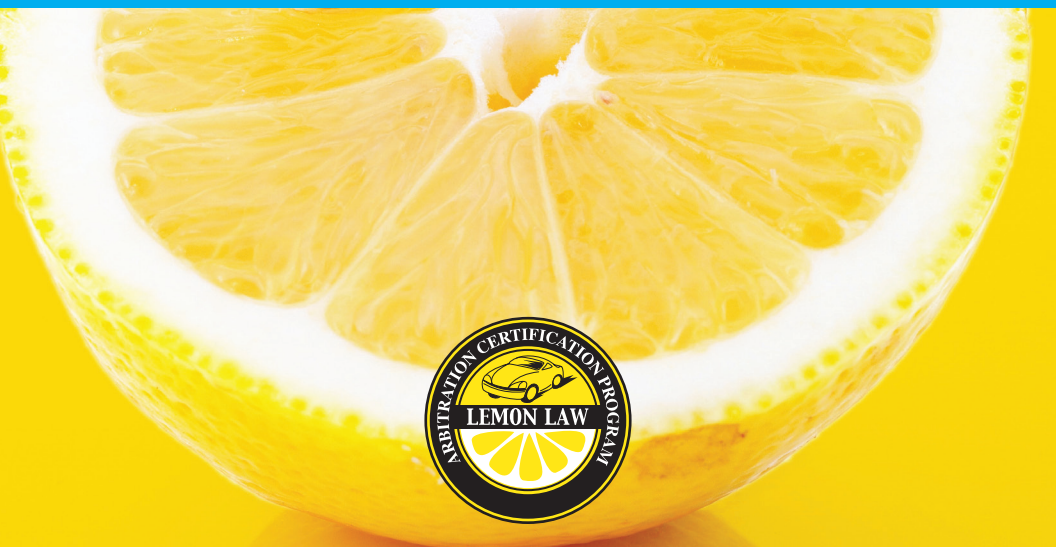




Lemon-aid

FOR CONSUMERS



CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS
REVISED 2016



Arbitration Certification Program (ACP), Who We Are

The ACP's role is to serve as State regulators with a statutory mandate to ensure that all the California State-certified vehicle programs remain in substantial compliance with the statutes and regulations governing the arbitration process.

The ACP's mission is to protect California's new car owners by ensuring that State-certified arbitration programs provide a fair and expeditious process to resolve Lemon Law disputes.

The ACP does not certify any mediation processes, conduct arbitration hearings, or modify or overturn decisions.



What ACP Regulates

The ACP is mandated to review all State-certified program operations. As State regulators, the ACP will review various components of each certified program throughout the year to ensure that all third-party arbitration program operations remain in substantial compliance by doing the following:

- Randomly audit State-certified arbitration hearings held throughout California to assure arbitration program staff and arbitrators are properly insulated from influence by the manufacturer and the hearing is conducted according to the arbitration program's rules and procedures.
- Randomly audit certified manufacturer's dealerships to ensure the proper disclosures are provided to consumers in the warranty materials and at the service centers for when consumers are experiencing warranty disputes.
- Randomly audit State-certified arbitration programs' case files that were arbitrated, ruled ineligible, and settled prior to the arbitration hearing to ensure the program properly opened and closed the claims according to the program's rules and procedures.
- Investigate complaints filed by the consumer against State-certified arbitration programs, manufacturers, program staff and arbitrators.
- Conduct annual inspections of State-certified programs, administrators, and manufacturers headquarters to ensure compliance with the program's rules, procedures, and California regulations.
- Coordinate with the Department of Motor Vehicles to ensure that reacquired vehicle titles are properly branded.

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Introduction

A new vehicle should mean you don't have to worry about breakdowns, mechanical problems, or safety. What if it's giving you a headache with repeated visits to the dealer for service? California's Lemon Law protects buyers and lessees from serious warranty defects that the dealer or manufacturer can't repair. In some cases, you may be entitled to a replacement or refund for your vehicle. This booklet answers questions about the Lemon Law and provides information about the arbitration process, record-keeping suggestions and sources of advice and assistance as it pertains to the California State-certified arbitration process **and is not intended as legal advice.**



California Lemon Law: An Overview

The California Lemon Law requires a vehicle manufacturer that is unable to repair a vehicle to conform to the manufacturer's express warranty after a reasonable number of repair attempts to replace or repurchase the vehicle.

Although there is no set number for "reasonable repair attempts," California's Lemon Law Presumption contains guidelines for determining when a "reasonable number" of repair attempts have been made.

