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In Brief...

A quarterly newsletter brought to you by the Massachusetts Laborers' Legal Services Fund

The Massachusetts "Lemon Law" provides a procedure to assist consumers who have purchased or leased a new vehicle that is defective. Consumers may be able to obtain a refund or replacement of the vehicle from the manufacturer if a reasonable number of repair attempts fail to correct a defect during the period of statutory protection. A defect is a problem that substantially impairs the use, market value, or safety of the vehicle. The term of protection for a new car is one (1) year or 15,000 miles, whichever comes first, from the date of original delivery. If repair of the defect is attempted three (3) or more times but the problem reoccurs, or, if repair attempts for any substantial defect or combination of serious defects total 15 or more business days, the standard of a "lemon" may be met. The manufacturer must then be given notice in writing of one final opportunity to fix the defect. If the defect is not corrected and the manufacturer will not replace the vehicle or refund the purchase price, consumers can opt for mediation, arbitration or file suit in court under Massachusetts General Laws c. 90 § 7N1/2.

The Massachusetts Lemon Law also mandates that every used vehicle sold by a dealer in the state be covered by an express written warranty. The warranty must cover the full cost for both the parts and labor necessary to repair any defect that impairs the vehicles safety or use. The one caveat to the otherwise full coverage under this warranty is that the dealer can seek up to one hundred dollars from the consumer.

The period of statutory protection for the used car lemon law is a bit more complicated than for new and leased vehicles. For a vehicle with less than forty thousand miles at the time of sale, the warranty extends for ninety days or for three thousand seven hundred and fifty miles, whichever occurs first. For a vehicle with mileage between forty thousand and eighty thousand miles, the warranty extends for sixty days or for two thousand five hundred miles, whichever occurs first. A vehicle with over eighty thousand miles, but less than one hundred and twenty five thousand



miles, is covered for thirty days or for one thousand two hundred and fifty miles.

The warranty period may be tolled when the vehicle is out of service as a result of any repair or attempted repair under the warranty. This means that for every day a vehicle is in the shop being repaired under the warranty, a day is added to the periods of statutory protection listed above.

A motor vehicle sale contract may be voided by the buyer of a vehicle for personal or immediate family use if the motor vehicle fails to pass inspection within seven days from the date of sale. This is the law regardless of any disclaimers of warranty, such as the words "as is" and other like statements.

In order for a buyer to void the transaction, he or she must notify the seller of his intention to void the sales contract within fourteen days from the date of sale. The buyer must also deliver the vehicle to the seller with a written statement signed by an authorized agent of the inspection station stating the reasons for the failed inspection.

NEW DRUNK DRIVING LAW

On October 28, 2005, the new Drunk Driving law became effective. Everyone should understand that the Prosecutor does not have to prove that you were "drunk". The Prosecutor only has to prove that you drank enough to affect your ability to drive your car safely. The Prosecutor does not have to prove that you drove unsafely only that you drove and you drove under "diminished capacity" or "driving while buzzed".

The new law increases the amount of time your license will be suspended if you refuse to take the breathalyzer. The minimum length of suspension *increases* as follows:

- From 6 months to 1 year, before an OUI second (2nd) offender is eligible for a *work* license;



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- From 1 year to 18 months, before an OUI 2nd offender is eligible for a general **hardship** license;
- For a breathalyzer refusal by a driver under age 21, from 1 year to 3 years;
- For a breathalyzer refusal by a driver with 1 prior OUI conviction from 1 year to 3 years;
- For a breathalyzer refusal by a driver with 2 prior OUI convictions from 2 years to 5 years;
- For a breathalyzer refusal by a driver with 3 prior OUI convictions from 5 years to **life time** suspension;

The new law also states that all license suspensions for a breathalyzer refusal will run **“in addition to”** any additional suspension period arising from the same incident. Example: You lose your license for 1 year for a breathalyzer refusal, **plus** an additional 45 days if you are later convicted as a 1st offense drunk driver;

The new statute also made the following changes:

- Abolished the prior issuance of a 15 day temporary license after a breathalyzer refusal;
- Allows the police to impound the car of a driver who refuses to take a breathalyzer up to 12 hours, at the driver’s expense;
- Requires that an OUI 1st offender between ages 16 and 21 with a blood alcohol level of .20 or greater who are found guilty must attend a “14 day 2nd offender in-patient program”;
- Increases the period of license suspension for 1st offender vehicular homicide to 15 years;
- Revokes **for life** the license of any person convicted of vehicular homicide involving OUI or an OUI with serious injury



- Creates a new misdemeanor of “child endangerment while operating a vehicle while under the influence with a child under 14 in the car.
- 2nd offenders of this new misdemeanor are subject to a mandatory 6 month imprisonment. Convictions for this new misdemeanor result in a license loss of 1 year for a 1st offense and 3 years for a 2nd offense.
- Allows the prosecutor to institute a forfeiture proceeding in the District Court or Superior Court for a vehicle owned by a 4th or subsequent OUI offender. (This means that the prosecutor is permitted to seize your car and sell it with all proceeds going to the police department and the prosecutor’s office.)
- Allows the Registry of Motor Vehicles to cancel the registration of any car owned by a 3rd or subsequent OUI offender during the period of license suspension.
- Requires ignition interlock devices for hardship licensees and for a period of 2 years for 2nd offenders.

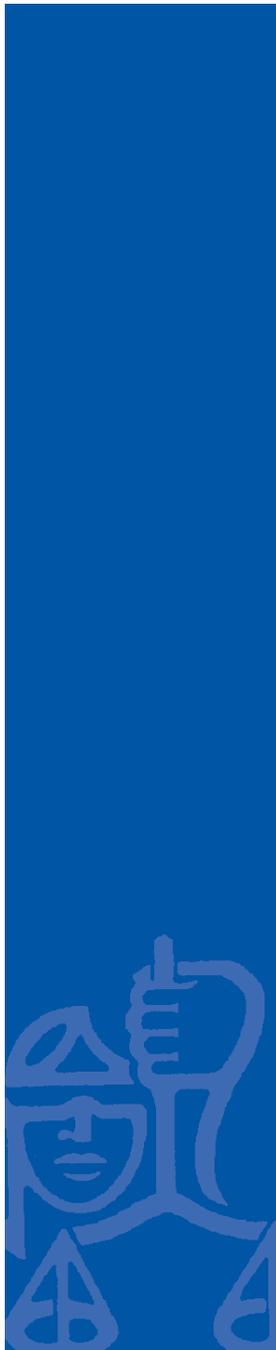
- Creates a new misdemeanor for driving a car not equipped with an ignition interlock device while under this restriction.

Under the new law, if you drink and drive, get arrested and then refuse to take the breathalyzer, you run the risk of losing your license for a long time and receiving larger fines.

Statements or questions please contact us at:
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