When life gives you lemon...law reform

The practitioner and vehicle owner's guide to the 2025 changes in the lemon law

By Michelle Fonseca-Kamana

Over the last decade, what was once a niche area of law has since skyrocketed in popularity. In 2015, court records indicate that there were approximately 4,500 lemon-law-related cases filed in California. By 2022 that number rose to 14,892 filings and by 2023 that number rose yet again to 22,655 filings. The California Judges Association estimates that nearly 10% of all civil filings in Los Angeles County are now related to lemon-law disputes. This massive uptick in filings exacerbated an already broken system, which in 2024 led to the legislative lemon-law reforms proscribed in AB 1755.

Lemon law 101

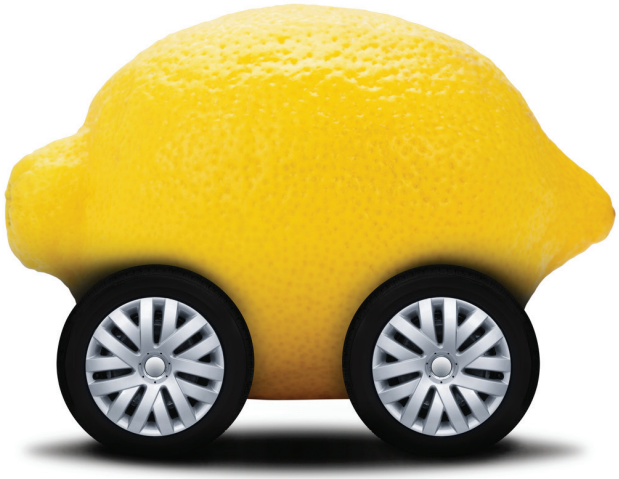
The Song-Beverly Consumer Warranty Act, more commonly known as the "lemon law," is the statute in California that sets forth legal obligations for manufacturers, distributors, and warrantors of consumer goods and new motor vehicles. Beginning at Civil Code section 1790, this statute lays the foundation for the most common lemon-law causes of action, which include breach of implied warranty, breach of express warranty, failure to promptly repurchase or replace the vehicle after being unable to conform the new motor vehicle after a reasonable number of attempts, and failure to commence repairs within a reasonable time and complete them within 30 days. If a consumer can prove a violation, the most common remedies are restitution (also known as a buyback or repurchase) or replacement of the vehicle. In addition to actual damages, if the consumer is able to prove the violation was willful, they may be eligible for a civil penalty of up to two times the amount of actual damages. If the potential for recovery of damages wasn't enticing enough, perhaps what makes the lemon law so appealing to practitioners and consumers alike is the one-way fee-shifting provision that allows consumers to recover their reasonable attorney's fees and costs if they are the prevailing party.

AB 1755 reforms

Although it is represented as more of a procedural reform, the bill also has key changes as it relates to the statute of limitations, actual damages and civil penalty damages.

Changes to the statute of limitations

Before the new reforms, the statute of limitations for lemon-law claims was four years. But there was a grey area about when the four years began to run. Generally speaking, most



claims were within the statute as long as they were brought within four years from when the vehicle arguably qualified for lemon-law remedies. Although the new statute of limitations in Code of Civil Procedure section 871.21 gives much more finality about when the statute actually runs, this finality comes at a price for consumers. The new statute of limitations now has two deadlines for consumers to take action.

First statute – based on warranty

The first statute of limitations is the shorter of the two because it is based on the applicable express warranty. With this new statute, claims will expire one year after the expiration of the applicable express warranty. For many manufacturers that have five-year powertrain warranties for example, the statute of limitations will effectively be six years from the date of delivery. However, for claims based on shorter bumper-to-bumper warranties of three years or 36,000 miles, this statute will put some pressure on consumers to take action quickly after that warranty has expired if they are having defects covered under that particular warranty.

Recreational vehicles (RV)

In addition to claims based on shorter bumper-to-bumper warranties, recreational vehicle (RV) owners are likely to be the most impacted by this new one-year statute of limitations. Compared to the motor-vehicle market where car owners rely on their vehicles on a daily basis for work, school, and family obligations, the recreational-vehicle industry moves at a much slower pace despite having significantly shorter warranties.

Most RV owners only take their RVs out on trips a handful of times a year, so that limited use coupled with the huge delays in RV dealerships scheduling and performing those repairs compared to the extremely limited-duration one-to-two-year warranty from the manufacturer, often leaves RV owners helpless. For those who are fortunate enough to be able to get those warranty repairs in before the warranty expires, many RV owners then try to work things out with the manufacturer directly, a process that also tends to be dragged out over the course of several months, if not years. Before they know it, a year has passed since their warranty expired and their rights for a refund or replacement of their six-figure RV have vanished.