The California Lemon Law covers the following new and used vehicles sold or leased in California that come with the manufacturer's new vehicle warranty:

- Cars, pickup trucks, vans, and SUVs.
- The chassis, chassis cab, and drivetrain of a motorhome.
- Dealer-owned vehicles and demonstrators.
- Many vehicles purchased or leased primarily for business use.
- Vehicles purchased or leased for personal, family, or household purposes.

The California Lemon Law applies throughout the duration of the vehicle manufacturer's original warranty period. Consult your vehicle manufacturer's warranty manual for warranty periods pertaining to your vehicle.



Song-Beverly Consumer Warranty Act

In 1970, California enacted the Song-Beverly Consumer Warranty Act requiring all manufacturers to repurchase or replace faulty products they failed to fix after a "reasonable number" of repair attempts. The Song-Beverly Consumer Warranty Act applies to many consumer transactions, not just vehicle purchases.

In 2007, the Act was amended to allow members of the Armed Forces, who are stationed in or are residents of California, to exercise their rights under the Act regardless of where their vehicles were purchased or registered.

Lemon Law Presumption*

Within the Song-Beverly Act, there is a presumption guideline wherein it is presumed that a vehicle is a “lemon” if the following criteria are met within 18 months of delivery to the buyer or lessee or 18,000 miles on the vehicle’s odometer, whichever comes first:

- The manufacturer or its agents have made two or more attempts to repair a warranty problem that results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven;
- The manufacturer or its agents have made four or more attempts to repair the same warranty problem; or
- The vehicle has been out of service for more than 30 days (not necessarily all at the same time) while being repaired for any number of warranty problems; or
- The problems are covered by the warranty, substantially reduce the vehicle’s use, value, or safety to the consumer and are not caused by abuse of the vehicle;
- If required by the warranty materials or by the owner’s manual, the consumer has to directly notify the manufacturer about the problem(s), preferably in writing. The notice must be sent to the address shown in the warranty or owner’s manual (for bullets 1 and 2).

If these criteria are met, the Lemon Law presumes that the buyer or lessee is entitled to a replacement vehicle or a refund of the purchase price. However, this presumption is rebuttable. The manufacturer may show that the criteria has not been met (for example, because the problems are minor) and therefore, the buyer or lessee is not entitled to a replacement vehicle or refund.

***Source: California Civil Code Section 1793.22(b).**



Legal Definition of a New Vehicle**

The Lemon Law covers new motor vehicles, including:

- A new vehicle bought or used primarily for personal, family, or household purposes.
- A new vehicle with a gross vehicle weight under 10,000 pounds bought or used primarily for business purposes (provided the owner or business has no more than five vehicles registered in California).
- The chassis, chassis cab, and propulsion portions of a motorhome.
- A dealer-owned vehicle, a “demonstrator,” or other motor vehicle sold with a manufacturer’s new car warranty (such as a used vehicle).
- Purchased and leased vehicles.
- “New Motor Vehicle” does not include:
 - Any portion of a motor home designed, used, or maintained primarily for human habitation; or
 - A motorcycle or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively as an off-road vehicle.

**** Source: California Civil Code Section 1793.22(e).**



State-Certified Arbitration Process

Many vehicle manufacturers offer an arbitration process in California. If a consumer elects to use this process, a neutral third party (an arbitrator) will decide whether a reasonable number of repair attempts has been made and what award should be granted to the consumer. These manufacturers have agreed to comply with the arbitrator's decision, if the consumer accepts it.

Some of these vehicle manufacturers voluntarily seek certification of their arbitration program from the California Department of Consumer Affairs' Arbitration Certification Program. This certification may limit manufacturers' civil liability. To encourage the use of arbitration, the law provides that before consumers can use the "Lemon Law Presumption" in court, they must first resort to the manufacturer's State-certified arbitration program.

These California State-certified arbitration programs train arbitrators in the fair and expeditious resolution of consumer disputes to hear and make decisions about consumers' vehicle warranty problems.

The participating manufacturers may be found in the enclosed California Certified Arbitration Programs insert or by visiting ACP's Web site at www.LemonLaw.ca.gov.

Free Process

Arbitration is a free and relatively simple way of resolving warranty disputes. There are no filing fees to open a claim for arbitration. The arbitration programs are funded by the participating manufacturers. The ACP law, rules, and monitoring are designed to ensure that this funding does not influence the decisions of the arbitration program and that the arbitration programs are sufficiently insulated from the manufacturer according to the provisions of Title 16, California Code of Regulations, section 3398.1.



