

The New Jersey Coalition for Prevention  
of Developmental Disabilities  
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Alternatively, the statement promoting the use of bicycle helmets may be in the form of a tag, notice, or decal designed by the bicycle supplier or retailer, provided the wording is clear and concise, appears in no less than 20-point type if in the form of a tag or notice and no less than 18-point type if in the form of a decal, and is printed in boldface capital letters, in color contrasting with the background. The tag or notice shall be made of cardboard, durable paper or plastic, and shall be no smaller than four inches by six inches if in the form of a tag or notice and no less than one by two inches if in the form of a decal; it may be covered by transparent plastic but shall not be obscured.

(c) A statement promoting the use of bicycle helmets that is contained within the text of the owner's manual, shall not satisfy the requirement.

Amended by R.1995 d.618, effective December 4, 1995.  
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

## SUBCHAPTER 25. SELLERS OF HEALTH CLUB SERVICES

### 13:45A-25.1 "Health club" defined

(a) The term "health club" shall include any establishment which:

1. Devotes at least 40 percent of its facility to the preservation, maintenance, encouragement or basic development of physical fitness or physical well-being through physical exercise; and
2. Where patron use is predominantly at will (that is, usage is permitted whenever the establishment is open or during specified time periods, such as "weekends", "weekdays", "mornings", etc.).

(b) The term "health club" shall not include a single focus establishment/facility that is devoted to the development of one particular physical skill, or activity or enjoyment of one specific sport. The following facilities are not subject to the Act Regulating Sellers of Health Club Services, P.L. 1987, c. 238 ("Act"):

1. Basic aerobic and "dance exercise" centers operating on a scheduled lesson or hourly basis;
2. Children's gyms (commercial play-spaces with trampolines and other gymnastic equipment) operating on a scheduled lesson or hourly basis;

3. Martial arts schools (for example, karate institutes);
4. Dancing schools (for example, ballet and jazz);
5. Gymnastic schools operating on a scheduled lesson or hourly basis;
6. Tanning salons ("sun studios");
7. Weight control centers;
8. Metabolic and nutrition centers;
9. Other single sport centers (for example, swim clubs, tennis clubs and racquetball clubs).

(c) Health club facilities located in hotels, motels, condominiums, cooperatives, corporate offices or other business facilities and which charge fees comparable to other for-profit health clubs are subject to the Act unless usage is limited to guests, residents or employees at no charge or at nominal cost, in which event the facilities are not within the scope of the Act.

### 13:45A-25.2 Registration; fees

(a) Applicant(s) shall request information from the Health Club Coordinator, Office of Consumer Protection, Post Office Box 45025, Newark, New Jersey 07101 regarding the initial registration of a facility; thereafter an application shall be forwarded to the applicant, along with a copy of the Act and a copy of all current rules.

(b) Any person who offers for sale or sells health club services shall pay to the Director of the Division of Consumer Affairs a registration fee of \$300.00 every two years for each health club facility operated, \$150.00 if paid during the second half of the biennial period.

(c) Upon verification of the information submitted in the application, payment of the registration fee and posting of a security, if not exempt from that requirement pursuant to N.J.A.C. 13:45A-25.4, a Certificate of Registration and the Notice described in (e) below shall be issued to the facility. The Certificate of Registration and Notice shall be displayed in a prominent place at the main entrance of each health club facility.

(d) Each contract for health club services shall contain, in the upper right-hand corner, the facility's Certificate of Registration number.

(e) The following shall be the text of the Notice to be provided by the Division to each registered facility:

#### NOTICE

This facility is registered as a seller of health club services by the State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, 124 Halsey Street, Newark, New Jersey 07102. Such registration does not mean that this facility has been approved or endorsed by that

agency. Patrons are advised that under New Jersey law, facilities offering contracts for health club services for longer than a three-month period must post with the Division of Consumer Affairs security against failure to provide such services.

(f) A registrant may note in advertising that it is a registered health club; however, a registrant shall not state or imply that the facility has been approved or endorsed by the Division.

(g) All registrations shall expire every two years on the 10th day of February.

Amended by R.1990 d.104, effective February 5, 1990.

See: 21 N.J.R. 3657(a), 22 N.J.R. 358(b).

Registration fee increased from \$100.00 to \$200.00 every two years.

Amended by R.1992 d.101, effective March 2, 1992.

See: 23 N.J.R. 3637(a), 24 N.J.R. 853(a).

Revised (a), (b), (e) and (g).