Second statute – six years from delivery

The second statute of limitations is broader in that it is six years from the date of original delivery of the motor vehicle. Notably, this limitation is not tied to any warranty term. Owners of electric vehicles with battery warranties that exceed this six-year limit are likely to be the most affected by this more limited statute of limitations. An important distinction however is that their warranty coverage after the six-year term is not affected, meaning the manufacturer still has to honor the warranty and pay for repairs pursuant to the warranty; however the car owner's right to restitution or replacement in the event there is a breach of that warranty or obligations associated with that warranty is now being limited.

Certified pre-owned vehicles

In addition to electric-vehicle owners, owners of certified pre-owned (CPO) vehicles will also be among those most affected by this new statute of limitations. Although most certified pre-owned vehicles are less than six years old when they are sold, the closer a CPO vehicle is to that six-year mark from the date of delivery to the original owner, the less time the new car owner has to drive the car and see if there are warrantable defects, and if so, then give the manufacturer a reasonable opportunity to repair those defects.

With these new reforms, it is no longer enough to purchase a CPO vehicle. Car owners should now take into account the statute of limitations and try to give themselves at least two years before that six-year statute of limitations runs to determine the true quality of the vehicle they just purchased before it's too late to take action.

Taken together, under the new statute of limitation, if a vehicle owner is seeking restitution or replacement under the lemon law, they will need to take action within one year after expiration of the applicable express warranty, but in no event can they take action six years after the original date of delivery of the vehicle.

Damages

Perhaps the biggest improvement in the law for consumers is found in Code of Civil Procedure section 871.27, subdivision (b), which now allows optional equipment and accessories, theft-deterrent devices, surface-protection products, service contracts, extended warranties, debt-cancellation agreements, and guaranteed asset protection ("GAP") financing *supplied by the selling or leasing dealership or an authorized retail facility for the manufacturer* to be recoverable as damages.

Dealerships are known for loading up vehicle contracts with every addition they can on a take-it-or-leave-it basis that often leaves unsuspecting consumers with no idea what was added to their vehicle, how much those add-ons actually cost, or how those additions would affect a possible lemon-law settlement. With the previous version of the law, manufacturers were essentially limited to only paying for the car itself, not anything that was rolled into the vehicle's financing. In doing so, manufacturers were able to legally deduct the cost of any aftermarket additions that were rolled into the vehicle's financing and to many consumers' detriment, those deductions would routinely be anywhere from $2,500 to $10,000+.

Although under the previous law, manufacturers routinely insisted on deductions for negative equity incorporated from trade-ins on lemon-law cases, this deduction is now codified in Code of Civil Procedure section 871.27, subdivision (c).

Lastly, the new reforms addressed issues raised in *Crayton v. FCA US LLC* (2021) 63 Cal.App.5th 194, pertaining to whether the residual value on a lease is included in a consumer's actual damages. In *Crayton*, the court found that in the lease at issue, plaintiff was not required to acquire title to the vehicle at the end of the lease, thereby requiring them to pay the residual value of the vehicle. Instead, the lease gave plaintiff the option to do so. Based on this distinction, the court found that the residual value on the lease did not fall under the "actual price paid or payable" in Civil Code section 1793.2, subdivision (d)(2)(B).

The characterization of whether residual value on a lease is considered actual damages is particularly important in cases involving civil-penalty damages, so the new reforms in Code of Civil Procedure section 871.27, subdivision (e) build on the *Crayton* decision. Under the new reforms, amounts paid or payable by lessees are further clarified in that amounts paid or payable under an existing agreement to extend a lease term shall be allowable as damages.

In certain cases the defects in a leased vehicle manifest later in the lease term and due to manufacturer delays and court backlogs, it is often not possible to resolve matters before the original lease termination date. Under the new reforms, not only are these lease-extension payments included as actual damages, they can also be included in the calculations for civil-penalty damages as long as the lease extension is activated by the consumer no later than 30 days after delivering pre-suit notice or filing a lawsuit, whichever is earlier.

The new law also clarifies situations in which the residual value can be considered as actual damages and be included in civil penalty calculations. The key distinction is based on amounts paid by the consumer toward the residual value. For example, in a normal lease transaction where the consumer pays the required payments under the lease and returns the vehicle at the end of the lease term without exercising their purchase option, the residual value would not be considered as an actual damage, nor could it be used in civil penalty calculations.

But in situations where the consumer has exercised the purchase option on a lease and has paid the residual value to purchase the vehicle, the residual value is considered an amount paid and, as such, is part of the actual damages. Similarly, if a consumer has exercised the purchase option on the lease but has financed the residual value, meaning they have not actually paid for the entirety of the residual value but by contract with a lender are bound to pay the full amount, the residual value can be included in civil penalty calculations if paid for or financed by the consumer no later than 30 days after delivering pre-suit notice or filing a lawsuit, whichever is earlier.

