

N.C.P.I.-Civil. 745.01
NEW MOTOR VEHICLES WARRANTIES ACT ("LEMON LAW") -
MANUFACTURER'S FAILURE TO MAKE REPAIRS NECESSARY TO CONFORM
NEW MOTOR VEHICLE TO APPLICABLE EXPRESS WARRANTIES.
GENERAL CIVIL VOLUME
JUNE 2013
N.C. Gen. Stat. § 20-351.2

745.01 NEW MOTOR VEHICLES WARRANTIES ACT¹ ("LEMON LAW") -
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The (*state number*) issue reads:

"Did the defendant fail to make (or to arrange to have made) repairs necessary to conform the plaintiff's new motor vehicle to all applicable express warranties covering that vehicle?"

On this issue the burden of proof is on the plaintiff.² This means that the plaintiff must prove, by the greater weight of the evidence, five things:

First, that the (*name vehicle*) was a new motor vehicle³ at the time of its [sale] [lease].

Second, that the defendant⁴ covered the (*name vehicle*) with an express warranty.⁵

Third, that within [one year or 12,000 miles]⁶ [*state any greater warranty term set forth in the express warranty*]⁷ following original delivery of the (*name vehicle*) to the plaintiff, the (*name vehicle*) failed to conform to all applicable express warranties.

Fourth, that the plaintiff reported the nonconformity to the [defendant] [defendant's agent] [defendant's authorized dealer] within [one year or 12,000 miles] [*state any greater warranty term set forth in the express warranty*] following original delivery of the (*name vehicle*) to the plaintiff.⁸

And Fifth, that the defendant failed to make (or arrange to have

made) the necessary repairs.

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the defendant failed to make (or arrange to have made) repairs necessary to conform the plaintiff's new motor vehicle to all applicable express warranties covering that vehicle, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

1. New Motor Vehicles Warranties Act, N.C. Gen. Stat. § 20-351 *et seq.* A civil action by a consumer is authorized by N.C. Gen. Stat. § 20-351.7. Certain procedural prerequisites (*e.g.*, ten day prior notice to manufacturer of intent to file suit) must be met.

2. The plaintiff must be a "consumer." A consumer includes (1) any purchaser of a motor vehicle, unless the purchase is for resale, (2) any lessee of a motor vehicle or (3) any other person entitled by the terms of an express warranty to enforce the obligations of that warranty. N.C. Gen. Stat. § 20-351.1(1). *See also* N.C. Gen. Stat. § 25-2-318.

3. The Act only applies to "new motor vehicles." A "motor vehicle" includes any vehicle defined in N.C. Gen. Stat. § 20-4.01 when sold or leased in North Carolina, but excludes "house trailers" and vehicles with gross vehicle weights exceeding 10,000 pounds. N.C. Gen. Stat. § 20-351.1(3). For a motor vehicle to be "new," it must be one for which "a certificate of origin, as required by N.C. Gen. Stat. § 20-52.1 or a similar requirement in another state, has never been supplied to a consumer, or which a manufacturer, its agent, or its authorized dealer states in writing is being sold as a new motor vehicle." N.C. Gen. Stat. § 20-351.1(4).

4. The defendant must be a "manufacturer," *i.e.*, a "person or corporation, resident or nonresident, who manufactures or assembles or imports or distributes new motor vehicles which are sold in the State of North Carolina." N.C. Gen. Stat. § 20-351.9.

5. Creation of express warranties is governed by N.C. Gen. Stat. § 25-2-313. In the event the trial judge determines that this element should be supplemented to provide further instruction on how an express warranty is created, he may instruct the jury from the following, as applicable:

[Any affirmation of fact or promise made by the defendant to the plaintiff

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which relates to the (*name vehicle*) and became part of the basis of the bargain created an express warranty that the (*name vehicle*) would conform to the affirmation or promise.]

[Any description of the (*name vehicle*) which was made part of the basis of the bargain created an express warranty that the (*name vehicle*) would conform to the warranty.]

[Any sample or model which was made part of the basis of the bargain created an express warranty that the whole of the (*name vehicle*) would conform to the sample or model.]

(It is not necessary to the creation of an express warranty that a person use formal words such as "warrant" or "guarantee" or have a specific intention to make a warranty. However, an affirmation merely of the value of a new motor vehicle or a statement purporting to be merely a person's opinion or commendation of a new motor vehicle does not create a warranty.)

6. The plaintiff has the burden of showing that the vehicle was within the warranty period. However, N.C. Gen. Stat. § 20-354.4 also allows the defendant an affirmative defense that odometer tampering has occurred to show that the vehicle was not within the warranty period at the time of the non-conformity. Therefore, under the statutory scheme, the defendant may choose to rebut the plaintiff's proof that the vehicle was within the warranty period because of odometer tampering, or the defendant may choose to present odometer tampering as an affirmative defense. However, if the jury answers "Yes" to the issues presented in N.C.P.I.-Civil 745.01 or N.C.P.I.-Civil 745.03, they will have found that the plaintiff has proven that the vehicle was within the warranty period. This creates the possibility of inconsistent verdicts. However, if the defense insists upon using odometer tampering as an affirmative defense, as opposed to simply rebutting the plaintiff's burden of proof, a separate issue should be presented. See N.C.P.I.-Civil 745.05.

7. "[A]ny express warranty for a new motor vehicle expressed in terms of a certain number of miles shall begin to accrue from the mileage on the odometer at the date of original delivery to the consumer." N.C. Gen. Stat. § 20-351.2(b).

8. N.C. Gen. Stat. § 20-351.2(a).