### 13:45A-25.3 Exemption from registration

(a) Where a facility claims exemption from registration because less than 40 percent of its square footage is devoted to health club services, the facility shall calculate the 40 percent square footage on the basis of the total indoor square footage of the establishment including the exercise equipment area(s), sauna(s), swimming pool(s), locker facilities and shower areas. The facility shall return a completed application form to the Division of Consumer Affairs along with documentation of the "less than 40 percent" claim, which shall include:

1. A schematic drawing noting the dimensions and use of each area of the facility;
2. A list of the various rooms/spaces with the total square footage of each room/space;
3. A statement of the total square footage of the facility; and
4. Two sample advertisements or brochures if any have been published by the facility within a three month period prior to the date documentation is filed.

(b) If, after the filing of the claim of exemption from registration, a facility makes an internal or external change in space allocation which changes the relationship of the health club services area to the total premises, the facility shall file a revised schematic diagram with the Division. This filing shall be made no later than 90 days after the date when the change in space allocation is completed.

(c) A claim of exemption from registration because less than 40 percent of the facility's square footage is devoted to health club services shall be subject to on-site verification at the discretion of the Director of the Division.

### 13:45A-25.4 Exemption from security requirement

A separate Declaration of Exemption from Security Requirement shall be filed for each facility claiming exemption from the bond/letter of credit/security requirement of N.J.S.A. 56:8-41 because its membership contracts are for a period no longer than three months. When the Declaration of Exemption from Security Requirement is filed, it must be accompanied by a copy of a written contract as proof that the contract duration is for a period of no longer than three months. The Declaration of Exemption from Security Requirement shall be available upon request from the Health Club Coordinator, Office of Consumer Protection, Post Office Box 45025, Newark, NJ 07101.

Amended by R.1992 d.101, effective March 2, 1992.

See: 23 N.J.R. 3637(a), 24 N.J.R. 853(a).

Revised text.

### 13:45A-25.5 Documentation of maintenance of security

Each establishment which has posted a bond as security shall maintain complete and accurate records relating to the bond and premium payments made thereon. Each establishment which has posted a letter of credit or provided other security acceptable to the Director of the Division shall maintain complete and accurate records relating to those items. These records shall be available on the premises of the establishment for review by the Director or his or her designated representative on any operating day.

### 13:45A-25.6 Violations; sanctions

Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., any violation of the provisions of this subchapter shall be subject to the sanctions contained in the Consumer Fraud Act.

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## SUBCHAPTER 26. AUTOMOTIVE DISPUTE RESOLUTION

### Cross References

Special rules regarding disputes arising under the New Jersey Lemon Law, see N.J.A.C. 1:13A.

### Law Reviews and Journal Commentaries

Expert testimony not required in Lemon Law suits, court says. Matt Ackermann, 150 N.J.L.J. 609 (1997).

### 13:45A-26.1 Purpose and scope

(a) The purpose of this subchapter is to implement the Lemon Law, P.L. 1988, c.123, by establishing an automotive dispute resolution system within the Division of Consumer Affairs in conjunction with the Office of Administrative Law. The subchapter also sets forth the method of refund computation, and details the reporting requirements and procedure for publication of compliance records of manufacturers of motor vehicles.

(b) This subchapter is applicable to:

1. All manufacturers of passenger cars and motorcycles registered, sold or leased in the State of New Jersey;
2. All purchasers and lessees of passenger cars and motorcycles registered, sold or leased in the State of New Jersey; and
3. Dealers servicing such vehicles whether their service facilities are located within or outside of the State.

Amended by R.1992 d.236, effective June 1, 1992.

See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).

Revised (b).

#### Case Notes

Lack of objective evidence defeats consumer's lemon law claim. *Tattersall v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 49.

Lack of evidence defeats consumer's lemon law claim. *Olszewski v. Chrysler Motor Corp.*, 97 N.J.A.R.2d (CMA) 46.

New car noise not qualifying nonconforming defect under lemon law. *Nebbia v. Nissan Motor Company*, 97 N.J.A.R.2d (CMA) 44.

Easily repairable nonconformity precludes lemon law relief. *Lee v. Hyundai Motor of America*, 97 N.J.A.R.2d (CMA) 41.

Multiple out-of-service repair attempts without fixing car's serious electrical malfunctions justifies lemon law relief. *Parrish v. Saab-Scania of America*, 97 N.J.A.R.2d (CMA) 38.

New car's vibration noise fails to qualify as lemon law nonconformity. *Marder v. Chrysler Corporation*, 97 N.J.A.R.2d (CMA) 34.

New car's infrequent stalling fails to meet lemon law standard. *Tenido v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 33.

Leased car's use and safety substantially impaired by engine's hesitation arising from inherent defect. *Pertain v. Mitsubishi Motor Sales of America*, 97 N.J.A.R.2d (CMA) 23.

Automobile purchaser was not entitled to Lemon Law relief for defect which recurred two years after successful repair. *Fowler-Fernandez v. Volkswagen United States, Inc.*, 96 N.J.A.R.2d (CMA) 190.

Van's commercial design does not preclude Lemon Law complaint so long as van is not used commercially. *Short v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 185.