Eligibility Requirements for Arbitration

To file a claim for arbitration, your vehicle must be:

- Purchased or leased in California from a retail seller.
- Covered by the manufacturer's original warranty or within six (6) months of expiration.
- Purchased or leased primarily for personal, family, or household purposes.
- A new vehicle with a gross vehicle weight under 10,000 pounds bought or used primarily for business purposes (provided the owner or business has no more than five vehicles registered in California).
- The chassis, chassis cab, and propulsion portions of a motorhome.
- A dealer-owned vehicle, a "demonstrator," or other motor vehicle sold with a manufacturer's new car warranty (such as a used vehicle).
- Members of the Armed Forces who are stationed in or are residents of California may exercise their rights under the Song-Beverly Act regardless of where their vehicles were purchased or registered.



How to File for Arbitration

All manufacturers with a California State-certified arbitration program are required to describe the specific steps for filing for arbitration in the manufacturers' warranty materials.

Some manufacturers provide an arbitration application in the information packet that comes with the vehicle at the time of purchase or lease.

You can also obtain or complete an application by calling the manufacturer's arbitration program listed on the enclosed California Certified Arbitration Programs insert or by visiting the ACP's Web site at **www.LemonLaw.ca.gov**.

No Attorney Needed

The California State-certified arbitration programs are informal dispute resolution processes that do not require an attorney. Because the process is informal, the programs assist the consumer and manufacturer in collecting the evidence to be presented from each party, so that the evidence can be shared with both parties and submitted to the arbitrator prior to the arbitration hearing. The arbitrator will hear from both the consumer and manufacturer through testimony and evidence at a hearing. Either party can also elect not to be present at the hearing and submit evidence with or without written testimony (declarations).

The parties may also elect to hire an attorney to represent them at the hearing or to process their arbitration claim. However, attorney fees may not be awarded by the arbitrator, unless the manufacturer has elected to include them as an award in their California State-certified arbitration application. Please check with your manufacturer, arbitration program, or the ACP for more information.

You should be aware that any decision rendered by an arbitrator can be used as evidence in future proceedings, including further arbitrations and/or civil court cases.

Timelines

All California State-certified arbitration programs are bound by the following deadlines:

- Programs must process your claim within 40 days. The decision must be rendered by the arbitrator and provided to the consumer within 40 days from the date the claim was opened. (This 40-day requirement may be delayed by up to 30 days for additional information, technical expert inspection requested by the arbitrator, or for a seven-day period for those disputes in which the consumer has made no attempt to seek redress directly from the manufacturer.)
- The manufacturer must perform the arbitrator's decision (if the consumer accepts the award) within 30 days from when the manufacturer is notified of the acceptance of the award. This 30-day requirement may be delayed for reasons beyond the control of the manufacturer or its representative, including any delay directly attributable to any act or omission of the consumer.

Possible Awards

An arbitrator may award any of the following (awards are made on a case-by-case basis):

- An additional repair attempt.
- A replacement vehicle.
- A refund of the purchase price.
- Reimbursement for incidental expenses (towing, rental car, etc.).
- No award.
- Other (some manufacturers offer an extended service contract or attorney fees).

If awarded, you have the option to choose either a vehicle repurchase or replacement.

Check with your manufacturer, arbitration program, or the ACP for details of the possible awards an arbitrator may provide. Please note that the arbitrator is unable to alter the terms of the manufacturer's express new vehicle warranty.

If the consumer accepts the decision, the manufacturer must perform the award.

What to Expect from a Repurchase/Replacement Award

If the decision provides for a replacement or refund, and is subject to Civil Code Section 1793.2(d), the decision shall require the manufacturer to replace the motor vehicle or make restitution in accordance with Civil Code Sections 1793.2(d)(2)(A), (B) and (C). The decision shall include payment of incidental damages to the extent authorized by the applicable law including Commercial Code Sections 2711 to 2715 inclusive, and Civil Code Sections 1793.2(d)(2) and 1794(a) and (b); and shall include all reasonable repair, towing and rental car costs, any sales or use tax, license fees, registration fees, other official fees, prepayment penalties, early termination charges and earned finance charges, if actually



paid, incurred or to be incurred by the consumer but need not include charges for which the consumer is justly responsible. If the arbitrator decides that the manufacturer is entitled to an offset for mileage, the offset shall be calculated in conformance with Civil Code Section 1793.2(d)(2)(C). Below are some examples.

