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by

Terence J. Centner

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ARTICLES

MINNESOTA'S LEMON LAWS: SOUR OPTIONS FOR CONSUMERS OF FARM TRACTORS

Terence J. Centner¹

In adopting its "lemon law" of 1983,² Minnesota joined the national movement³ to provide increased remedies for consumers of automobiles. Three years later, lemon law remedies were extended to consumers of farm tractors as well.⁴ Today, all states have automobile lemon laws,⁵ four states have tractor lemon laws,⁶ and a few states have lemon laws that cover motor homes⁷ and motorized wheelchairs.⁸

Consumer dissatisfaction with the Magnuson-Moss Warranty Act⁹ and remedies under state warranty law¹⁰ led to the widespread adoption of lemon laws. These laws are more specific,¹¹ ease consumers' burden of proof for relief,¹²

1. Professor, University of Georgia College of Agricultural and Environmental Sciences, Athens, Georgia; B.S., Cornell University; J.D., State University of New York Buffalo Law School; LL.M., University of Arkansas.

2. MINN. STAT. § 325F.665 (1994). See also 1983 Minn. Laws 108.

3. Ronald J. Adams, *Florida's Motor Vehicle Arbitration Board - A Two-Year Review*, ARB. J., Mar. 1992, at 36; Julian B. Bell III, Comment, *Ohio's Lemon Law: Ohio Joins the Rest of the Nation in Waging War Against the Automobile Limited Warranty*, 57 U. CIN. L. REV. 1015 (1989); Lee D. Dahringer & Denise R. Johnson, *Lemon Laws: Intent, Experience, and a Pro-Consumer Model*, 22 J. CONSUMER AFF. 158 (1988); Harold Greenberg, *The Indiana Motor Vehicle Protection Act of 1988: The Real Thing for Sweetening the Lemon or Merely a Weak Artificial Sweetener?* 22 IND. L. REV. 57 (1989); Mary B. Kegley & Janine S. Hiller, "Emerging" *Lemon Car Laws*, 24 AM. BUS. L.J. 87 (1986); Lisa K. Jorgenson, Comment, *Illinois Lemon Car Buyer's Options in a Breach of Warranty Action*, 20 J. MARSHALL L. REV. 483 (1987); Saverio LaManna, *Lemon Laws: An Expansion of Remedies for New Car Buyers*, 33 FOR THE DEFENSE 2 (July 1991); Heather Newton, Note, *When Life Gives You Lemons, Make A Lemon Law: North Carolina Adopts Automobile Warranty Legislation*, 66 N.C. L. REV. 1080 (1988); L. Steven Platt, *Lemon Auto Litigation in Illinois*, 73 ILL. B.J. 504 (1985); Linda B. Samuels, Richard L. Coffinberger & Kevin F. McCrohan, *Legislative Responses to the Plight of New Car Purchasers: A Missed Marketing Opportunity*, 5 J. PUB. POLY & MARKETING 61 (1986); Anne V. Swanson, *A Comparative Analysis of Three Lemon Laws*, 75 ILL. B.J. 436 (1987); Julie A. Vergeront, *A Sour Note: A Look at the Minnesota Lemon Law*, 68 MINN. L. REV. 846 (1984); Joan Vogel, *Squeezing Consumers: Lemon Laws, Consumer Warranties, and a Proposal for Reform*, 1985 ARIZ. ST. L.J. 589 (1985).

4. MINN. STAT. § 325F.6651:6659 (1994). See also 1986 Minn. Laws 422, art. 2. Farm tractors include "any self-propelled vehicle which is designed primarily for pulling or propelling agricultural machinery and implements and is used principally in the occupation or business of farming . . ." MINN. STAT. § 325F.6651 subd. 2 (1994).

5. Donald F. Clifford, Jr., *Non-UCC Statutory Provisions Affecting Warranty Disclaimers and Remedies in Sales of Goods*, 71 N.C. LAW REV. 1011 (1993).

6. GA. CODE ANN. § 10-1-810 to -819 (1994); ILL. ANN. STAT. ch. 815, para. 340/1-340/11 (Smith-Hurd 1993); MINN. STAT. § 325F.6651:6659 (1994); VA. CODE ANN. § 59-1-207.7 to -207.8 (Michie 1987). See also Terence J. Centner, *Separating Lemons: Automobiles and Tractors Under the "Motor Vehicle Warranty Rights Act" and the "Farm Tractor Warranty Act"*, GA. STATE BAR J. 30, 36 (Fall 1993); Terence J. Centner, *The New "Tractor Lemon Laws": An Attempt to Squeeze Manufacturers Draus Sour Benefits*, 14 J. PROD. LIT. 121 (1992).

7. Often, lemon law provisions are incorporated in the automobile statute. See Clifford, *supra* note 5, at 1097. Minnesota's automobile lemon law covers motor homes by reason of the definition of motor vehicle. MINN. STAT. § 325F.665 (1994). Subdivision 1(e) of section 325F.665 states that motor vehicles include "the self-propelled motor vehicle chassis or van portion of recreational equipment as defined in section 168.011, subdivision 25 . . ." MINN. STAT. § 325F.665 subd. 1(e) (1994). Subdivision 25 of section 168.011 defines recreational equipment to include "travel trailers including those which telescope or fold down, chassis mounted campers, house cars, motor homes, tent trailers, slip in campers, and converted buses that provide temporary human living quarters." MINN. STAT. § 168.011 subd. 25 (1994).

8. See, e.g., GA. CODE ANN. §§ 10-1-890 to -894 (1994).

9. 15 U.S.C. §§ 2301-2312 (1988). It has been reported that most automobile manufacturers offer limited rather than full warranties thereby circumventing any refund or replacement requirements. Adams, *supra* note 3, at 37; Bell, *supra* note 3, at 1015-16.

10. LaManna, *supra* note 3, at 3. Costly lawsuits is mentioned as one reason. LaManna, *supra* note 3, at 3. In some states, dissatisfaction includes difficulties of obtaining attorney fees. See Clifford, *supra* note 5, at 1097.

11. Clifford, *supra* note 5, at 1097.

provide a simpler cause of action,¹³ may extend the time period for consumer relief,¹⁴ and often award prevailing attorneys fees.¹⁵ At the same time, lemon law provisions may constrain consumer options. For example, consumers are required to participate in an informal dispute settlement procedure¹⁶ and provide sellers the opportunity to cure.¹⁷ Consumers must also absorb limits on incidental and consequential damages¹⁸ and file claims within a shorter statute of limitations.¹⁹

This article analyzes the Minnesota lemon law provisions for tractors and contrasts some of that statute's provisions with Minnesota's lemon law for automobiles and other lemon law legislation. Beginning with a description of the statutory terms of protection, Part I of the article analyzes the reasonableness of the tractor lemon law provisions, notes the absence of a vehicle usage provision, and comments on a loaned vehicle exception. Next, in Part II, the article addresses issues regarding limitations on repairs, refunds, and replacements. Part III raises three issues concerning rights for consumers of farm tractors. The reconveyance of lemon tractors, inferior restitution provisions, and the binding informal dispute settlement procedure are also discussed as limitations on consumers' statutory rights. As its conclusion, Part IV of the article suggests the coordination of prerequisites and a number of provisions to facilitate consumer remedies under the Minnesota lemon laws.

