

It's a Sour Subject

Understanding the Bay State's Various Lemon Laws

By KEVIN V. MALTBY, Esq.

The current economic downturn has certainly impacted the automotive industry, and in a number of ways.

It is clear from current car advertisements on television and in newspapers that it is a buyer's market. Some advertisements even go so far to acknowledge that there is no better time to purchase a car. But even with new and used car dealers anxious to make a sale, consumers should remain cautious when negotiating the purchase of a vehicle.

In most cases, a car buyer will be thrilled with their purchase and happy with the service and attention they received from the dealer during the process. However, there are occasions where car buyers find that they have purchased a car otherwise known as a 'lemon.'

In Massachusetts, there are three so-called 'lemon laws':

- The New and Leased Car Lemon Law;
- The Used Vehicle Warranty Law; and
- The Lemon Aid Law.

Understanding these measures can help consumers save money, time, and considerable aggravation. Here is a primer on all three:

The New and Leased Car Lemon Law

This measure covers new motor vehicles sold or replaced in Massachusetts after Jan. 1, 1984 by a dealer or manufacturer, as well as new motor vehicles leased in Massachusetts after July 1, 1997. Generally, new cars, motorcycles, vans, and trucks that are bought or leased in Massachusetts are covered.

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ual to be "engaged in the business of ... selling motor vehicles" if they sell "more than three motor vehicles in any calendar year." The term 'manufacturer' includes persons engaged in the business of manufacturing, assembling, or importing motor vehicles, and persons who sell or distribute motor vehicles to Massachusetts dealers.

However, the lemon law does not cover 'auto homes,' vehicles built primarily for off-road use, or any vehicle used primarily for business purposes. Vehicles that may not be covered under this definition may include ambulances, fire engines, or motor homes.

Vehicles that are covered by the New and Leased Car Lemon Law are covered only for one year or 15,000 miles of use from the date of original delivery of a new motor vehicle, whichever comes first.

While Massachusetts law does not use the word 'lemon,' a consumer may have a lemon under the New and Leased Car Lemon Law if there is a defect or malfunction or combination of defects or malfunctions that substantially impairs the use, market value, or safety of a motor vehi-

cle. This means that the nonconformity was not caused by the vehicle owner's negligence, an accident, vandalism, or an unauthorized person attempting to repair the vehicle.

However, merely having a nonconformity that substantially impairs use, market value, or safety does not confer lemon status on a vehicle. A consumer may seek remedy under the New and Leased Car Lemon Law only if the nonconformity remains after the dealer or manufacturer has made a "reasonable number of [repair] attempts." The law defines this phrase in two different ways:

- Three or more attempts by the dealer or manufacturer to repair the same nonconformity during either the first year or 15,000 miles of use (whichever is earlier) after the vehicle's delivery; or
- The vehicle is out of service for 15 or more business days during either the first year or 15,000 miles of use (whichever is earlier) after the vehicle's delivery.

It's important to keep records of all of contacts with the dealer or manufacturer during the repair period. It is also critical to save all receipts for repair work,

including repair work done under warranty. It is advisable to insist on an itemized bill to be sure that the particular nonconformity was actually worked on.

If the manufacturer fails repair the nonconformity, the New and Leased Car Lemon Law affords the consumer the right to a full refund or a replacement of the vehicle. If the manufacturer refuses to comply with this provision of the law, then you may submit the matter to arbitration.

The Used Vehicle Warranty Law

The Used Vehicle Warranty Law covers all used motor vehicles sold in Massachusetts by a dealer or a private seller. Generally, all vehicles that are not covered by the New and Leased Car Lemon Law are covered by the Used Vehicle Warranty Law.

The Used Vehicle Warranty Law does not cover auto homes, vehicles built primarily for off-road use, motorcycles, or any vehicles used primarily for business purposes. The Used Vehicle Warranty Law also does not cover dealer sales of used cars for less than \$700. It also does not cover vehicles that have been operated for more than 125,000 miles.

