

Texas Motor Vehicle Division
Lemon Law Rules
Subchapter G, Warranty Performance Obligations
43 TAC §§8.201-8.210

Subchapter G, Warranty Performance Obligations

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| 8.201 | Objective. |
| 8.202 | Filing of Complaints. |
| 8.203 | Review of Complaints. |
| 8.204 | Notification to Manufacturer, Converter or Distributor. |
| 8.205 | Mediation; Settlement. |
| 8.206 | Hearings. |
| 8.207 | Contested Cases: Decisions and Final Orders. |
| 8.208 | Decisions. |
| 8.209 | Incidental Expenses. |
| 8.210 | Compliance with Order Granting Relief. |
| | §§8.211– 8.240 reserved for expansion |

§8.201. Objective. It is the objective of this subchapter to implement the intent of the legislature as declared in Occupations Code, Subchapter M, (§§2301.601-2301.613) and §2301.204, by prescribing rules to provide a simplified and fair procedure for the enforcement and implementation of the Texas Lemon Law (Subchapter M) and consumer complaints covered by general warranty agreements (§2301.204), including the processing of complaints, the conduct of hearings, and the disposition of complaints filed by owners of motor vehicles seeking relief under these provisions of the Code.

§8.202. Filing of Complaints.

(a) Complaints for relief under the lemon law must be in writing and filed with the division at its office in Austin. Complaints may be in letter form or any other written format or may be submitted on complaint forms provided by the division.

(b) Complaints should state sufficient facts to enable the division and the party complained against to know the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law.

(c) Complaints should provide the following information:

(1) name, address, and phone number of vehicle owner;

(2) identification of vehicle by make, model, and year, and manufacturer's vehicle identification number;

(3) type of warranty coverage;

(4) name and address of dealer, or other person, from whom vehicle was purchased or leased, including the name and address of the current lessor, if applicable;

(5) date of delivery of vehicle to original owner; and in the case of a demonstrator, the date the vehicle was placed into demonstrator service;

(6) vehicle mileage at time vehicle was purchased or leased, mileage when problems with vehicle were first reported, name of dealer or manufacturer's, converter's, or distributor's agent to whom problems were first reported, and current mileage;

(7) identification of existing problems and brief description of history of problems and repairs on vehicle, including date and mileage of each repair, with copies of repair orders where possible;

(8) date on which written notification of complaint was given to the vehicle manufacturer, converter, or distributor, and if the vehicle has been inspected by manufacturer, converter, or distributor, the date and results of such inspection;

(9) any other information which the complainant believes to be pertinent to the complaint.

(d) The division's staff will provide information concerning the complaint procedure and complaint forms to any person requesting information or assistance.

(e) The filing fee required under Occupations Code, §2301.712, should be remitted with the complaint by check or money order. No filing fee is required for a complaint filed under Occupations Code, §2301.204. The filing fee is nonrefundable, but a complainant who prevails in a case is entitled to reimbursement of the amount of the filing fee. Failure to remit the filing fee with the complaint will result in delaying the commencement of the 150-day requirement provided in §8.206(12) of this chapter (relating to Hearings) and may result in dismissal of the complaint.

§8.203. Review of Complaints. All complaints will be reviewed promptly by the division's staff to determine whether they satisfy the requirements of Occupations Codes, Chapter 2301, Subchapter M, or Occupations Code, §2301.204.

(1) If it cannot be determined whether a complaint satisfies the requirements of Occupations Code, Chapter 2301, Subchapter M, or Occupations Code, §2301.204, the complainant will be contacted for additional information.

(2) If it is determined that the complaint does not meet the requirements of Occupations Code, Chapter 2301, Subchapter M, or Occupations Code, §2301.204, the complainant will be notified of this fact.

(3) If it is determined that the complaint does meet the requirements of Occupations Code, Chapter 2301, Subchapter M, or Occupations Code, §2301.204, the complaint will be processed in accordance with the procedures set forth in this subchapter.

(4) For purposes of Occupations Code, §2301.606, the commencement of a proceeding means the filing of a complaint with the division, and the date of filing is determined by the date of receipt by the division.