I. STATUTORY TERMS OF PROTECTION

Both the Minnesota automobile and tractor lemon laws contain a statutory term of protection during which nonconformities must occur and be reported to qualify a consumer for relief under a delineated statutory duty.²⁰ Because the protection period significantly restricts the time period in which a consumer might obtain relief for a "lemon" vehicle, two questions are worthy of consideration. First, are the statutory terms of protection reasonable? Second, would a statutory term of protection based in part on vehicle usage provide a more appropriate term of protection for the consumer?

12. Dahringer & Johnson, *supra* note 3, at 161-64. The U.C.C. burdens consumers with proof of rejection or revocation and may contain privity requirements. See generally U.C.C. §§ 2-318, 2-601, 2-608.

13. Lemon laws seek to provide remedies more quickly and inexpensively than alternative remedies. LaManna, *supra* note 3, at 4. Under a lemon law, the consumer may have to prove that the manufacturer failed to make required repairs rather than proof of a defective vehicle under warranty legislation. Greenberg, *supra* note 3, at 75.

14. LaManna, *supra* note 3, at 4. Lemon laws grant buyers a statutory term of protection as opposed to a reasonable time for buyers to reject or discover a defect that occurs under the U.C.C. See U.C.C. §§ 2-602(1), 2-606(1).

15. See Vogel, *supra* note 3, at 661-62. Furthermore, the possibility of double damages has been incorporated into the Wisconsin lemon law. WIS. STAT. § 218.015(7) (1994). See also Stephen J. Nicks, *A New Twist on Lemon Law*, 64 WIS. BAR BULL., Oct., 1991, at 23.

16. Participation in an established dispute settlement procedure generally is a prerequisite for other relief. Vogel, *supra* note 3, at 648 n. 290. See also MINN. STAT. § 325F.665 subd. 6(a) (1994).

17. Lemon laws require more than one opportunity for the manufacturer to cure before a consumer may qualify for a refund or replacement. See, e.g., MINN. STAT. § 325F.665 subd. 6(a) (1994). See also Vergeront, *supra* note 3, at 868.

18. The absence of the enumeration of consequential damages in the lemon laws may mean a consumer would be able to collect greater damages via a suit under the U.C.C. U.C.C. § 2-715. See Vergeront, *supra* note 3, at 870. Consequential damages do not appear to be possible under the Minnesota lemon laws. See *infra* notes 111-118 and accompanying text.

19. Under the U.C.C., a consumer would have four years. U.C.C. § 2-725(1). Both of the Minnesota lemon laws have shorter periods for their statutes of limitation. MINN. STAT. §§ 325F.665 subd. 10, 325F.6658 (1994).

20. MINN. STAT. §§ 325F.665 subd. 2-3, 325F.6653, 325F.6654 (1994).

A. Reasonableness of Statutory Terms

The Minnesota automobile lemon law establishes a statutory term of protection that is the earlier of two years or the term of the applicable express warranty.²¹ In contrast, the tractor lemon law provides a term that is the earlier of one year or the term of the applicable express warranty.²² The statutory term of both laws may be increased by any period of time during which repair services or parts are not available due to natural or other disasters.²³ However, the laws do not extend the statutory term of protection to compensate for time during which a consumer could not use the vehicle because the vehicle was out of service due to the repair of a nonconformity.²⁴

For the tractor lemon law, this could be rather serious.²⁵ Many pursuits involving tractors need to be completed in a timely fashion and a substitute tractor may be difficult to locate. For example, fields need to be prepared for planting when the weather cooperates, crops need to be harvested when mature and before they deteriorate, and animal waste needs to be removed from buildings and deposited at other locations in a timely fashion. Conceivably, a consumer's new tractor could have a serious nonconformity on the day of delivery, the new tractor could be under repair for fifty-nine business days, the consumer could then be provided a loaned vehicle, and one day after the one-year statutory term of protection has expired the new tractor could be returned to the consumer. In this manner, the consumer would be able to use the new tractor less than one day before the manufacturer's duties under the lemon law expired.

Because the statute protects the consumer for the statutory protection period or the warranty period, whichever is shorter, a manufacturer who does not want the statutory duties to apply for the full statutory term can provide a shorter warranty period in an express warranty.²⁶ The manufacturer's control over the protection period, then, presents a potential and very likely limitation on the consumer's rights.²⁷

Whenever a shorter manufacturer warranty term is present, that term replaces the statutory protection and limits the manufacturer's duties to repair, refund, or replace.²⁸ Nonconformities occurring after the shorter warranty

21. MINN. STAT. § 325F.665 subd. 2, 3(b)(1) (1994). The two-year time period is calculated from the date of original delivery. MINN. STAT. § 325F.665 subd. 2, 3(b)(1) (1994).

22. MINN. STAT. §§ 325F.6653-.6654 (1994). The one-year time period is calculated from the date of original delivery. MINN. STAT. § 325F.6653 (1994).

23. MINN. STAT. §§ 325F.665 subd. 3, 325F.6655 (1994).

24. MINN. STAT. §§ 325F.6653-.6654 (1994).

25. Automobile consumers may not be affected as much due to the availability of substitute vehicles and the automobile lemon-law restitution provisions. See *infra* notes 111-114 and accompanying text. For tractors, the statutory term of protection is only one year. The law enables a vehicle to be under repair for up to 60 business days, and a loaned-vehicle exception allows a manufacturer to lend a consumer a similar vehicle and toll this period. MINN. STAT. § 325F.6654.

26. MINN. STAT. § 325F.6654 subd. 2 (1994). The express warranty could be for six months. Of course, the consumer would have knowledge that the vehicle was warranted for a shorter period.

27. MINN. STAT. §§ 325F.665 subd. 2-3, 325F.6653-.6654 (1994). Such a limitation was identified by Vergeront as applying to repairs. Vergeront, *supra* note 3, at 867-68. It may also apply to the duty to refund or replace. MINN. STAT. §§ 325F.665 subd. 3, 325F.6654 (1994). In defining a reasonable number of attempts to conform, the earlier date also applies.

28. MINN. STAT. §§ 325F.665 subd. 2, 3(b), 325F.6653-.6654. For example, if a vehicle had a six-month warranty, nonconformities occurring seven months after delivery of the vehicle to the consumer would not need be remedied pursuant to the lemon law provisions.

term but before the expiration of the term of years provided by the lemon law do not need to be cured.²⁹ Thus, the two-year term of the automobile lemon law and the one-year term of the tractor lemon law may not be very meaningful. If the purpose of the lemon law is to provide consumers relief for nonconformities occurring during the one- or two-year term set forth in the law,³⁰ the statutory term of protection needs to be the latter date of the statutory time period or the applicable express warranty.