Under the Used Vehicle Warranty Law, a dealer is "any person engaged in the business of selling, offering for sale, or negotiating the retail sale of used motor vehicles as broker or agent for another. ... [Such] person shall be deemed to be engaged in the business of selling used motor vehicles if such person has sold more than three used vehicles in the preceding 12 months." Notice that this is a slightly different def-

inition of dealer than the one recognized by the New and Leased Car Lemon Law. The used-car language refers to a rolling 12-month period, where the new-car language refers to a calendar year.

A private seller is "any person who is not a dealer and who offers to sell or sells a used motor vehicle to a consumer." So if you bought your used car from a relative or neighbor, it's covered, no matter how little you paid for it.

However, the Used Vehicle Warranty Law treats dealers and private sellers differently in some key aspects. Here are a few examples.

- **Dealers.** Consider, for example, that a consumer purchased a used car from a dealer. Under the Used Vehicle Warranty Law, the dealer is required to give "an express written warranty covering the full cost of both parts and labor necessary to repair any defect that impairs the said motor vehicle's safety or use." However, the consumer may be required to pay up to \$100 toward the repair of any covered defect. This express warranty will be in effect for the following durations:

- 90 days or 3,750 miles (whichever happens earliest) for used motor vehicles that have been driven less than 40,000 miles

at the time of sale;

- 60 days or 2,500 miles (whichever happens earliest) for used motor vehicles that have been driven between 40,000 and 80,000 miles at the time of sale; or

- 30 days or 1,250 miles (whichever happens earliest) for used motor vehicles that have been driven between 80,000 and 125,000 miles at the time of sale.

If a vehicle is returned within five days of the expiration of the warranty, then the consumer is entitled to a repair of any defect that substantially impairs the vehicle's safety or use. The dealer is required to present a receipt describing the repair performed in an attempt to correct the defect and listing the parts replaced.

If the dealer fails to repair the same defect within three attempts, or if the used motor vehicle is out of service for more than 10 business days, then the dealer must refund the full price of the vehicle less 15 cents for each mile the vehicle was used between its sale and its return. If the dealer refuses to comply with this provision of the law, then a consumer may submit the matter to arbitration.

However, if a car's defect was caused by negligence, an accident, vandalism, or an unauthorized person attempting to repair

the vehicle, the dealer is not required to do anything.

- **Private sellers.** If a consumer purchased a used car from a private seller, the Used Vehicle Warranty Law requires a private seller to disclose all known defects that "impair the used motor vehicle's safety or substantially impair its use." If the seller fails to do this, the buyer has the right, within 30 days of purchase, to return the car for a full refund. If the private seller refuses to comply with this provision of the law, the buyer may be entitled to both damages and attorney's fees and costs.

The Lemon Aid Law

The third Massachusetts lemon law is popularly known as the 'Lemon Aid Law.' This law applies to all motor vehicles, including motorcycles, that are purchased for "the immediate personal or family use of the buyer." Under this lemon law, a buyer may be entitled to void the contract of sale if the motor vehicle fails to pass inspection within seven days. Of course, if a vehicle fails inspection due to "abusive or negligent operation" or by "damage resulting from an accident" after the date of sale, then the vehicle is not covered by this law.

Despite the presence of the three "lemon laws," a car buyer should take all reasonable steps necessary to ensure that he or she is not purchasing a lemon. When purchasing a used automobile, it is important to consider the dealership, the origin of the car, and whether the dealer is providing a warranty. If possible, a buyer should also seek permission from the dealer to have the vehicle inspected by their own mechanic. In some cases, the dealership will permit an inspection.

Typically, dealerships anchored in the community with a strong reputation for quality are safe bets for a pleasant car-buying experience. Word of mouth is also an excellent resource, since referral business and reputation are critical to a seller's financial well-being.

Finally, do not ignore your common sense when considering purchasing a new or used car. ❖

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