARRANTIES**

**West Virginia Lemon Law 46A-6A-1.** Legislative declarations The Legislature hereby finds and declares as a matter of public policy that the purpose of this article is to place upon the manufacturers of motor vehicles the duty to meet their obligations and responsibilities under the terms of the express warranties extended to the consumers in this state. The Legislature further finds as a matter of public policy that the manufacturer shall bear the total cost of performing any duty or responsibility imposed by their warranties and the provisions of this article.

The Legislature further finds that any agreement under the provisions of article six-a, chapter seventeen-a of this code, or any agreement hereafter amended or entered into between a dealer and manufacturer which would transfer to the dealer any duty, or all or any part of the cost of performing any duty imposed on the manufacturer by the provisions of this article, or which would directly or indirectly charge the dealer for or reduce the payment or reimbursement due the dealer for performing work or furnishing parts required by this article to be provided by either the dealer or manufacturer, so as to shift to the dealer all or any part of the cost of the manufacturer's compliance with this article, to be against public policy, void and unenforceable.

#### **West Virginia Lemon Law 46A-6A-2. Definitions.**

When used in this article, the following words, terms and phrases shall have the meaning ascribed to them, except where the context indicates a different meaning:

**"Consumer"** means the purchaser, other than for purposes of resale, of a new motor vehicle purchased in this state, used primarily for personal, family or household purposes, a person to whom the new motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the

motor vehicle and any other person entitled by the terms of the warranty to enforce the obligations of the warranty;

**"Manufacturer"** means a person engaged in the business of manufacturing, assembling or distributing motor vehicles, who will, under normal business conditions during the year, manufacture, assemble or distribute to dealers at least ten new motor vehicles;

**"Manufacturer's express warranty"** and **"warranty"** mean the written warranty of the manufacturer of a new motor vehicle of its condition and fitness for use, including any terms or conditions precedent to the enforcement of obligations under that warranty; and

**"Motor vehicle"** means any passenger automobile sold in this state, including pickup trucks and vans subject to registration as a Class A motor vehicle under the provisions of article ten, chapter seventeen-a of this code, and any self-propelled motor vehicle chassis of motor homes sold in this state subject to registration as and Class A or Class B motor vehicle under the provisions of article ten, chapter seventeen- a of this code.

**West Virginia Lemon Law 46A-6A-3. Manufacturer's duty to repair or replace new motor vehicles.**

If a new motor vehicle purchased in this state on or after the first day of January, one thousand nine hundred eighty-four, does not conform to all applicable express warranties and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of the express warranties or during the period of one year following the date of original delivery of the new motor vehicle to a consumer, whichever is the later date, the manufacturer, its agent or its authorized dealer shall make the repairs necessary to conform the vehicle to the express warranties, notwithstanding the fact that the repairs are made after the expiration of the warranty term.

If the manufacturer, its agents or its authorized dealer are unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use or market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall, replace the new motor vehicle with a comparable new motor vehicle which does conform to the warranties.

**West Virginia Lemon Law 46A-6A-3a. Dealer's duty to disclose repairs to consumer.**

Beginning the first day of July, one thousand nine hundred eighty-nine, all authorized dealers of new motor vehicles purchased in this state shall provide to any consumer a

written disclosure of any repairs to a new motor vehicle which repairs have a retail value of five hundred dollars or more and were performed after shipment from the manufacturer to the dealer, including damage to the new motor vehicle while in transit. This disclosure requirement does not apply to identical replacement of stolen or damaged accessories or their components, tires or antennae. For purposes of this section, a motor vehicle is not a new motor vehicle when it has been previously titled or the motor vehicle has been damaged in such a manner that, were the damage not repaired, the value and usability of the motor vehicle would be substantially impaired.

**West Virginia Lemon Law 46A-6A-4. Civil action by consumer.**

If the nonconformity results in substantial impairment to the use or market value of the new motor vehicle and the manufacturer has not replaced the new motor vehicle pursuant to the provisions of section three of this article, or if the nonconformity exists after a reasonable number of attempts to conform the new motor vehicle to the applicable express warranties, the consumer shall have a cause of action against the manufacturer, in the circuit court of any county having venue.

In any action under this section, the consumer may be awarded all or any portion of the following:

Revocation of acceptance and refund of the purchase price, including, but not limited to, sales tax, license and registration fees, and other reasonable expenses incurred for the purchase of the new motor vehicle, or if there be no such revocation of acceptance, damages for diminished value of the motor vehicle;

Damages for the cost of repairs reasonably required to conform the motor vehicle to the express warranty;

Damages for the loss of use, annoyance or inconvenience resulting from the nonconformity, including, but not limited to, reasonable expenses incurred for replacement transportation during any period when the vehicle is not out of service by reason of the nonconformity or by reason of repair; and

Reasonable attorney fees.