A second issue concerning the reasonableness of the statutory term of protection involves the one-year period set forth in the tractor lemon law, which is one-half of the term provided for automobile consumers.³¹ Obviously, tractors are different from automobiles and, therefore, may require a different statutory term of protection. For some self-propelled agricultural machinery, the main use for a given year may be concentrated in one or two relatively brief periods. Examples are planting or harvesting a particular crop. Given the seasonal nature of agricultural production, the statutory out-of-service provision,³² and the loaned vehicle exception,³³ a one-year warranty would appear to be too short. A tractor could be under repair or a loaned tractor made available for an entire busy season so that a consumer could not determine whether the new tractor would function as required by the consumer during the statutory term of protection.³⁴

To ensure that tractor consumers are able to use their new vehicles during a busy season level of operation, some type of additional dispensation might be included to expand the statutory term of protection. A two-year period, similar to that in the automobile lemon law,³⁵ would be more appropriate. The legislature might also consider a provision that extends the term of protection by the number of days a new vehicle was out of service due to repairs.³⁶ Such an amendment would further the statute's purpose without adding, significantly, to the manufacturer's duties.

In the same way, holding the manufacturer responsible for nonconformities for the longer, rather than the shorter, of the two time periods³⁷ would also provide a more reasonable resolution for nonconformities and more meaning-

29. An exception would exist if the same nonconformity to a motor vehicle had occurred four times during the warranty term and occurred a fifth time. In such cases, the manufacturer could incur an obligation to provide a refund or replace the vehicle. MINN. STAT. § 325F.665 subd. 3 (1994).

30. It is not clear that this was an objective. One of the reasons for lemon laws was dissatisfaction with existing remedies for breach of warranty, which may include no remedies after a brief express warranty. LaManna, *supra* note 3, at 3. To provide a remedy for a one- or two-year term, the lemon law duties could apply for the full term of years set forth in the law so that manufacturers would be unable to limit consumer relief to alternative remedies.

31. MINN. STAT. §§ 325F.6653-.6654, 325F.665 subd. 2 (1994).

32. A tractor may be out of service for up to 60 business days before a manufacturer may incur an obligation. MINN. STAT. § 325F.6654 (1994).

33. A consumer may be loaned a vehicle and the time period the new vehicle is under repair is tolled and does not count for establishing the 60-day out of service period. *See infra* notes 84-93 and accompanying text.

34. Using a new combine as an example, if the combine was under repair during the harvest season, the consumer may not be able to use it until the following year, and would not be able to determine within the statutory term whether the combine had a nonconformity that caused it to be a "lemon."

35. Establishing consistency between the lemon laws would benefit consumers and attorneys. This should accompany a revised provision making the term of protection the latter of the statutory time period or the applicable express warranty. *See supra* note 30 and accompanying text.

36. *See infra* notes 94-99 and accompanying text.

37. *See supra* notes 26-30 and accompanying text.

ful rights to tractor consumers. Consideration should also be given to a term of statutory protection that is long enough to determine whether a nonconformity exists, but not so long as to place an unreasonable burden on the manufacturer.

B. Vehicle Usage

A more practical means of providing protection against an irreparable or faulty motor vehicle or tractor is suggested by automobile lemon-law usage provisions of other states.³⁸ Because both the period of ownership and vehicle usage are significant factors in determining a reasonable term for consumer protection, the statutory term of protection might incorporate a usage provision. For automobiles, the term might be prescribed with an alternative provision incorporating a mileage cap.³⁹ For tractors, the term might be prescribed with an alternative provision incorporating a cap established by the number of hours of tractor usage.⁴⁰ The statutory provision would provide that whichever occurs first, the time period or the enumerated unit of vehicle usage, establishes the term of protection.⁴¹ In this manner, manufacturers would not incur obligations for vehicles subjected to heavy usage after the consumer had made reasonable usage of the vehicle.

The idea of a usage cap is not new. A number of state automobile lemon laws incorporate a statutory term which takes into account the number of miles the new vehicle has been driven.⁴² For motor vehicles subjected to heavy usage, the statutory term of protection would be based on the alternative provision prescribing a statutory number of miles rather than the statutory time period. However, for motor vehicles driven less frequently, the statutory term of protection would be the two-year statutory time period.

If a usage cap were incorporated into tractor lemon laws, tractors used an unreasonably high number of hours would be covered for a statutorily prescribed number of hours of usage rather than a statutory time period of protection. Under this option, a usage cap could be a number of hours that approximately represents the normal use of an agricultural vehicle during the statutory time period, which under the current Minnesota tractor law is a one-year time period.⁴³ If the recommendation to adopt the same two-year statutory term of protection as the automobile lemon law⁴⁴ were implemented, a usage cap could be established to represent normal usage of a tractor for a two-

38. See, e.g., GA. CODE ANN. §§ 10-1-782(9), 10-1-784(b) (1994).

39. A mileage cap could provide that the manufacturer would not have any duties with respect to vehicles driven more than 12,000 miles. GA. CODE ANN. § 10-1-782(9). The Minnesota law incorporates a mileage cap for reconveyed vehicles. MINN. STAT. § 325F.665 subd. 5 (1994).

40. All self-propelled agricultural vehicles are equipped with an hour meter that registers hours of operation.

41. For example, the Georgia automobile lemon law defines a lemon law rights period as the period ending one year or 12,000 miles of operation after delivery, whichever occurs first. GA. CODE ANN. § 10-1-782(9). Furthermore, for nonconformities reoccurring after the rights period, the Georgia automobile lemon law extends protection and manufacturers may incur a statutory obligation to replace a vehicle or make a refund for a period of up to two years or 24,000 miles of operation after the initial repair attempt. GA. CODE ANN. § 10-1-784(b) (1994).

42. *Id.*

43. MINN. STAT. §§ 325F.6653 - .6654 (1994).

44. The two-year term would provide consumers usage of a new vehicle during a seasonal period of heavy usage, in instances where the tractor was under repair the first season.

year period. A two-year term should not constitute a significant burden on manufacturers because the additional protection would apply only to tractors that were not subjected to heavy vehicle usage.

