

**4.45 MOTOR VEHICLE LEMON LAW** (Approved 05/2003; Revised 11/2023)

The purpose of the so-called New Jersey “Lemon Law” is to protect buyers or lessees when they buy or lease a motor vehicle and the manufacturer cannot correct defects in the vehicle.

The Lemon Law does not apply to every defect in an automobile. It is not a guarantee against every defect. It applies to a defect that substantially impairs the use, value, or safety of a vehicle.

To establish a claim under the Lemon Law, *[Plaintiff]* must prove by a preponderance of the credible evidence each of the following five elements of the claim. The elements are:

1. *[Plaintiff]* purchased/leased a vehicle manufactured by *[Defendant]*.
2. The vehicle had a nonconformity or nonconformities<sup>1</sup> that is/are a defect or defects that substantially impaired the use, value, or safety of the vehicle.

To substantially impair, the defect or condition must impair the use, value, or safety in an important, essential, or significant way. When I use the term “substantial,” I do not mean a defect, impairment, or condition that is minor, trivial, or unimportant.

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<sup>1</sup> A recall notice alone is not sufficient to establish the nonconformity element required to recover under New Jersey’s Lemon Law. *Singer v. Toyota Motor Sales, U.S.A., Inc.*, 476 N.J. Super. 121 (App. Div. 2023).

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In determining whether a defect or condition substantially impairs the use or value of the vehicle, you can consider whether the defects or conditions have shaken *[Plaintiff's]* confidence in the vehicle. If the defect has shaken *[Plaintiff's]* confidence in the vehicle, this loss of confidence may be the basis for you to find that the defect has impaired the vehicle's use or value. You must consider this from both a subjective and objective point of view.

From a subjective standpoint, the defects must be examined from the point of view of this particular plaintiff. From an objective standpoint, the defects that allegedly have shaken *[Plaintiff's]* confidence must be consistent with what a reasonable person in *[Plaintiff's]* position would have believed under the same or similar circumstances.

For example, in deciding whether a specific defect or condition substantially impairs the use or value of a vehicle, you may consider whether the specific defect or condition complained of, in fact, caused *[Plaintiff]* to lose confidence in this vehicle. Even if you find that *[Plaintiff's]* confidence in the vehicle was shaken, you must also consider whether or not the specific defect or condition, if any, was such that a reasonable person would have lost confidence in the vehicle.

***NOTE TO JUDGE***

If the manufacturer raises either or both of the affirmative defenses set forth below, the following language would be appropriate. *N.J.S.A. 56:12-40.*

The manufacturer in this case has raised as a defense to *[Plaintiff's]* claim that the alleged nonconformity does not substantially impair the use, value, or safety of the vehicle, and/or that the nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the vehicle by someone other than the manufacturer or its dealer. If you find the manufacturer has proven by a preponderance of the evidence that the alleged nonconformity does not substantially impair the use, value, or safety of the vehicle and/or that the nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the vehicle by someone other than the manufacturer or its dealer, then you must find that there is no nonconformity within the meaning of the Lemon Law.

***[Charge Continues]***

3. The nonconformity occurred during the first 18,000 miles of use, or within two years after the date of original delivery to *[Plaintiff]*, whichever is earlier.

4. *[Plaintiff]* reported the nonconformity to the manufacturer or its dealer during the first 18,000 miles of use, or during the period of two years following the date of original delivery to *[Plaintiff]*, whichever is earlier.
5. *[Defendant]*, through its authorized dealers, did not repair the nonconformity or non-conformities within a reasonable time.

***NOTE TO JUDGE***

The following language should be charged in those cases where it is alleged the conditions for the presumption have been met. Note the two-year term and two-year period specified shall be extended by any period of time during which repair services were not available to the consumer because of war, invasion, or strike, or a fire, flood, or other natural disaster. *N.J.S.A. 56:12-33.*

It is presumed that a manufacturer or its dealer is unable to repair or correct a nonconformity within a reasonable time if, within the first 18,000 miles of operation, or during the period of two years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date:

- (a) substantially the same nonconformity has been subject to repair three or more times by the manufacturer or its dealer, and the nonconformity continued to exist; or
- (b) the motor vehicle was out of service by reason of repair for one or more nonconformities for a cumulative total of 20 or more calendar days; or
- (c) a nonconformity which is likely to cause death or serious bodily injury if the vehicle is driven has been subject to examination or repair

at least once by the manufacturer or its dealer, and the nonconformity continued to exist.