New civil penalty procedure

The landmark case of *Krotin v. Porsche Car North America, Inc.* (1995) 38 Cal.App.4th 294, 302, is best known for holding that "the Act creates an affirmative duty on the manufacturer or its representative to provide restitution or replacement when a covered defect…is not repaired." This affirmative duty has been widely used by lemon-law practitioners to argue for civil penalty damages even when no explicit request for a repurchase or replacement was made by the consumer. While the new reforms do not affect the manufacturer's obligation to affirmatively provide restitution or replacement when a defect has not been repaired, they do clarify the new procedure that must be followed for consumers to be eligible for civil penalty damages.

This new procedure can be found in section 871.24 of the Code of Civil Procedure, which goes into effect April 1, 2025. The new procedure essentially requires the manufacturer to be notified of the consumer's request that their vehicle be repurchased or replaced pursuant to the lemon law before civil-penalty damages for a willful violation of the lemon law can kick in.

The notice to the manufacturer must include the consumer's name, vehicle identification number for the vehicle at issue, a brief summary of the problems with the vehicle, and a statement that they want the manufacturer to repurchase or replace their vehicle. Much like claims under the Consumer Legal Remedies Act, the notice can be sent via certified mail to the address provided by the manufacturer in the owner's manual or warranty booklet, however the new law also provides for a more technology-friendly method of notice by email to the email provided by the manufacturer in the owner's manual or warranty booklet. Considering the evidentiary issues of proving notice and the contents of the notice, the email option will likely be the preferred method of notice for many practitioners as notice is delivered instantly and the contents of the notice are clearly shown in the email as well.

Possession of the vehicle

In a bit of a deviation from *Martinez v. Kia Motors America, Inc.* (2011) 193 Cal.App.4th 187, which held that a consumer does not need to maintain possession of the defective vehicle to obtain restitution under the Act, section 871.24 includes a requirement that the consumer have possession of the motor vehicle at the time the notice is submitted and for 30 days thereafter, and if the manufacturer agrees to provide restitution or replacement within 30 days after receipt of the notice, the consumer must continue to keep possession of the vehicle for another 30 days while the settlement is completed. In the event the repurchase or replacement is rejected or not completed within 60 days from the date of notice, the consumer may file their claim for civil penalties and other relief and may sell the vehicle. Keep in mind, however, that possession is only required if the consumer wants the ability to seek civil penalty damages. Consumers may still file their lemon-law claims without having possession of the vehicle and without providing notice and still obtain restitution or replacement remedies.

This new pre-litigation procedure provides consumers with a much-needed time frame in which manufacturers must act. Under the previous version of the law, there was merely a vague requirement that the manufacturer "promptly" provide restitution or replacement, however in practice, it would often take several weeks and up to several months just for a manufacturer to respond to a repurchase request, and then another several weeks or months for them to actually process the repurchase or replacement. This resulted in massive delays for consumers, all while they are stuck making payments for a vehicle that is consistently putting their lives, their family's lives, and the general public in danger. The new time frames now give manufacturers 30 days to say yes or no to a repurchase request after they receive notice, and then 30 more days to process the settlement. If manufacturers actually comply with these time frames, 60-day closings on lemon-law cases will be a substantial improvement to the 3-6-plus-month time frames consumers had been forced to endure.

Lastly, and importantly for practitioners, the new reform also provides for reasonable attorney's fees for these pre-litigation repurchase or replacement requests, whereas previously there was no explicit right to attorney's fees pre-litigation, although most manufacturers would still agree to nominal attorney's fees for pre-litigation demands from attorneys on behalf of consumers.

Settlement procedure

Lemon-law settlement agreements have spiraled over the last decade with manufacturers often causing massive delays in final negotiations by forcing "take it or leave it" terms such as 1542 waivers and indemnity clauses, insisting on 75-90-day completion time frames that they don't even live up to in the end, forcing plaintiffs to be without a car and without settlement funds for days or even weeks while the manufacturer processes the checks and inspects the vehicle after it is returned, or even outright refusing to sign releases yet insisting the plaintiff is the sole signatory. Many consumers are left in situations where they're forced to make a decision between signing a release with extraneous terms that mostly benefit the manufacturer or blow off the settlement and wait months if not years for their day in court.

