

**John O'Neal—O'Neal Law Office
7 Battleground Court, Suite 212, Greensboro, NC 27408**

Classification of claims

1. “The terms and money are funny with my car!” (This paper does not cover the plethora of federal and state laws that apply to vehicle financing and contract issues. For more information in this area, consult these and related statutes.)

NC Retail Installment Sales Act--- N.C.G.S. § 25A-1 *et seq.*

Truth in Lending Act---15 U.S.C. §1601 *et seq.*

Equal Credit Opportunity Act---15 U.S.C. §1691 *et seq.*

Fair Credit Reporting Act---15 U.S.C. §1681 *et seq.*

Repossession--- N.C.G.S. § 25-9-103 *et seq.*

Regulation “M” (regarding consumer leases)---12 C.F.R. Part 213

Conditional delivery agreement (a/k/a yo-yo financing a/k/a spot delivery) allowed---N.C.G.S. § 20-75.1

2. “There’s something wrong with my car!”

Lemon law---N.C.G.S. § 20-351 *et seq.*

Magnuson Moss Warranty Act---15 U.S.C. §§ 2301-2312; 16 C.F.R. Parts 700-703, 239

FTC Used Car Rule---16 C.F.R. Part 455

Uniform Commercial Code--- N.C.G.S. § 25-2-101 *et seq.*

3. “You lied to me about this car!”


Odometer disclosure---49 U.S.C. § 32705

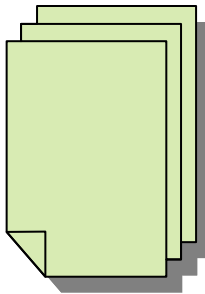
Damage disclosure---N.C.G.S. § 20-305.1(e), N.C.G.S. § 20-71.4(a)(2), N.C.G.S. § 20-71.4(a)(1)


Lemon disclosure---N.C.G.S. § 20-351.3(d)

Motor Vehicle Repair Act---N.C.G.S. § 20-348 *et seq.*



The National Consumer Law Center has really good publications on vehicle law and consumer law issues. For info on these publications, which include a survey of relevant law as well as pleadings and discovery, visit <http://www.consumerlaw.org/publications/>.

Case Type	Relevant statutes	Key concepts	Damages
<p>Lemon Law Protects consumers from problems with new vehicles</p> 	<p>N.C.G.S. § 20-351 <i>et seq.</i></p>	<p>New vehicle... ..defects, which subst. impair vehicle’s value, must appear w/in 24 months or 24K miles of delivery of vehicle</p> <p>“Reasonable number of attempts” means either (1) <u>4</u> repair attempts to fix <u>the same defect</u> or (2) vehicle unavailable to customer for 20 or more business days during any 12-month period of the warranty</p> <p>...claim is v. m’fr NOT dealer/seller</p> <p>Claim for refund (partial) or replacement vehicle BUT first buyer must send written notice to m’fr of the defect(s) and give 15 calendar days to correct the defect(s) BUT only if m’fr clearly discloses the written notice requirement and contact info for proper addressee of notice</p>	<p>Statutory formula (N.C.G.S. § 20-351.3) for determining refund ALSO attorneys’ fees are allowed BUT most warranties have mandatory arbitration provisions which seek to avoid litigation</p>
<p>Lemon</p>	<p>N.C.G.S. § 20-</p>	<p>If vehicle is returned pursuant to</p>	


<p>disclosure</p>	<p>351.3(d)</p>	<p>Lemon Law statute, subsequent sellers/transferrors must disclose the return and the defects or conditions that substantially impaired value of vehicle</p> <p>Duty to disclose presumably exists t/o life of the vehicle</p>	
<p>Magnuson Moss Warranty Act Establishes disclosure requirements and protocol for rights related to defects covered under a warranty, extended warranty, or vehicle service contract from a selling dealer at any time up to 90 days after</p>	<p>15 U.S.C. §§ 2301-2312; 16 C.F.R. Parts 700-703, 239</p> 	<p>No warranty is required but if one is provided it must clearly state if it is full or limited</p> <ul style="list-style-type: none"> • Is it a defect? ...does defect substantially impair value or fx of vehicle to a reasonable person? • Defect existed at time of sale • Defect covered by warranty/extended service contract • D gets reas. opportunity to cure (usually no more than 3 tries) • Repairs performed in a reasonable manner in a reasonable time frame • Privity with potential defendant (ex: case of customer buying vehicle service contract from “selling dealer”....more is 	<p>Allows warrantor to require arbitration or other informal dispute resolution mechanisms but there are rules re: these mechanisms</p> <p>If this does not apply, attorneys’ fees are allowed</p> <p>NOTE: although MM Warranty Act is federal law, federal court only has jurisdiction if total of all claims are \$50K or more</p>