II. LEMON-LAW DUTIES

Under Minnesota's lemon laws a manufacturer has two distinct duties that apply to qualifying express warranties. A manufacturer has a duty to repair nonconforming vehicles⁴⁵ and a duty to take back a nonconforming vehicle, refunding the purchase price or replacing the vehicle.⁴⁶ For these duties to attach, a manufacturer's warranty must exist⁴⁷ and a nonconformity must occur during the statutory term of protection.⁴⁸ Moreover, the duties are dependent on the definition of nonconformity.⁴⁹ For tractors, the lemon law duties are also affected by a loaned-vehicle exception that severely limits consumer rights provided by the law.⁵⁰

Distinctions in the affirmative defenses suggest that the duties of the automobile law provide consumers more rights than provided by the duties of the tractor law. Both lemon laws prescribe a duty to conform to all applicable express warranties⁵¹ made by the manufacturer.⁵² However, a manufacturer's duty to refund or replace is required only when a vehicle does not conform to any applicable express written warranty⁵³ and stated prerequisites are met.⁵⁴ Lemon law duties to refund or replace are limited by two affirmative defenses available to manufacturers. First, a nonconformity under both laws excludes defects or conditions that are the result of abuse, neglect, or unauthorized mod-

45. MINN. STAT. §§ 325F.665 subd. 2, 325F.6653 (1994).

46. MINN. STAT. §§ 325F.665 subd. 3, 325F.6654 (1994).

47. The automobile law defines warranty as one made by the manufacturer. MINN. STAT. § 325F.665 subd. 1(c) (1994). The tractor law contains a similar provision with the addition that the warranty must be in writing. MINN. STAT. § 325F.6651 subd. 5 (1994).

48. See *supra* notes 21-24 and accompanying text. Nonconformities occurring during the statutory term that remain unrepaired until the end of the term also need to be repaired. MINN. STAT. §§ 325F.665 subd. 2, 325F.6653 (1994).

49. The tractor law defines nonconformity, MINN. STAT. § 325F.6651 subd. 7 (1994), while the automobile lemon law does not, MINN. STAT. § 325F.665 (1994).

50. MINN. STAT. § 325F.6654 subd. 2 (1994).

51. MINN. STAT. §§ 325F.665 subd. 2-3, 325F.6653-6654 (1994).

52. This is prescribed in the definition of warranty. MINN. STAT. §§ 325F.665 subd. 1(c), 325.665 subd. 5 (1994).

53. A written warranty is required due to the definition of a warranty by each lemon law. MINN. STAT. §§ 325F.665 subd. 1(c), 325.6651 subd. 5 (1994).

54. For automobiles:

If the manufacturer . . . [is] unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use or market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall either replace the new motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price, including the cost of any options or other modifications arranged, installed, or made by the manufacturer, its agent, or its authorized dealer within 30 days after the date of original delivery

MINN. STAT. § 325F.665 subd. 3(a) (1994).

For tractors:

If a farm tractor does not conform to applicable express written warranties and the consumer reports the nonconformity to the manufacturer and its authorized dealer during the term of the express written warranties or during the period of one year following the date of the original delivery of the farm tractor to the consumer, whichever is earlier, the manufacturer or its authorized dealers shall make the repairs necessary to make the farm tractor conform to the express written warranties, notwithstanding that the repairs are made after the expiration of the warranty term or the one-year period. For a self-propelled vehicle this section is limited to warranties on the engine and power train.

MINN. STAT. § 325F.6653 (1994).

ifications or alterations of the vehicle.⁵⁵ Thus, if a consumer contributes to a nonconformity, relief is jeopardized.⁵⁶ Second, the duty to refund or replace new automobiles does not apply if the nonconformity does not substantially impair either "use or market value,"⁵⁷ whereas for tractors, a manufacturer has an affirmative defense if the nonconformity does not substantially impair both "use and market value."⁵⁸ This means that minor problems may not qualify a consumer to the relief provided by the lemon laws.

A. Limitations on Repairs

Statutory qualifications and prerequisites for repairs limit consumer rights under the Minnesota lemon laws. Manufacturers have an obligation to repair only those conditions or defects that are covered by an express written warranty from the manufacturer.⁵⁹ Implied warranties, oral warranties, and warranties from a dealer are not covered.⁶⁰ Moreover, manufacturers have no statutory duty to repair vehicles with serious safety defects which are not covered by a warranty from the manufacturer.⁶¹

For tractors, two additional qualifications must be met before a manufacturer may incur a duty to repair. The statute defines nonconformity as "any condition of the farm tractor that makes it impossible to use for the purposes for which it was intended."⁶² If a condition or defect does not completely preclude the use of the tractor for its intended purpose, it is not a nonconformity, and would not need to be remedied under the lemon law.⁶³

Even more importantly, the affirmative defense provisions of section 325F.6657 constitute a second qualification. This section provides that any condition not substantially impairing the use and market value of a tractor does not need to be repaired.⁶⁴ Thereby, the tractor lemon law does not require manufacturers to repair minor defects, and may not provide the farmer a means to remedy minor defects.⁶⁵

The lemon law qualifications disclose the importance of a manufacturer's warranty. In the absence of a qualifying express warranty, consumers will not qualify for relief under a lemon law. Moreover, even with a written warranty,

55. MINN. STAT. §§ 325F.665 subd. 3, 325F.6657 (1994).

56. For example, certain acts by an owner to fix a nonconformity that were negligent and exacerbate the nonconformity may fall within this exception and could be used to deny the owner relief under the lemon law.

57. MINN. STAT. § 325F.665 subd. 3(a) (1994).

58. MINN. STAT. § 325F.6657 (1994).

59. MINN. STAT. §§ 325F.665 subd. 1(c) & 2, 325F.6651 subd. 5, 325F.6654 (1994).

60. MINN. STAT. §§ 325F.665 subd. 1(c) & 2, 325F.6651 subd. 5, 325F.6654 (1994).

61. Manufacturers are not required to make written warranties. MINN. STAT. § 325F.6654 (1994). Furthermore, both laws provide that "any terms or conditions precedent to the enforcement of obligations under [a] warranty . . ." are part of the warranty. MINN. STAT. §§ 325F.665 subd. 1(c), 325F.6651 subd. 5 (1994).

62. MINN. STAT. § 325F.6651 subd. 7 (1994).

63. *Id.* For example, if a consumer purchased a new combine and its turn signal did not work, would such a condition constitute a nonconformity? The combine could still be used for its intended purpose of harvesting crops, although the absence of a signal may constitute a traffic violation. Arguably, such combine does not have a nonconformity since it could be used for its intended purpose. *Id.*

64. The affirmative defense involving substantial impairment applies to both the duty to repair and the duty to refund or replace. MINN. STAT. § 325F.6657 (1994). This may be contrasted to the automobile lemon law where the affirmative defense involving substantial impairment only applies to the duty to refund or replace. MINN. STAT. § 325F.665 subd. 3 (1994).