It is an affirmative defense to any claim under this section that an alleged nonconformity does not substantially impair the use or market value or that a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle by anyone other than the manufacturer, its agent or its authorized dealer.

An action brought under this section by the consumer must be commenced within one year of the expiration of the express warranty term.

The cause of action provided for in this section shall be available only against the manufacturer.

**West Virginia Lemon Law 46A-6A-5. Presumption of reasonable number of attempts; extension of warranty term when repair services unavailable.**

It is presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties, if the same nonconformity has been subject to repair three or more times by the manufacturer, its agents or its authorized dealers within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to the consumer, whichever is the earlier date, and the nonconformity continues to exist, or the vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days during the term or during the one-year period, whichever is the earlier date.

If the nonconformity results in a condition which is likely to cause death or serious bodily injury if the vehicle is driven, it is presumed that a reasonable number of attempts have been undertaken to conform the vehicle to the applicable express warranties if the nonconformity has been subject to repair at least once by the manufacturer within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, and the nonconformity continues to exist.

The presumption that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties applies against a manufacturer only if the manufacturer has received prior written notification from or on behalf of the consumer and has had at least one opportunity to cure the defect alleged.

The term of an express warranty, the one-year period and the thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike or fire, flood or other natural disaster.

**West Virginia Lemon Law 46A-6A-6. Written statement to be provided to consumer.**

At the time of purchase the manufacturer, either directly or through its agent or its authorized dealer, must provide the consumer a written statement on a separate piece of paper, in ten point all capital type, in substantially the following form:

"IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER STATE LAW TO REPLACEMENT OR TO COMPENSATION. HOWEVER, TO BE ENTITLED TO REPLACEMENT OR TO COMPENSATION, YOU MUST FIRST NOTIFY THE MANUFACTURER OF THE PROBLEM IN WRITING AND PROVIDE THE MANUFACTURER AN OPPORTUNITY TO REPAIR THE VEHICLE."

#### **§46A-6A-7. Resale of returned motor vehicle.**

If a new motor vehicle has been returned under section three of this article or a similar statute of another state, it may not be resold in this state unless the manufacturer corrects the nonconformity and provides the consumer with a written statement on a separate piece of paper in ten point all capital type, in substantially the following form:

"IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTY AND THE NONCONFORMITY WAS NOT CURED WITHIN A REASONABLE TIME AS PROVIDED BY WEST VIRGINIA LAW.":

Provided, That no manufacturer shall require by agreement or otherwise, either directly or indirectly, that any of its authorized dealers in this state accept such a motor vehicle for resale.

#### **West Virginia Lemon Law 46A-6A-8. Third party dispute resolution process; attorney general to promulgate rules and regulations.**

The attorney general of the state of West Virginia shall promulgate rules and regulations for the establishment and qualification of a third party dispute mechanism or mechanisms for the resolution of warranty disputes between the consumer and the manufacturer, its agent or its authorized dealer. Such mechanisms shall be under the supervision of the division of consumer protection in the office of the attorney general, and shall meet or exceed the minimum requirements of the informal dispute settlement mechanism as provided by the Magnuson-Moss Warranty Federal Trade Commission Improvement Act (Public Law 93-637) and rules and regulations lawfully promulgated thereunder effective the first day of January, one thousand nine hundred eighty-four.

If a qualified third party dispute resolution process exists and the consumer receives timely notification in writing of the availability of the third party process with a description of its operation and effect, the cause of action under section four of this article may not be asserted by the consumer until after the consumer has initially resorted to the third party process. Notification of the availability of the third party process must be timely to the consumer. If a qualified third party dispute resolution process does not exist, or if the consumer is dissatisfied with the third party decision, or if the manufacturer, its agent or its authorized dealer fails to promptly fulfill the terms of the third party decision, the consumer may assert a cause of action under section four of this article.

Any period of limitation of actions under any federal or West Virginia laws with respect to any consumer shall be tolled for the period between the date a complaint is filed with a third party dispute resolution process and the date of its decision or the date before

which the manufacturer, its agent or its authorized dealer is required by the decision to fulfill its terms, whichever occurs later.

**West Virginia Lemon Law 46A-6A-9. Other remedies available.**

Nothing in this article shall be construed to limit any right or remedy which is otherwise available to a consumer or authorized dealer of a manufacturer under any other law.

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