Deduction for damages

For example, the consumer's vehicle is one year old and has been driven 15,000 miles. The arbitrator awards a repurchase of the vehicle. At the time of the arbitration hearing, the arbitrator inspected the vehicle and found damage to the left front fender and headlight assembly. The arbitrator ascertained from the consumer during the arbitration hearing that an insurance company had paid the consumer \$3,500 for repairs, which the consumer had not completed at the time of the arbitration. The arbitrator may deduct this amount from the consumer's repurchase award.

Manufacturers may not deduct for damages

For example, the consumer's vehicle is two years old and has been driven 20,000 miles. The vehicle has two door dings, a few scratches under the front bumper possibly caused from rocks in the road, and three scratches on the hood. Because the vehicle has been driven for two years and 20,000 miles, the vehicle shows signs of predictable wear due to road conditions and other situations typically found during use of that duration. The usual consequences of driving a vehicle are accounted for by the statutory mileage deduction. An arbitrator may not deduct for this damage.

A consumer may be liable for mileage higher than allowed by the terms of a lease

For example, the consumer's arbitration hearing was held after the end of the lease. The terms of the consumer's 24 month lease contract states that the consumer may drive 12,000 miles per year, with a charge of 15 cents per mile for miles driven over 12,000 miles per year. The consumer has driven 36,000 miles over the course of 24 months. The consumer may be responsible for

What to Expect from a Repurchase/Replacement Award (continued)

paying the leasing company \$1,800.00 (12,000 miles x 15 cents = \$1,800) for the miles in excessive of 12,000 miles under the terms of the lease. An arbitrator may make an allowance for this payment to the leasing company in an award if the consumer has not already paid the leasing company this amount.

However, because the consumer had returned the vehicle at lease end, pursuant to Martinez v Kia the fact that the consumer was no longer in possession of the vehicle at the time of requesting arbitration or at the time of arbitration may not be considered by the arbitrator.

The arbitrator(s) may deduct a mileage offset*** for your use of the vehicle prior to the first warranty repair attempt. When the mileage offset applies, California law requires the use of the following formula to calculate the amount of the deduction:

Purchase price x (multiplied by) [miles driven by buyer at first repair attempt ÷ (divided by) 120,000] = (equals) use deduction.

HERE IS AN EXAMPLE:

Price paid by consumer.....\$24,000

Miles driven by buyer at first repair2,000

$\$24,000 \times 2,000 \div 120,000 = \400 (use deduction)

$\$24,000$ minus $\$400 = \$23,600$

\$23,600 would be the amount refunded to you.

***** Source: California Civil Code Section 1793.2(d)(2)(C).**

Settlement/Mediation

When you contact the manufacturer to inform them of the problem you identified (nonconformity), it is very possible the manufacturer may try to resolve your claim. The manufacturer may want another opportunity to diagnose the nonconformity and may even want an opportunity to repair the problem. Sometimes manufacturers may offer to reimburse you one or more car payments, offer a cash amount to cover your inconvenience, provide free car maintenance, offer an extended warranty, or some other “goodwill” offer.

If you file for arbitration through one of the California State-certified arbitration programs, you may be asked if you would like the program to contact the manufacturer to see if they would like to settle/mediate your claim, which may include some of the negotiation offers listed above. You have the right to decline any offers and proceed directly to arbitration, so an arbitrator may decide your claim.

While mediation and settlement discussions are permitted, ACP does not certify that activity as part of the process. In the event of a settlement made after the program has received notification of the dispute, the ACP randomly reviews settlements to ensure consumers have entered into an agreement settling the dispute, the consumer is satisfied with the terms of the settlement agreement, the agreement contains a specified reasonable time for performance, and the State-certified arbitration program has verified performance. The mediation and settlement discussion shall not be performed by the same program staff that processes your claim.



Tips for Arbitration

If you decide to file for arbitration, ACP recommends the following:

Prior to filing for arbitration:

- Read your warranty booklet and/or owner's manual to learn more about the Lemon Law requirements and the availability of the arbitration program.
- Tell the authorized dealer about your vehicle problem and make sure it is fully described on the repair order.
- Try to work with the authorized dealer to resolve the problem.
- Ensure authorized dealers provide you with a repair order each time you take your vehicle in for warranty or vehicle problems.
- Keep copies of all repair orders and assure that repair orders include your comments provided to the technician(s) or advisor(s).