65. For example, a nonfunctioning turn signal may not substantially impair the vehicle's use, so it would not need to be repaired under the lemon law provisions. MINN. STAT. § 325F.6657 (1994).

consumers having a nonconformity or a defective vehicle may need to resort to commercial law remedies for those items that are excepted from lemon law coverage.⁶⁶

B. Limitations of Refunds and Replacements

Lemon laws require the refund of the purchase price or the replacement of a lemon vehicle to consumers in exceptional situations where the manufacturer fails to correct a nonconformity. To qualify for a refund or replacement under the automobile lemon law, a consumer must allow the manufacturer a reasonable number of attempts to conform the motor vehicle to the applicable express warranty.⁶⁷ Thereafter, if a qualifying nonconformity occurs, the manufacturer may incur liability for a refund or replacement.⁶⁸ A reasonable number of attempts to conform a motor vehicle is defined through three alternative provisions: (1) the consumer has presented a manufacturer the same nonconformity four or more times within the statutory term and the same nonconformity continues to exist;⁶⁹ (2) the motor vehicle is out of service by reason of repair for a cumulative total of more than thirty business days during the statutory term;⁷⁰ or (3) the nonconformity results in a complete failure of the braking or steering system of the new motor vehicle that is likely to cause death or serious bodily injury if the vehicle is driven and was subject to repair once during the statutory term of protection but continues to exist.⁷¹

A tractor consumer is entitled to a refund or replacement if one of two alternative qualifications is met. Under the first alternative, a consumer has a remedy if the same reoccurring nonconformity substantially impairs the use and market value of the tractor to the consumer⁷² five times within the statutory term.⁷³ Under the second qualification, the same nonconformity substantially impairing the use and market value of the tractor⁷⁴ must deprive the consumer of the use of the tractor for more than sixty business days during the

66. This includes breaches of implied warranties and breaches consisting of nonconformities of insubstantial defects of items expressly warranted in a written warranty. The U.C.C. allows damages for breaches of warranties. U.C.C. §§ 2-714 to -715 (1972).

67. MINN. STAT. § 325F.665 subd. 3(a) (1994). See also *supra* note 54.

68. MINN. STAT. § 325F.665 subd. 3(a) (1994).

69. MINN. STAT. § 325F.665 subd. 3(b) (1994). Thereby, a nonconformity occurring a fifth time after the statutory term would qualify the consumer for a refund or replacement. *Id.* Of course, the substantial impairment requirement must be met. MINN. STAT. § 325F.665 subd. 3(a) (1994).

70. MINN. STAT. § 325F.665 subd. 3(b)(1994). The statutory term is the earlier of the term of the applicable express warranty or two years. *Id.*

71. MINN. STAT. § 325F.665 subd. 3(c) (1994). The second occurrence of a complete failure of the braking or steering system happening at any time would qualify the consumer for a refund or replacement. *Id.*

72. Subdivision 1(a) of section 325F.6654 asserts that either a substantial impairment of use or market value may justify a refund or replacement, but the statutory affirmative defense of section 325F.6657 declares that both use and market value must be impaired. MINN. STAT. §§ 325F.6654 subd. 1(a), 325F.6657 (1994). Given this inconsistency, it is assumed that a nonconformity must substantially impair both use and market value. MINN. STAT. § 325F.6657 (1994).

73. MINN. STAT. § 325F.6654 subd. 2 (1994). The statute provides in part:

The replacement or refund obligation specified in subdivision 1 shall arise if the manufacturer . . . [is] unable to make the farm tractor conform within the express written warranty term or during the period of one year . . . whichever is the earlier date, and (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its authorized dealers, but such nonconformity continues to exist . . .

Id. This language suggests that the tractor must fail to conform a fifth time within the earlier of the warranty term or the one-year statutory term. *Id.* Thus, a nonconformity must occur five times during the statutory term of protection.

74. See *supra* note 72.

statutory term.⁷⁵ The out-of-service period is tolled, however, if a consumer is provided the use of a substitute farm tractor which performs the same function.⁷⁶

A subtle distinction between the automobile and tractor laws is found in the notice requirement. Before a manufacturer may incur a statutory obligation under the tractor lemon law, a direct written notification from the consumer to the manufacturer is mandatory.⁷⁷ A consumer of an automobile does not need to provide direct notification to the manufacturer; rather, written notice may be sent to the manufacturer or its agent.⁷⁸ Given the business relationship between a manufacturer of a tractor and its dealers, a provision allowing written notice to an authorized dealer should provide sufficient notice.

Because both laws seek to accomplish the same objectives, the provisions for refunds and replacements should not be materially different. Why not have the same statutory out-of-service period for both autos and tractors?⁷⁹ Currently, they vary by thirty days, and the sixty-day period required for tractors is too long for self-propelled equipment used only for specialized tasks such as harvesting.⁸⁰ The tractor lemon law should be modified so that the same non-conformity need occur only four rather than five times during the statutory term.⁸¹ This way, if the nonconformity persists after four repairs, the consumer qualifies for statutory relief similar to the provisions of the automobile law.⁸² Written notification of a condition to a tractor manufacturer's authorized dealer should suffice as notice to establish an obligation to refund or replace.⁸³ Substantial agreement of the provisions might benefit consumers and counsel.

C. Loaned Vehicles

The Minnesota tractor lemon law contains a loaned-tractor exception that enables manufacturers to loan tractors to assist consumers.⁸⁴ Under this excep-

75. MINN. STAT. § 325F.6654 (1994). This is in contrast to the 30 business days of the automobile lemon law. MINN. STAT. § 325F.665 subd. 3 (1994). Business days are determined by counting the days when the service department of the authorized dealer is open for purposes of repairs. MINN. STAT. § 325F.6654 subd. 2 (1994).

76. MINN. STAT. § 325F.6654 subd. 2 (1994). See *infra* notes 84-99 and accompanying text.

77. "No action may be brought unless the manufacturer has received prior direct written notification from or on behalf of the consumer and has been offered an opportunity to cure the condition . . ." MINN. STAT. § 325F.6654 subd. 1 (1994).

78. MINN. STAT. § 325F.665 subd. 3(e) (1994). The statute provides:

The presumption contained in paragraph (b) applies against a manufacturer only if the manufacturer, its agent, or its authorized dealer has received prior written notification from or on behalf of the consumer at least once and an opportunity to cure the defect alleged. If the notification is received by the manufacturer's agent or authorized dealer, the agent or dealer must forward it to the manufacturer by certified mail, return receipt requested.

Id.

79. Compare MINN. STAT. § 325F.665 subd. 3 (1994) (providing for a 30 day out-of-service period) with MINN. STAT. § 325F.6654 (1994) (providing for a 60 day out-of-service period).

80. For example, many grain and corn crops have narrow windows of opportunities during which they should be harvested to achieve maximum yield and/or quality.

81. See *supra* note 73.

82. Compare MINN. STAT. § 325F.665 subd. 3(b) (1994) with MINN. STAT. § 325F.6654 subd. 2 (1994).

83. Compare MINN. STAT. § 325F.665 subd. 3(e) (1994) (indicating that notice may be given to the manufacturer, its agent, or its authorized dealer) with MINN. STAT. § 325F.6654 subd. 1 (1994) (indicating that notice may be given only to the manufacturer).

