

## NEW CARS GONE SOUR

By Attorney Michael H. Wald

Everyone has heard the stories of new cars gone sour. Well, under the Texas "lemon law," here is how to try to get your money back. (Although the law first became effective October 1, 1983, it was then declared unconstitutional by a federal district court on June 12, 1984, and at that time enforcement ceased. However, on March 25, 1985, a federal court of appeals reversed the district court's judgment, and the law is again fully enforceable.)

The law applies to new motor vehicles only. The conditions which must be met are these:

1. Problems requiring repair must substantially impair the use and market value of the vehicle.

2. Within 12 months of ownership or the terms of the warranty, whichever is less, the vehicle must have been returned to the manufacturer or distributor, its agent, or its authorized dealership four or more times for repair of the same problems or have been under repair at a dealership or out of service for a cumulative total of 30 or more days during such period. (Keep records. Under Texas law, it is the consumer's burden to prove his case.)

3. The owner must have notified the manufacturer (of a domestic made vehicle) or distributor (of a foreign-made vehicle) in writing about problems still not repaired, and allow a reasonable time after notification for the repairs to be made.

4. After the expiration of a year or the warranty term, whichever is less, the owner has six months to file a complaint, again in writing, with the Texas Motor Vehicle Commission, P.O. Box 2293, Austin, 78768. The Commission is empowered to hold a hearing to determine the merits of

your complaint and take a ride in the motor vehicle -- with a commission examiner. But don't hold your breath. Due to budget constraints and the number of complaints, there is a big backlog. If the Commission eventually finds in your favor it may order the manufacturer or distributor to replace the motor vehicle with a comparable motor vehicle or accept return of the motor vehicle from the owner and refund the full purchase price less a reasonable allowance for any driving before the first complaint and any subsequent period when the vehicle was not out of service for repair. Refunds will be made to the owner and leinholder, if any, as they may have an interest.

In any hearing before the Commission under this law, a manufacturer or distributor may plead and prove as a defense that:

1. the problems requiring repair are the result of abuse, neglect, or unauthorized modifications or alterations of the motor vehicle.

2. the problems do not substantially impair the use or value of the motor vehicle.

Of course, the "lemon law" does not limit the rights of an owner available under any other law. A consumer can appeal the Commission's decision to state district court. In fact, a consumer can bypass the Commission, and go right to court to present his or her case; although the Commission has set up the above process allowing consumers to represent themselves without a lawyer.

Hopefully your dream car will remain a cream puff, but if not this information may be your lemon aid.

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