acquiring the vehicle		required than the mere sale of the VSC)	
<p>Damage disclosure for <u>all</u> vehicles</p> 	N.C.G.S. § 20-71.4(a)(2)	Requires the seller to make a <u>written</u> disclosure if vehicle is salvaged, flood-damaged, reconstructed	<p>No private right of action stated in statute but claim can be made for fraud, misrepresentation, UDAP, etc. possibly leading 3x the amount of actual damages sustained plus court costs plus attorneys' fees.</p> <p>NOTE: Failure to disclose such damage is a Class 2 misdemeanor--N.C. Gen. Stat. §20-71.4(d)</p>
<p>Damage disclosure for new vehicles</p>	N.C.G.S. § 20-305.1(e)	Dealers are required to disclose in writing any damage and repair that exceeds 5% of the manufacturer's suggested retail price before you enter into a contract to purchase the vehicle. There is no disclosure requirement, however, regarding damage to glass, tires, or bumpers if the damaged item has been replaced with original or comparable equipment. NOTE: does not apply to motorcycles	<p>No private right of action stated in statute but claim can be made for fraud, misrepresentation, UDAP, etc. possibly leading 3x the amount of actual damages sustained plus court costs plus attorneys' fees.</p>
<p>Damage disclosure for vehicles 5 years old or newer</p>	N.C.G.S. § 20-71.4(a)(1)	<p>New cars and used cars that are five years old or newer... requires the seller to make a <u>written</u> disclosure of damage that exceeds 25% of the vehicle's fair market value.</p> <p>Must prove intent to defraud by the</p>	<p>No private right of action stated in statute but claim can be made for fraud, misrepresentation, UDAP, etc. possibly leading 3x the amount of actual damages sustained plus court costs plus attorneys' fees.</p> <p>NOTE: Failure to disclose such damage is a</p>

		seller	Class 2 misdemeanor--N.C. Gen. Stat. §20-71.4(d)
--	--	--------	--

<p>FTC Used Car Rule Sets forth requirements for warranty disclosures as well as other types of information to be given in conjunction with used car sales.</p>	<p>16 C.F.R. Part 455</p> 	<p>Applies to all sellers of vehicle except those who sell, or offer to sell, fewer than six (6) used vehicles in a twelve month period. Those subject to the FTC Used Car Rule must, upon sale of a vehicle, use a Buyers Guide sticker and fill it out correctly and completely, both the front side and the back side. The seller must provide the completed Buyers Guide sticker to the buyer.</p>	<p>No implied private right of action. Still, the Trade Practices Rule is useful as a basis for state UDAP claim or Magnuson Moss claims</p>
<p>Uniform Commercial Code Primary source of law in all contracts dealing with the sale of goods.</p>	<p>N.C.G.S. § 25-2-101 <i>et seq.</i></p> 	<p>Ever-present obligation to perform and enforce contract in good faith (N.C.G.S. § 25-1-304).</p> <p>Tender, Acceptance, Rejection and Revocation</p> <p>TENDER - Buyer is entitled to reject any goods that fail in any respect conform to the contract. Unfortunately, new cars are often complex and their innermost workings are beyond the understanding of the average new car buyer. The buyer therefore does not know whether the goods are then conforming.</p> <p>ACCEPTANCE - The new car buyer</p>	<p>Reject goods and cancel contract and recover money paid</p> <p>OR if it is too late to reject goods, can recover difference b/t FMV of goods as delivered and FMV of goods had they been as warranted</p> <p>Also allowed: consequential damages (ex: PI damages, economic loss to property)</p>