Code of Civil Procedure section 871.25 contains the new standardized release for use in Song-Beverly cases. This new release requires specific dollar amounts for both the loan balance or lease balance which are to contain the interest through the anticipated date of payoff, specific dollar amounts for the consumer's recovery, ensures consumers will be reimbursed for any payments made between time of settlement and time of payoff, specific dollar amounts for the civil penalty amount, language for attorney's fees by agreement or by motion, requires signatures for both parties, and most importantly requires manufacturers to have the consumer's restitution check ready for them *at the time they return the vehicle*.

Currently, many manufacturers refuse to provide checks at the time of the vehicle return, forcing plaintiffs to wait to have the settlement funds they need to purchase another vehicle. Furthermore, while many releases used to take effect as soon as the consumer signed it, this new release takes effect once the consumer returns the vehicle to the manufacturer, which protects consumers in the event they are injured between the time they sign the release and return the vehicle. The new release also contains a Code of Civil Procedure section 664.6 provision to allow enforcement and provides for attorney's fees in the event of a breach.

Practitioners utilizing the new standardized release in Code of Civil Procedure section 871.25 will also want to be familiar with section 871.27, subdivision (g), which provides further guidelines on settlements. This section forbids manufacturers from making settlement contingent on the execution of any release other than the standardized release in section 871.25. More importantly, this section reiterates the requirement for manufacturers to provide consumers with their restitution proceeds at the time of vehicle return, and requires the funds for the payoff of the vehicle, attorney's fees, and civil penalties be sent within one business day of the vehicle return. Lastly, this section now requires manufacturers to complete settlements within 30 days from the date they receive the signed release from the consumer or consumer's counsel and provides a mandatory penalty of $50 a day until the settlement is completed if manufacturers are unable to complete the repurchase or replacement settlement within 30 days.

New procedural benchmarks

Code of Civil Procedure section 871.26 appears to have taken a page out of Senator Umberg's Civil Discovery Bill SB 235, codified at Code of Civil Procedure section 2016.090, in providing strict procedural benchmarks that are now specific to lemon-law claims. Under the new reforms, the parties will be required to exchange specific documents and information within 60 days from the filing of the answer or other responsive pleading, produce plaintiff and the manufacturer's person most qualified to testify for deposition within 120 days from the filing of the answer or other responsive pleading, and go to mediation within 150 days from the filing of the answer or other responsive pleading.

Failing to comply with these new procedural benchmarks will also come at a cost for the offending party with a $1,500 sanction against plaintiff's attorney or a $2,500 sanction for defendant's counsel. For repeated noncompliance by plaintiff and their counsel, the court *shall* order the case dismissed without prejudice and for plaintiff's attorney to be responsible for costs awarded to the manufacturer. For repeated noncompliance by defendant and their counsel, the court *shall* order that evidentiary sanctions attach precluding the manufacturer from introducing evidence at trial regarding whether the motor vehicle had a nonconformity that substantially impaired the use, value, or safety of the motor vehicle, or whether the motor vehicle was repaired to match the written warranty after a reasonable number of opportunities to do so which essentially functions as an admission of liability as to the underlying claim.

Choose your own adventure, lemon-law edition

Although the reforms in AB 1755 passed and most of them took effect January 1, 2025, or will take effect April 1, 2025, practitioners should still exercise caution as the reforms came with a caveat from Governor Gavin Newsom. In his message to the members of the California State Assembly regarding his signing of AB 1755, Newsom wrote, "While AB 1755 aims to speed resolution of Lemon Law claims and reduce litigation, many automakers, including smaller electric-vehicle automakers, have expressed serious concerns that some of the specific procedures prescribed in AB 1755 are unworkable for them. *In light of those concerns, the authors have agreed to introduce a bill early in the 2025-2026 legislative session that would amend the statute enacted by this bill to make its new*

procedures subject to election by a given automaker. Automakers that do not elect to utilize the new procedures to resolve Lemon Law claims on their vehicles would be subject to existing Lemon Law rules. I urge the Legislature to adopt that compromise proposal swiftly." (Emphasis added).

Another requested amendment from the governor involves requiring consumers who have made lemon-law claims under AB 1755 to give notice to prospective buyers if they sell their vehicles prior to resolution of their lemon-law lawsuit. Although the idea of protecting unsuspecting car buyers from possible lemon vehicles that haven't had the opportunity to be branded as such is noted, this type of notice is more likely to do more damage to consumers who are actively dealing with a lemon vehicle and have no choice but to sell it.

Ultimately, these reforms are the tip of the iceberg when it comes to the future of lemon law. With these new legislative changes in AB 1755, possible new amendments in 2025, and the recent detrimental decision in *Rodriguez v. FCA US LLC* (2024) 17 Cal.5th 189, that all but gutted used-car lemon law in California, it is more important than ever for the plaintiff's bar to come together to advocate and protect our clients' rights.

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