84. MINN. STAT. § 325F.6654 subd. 2 (1994). Similar provisions are also set forth in other state tractor lemon laws. See GA. CODE ANN. § 10-1-814(a) (1994); ILL. ANN. STAT. ch. 815, para. 340/4 (Smith-Hurd 1993); VA. CODE ANN. § 59.1-207.8B (Michie 1987).

tion, a manufacturer may provide a consumer "with the use of another farm tractor which performs the same function."⁸⁵ A loaned vehicle is undoubtedly a beneficial service to consumers needing a tractor for the timely execution of their agricultural pursuits.⁸⁶ The real significance of the exception, however, is that a loaned tractor tolls the out-of-service period and lessens the likelihood that a nonconforming vehicle will qualify for a repair, refund, or replacement. Thus, through the loaned tractor exception, a manufacturer may defer future statutory duties to repair, refund or replace and prevent a consumer from qualifying for a refund or replacement.⁸⁷

The impact of the loaned-tractor exception may be shown for each alternative qualification for a refund or replacement.⁸⁸ A consumer may qualify for a refund or replacement if the new tractor fails five times due to the same nonconformity during the statutory term.⁸⁹ Under the loaned tractor exception, the consumer could be provided a substitute tractor when the nonconforming vehicle was being fixed for the fourth breakdown, and repairs stalled until the statutory term had expired.⁹⁰ After expiration of the term, the repaired new tractor could be returned to the consumer and the loaned tractor to the manufacturer. In this manner, the new tractor could not fail a fifth time during the statutory term of protection. In a similar fashion, the loaned tractor exception could preclude a consumer from lacking the service of the new tractor due to the same nonconformity for more than sixty days during the statutory term of protection. Whenever a new tractor was under repair and had been under repair for nearly sixty days, the manufacturer could provide the consumer a loaned tractor.⁹¹ After the statutory term had expired, the repaired new tractor could be returned to the consumer.⁹² If the same nonconformity occurred again, the consumer would not qualify for a refund or replacement and would be left with the lemon tractor.⁹³

In response to this predicament, an appropriate remedy might be to retain the loaned tractor exception but extend statutory coverage to preclude the exception from being used to defeat worthy claims for refunds or replacements.⁹⁴ A new provision could be added to extend the statutory term of pro-

85. MINN. STAT. § 325F.6654 subd. 2 (1994).

86. The automobile lemon law does not allow a loaned vehicle to toll the time of the out-of-service period. *See generally* MINN. STAT. § 325F.665 (1994). Perhaps a loaned-vehicle provision could be considered as an additional means to aid automobile consumers who have a nonconforming vehicle.

87. A new tractor under repair would not be able to have the same nonconformity reoccur during the period of repair. MINN. STAT. §§ 325F.6653-.6654 (1994).

88. *See supra* notes 72-76 and accompanying text.

89. *See supra* note 73.

90. The term is the shorter of the express warranty or one year. MINN. STAT. § 325F.6654 subd. 2 (1994).

91. To achieve this, the manufacturer presumably would need the dealer's cooperation to learn when a particular vehicle was approaching the 60-day limit. *Id.* The loaned tractor exception does not affect any written express warranties, unless such provide otherwise.

92. By waiting until the expiration of the statutory term of protection, any additional days the tractor was out of service due to the same nonconformity would not qualify the consumer for any relief. *Id.*

93. The vehicle would not have been out of service for more than 60 days. Nonconformities occurring after the statutory term of protection has expired do not involve a statutory duty. MINN. STAT. §§ 325F.6653-.6654 (1994).

94. The issue is not the loaned tractor exception but rather the use of the exception to preclude a consumer from being able to qualify for a refund or replacement whenever a new tractor cannot be used for the full statutory term.

tection⁹⁵ and the statute of limitations⁹⁶ by the total number of days that a tractor is under a repair.⁹⁷ For example, assume a consumer purchased a tractor with a 180-day express warranty from the manufacturer and was provided a loaned vehicle for fifty days due to a nonconformity.⁹⁸ The statutory term of protection would be 230 days. Manufacturers who provide consumers a loaned tractor would not diminish consumers' rights to repairs, replacement, and refunds for the earlier of the full warranty term or one-year statutory term. Rather, the proposal guarantees consumers that they can use their new tractors during the full warranted period because the days the tractors are under repair toll the warranted term.⁹⁹

III. AUGMENTING RIGHTS FOR CONSUMERS OF FARM TRACTORS

A comparison of consumer rights established under the two lemon laws suggests that the consumers of farm tractors are less likely to qualify for some type of relief. This part identifies three issues adversely affecting the rights of farmers: the absence of a restriction on returned lemon vehicles, inferior restitution provisions, and differences in the dispute settlement mechanism.

A. *Reconveyed Lemon Vehicles*

Consumers of automobiles that are returned under lemon laws are provided additional rights that are not available to consumers of tractors. Although tractors vary somewhat from motor vehicles, the inclusion of pickup trucks, vans, and motor homes in the automobile law shows inclusion of a variety of vehicles.¹⁰⁰ Consumers of tractors seem to have the same needs as consumers protected by the automobile lemon law. The automobile lemon law

95. This provision would need to be added to sections 325F.6653 & 325F.6654. MINN. STAT. §§ 325F.6653, 325F.6654 subd. 2 (1994). The proposal does not extend a manufacturer's express warranty term, but rather extends qualification for lemon law relief. The wording could state:

For the purposes of the duties under this section, the term of a manufacturer's express warranty shall be extended by the total number of days the tractor is out of service by reason of repair during said term of the manufacturer's express warranty. Thus, manufacturers' duties extend for the term of the express warranty plus the number of days the tractor was out of service by reason of repair during the term. The period of one year following the date of original delivery of the farm tractor shall be extended by the total number of days the tractor is out of service by reason of repair during said period of one year. Thus, the one-year period shall mean one year, plus days the tractor was out of service during the first year following the date of the original delivery.

96. The tractor lemon law also contains a separate statute of limitations requiring action to be commenced within six months of the expiration of the express warranty term or one year following the date of the original delivery of the tractor to the consumer. MINN. STAT. § 325F.6658 (1994). If the term of a manufacturer's express warranty and the one-year term are to be extended, then the statute of limitations also needs to be extended. New sentences could be added to section 325F.6658 to state:

The term of a manufacturer's express warranty shall mean manufacturer's warranty term, plus the total number of days the particular tractor was out of service by reason of repair during the warranty term. One year following the date of original delivery shall mean one year, plus the total number of days the particular tractor was out of service by reason of repair during the first year following the date of the original delivery of the vehicle to the consumer.

97. Only repairs covered by the statute would extend the statutory term and statute of limitations.

98. The loaned tractor was provided during the 180 day term of the express warranty.

99. The suggested proposal builds on the existing provisions regarding the statutory term so is not an undue departure from the current law.