Tips for Arbitration (continued)

- Take notes of all your conversations with the authorized dealer personnel.
- Notify the authorized dealer immediately if a repair attempt is not successful.
- Keep a log or notebook on the problems and warranty-related repair attempts. Include dates, occurrences, and other related information.
- Contact the manufacturer directly. If required by the warranty or owner's manual, send the manufacturer a letter describing the problems that need further repair. Send the letter to the address shown in your warranty booklet or owner's manual. Send it by certified mail and keep a copy of the letter and the certified mail receipt.
- Do not stop making vehicle payments.

When filling out the application:

- Clearly state the problem(s) and what result you want from arbitration.
- Make sure the application is readable (legible) and complete, including signature and date.
- Make a copy for your records.

Preparing for your arbitration hearing:

- It is to your advantage to attend your hearing in person and present your case to the arbitrator. You also can make your presentation by telephone or in writing, but this may not be as effective as an in-person presentation.
- Organize and write down the main points of your problem(s) and argument. Emphasize those problems that significantly impact the use, value, or safety of the vehicle to you.
- Rehearse your presentation.

Tips for Arbitration (continued)

- Record and summarize warranty repairs in the order in which they occurred. Focus on the problem(s) that affect(s) the use, value, or safety of the vehicle to you.
- Make copies of the sales contract and finance/lease agreement, all repair and service orders, any letters between you and the dealer or manufacturer, and any other documents, such as signed statements, that might help support your case.
- Do not use a highlighter pen on repair orders because it may blacken highlighted information when photocopied.
- Contact the manufacturer and ask for any technical service bulletins that might be related to your vehicle's problem(s).
- Contact the National Highway Traffic Safety Administration (see *Additional Resources*, page 23) and ask for any safety recall information. Find out if there has been a pattern of similar problems with your vehicle model.
- Get signed statements from mechanics and people who have ridden in your vehicle and experienced the problem (for example, family, or carpool members). This is especially important if the problem only happens once in a while.
- While the total number of days that a vehicle has been out of service can be important, arbitrators tend to focus on those problems that still aren't fixed. If the manufacturer has repaired some problems so that the vehicle conforms to the terms of the warranty, arbitrators generally will not order the manufacturer to replace or buy back the vehicle. Focus on the problems that the dealer or manufacturer has not satisfactorily repaired. State what relief you want from the arbitrator.

Tips for Arbitration (continued)

- Remember, State-certified arbitration programs only address warranty repair issues and the expenses connected to them. To get any other monetary awards, you must use the court system.
- Review the program's hearing format prior to the arbitration hearing and be prepared to follow the format.
- If possible, bring the vehicle to the arbitration hearing in case the arbitrator may want to inspect and/or test drive the vehicle.

After your arbitration hearing:

- If the arbitrator is requesting additional information or an inspection of the vehicle, cooperate fully with the request and follow the instructions of the program.
- Once the arbitrator has issued a decision, accept or reject the arbitrator's decision within 30 days.
- The claim will close once you accept or reject the decision, however, if the manufacturer is required to perform an award, the arbitration program must verify the performance of the award.
- If you disagree with the arbitrator's decision, you may reject the decision or seek legal advice from an attorney as to what legal options are available to you.
- If, after the hearing, you seek an additional warranty repair attempt, you may refile for arbitration with the program during the eligibility period.

Factors that may affect your case:

- Whether the arbitration program has jurisdiction to decide your dispute;
- Whether your vehicle has a problem that substantially affects its use, value, and/or safety to you;

Tips for Arbitration (continued)

- Whether the problem is determined to be a substantial one by the arbitrator;
- Whether the problem was caused by an unreasonable use of your vehicle;
- Whether the manufacturer has had a reasonable opportunity to repair your vehicle including:
 - the number of repair attempts.
 - the number of days your vehicle was in the shop for repair.
 - other factors that affect how many repair attempts were made, and the reasonableness of those factors.
 - whether your warranty dispute falls under the Lemon Law Presumption (see earlier *Lemon Law Presumption*, page 7).
- Whether a further repair attempt is likely to remedy the problem.
- The existence and amount of any incidental damages including, but not limited to, sales taxes, license fees, registration fees, other official fees, prepayment penalties, early termination charges, earned finance charges, and repair, towing and rental costs actually paid, incurred, or to be incurred by you.
- Whether a mileage deduction should apply (see *What to Expect from a Repurchase/Replacement Award*, page 15).
- Any other issue that is relevant to the particular dispute.