This presumption, however, shall only apply against the manufacturer if the manufacturer has received written notification by or on behalf of *[Plaintiff]*, by certified mail, return receipt requested, of a potential claim pursuant to this law, and has had one opportunity to repair or correct the defect or condition within 10 calendar days following receipt of the notification. The notification by *[Plaintiff]* shall take place any time after the motor vehicle has had substantially the same nonconformity subject to repair two or more times or has been out of service by reason of repair for a cumulative total of 20 or more calendar days.

***[Charge Continues]***

If you find by a preponderance of the evidence that *[Plaintiff]* has proven all five elements, then you must find for *[Plaintiff]* on the Lemon Law claim.

But, if you find that *[Plaintiff]* has failed to establish all five elements, then you will find for *[Defendant]*.

***NOTE TO JUDGE***

In the event that there are factual disputes as to any of the damage elements of a Lemon Law claim, the court should provide damage instructions. *See N.J.S.A. 56:12-32 and -42.*

In the event the parties have stipulated the amount of damages, the language set forth below would outline for the jury the ultimate outcome. *DiVigence v. Chrysler Corp.*, 345 N.J. Super. 314 (App. Div. 2001).

If then a plaintiff reports a nonconformity in a motor vehicle to the manufacturer or its dealer during the first 18,000 miles of operation, or during the period of two years following the date of the original delivery of the motor vehicle to the plaintiff, whichever is earlier, the manufacturer is required to make arrangements with its dealer to make, within a reasonable period of time, all repairs necessary to correct the nonconformity.

If the manufacturer is unable to correct the nonconformity within a reasonable time, the manufacturer shall accept return of the motor vehicle from the plaintiff. The manufacturer shall also provide the plaintiff with a full refund of the purchase/lease price and any other charges, fees, and costs, less a reasonable allowance for the use of the motor vehicle, which shall be calculated by the court.<sup>2</sup>

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<sup>2</sup> For claims for breach of express warranty on the sale of goods or breach of implied warranty of fitness for a particular purpose, see Model Civil Jury Charges 4.21 and 4.22.

LEMON LAW MODEL JURY VERDICT SHEET

1. Did *[Plaintiff]* prove that *[Plaintiff]* purchased/leased a vehicle manufactured by *[Defendant]*?

YES \_\_\_\_\_ VOTE \_\_\_\_\_  
NO \_\_\_\_\_ VOTE \_\_\_\_\_

If your answer is “yes,” proceed to question 2.  
If your answer is “no,” stop your deliberations and return your verdict.

2. Did *[Plaintiff]* prove that the vehicle had a nonconformity or nonconformities which substantially impaired the use, value, or safety of the vehicle?

YES \_\_\_\_\_ VOTE \_\_\_\_\_  
NO \_\_\_\_\_ VOTE \_\_\_\_\_

If your answer is “yes,” proceed to question 3.  
If your answer is “no,” stop your deliberations and return your verdict.

3. Did *[Plaintiff]* prove the nonconformity occurred during the first 18,000 miles of use or within two years after the date of original delivery to *[Plaintiff]*, whichever is earlier?

YES \_\_\_\_\_ VOTE \_\_\_\_\_  
NO \_\_\_\_\_ VOTE \_\_\_\_\_

If your answer is “yes,” proceed to question 4.  
If your answer is “no,” stop your deliberations and return your verdict.

4. Did *[Plaintiff]* prove that *[Plaintiff]* reported the nonconformity to the manufacturer or its dealer during the first 18,000 miles of use or during the period of two years following the date of original delivery to *[Plaintiff]*, whichever is earlier?

YES \_\_\_\_\_

VOTE \_\_\_\_\_

NO \_\_\_\_\_

VOTE \_\_\_\_\_

If your answer is “yes,” proceed to question 5.

If your answer is “no,” stop your deliberations and return your verdict.

5. Did *[Plaintiff]* prove that the manufacturer, through its authorized dealers, did not repair the nonconformity or nonconformities within a reasonable time?

YES \_\_\_\_\_

VOTE \_\_\_\_\_

NO \_\_\_\_\_

VOTE \_\_\_\_\_

*[Insert specific damage question, if appropriate. See N.J.S.A. 56:12-32 and -42.]*