§8.204. Notification to Manufacturer, Converter, or Distributor. Upon receipt of a complaint for relief under the Occupations Code, Chapter 2301, Subchapter M, or §2301.204, notification thereof, with a copy of the complaint, will be given to the appropriate manufacturer, converter, or distributor, and a response to the complaint will be requested. A copy of the complaint and notification thereof will also be provided to the selling dealer and any other dealers that have been involved with the complaint and a response may be requested.

§8.205. Mediation; Settlement. If, from a review of the complaint and the responses received from the manufacturer, converter, distributor, or dealer, it appears to the division staff that a settlement or resolution of the complaint may be possible without the

necessity for a hearing, the division staff will attempt to effect a settlement or resolution of the complaint.

§8.206. Hearings. Complaints which satisfy the jurisdictional requirements of the Occupations Code, §2301.204 and §§2301.601-2301.613, will be set for hearing and notification of the date, time, and place of the hearing will be given to all parties by certified mail.

(1) Where possible, and subject to the availability of division personnel and funds, hearings will be held in the city where the complainant resides or at a location reasonably convenient to the complainant.

(2) Hearings will be scheduled at the earliest date possible, provided that ten days prior notice, or as otherwise provided by law, must be given to all parties.

(3) Hearings will be conducted by division staff hearing officers or by independent hearing officers designated by the director.

(4) Hearings will be informal, it being the intent of this section to provide a procedure and forum which does not necessitate the services of attorneys and which does not involve strict legal formalities applicable to trials in county or district court.

(5) The parties have the right to be represented by attorneys at a hearing, although attorneys are not necessary. Any party who intends to be represented by an attorney at a hearing must notify the division and the other party at least five business days prior to the hearing and failure to do so will constitute grounds for postponement of the hearing if requested by the other party.

(6) The parties have the right to present their cases in full, including testimony from witnesses; documentary evidence such as repair orders, warranty documents, vehicle sales contract, etc., subject to the hearing officer's rulings.

(7) By agreement of the parties and with the approval of the hearing officer, the hearing may be conducted by written submissions only or by telephone.

(8) Except for hearings conducted by written submission only, each party will be subject to being questioned by the other party, within limits to be governed by the hearing officer.

(9) Except for hearings conducted by written submission only or by telephone, the complainant will be required to bring the vehicle in question to the hearing for the purpose of having the vehicle inspected and test driven, unless otherwise ordered by the hearing officer upon a showing of good cause as to why the complainant should not be required to bring the vehicle to the hearing.

(10) The division may have the vehicle in question inspected prior to the hearing by an expert, where the opinion of such expert will be of assistance to the hearing officer and the director in arriving at a decision. Any such inspection shall be made upon prior notice to all parties who shall have the right to be present at such inspection, and copies of any findings or report resulting from such inspection will be provided to all parties prior to, or at, the hearing.

(11) Except for hearings conducted by written submission only, all hearings will be recorded on tape by the hearing officer. Copies of the tape recordings of a hearing will be provided to any party upon request and upon payment as provided by law.

(12) All hearings will be conducted expeditiously. However, if a division hearing officer has not issued a decision within 150 days after the Occupations Code,

§§2301.601–2301.613 complaint and filing-fee were received, division staff shall notify the parties by certified mail that complainant has a right to file a civil action in state district court to pursue rights under §§2301.601–2301.613. The 150-day period shall be extended upon request of the complainant or if a delay in the proceeding is caused by the complainant. The notice will inform the complainant of the right to elect to continue the lemon law complaint through the division.

§8.207. Contested Cases: Decisions and Final Orders. To expedite the resolution of cases filed under Occupations Code, Chapter 2301, Subchapter M, or §2301.204, the director may conduct hearings and issue final orders for the enforcement of these sections, including the delegation of this duty to hearing officers. Review of the hearings officers' decisions and final orders shall be according to the procedures as follows:

(1) A hearing officer will prepare a written decision and final order as soon as possible but not later than 60 days after the hearing is closed, or as otherwise provided by law. The decision and order will include the hearing officer's findings of fact and conclusions of law.