Lemon Law does not provide relief for nonconformities which occur above legal speed limit. *Sher v. Buick Motor Division*, 96 N.J.A.R.2d (CMA) 109.

Truck purchased primarily for commercial use not covered under Lemon Law. *Maino v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 32.

Car suffering from collision damage not subject to Lemon Law remedy. *Lloyd-Brown v. Hyundai Motor Corporation*, 96 N.J.A.R.2d (CMA) 6.

#### 13:45A-26.2 Definitions

As used in this subchapter, the following words shall have the following meanings:

"Days" means calendar days.

"Director" means the Director of the Division of Consumer Affairs.

"Dispute Resolution System" means a procedure established by the Division of Consumer Affairs and the Office of Administrative Law for the resolution of disputes regarding motor vehicle nonconformity(s) through summary administrative hearings.

"Lemon Law" means P.L. 1988, c.123, an Act concerning new motor warranties and repealing P.L. 1983, c.215, as amended by P.L. 1993, c.21.

"Lemon Law Unit" ("LLU") means the administrative unit within the Division of Consumer Affairs that processes Lemon Law matters.

"Motor vehicle" means a passenger automobile or motorcycle as defined in N.J.S.A. 39:1-1, that is registered, sold or leased in the State of New Jersey, whether purchased, leased, or repaired in the State or outside the State.

"Nonconformity" means a defect or condition which substantially impairs the use, value or safety of a motor vehicle.

"OAL" means the Office of Administrative Law.

"Out of service" means the number of days the defective motor vehicle is on the premises of a repair facility for the purpose of repairing one or more nonconformities; delays caused by the consumer, such as a delay in picking up the motor vehicle from the facility after notification that it is ready, shall not be counted as days out of service.

"Term of protection" means within the first 18,000 miles of operation or the two years following the original date of delivery of the motor vehicle to the consumer, whichever is the earlier date.

"Title" means the certificate of ownership of a motor vehicle.

Amended by R.1992 d.236, effective June 1, 1992.

See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).

Revised definition "motor vehicle".

Amended by R.1994 d.176, effective April 4, 1994.

See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

#### Case Notes

Car owner's unhappiness with transmission insufficient for lemon law recovery. *Weiss v. Ford Motor Corporation*, 97 N.J.A.R.2d (CMA) 52.

Automobile owner who experienced engine knocking noise, followed by loss of power, was entitled to relief under Lemon Law. *Capps v. Nissan Motor Corporation*, 97 N.J.A.R.2d (CMA) 19.

Automobile's slipping clutch substantially impaired its safety, use, and value, entitling owners to Lemon Law relief. *Totin v. Hyundai Motor Company*, 97 N.J.A.R.2d (CMA) 16.

Grinding noise in automobile's brakes did not impair its safety, use, or value, and thus owner was not entitled to relief under Lemon Law. *Davis v. Toyota Motor Sales*, 97 N.J.A.R.2d (CMA) 14.

Rotten egg smell emanating from automobile's exhaust pipe did not substantially impair its safety, use, or value, and thus owner was not entitled to Lemon Law relief. *Monninger v. Hyundai Motor Company*, 97 N.J.A.R.2d (CMA) 12.

Poor gas mileage is not covered under Lemon Law. *Hassmiller v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 10.

Owner's unverifiable allegation that automobile's engine raced at idle was insufficient to support Lemon Law relief. *Glombiak v. Nissan Motor Corporation*, 97 N.J.A.R.2d (CMA) 7.

Strong odor of rotten eggs which emanated from automobile, particularly during stops and starts, constituted nonconformity entitling owner to Lemon Law relief. *Conte v. Mitsubishi Motor Sales of America, Inc.*, 97 N.J.A.R.2d (CMA) 4.

Owner failed to show that value of automobile was substantially impacted by transmission whine, wind noise, and rattles and vibrations in passenger door and dashboard. *Martins v. Ford Motor Corporation*, 97 N.J.A.R.2d (CMA) 1.

Squeaking noise in van's wheels was significant enough to constitute substantial defect and to impair van's use, safety and value. *Lloyd v. Chrysler Corporation*, 96 N.J.A.R.2d (CMA) 282.

Steering problem was substantial nonconformity which impaired use, value and safety of automobile. *Toth v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 281.

Fact that lessor had driven automobile 16,000 miles in 17 months controverted his claim that engine noise, backfiring, loss of power and excessive gasoline consumption had impaired his use of automobile. *Mohamadi v. Mercedes-Benz of N.A.*, 96 N.J.A.R.2d (CMA) 279.

Lessor of new van failed to show that loud creaking noise in front end of vehicle indicated steering or suspension problem. *Shtutman v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 277.