100. MINN. STAT. §§ 168.011 subd. 7, 325F.665 subd. 1(e) (1994).

establishes conditions for the resale or re-lease¹⁰¹ of motor vehicles that are returned under the lemon law or an informal dispute settlement proceeding.¹⁰² Returned vehicles may not be reconveyed¹⁰³ to a new consumer without an express warranty similar to that provided to the original purchaser.¹⁰⁴ In addition, the consumer of a reconveyed vehicle is entitled to a written statement acknowledging that the motor vehicle had previously been returned to the manufacturer.¹⁰⁵ Another limitation provided by the statute is that any motor vehicle returned due to a nonconformity resulting in a complete failure of the braking or steering system cannot be resold in Minnesota.¹⁰⁶

Consumers of returned or repurchased tractors in Minnesota do not have similar protection. A tractor returned because the manufacturer was unable to make it conform to a written warranty may be reconveyed to another consumer without any notice to the second consumer of past nonconformities. Consumer protection from vehicles that have previously been found to be lemons, as provided in the automobile lemon law, is an important attribute of lemon laws.¹⁰⁷ Consumers of farm tractors would benefit from similar provisions for lemon tractors that are reconveyed by manufacturers or dealers.

Existence of reconveyance provisions may also encourage manufacturers to take additional remedial action to preclude a vehicle from qualifying for a refund or replacement under a lemon law. Under section 325F.665 of the Minnesota automobile lemon law, if a manufacturer accepts the return of a motor vehicle before it is required to pursuant to the duty to refund or replace, resale requirements do not apply.¹⁰⁸ In this manner, by accepting the return of a vehicle with a problem before it is required by the statute, the manufacturer would be able to reconvey the vehicle without a warranty¹⁰⁹ and without notice that would provide information to the new consumer about the earlier problems of the vehicle.¹¹⁰

101. MINN. STAT. § 325F.665 subd. 5 (1994). While the automobile lemon law covers leased vehicles, the tractor lemon law does not. MINN. STAT. § 325F.665 subd. 1 (1994).

102. MINN. STAT. § 325F.665 subd. 5(a) (1994). This includes vehicles returned pursuant to subdivision three or a similar statute of another state. A vehicle returned as the result of a legal action or informal dispute settlement would also be covered by these provisions. *Id.*

103. Because the automobile law includes leased automobiles, reconveyance includes re-leasing and returned vehicles. MINN. STAT. § 325F.665 subd. 4 (1994).

104. The automobile law allows the term of the express warranty of a reconveyed vehicle to be limited to the earlier of 12,000 miles or 12 months, calculated from the date of resale. MINN. STAT. § 325F.665 subd. 5(a)(1) (1994).

105. MINN. STAT. § 325F.665 subd. 5 (1994). Subdivision 5 provides:
If a motor vehicle has been returned under the provisions of subdivision 3 . . . it may not be resold or re-leased in this state unless: (1) the manufacturer provides the same express warranty it provided to the original purchaser . . . and (2) the manufacturer provides the consumer with a written statement . . . :
"IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTY AND THE NONCONFORMITY WAS NOT CURED WITHIN A REASONABLE TIME AS PROVIDED BY MINNESOTA LAW."

Id. (emphasis in the original)

106. The failure must be likely to cause death or serious bodily injury if the vehicle was driven. MINN. STAT. § 325F.665 subd. 5(b) (1994). No such provision exists in the tractor lemon law.

107. Failure to apprise a consumer about a reconveyed lemon vehicle thwarts the purpose of the lemon law. Vogel, *supra* note 3, at 642-44. See also Swanson, *supra* note 3, at 444. It should be noted that the Virginia Legislature recently corrected an analogous shortcoming for automobiles. VA. CODE ANN. § 59.1-207.16:1 (Michie Supp. 1994).

108. MINN. STAT. § 325F.665 subd. 3, 5(a) (1994). See also *supra* note 105.

109. Manufacturers may find it advantageous to avoid new express warranties by taking back a vehicle with a nonconformity. MINN. STAT. § 325F.665 subd. 5(a) (1994).

110. *Id.* Such also occurs in the absence of a lemon law.

B. Restitution Accompanying A Refund or Replacement

Another distinction between the automobile and tractor lemon law provisions is the restitution provided whenever a consumer is entitled to a refund or replacement vehicle. The automobile lemon law provides that the manufacturer's refund or replacement must include payment of "the cost of any option" and "all other charges," less a reasonable offset for vehicle use.¹¹¹ "The cost of any option" includes vehicle options and modifications arranged, installed, or made by the manufacturer or its agent within thirty days after the date of original delivery.¹¹² "All other charges" include sales and excise taxes, license fees, registration fees, towing charges, and rental vehicle expenses.¹¹³ Moreover, the consumer has the option of refusing a replacement vehicle and choosing a refund.¹¹⁴

The tractor lemon law provides consumers fewer costs and expenses when the manufacturer makes a refund or a tractor is replaced. The payment to the consumers need only include "the cash purchase price, including sales tax, license fees, registration fees, and any similar governmental charges, less a reasonable allowance for prior use."¹¹⁵ The tractor law delineates a reasonable allowance for prior use as no less than the fair rental value of the tractor,¹¹⁶ and defines a fair rental value as the "rental value calculated in accordance with the 'Tractor and Farm Equipment Trade-In Guide' published by the national farm and power equipment dealers association."¹¹⁷ Costs for options, towing charges, and rental vehicle expenses incurred during attempted repairs are borne by the consumer of the tractor. The omission of such costs from the recovery provided by the tractor lemon law, together with the absence of incidental and consequential damages, severely limits a consumer's statutory relief.¹¹⁸

C. Dispute Settlement

Both lemon laws provide for the use of alternative dispute settlement mechanisms,¹¹⁹ however, the automobile law is more consumer-friendly. The automobile law mandates manufacturers' participation in an informal dispute settlement mechanism,¹²⁰ whereas the tractor law makes manufacturer participation discretionary.¹²¹ Consumers are not entitled to a refund or replacement

111. MINN. STAT. § 325F.665 subd. 3(a) (1994). The costs and charges do not include incidental and consequential damages as provided by the U.C.C. U.C.C. § 2-715.

112. MINN. STAT. § 325F.665 subd. 3(a) (1994).

113. *Id.* However, from these charges a deduction may be made for a reasonable allowance for the consumer's use of the vehicle. *Id.*

114. *Id.*

115. MINN. STAT. § 325F.665 subd. 1 (1994). Moreover, if a substitute vehicle was provided, the consumer may be charged for its use. *Id.*

116. MINN. STAT. § 325F.665 subd. 8 (1994).

117. MINN. STAT. § 325F.665 subd. 6 (1994).

118. Consumers may want to resort to state warranty law to secure more extensive relief. MINN. STAT. §§ 336.2714 to 715 (1994).

119. The laws require compliance with 16 C.F.R. § 703 (1994).

120. MINN. STAT. § 325F.665 subd. 6(a) (1994).

121. MINN. STAT. § 325F.665 subd. 1 (1994).

under either lemon law unless they comply with the available alternative dispute settlement mechanism,¹²² although the automobile law allows a manufacturer to waive the use of this mechanism. Thus, consumers' rights for a refund or replacement may depend on proceeding through an available settlement mechanism.