(2) The decision and final order shall be sent to all parties of record by certified mail.

(3) The decision and order is final and binding on the parties, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing.

(4) A party who disagrees with the decision and final order may file a motion for rehearing within 20 days from the date of the notification of the final order. A motion for rehearing must include all the specific reasons, exceptions, or grounds that are asserted by a party as the basis of the request for a rehearing. It shall recite, if applicable, the specific findings of fact, conclusions of law, or any other portions of the decision to which the party objects. Replies to a motion for rehearing must be filed with the director within 30 days after the date of the notification of the final order. A party or attorney of record notified by mail is presumed to have been notified on the third day after the date on which the order was mailed.

(5) The director must act on the motion within 45 days after the date of notification of the final order, or as otherwise provided by law, or it is overruled by operation of law. The director may, by written order, extend the period for filing, replying to, and taking action on a motion for rehearing, not to exceed 90 days after the date of notification of the final order. In the event of an extension of time, the motion for rehearing is overruled by operation of law on the date fixed by the written order of extension, or in the absence of a fixed date, 90 days after the date of notification of the final order.

(6) If the director grants a motion for rehearing, the parties will be notified by first class mail. A rehearing will be scheduled as promptly as possible. After rehearing, the director shall issue a final order and any additional findings of fact or conclusions of law necessary to support the decision or order. The director may also issue an order granting the relief requested in a motion for rehearing or replies thereto without the need for a rehearing. If a motion for rehearing and the relief requested is denied, an order so stating will be issued.

(7) A party who has exhausted all administrative remedies, and who is

aggrieved by a final decision in a contested case from which appeal may be taken is entitled to judicial review pursuant to Occupations Code, §§2301.751-2301.756, under the substantial evidence rule. The petition shall be filed in a district court of Travis County or in the Court of Appeals for the Third Court of Appeals District within 30 days after the decision or order is final and appealable. A copy of the petition must be served on the director and any other parties of record. After service of the petition on the director and within the time permitted for filing an answer, the director shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding. If the court orders new evidence to be presented to the director, the director or the director's designee may modify the findings and decision or order by reason of the new evidence, and shall transmit the additional record to the court.

§8.208. Decisions. Unless otherwise indicated, this section applies to decisions made pursuant to Occupations Code, Chapter 2301, Subchapter M. Decisions shall give effect to the presumptions provided in Occupations Code, §2301.605, where applicable.

(1) If it is found that the manufacturer, distributor, or converter is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect in the complainant's vehicle which creates a serious safety hazard or substantially impairs the use or market value of the vehicle after a reasonable number of attempts, and that the affirmative defenses provided under Occupations Code, §2301.606, are not applicable, the director shall order the manufacturer, distributor, or converter to replace the vehicle with a comparable vehicle, or accept the return of the vehicle from the owner and refund to the owner the full purchase price of the vehicle, less a reasonable allowance for the owner's use of the vehicle.

(2) In any decision in favor of the complainant, the director will accommodate the complainant's request with respect to replacement or repurchase of the vehicle, to the extent possible.

(3) Where a refund of the purchase price of a vehicle is ordered, the purchase price shall be the amount of the total purchase price of the vehicle, but shall not include the amount of any interest or finance charge or insurance premiums. The award to the vehicle owner shall include reimbursement for the amount of the lemon law complaint filing fee paid by or on behalf of the vehicle owner. The refund shall be made payable to the vehicle owner and the lienholder, if any, as their interests require.

(4) There is a rebuttable presumption that a motor vehicle has a useful life of 120,000 miles. Except in cases where the preponderance of the evidence shows that the vehicle has a longer or shorter expected useful life than 120,000 miles, the reasonable allowance for the owner's use of the vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this paragraph.

(A) the product obtained by multiplying the purchase price of the vehicle, as defined in paragraph (3) of this section, by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the vehicle traveled from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order; and

(B) 50% of the product obtained by multiplying the purchase price by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the vehicle traveled after the first report of the defect or condition forming the

basis of the repurchase order. The number of miles during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.