	<p>therefore accepts the goods believing and expecting that the manufacturer will repair any problem he has with the goods under the warranty.</p> <p>REJECTION - The new car buyer may discover a problem with the vehicle within the first few miles of his purchase. This would allow the new car buyer to reject the goods. If the new car buyer discovers a defect in the car within a reasonable time to inspect the vehicle, he may reject the vehicle. This period is inexact. On the one hand, the buyer must be given a reasonable time to inspect and that implies a right to use the vehicle. However, on the other hand, continued use or use beyond a reasonable time to inspect will be held to be an acceptance of the vehicle.</p>	
--	--	--

<p>Odometer Law--Federal Prohibits tampering with odometers and establishes disclosure standards</p>	<p>49 U.S.C. §§ 30501-30505; 49 C.F.R. §§ 580.1-580.17;</p>	<p>Prohibits odometer-tampering as well as operating a vehicle with a disconnected or nonfunctional odometer.</p> <p>Must show the odometer was altered with the intent to defraud</p> <p>Both acts allow a prevailing plaintiff to recover costs, reasonable attorneys' fees, and treble damages.</p>	<p>Treble damages or \$1,500, whichever is greater. Also, attorneys' fees are authorized.</p>
<p>Odometer Law--State Prohibits tampering with odometers and establishes disclosure standards for vehicle mileage</p>	<p>N.C.G.S. § 20-340 <i>et seq.</i> </p>	<p>Note that the Act only applies to vehicles less than 10 years old. Further the Act does not apply to large vehicles (vehicles over 16,000 pounds gross vehicle weight).</p> <p>Must show intentional violation (either reckless disregard or gross negligence of seller re: representation of vehicle's mileage)</p>	<p>Greater of treble damages or \$1,500 <u>for each violation</u> of the statute (see <i>Washburn v. Vandiver</i>, 93 N.C. App. 657, [1989]) + costs + attorneys' fees.</p> <p>Treble damages up to \$1,500, court costs, and attorney fees</p> <p>Under NC law, alteration of an odometer is a felony and other violations of the NC Vehicle Mileage Act constitute misdemeanors.</p>
<p>Motor Vehicle Repair Act</p>	<p>N.C.G.S. § 20-354, <i>et seq.</i></p>	<p>Applies to the majority of vehicle maintenance and repair except for tire purchases and installation. It does not apply to repairs and maintenance on vehicles over 26,000 pounds gross</p>	<p>Compensatory damages, case costs, court costs, and reasonable attorneys' fees.</p>

 <p>war</p>	<p>vehicle weight or to certain third party repairs.</p> <p>Vehicle owner has rights including the following:</p> <p>To receive a written estimate when the cost of repairs will exceed \$350</p> <p>To be told, in advance, if there will be a charge for preparing the estimate.</p> <p>To inspect any parts removed from your vehicle.</p> <p>To retain all parts removed from your vehicle.</p> <p>To receive a legible copy of any repair invoices for vehicle with each invoice sufficiently detailed so as to contain a statement of work or repairs performed, itemization of the nature and cost of all labor and parts required to perform the work or repair, and a statement identifying any replacement part as being used, rebuilt, reconditioned, etc.</p>	
--	---	--



Looming in the backdrop as a possible sledgehammer.... N.C.G.S. § 75-1.1

Unfair or Deceptive Acts and Practices (a/k/a UDAP)

- Mere breach of contract is not enough; need aggravating circumstances.
- Proof of actual deception not required; capacity of statements to deceive is sufficient.
- Must prove actual injury.
- Treble damages mandated and attorneys' fees available.
- 4-year statute of limitation.

Helpful documents in vehicle cases

- DMV title history (from North Carolina and/or all other states in which vehicle was registered)
- Title application
- CarFax report or AutoCheck report
- Vehicle service records and receipts for parts, etc. [if you're lucky!]
- Sales contract/consumer credit agreement/Finance agreement
- Bill of sale, Retail Installment Sales Agreement, and all documents provided in conjunction with sale
- Odometer Disclosure Form
- Repair estimates, supplements, and invoices
- Buyers Guide sticker
- Warranty or extended warranty or vehicle service contract
- Accident report (helpful if vehicle has property damage from motor vehicle accident)
- Advertising or marketing materials promulgated by seller (ex: Craigslist ads, classified ads, sales circular, e-mails)
- Appraised vehicle value from Kelly's (www.kbb.com), Edmunds (www.edmunds.com), NADA guide (www.nada.com)