Automobile lessor failed to show that automobile's propensity for stalling in damp or rainy weather constituted continuing nonconformity. *Christelles v. Nissan Motor Corporation*, 96 N.J.A.R.2d (CMA) 274.

Brake noise was nonconformity which substantially impaired safety and value of leased automobile. *Orefice v. Chrysler Corporation*, 96 N.J.A.R.2d (CMA) 271.

Noxious smoke venting from engine into passenger compartment of automobile was nonconformity which substantially impaired its use, safety and value. *Noonan v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 269.

Lemon Law relief was denied where automobile noise did not impair its use, value or safety. *Primiano v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 265.

Slight transmission noise was found not to constitute substantial defect warranting Lemon Law relief. *Ciccone v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 263.

Lemon Law claim was denied where truck's drifting to left and right was easily corrected by driver's steering. *Sreenen v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 259.

Lemon Law relief was warranted where defects in new automobile's windows and convertible top were not corrected. *Melnick v. Saab-Scandia*, 96 N.J.A.R.2d (CMA) 257.

Lemon Law claim was dismissed where automobile purchaser failed to present objective evidence of alleged faulty transmission. *Billos v. Volkswagen U.S., Inc.*, 96 N.J.A.R.2d (CMA) 255.

Lemon Law claim based upon water leak and gas gauge defect was rejected where purchaser presented no evidence of alleged leak and gas gauge defect was found to be insubstantial. *Diaz v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 253.

Defective anti-lock brake system panel light warranted Lemon Law relief. *De Genaro v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 251.

Usual drivetrain sound typical of automobile was not nonconformity entitling consumer to relief under Lemon Law. *White v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 248.

Minor problem with automobile's audio system was not nonconformity entitling consumer to relief under Lemon Law. *Stagich v. Nissan Motor Corporation in U.S.A.*, 96 N.J.A.R.2d (CMA) 245.

Unsubstantiated problem with transmission was not nonconformity entitling consumer to relief under Lemon Law. *Miller v. General Motors Corporation*, 96 N.J.A.R.2d (CMA) 243.

Drop in automobile engine's revolutions per minute at certain speeds and when idling was not nonconformity entitling consumer to relief under Lemon Law. *Czajka v. Hyundai Motor America*, 96 N.J.A.R.2d (CMA) 241.

Purchaser's difficulty shifting automobile was not nonconformity supporting relief under Lemon Law. *Millar v. Mazda Motors of America, Inc.*, 96 N.J.A.R.2d (CMA) 240.

Unsubstantiated problem with power door locks was not nonconformity entitling consumer to relief under Lemon Law. *Baker v. Pontiac Division of General Motors Corporation*, 96 N.J.A.R.2d (CMA) 237.

Power steering fluid leak constituted nonconformity entitling automobile lessee to relief under Lemon Law. *Rocca-Carchia v. Volkswagen U.S., Inc.*, 96 N.J.A.R.2d (CMA) 234.

Occasional rough idle characteristic of model was not nonconformity supporting relief under Lemon Law. *Rafac v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 232.

Noise in back seat when automobile goes over rough road was not nonconformity entitling consumer to relief under Lemon Law. *Medway v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 226.

Unsubstantiated annoying draft on driver's feet during cold weather was not nonconformity entitling consumer to relief under Lemon Law. *Kraus v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 223.

Engine running rough or missing was not nonconformity entitling consumer to relief under Lemon Law. *Heresniak v. General Motors Corporation*, 96 N.J.A.R.2d (CMA) 221.

Automobile's natural drift does not constitute defect supporting Lemon Law claim. *Meross v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 214.

Unverifiable vibration or buzzing sound in passenger compartment did not support claim for relief under Lemon Law. *Wiechmann v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 212.

Automobile's minor imperfections did not support claim for relief under Lemon Law. *Mestman v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 210.

Automobile's violent shaking whenever brakes were applied constituted nonconformity entitling purchaser to Lemon Law relief. *Atienza v. Ford Motor Corporation*, 96 N.J.A.R.2d (CMA) 207.

Nauseating odor in automobile constitutes nonconformity warranting relief under Lemon Law. *Sanchez v. Nissan Motor Corporation, USA*, 96 N.J.A.R.2d (CMA) 205.

There was no evidence that grinding noise made when four-wheel drive engaged constituted nonconformity entitling truck buyer to Lemon Law relief. *Koury v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 201.

"Tapping" noise from engine compartment was not nonconformity entitling consumer to Lemon Law relief. *Casano v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 196.

Water leak in automobile's trunk was not nonconformity entitling purchaser to Lemon Law relief. *Good v. Hyundai Motors America*, 96 N.J.A.R.2d (CMA) 194.

Automobile's hesitation or stalling during drive constitutes nonconformity warranting relief under Lemon Law. *Nesta v. General Motors Corporation*, 96 N.J.A.R.2d (CMA) 186.