(5) There is a rebuttable presumption that the useful life of a towable recreational vehicle is 3,650 days (10 years). Except in cases where preponderance of the evidence shows that the vehicle has a longer or shorter expected useful life than 3,650 days (10 years), the reasonable allowance for the owner's use of the towable recreational vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this paragraph.

(A) The product obtained by multiplying the purchase price of the towable recreational vehicle, as defined in paragraph (3) of this section, by a fraction having as its denominator 3,650 days (10 years), except the denominator shall be 1,825 days (5 years), if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order.

(B) 50% of the product obtained by multiplying the purchase price by a fraction having as its denominator 3,650 days (10 years), except the denominator shall be 1,825 days (5 years), if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days of ownership after the first report of the defect or condition forming the basis of the repurchase order. The number of days during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.

(C) Any day or part of a day that the vehicle is out of service for repair will be deducted from the numerator in determining the reasonable allowance for use of a towable recreational vehicle in this paragraph.

(6) Except in cases involving unusual and extenuating circumstances, supported by a preponderance of the evidence, where refund of the purchase price of a leased vehicle is ordered, the purchase price shall be allocated and paid to the lessee and the lessor, respectively as follows.

(A) The lessee shall receive the total of:

(i) all lease payments previously paid by him to the lessor under the terms of the lease; and

(ii) all sums previously paid by him to the lessor in connection with the entering into the lease agreement, including, but not limited to, any capitalized cost reduction, down payment, trade-in, or similar cost, plus sales tax, license and registration fees, and other documentary fees, if applicable.

(B) The lessor shall receive the total of:

(i) the actual price paid by the lessor for the vehicle, including tax, title, license, and documentary fees, if paid by lessor, and as evidenced in a bill of sale, bank draft demand, tax collector's receipt, or similar instrument; plus

(ii) an additional 5.0% of such purchase price plus any amount or fee, if any, paid by lessor to secure the lease or interest in the lease;

(iii) provided, however, that a credit, reflecting all of the payments made by the lessee, shall be deducted from the actual purchase price which the manufacturer, converter, or distributor is required to pay the lessor, as specified in causes (i) and (ii) of

this subparagraph.

(C) When the director orders a manufacturer, converter, or distributor to refund the purchase price in a lease vehicle transaction, the vehicle shall be returned to the manufacturer, converter, or distributor with clear title upon payment of the sums indicated in subparagraphs (A) and (B) of this paragraph. The lessor shall transfer title of the vehicle to the manufacturer, converter, or distributor, as necessary in order to effectuate the lessee's rights under this rule. In addition, the lease shall be terminated without any penalty to the lessee.

(D) Refunds shall be made to the lessee, lessor, and any lienholders as their interest may appear. The refund to the lessee under subparagraph (A) of this paragraph shall be reduced by a reasonable allowance for the lessee's use of the vehicle. A reasonable allowance for use shall be computed according to the formula in paragraph (4) or (5) of this section, using the amount in subparagraph (B) (i) of this paragraph as the applicable purchase price.

(7) In any award in favor of a complainant, the director may require the dealer involved to reimburse the complainant, manufacturer, converter, or distributor, for the cost of any items or options added to the vehicle but only to the extent that one or more of such items or options contributed to the defect that served as the basis for the order or repurchase or replacement. In no event shall this paragraph be interpreted to mean that a manufacturer, converter, or distributor, will be required to repurchase a vehicle due to a defect or condition that was solely caused by a dealer add-on item or option.

(8) If it is found by the director that a complainant's vehicle does not qualify for replacement or repurchase, then the director shall enter an order dismissing the complaint insofar as relief under Occupations Code, §2301.604. However, the director may enter an order in any proceeding, where appropriate, requiring repair work to be performed or other action taken to obtain compliance with the manufacturer's, converter's, or distributor's, warranty obligations.

(9) If the vehicle is substantially damaged or there is an adverse change in its condition, beyond ordinary wear and tear, from the date of the hearing to the date of repurchase, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party shall have the right to request reconsideration by the director of the repurchase price contained in the final order.