Additional Resources

Department of Consumer Affairs Arbitration Certification Program

1625 North Market Boulevard,
Suite N-112
Sacramento, CA 95834
(916) 574-7350 Voice
(800) 952-5210 Toll-Free
(916) 574-8638 Fax

www.LemonLaw.ca.gov

- California's Lemon Law Arbitration Program Agency

Manufacturer or dealer, by certified mail

(Check the owner's manual for the address to notify the manufacturer of warranty repair needs)

- Manufacturer's or dealer's failure to honor the warranty.
- Extended warranty.
- Service contract underwritten by the manufacturer.
- Motorhomes ineligible for arbitration.
- Mediation.
- Auto repair.
- Repair invoices.

Department of Motor Vehicles (DMV) Bureau of Investigations

www.dmv.ca.gov

(Check the White Pages of your telephone book)

- Manufacturer's or dealer's failure to honor the warranty.
- Extended warranty.
- Service contract underwritten by the manufacturer.
- Motorhomes ineligible for arbitration.
- Mediation.

- Auto repair.
- Repair invoices.
- Dealer and salesperson fraud.
- Motorcycles.
- Sales disputes.
- Used cars.

New Motor Vehicle Board

1507 21st Street, Suite 330
Sacramento, CA 95811
(916) 445-1888

www.nmvb.ca.gov

- Manufacturer's or dealer's failure to honor the warranty.
- Extended warranty.
- Service contract underwritten by the manufacturer.
- Motorhomes ineligible for arbitration.
- Mediation.
- Auto repair.
- Repair invoices.
- Dealer and salesperson fraud.
- Motorcycles.
- Sales disputes.
- Used cars.

Local mediation programs in California

www.dca.ca.gov/consumer/mediation_programs.shtml

- Manufacturer's or dealer's failure to honor the warranty.
- Extended warranty.
- Service contract underwritten by the manufacturer.
- Motorhomes ineligible for arbitration.
- Mediation.

Additional Resources (continued)

Local county consumer affairs office

(check the White Pages of your telephone book)

- Manufacturer's or dealer's failure to honor the warranty.
- Extended warranty.
- Service contract underwritten by the manufacturer.
- Motorhomes ineligible for arbitration.
- Mediation.
- Auto Repair.
- Repair invoices.
- Dealer and Salesperson Fraud.
- Motorcycles.
- Sales Disputes.
- Used Cars.

Department of Consumer Affairs Bureau of Automotive Repair

(800) 952-5210

www.smogcheck.ca.gov

- Auto repair.
- Repair invoices.

Local district attorney's office

(check the White Pages of your telephone book)

- Dealer and salesperson fraud.
- Motorcycles.
- Sales disputes.
- Used cars.

Office of the Attorney General Public Inquiry Unit

P.O. Box 944255

Sacramento, CA 94244-2550

(916) 322-3360 or (800) 952-5225

www.ag.ca.gov

- Dealer and salesperson fraud.
- Motorcycles.
- Sales disputes.
- Used cars.

National Highway Traffic Safety Administration

1200 New Jersey Avenue, SE

West Building,

Washington, D.C. 20590

www.nhtsa.dot.gov

Auto Safety Hotline: (888) 327-4236

- Safety complaints.
- Recall information.

Center for Auto Safety

1825 Connecticut Avenue NW

Suite 330

Washington, D.C. 20009

(202) 328-7700

www.autosafety.org

- Safety complaints.
- Recall information.

Attorneys

Check your Yellow Pages

www.yip.com at the beginning of the "attorneys" listing for lawyer referral services or contact the California State Bar at (415) 538-2000 or www.calbar.ca.gov to get the name of the certified lawyer referral service nearest you.

- Lemon Law attorneys.

Consumers for Auto Reliability and Safety (CARS)

1303 J Street, Suite 270

Sacramento, CA 95814

(530) 759-9440

www.carconsumers.com

- Other Lemon Law Information.

Department of Insurance Consumer Communications Division

300 S. Spring Street

Los Angeles, CA 90013

(800) 927-4357

www.insurance.ca.gov

- Extended service contracts.



**CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS
ARBITRATION CERTIFICATION PROGRAM**

1625 North Market Boulevard, Suite N-112
Sacramento, CA 95834
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www.LemonLaw.ca.gov (ACP Web site)



**[https://www.facebook.com/
ArbitrationCertificationProgram](https://www.facebook.com/ArbitrationCertificationProgram)**



@ACPLemonLaw

(800) 952-5210 (Consumer Information Center)

STATE OF CALIFORNIA



DEPARTMENT OF CONSUMER AFFAIRS

**CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS
ARBITRATION CERTIFICATION PROGRAM**

1625 North Market Boulevard, Suite N-112
Sacramento, CA 95834