The major distinction between the laws is whether a settlement reached under the mechanism is reviewable. For automobile consumers, a settlement decision is nonbinding unless otherwise agreed by the parties.¹²³ For consumers of tractors, a settlement decision is binding on all participating parties.¹²⁴ Thus, the tractor settlement mechanism curtails the availability of a consumer to appeal an unfavorable settlement.

Furthermore, provisions of the automobile dispute resolution mechanism may be more consumer-friendly than the tractor procedure. The automobile law requires an opportunity for a consumer to make an oral presentation,¹²⁵ while the tractor procedure does not appear to require such an opportunity.¹²⁶ The automobile lemon law also contains provisions on treble damages for selected situations of bad faith¹²⁷ and allows civil remedies.¹²⁸

IV. CONCLUDING COMMENTS

The Minnesota lemon laws are intended to provide consumers additional remedies for new vehicles that do not conform to express warranties. Through the delineation of manufacturer duties to repair, refund, or replace nonconforming vehicles, the laws provide a cause of action whenever a manufacturer breaches one of these duties.¹²⁹ Given the similarities of the laws' objectives, it is surprising to learn that they have such diverse prerequisites and contrasting provisions. These prerequisites and dissimilar provisions create discrepancies that are illogical and may preclude consumers and their attorneys from fully meeting the requisite criteria to secure remedies for lemon vehicles. Moreover, the exacting statutory criteria of the tractor law may impede tractor consumers from obtaining any meaningful relief.

This article articulates several suggestions for the amendment of the tractor lemon law to provide greater consumer relief. Lemon laws should require a minimum warranty rather than provide an additional mechanism for the

122. MINN. STAT. §§ 325F.665 subd. 6(a), 325F.6656 subd. 1 (1994). However, a manufacturer may allow a consumer of a motor vehicle to commence an action without going through the alternative dispute resolution procedure. MINN. STAT. § 325F.665 subd. 6(a) (1994). Other remedies are available when a consumer is seeking relief for repairs. MINN. STAT. §§ 325F.665 subd. 11, 325F.6659 (1994).

123. MINN. STAT. § 325F.665 subd. 7 (1994).

124. MINN. STAT. § 325F.6656 subd. 4(b) (1994). The statute states: "A settlement reached under this section is binding on all participating parties." *Id.*

125. MINN. STAT. § 325F.665 subd. 6(e) (1994). The statute states: "The informal dispute settlement mechanism shall allow each party to appear and make an oral presentation in the state of Minnesota . . ." *Id.*

126. Parties shall have the right to comment on documents received by any informal dispute settlement mechanism "in writing, or with oral presentation at the request of the mechanism . . ." MINN. STAT. § 325F.6656 subd. 4(a)(1) (1994). However, if a manufacturer's representative is in attendance or participating in a procedure, the consumer must be given a chance to be heard. *Id.*

127. MINN. STAT. § 325F.665 subd. 8 (1994).

128. MINN. STAT. § 325F.665 subd. 9 (1994).

129. See *supra* notes 51-58 and accompanying text.

enforcement of rights.¹³⁰ Modification of the statutory terms of protection to calculate such terms in part by vehicle usage would provide manufacturers and consumers a more fair time period for lemon law duties.¹³¹ The loaned tractor exception should be revised to prevent the obstruction of the manufacturer's duty to refund or replace.¹³² Extended consumer protection to include credit for days a vehicle is out of service by reason of repairs should be incorporated in new provisions regarding the statutory term of protection and statute of limitations, by extending the statutory term by the number of days the vehicle was out of service by reason of repairs.¹³³ Modification of the requirements that a nonconformity make it impossible to use the tractor and substantially impair both use and value of the tractor before a duty to repair arises are needed to ameliorate these overly exacting requirements.¹³⁴

A comparison of different provisions between the automobile and tractor lemon laws discloses other issues that might be addressed to provide more effective relief for consumers of lemon vehicles. First, the tractor law needs a provision regarding the resale of lemon vehicles to help prevent lemon vehicles from being conveyed to another consumer.¹³⁵ Next, the terms of statutory protection might be amended to provide the same term,¹³⁶ and the laws might delineate a similar number of days for the out of service provision rather than the current discrepancy between the two laws.¹³⁷ Provisions regarding the number of times the same nonconformity must occur to qualify a tractor consumer for a refund or replacement might be set at four times during the statutory term of protection, similar to the automobile lemon law, so that a fifth occurrence at any time would qualify the consumer for relief.¹³⁸ Another suggestion is to amend the restitution provisions of the tractor law to correspond with those of the automobile law.¹³⁹ With respect to the statutory notice requirements, the tractor law should follow the automobile law and only require written notice to authorized dealers or the manufacturer rather than specifically requiring notice to both the manufacturer and the dealer.¹⁴⁰ And finally, at a minimum, it would seem that the laws should have an identical alternative dispute settlement mechanism.¹⁴¹

Consumers expect lemon laws to remove obstacles and afford them reme-

130. This would require revising the statutory term of protection so it covered an enumerated period rather than allowing a shorter express warranty to establish the statutory term of protection. See *supra* notes 26-30 and accompanying text.

131. This could be a mileage unit for automobiles and a period of hours for tractors. See *supra* notes 38-44 and accompanying text.

132. See *supra* notes 84-99 and accompanying text.

133. See *supra* notes 94-99 and accompanying text.

134. See *supra* notes 62-65 and accompanying text.

135. See *supra* notes 101-107 and accompanying text.

136. See *supra* notes 31-37 and accompanying text. Currently, the tractor law uses a one-year term while the automobile law provides a two-year term. MINN. STAT. §§ 325F.665 subd. 2 & 3(c)-(d), 325F.6653 - .6654 (1994).

137. See *supra* notes 70, 75, 79-81 and accompanying text.

138. See *supra* notes 72-73, 82 and accompanying text.

139. See *supra* notes 111-118 and accompanying text. Possibly, more generous restitution under both laws would be appropriate given alternative commercial code provisions. See MINN. STAT. §§ 336.714 - .715 (1994).

140. Notice to the manufacturer must be written. MINN. STAT. § 325F.6654 subd. 1 (1994). See *supra* notes 77-78, 83 and accompanying text.

141. This would not require that an alternative dispute settlement mechanism be mandatory, but rather once a consumer was governed by a mechanism, they would be subject to identical provisions. See *supra* notes 119-128 and accompanying text.

dies for nonconforming new vehicles. Under the current set of lemon laws, new obstacles have been created by reason of unnecessary prerequisites and contrasting provisions. Statutory amendments to establish analogous basic lemon law provisions for all new vehicles would obviate the need to learn two sets of dissimilar rules regulating defective vehicles and could assist consumers and counsel in securing the intended relief.