(10) The director will issue a written order in each Occupations Code, Chapter 2301, Subchapter M or §2301.204 case in which a hearing is held and a copy of the order will be sent to all parties.

§8.209. Incidental Expenses.

(a) When a refund of the purchase price of a vehicle is ordered, the complainant shall be reimbursed for certain incidental expenses incurred by the complainant from loss of use of the motor vehicle because of the defect or nonconformity which is the basis of the complaint. The expenses must be reasonable and verified through receipts or similar written documents. Reimbursable incidental expenses include but are not limited to the following costs:

- (1) alternate transportation;
- (2) towing;
- (3) telephone calls or mail charges directly attributable to contacting the

manufacturer, distributor, converter, or dealer regarding the vehicle;

(4) meals and lodging necessitated by the vehicle's failure during out - of - town trips;

(5) loss or damage to personal property;

(6) attorney fees if the complainant retains counsel after notification that the respondent is represented by counsel; and

(7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use.

(b) Incidental expenses shall be included in the final repurchase price required to be paid by a manufacturer, converter, or distributor to a prevailing complainant or in the case of a vehicle replacement, shall be tendered to the complainant at the time of replacement.

(c) In regards to the cost of items or accessories presented under subsection (a)(7) of this section, the hearing officer shall consider the permanent nature, functionality, and value added by the items or accessories and whether the items or accessories are original equipment manufacturer parts (OEM) or non-OEM parts.

§8.210. Compliance with Order Granting Relief. Compliance with the director's order will be monitored by the director.

(1) A complainant is not bound by the director's decision and order and may either accept or reject the decision.

(2) If a complainant does not accept the director's final decision, the proceeding before the director will be deemed concluded and the complaint file closed.

(3) If the complainant accepts the director's decision, then the manufacturer, converter, or distributor and the dealer to the extent of the dealer's responsibility, if any, shall immediately take such action as is necessary to implement the director's decision and order.

(4) If a manufacturer, converter, or distributor replaces or repurchases a vehicle pursuant to a director order, reacquires a vehicle to settle a complaint filed under Occupations Code, Chapter 2301, Subchapter M or §2301.204, or brings a vehicle into the state of Texas which has been reacquired to resolve a warranty claim in another jurisdiction, the manufacturer, converter, or distributor shall, prior to resale of such vehicle, re-title the vehicle in Texas and issue a disclosure statement on a form provided by or approved by the director. In addition, the manufacturer, converter, or distributor reacquiring the vehicle shall affix a disclosure label provided by or approved by the director on an approved location in or on the vehicle. Both the disclosure statement and the disclosure label shall accompany the vehicle through the first retail purchase. Neither the manufacturer, converter, or distributor nor any person holding a license or general distinguishing number issued by the division under the Code or, Transportation Code, Chapter 503, shall remove or cause the removal of the disclosure label until delivery of the vehicle to the first retail purchaser. A manufacturer, converter, or distributor shall provide the director, in writing, the name, address, and telephone number of any transferee, regardless of residence, to whom the manufacturer, distributor, or converter, as the case may be, transfers the vehicle within 60 days of each transfer. The selling dealer shall return the completed disclosure statement to the director within 60 days of the retail sale of a reacquired vehicle. Any manufacturer, converter, or distributor or

holder of a general distinguishing number who violates this section is liable for a civil penalty or other sanctions prescribed by the Code. In addition, the manufacturer, converter, or distributor must repair the defect or condition in the vehicle that resulted in the vehicle being reacquired and issue, at a minimum, a basic warranty (12 months/12,000 mile, whichever comes first), except for non-original equipment manufacturer items or accessories, on a form provided by or approved by the director, which warranty shall be provided to the first retail purchaser of the vehicle.

(5) In the event of any conflict between this rule and the terms contained in a cease and desist order, the terms of the cease and desist order shall prevail.

(6) The failure of any manufacturer, converter, distributor or dealer to comply with a decision and order of the director within the time period prescribed in the order may subject the manufacturer, converter, or distributor, or dealer to formal action by the division and the assessment of civil penalties or other sanctions prescribed by Occupations Code, Chapter 2301, for the failure to comply with an order of the director.