

Kentucky Lemon Law Statutes

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Kentucky Lemon law - Statutes 367.840 KRS to 367.846 & 367.860 to 367.870

Kentucky Lemon law 367.840 KRS to 367.844 to be construed liberally -- Purposes.

KRS 367.841 to 367.844 shall be liberally construed and applied to promote the underlying purposes of KRS 367.841 to 367.844, which purposes are:

1. To protect consumers who buy or lease new motor vehicles that do not conform to applicable warranties by holding manufacturers accountable for certain nonconformities;
2. To limit the number of attempts and the amount of times that a manufacturer or its agents shall have to cure such nonconformities; and
3. To require manufacturers to provide, in as expeditious a manner as possible, a refund, not to exceed the amount in KRS 367.842, or replacement vehicle that is acceptable to the aggrieved consumer when the manufacturer or its agents fail to cure any nonconformity within the specified limits.

Kentucky Lemon law 367.841 Definitions.

1. **"Buyer"** means any resident person who buys, contracts to buy, or leases a new motor vehicle in the Commonwealth of Kentucky. In the case of the lease of a new motor vehicle, "buyer" shall mean the lessor, lessee, or both.
2. **"Manufacturer"** means any person or corporation, resident or nonresident, who manufactures or assembles new motor vehicles, including new conversion van manufacturers, which are sold in the Commonwealth of Kentucky.
3. **"Motor vehicle"** means every vehicle which is self-propelled, and which is intended primarily for use and operation on the public highways and required to be registered or licensed in the Commonwealth prior to such use or operation; however, "motor vehicle" shall not include:
 1. Any vehicle substantially altered after its initial sale from a dealer to an individual;
 2. Motor homes;
 3. Motorcycles;
 4. Mopeds;
 5. Farm tractors and other machines used in the production, harvesting, and care of farm products; or
 6. Vehicles which have more than two (2) axles.
4. **"New motor vehicle"** means a motor vehicle which has been finally and completely assembled and is in the possession of a manufacturer, factory branch, distributor, wholesaler, or an authorized motor vehicle dealer operating under a valid sales and service agreement, franchise, or contract for the sale of such vehicle granted by the manufacturer, factory branch, distributor, or wholesaler which is, in fact, new and on which the original title has never been issued.
5. **"Express warranty"** or **"warranty"** means the written warranty, so labeled, of the manufacturer of a new automobile, including any terms or conditions precedent to the enforcement of obligations under the warranty.
6. **"Nonconformity"** means a failure to conform with an express warranty in a manner which substantially impairs the use, value, or safety of the motor vehicle.

7. **"Reasonable allowance for use"** means the amount directly attributable to a consumer's use of the vehicle other than those time periods when the vehicle is out of service due to the nonconformity.

Kentucky Lemon law 367.842 Options of buyer if manufacturer unable to repair nonconformity in new motor vehicle -- Rights of lienholder -- Resolution of disputes -- Dealer not liable.

1. If, after a reasonable number of attempts, the manufacturer or its agents are unable to repair the nonconformity in the motor vehicle to the express warranty during the first twelve thousand (12,000) miles of operation or during the first twelve (12) months following the date of delivery to the buyer, whichever is the earlier date, that buyer shall report the nonconformity, in writing, to the manufacturer.
2. If, within the period specified in subsection (1) of this section, the manufacturer or its agents, are unable to repair or correct any nonconformity or defect that substantially impairs the use, value, or safety of the motor vehicle, after a reasonable number of attempts, the manufacturer, at the option of the buyer, shall replace the motor vehicle with a comparable motor vehicle, or accept return of the vehicle from the buyer and refund to the buyer the full purchase price. The full purchase price shall include the amount paid for the motor vehicle, finance charge, all sales tax, license fee, registration fee, and any similar governmental charges plus all collateral charges, less a reasonable allowance for the buyer's use of the vehicle. Refunds shall be made to the buyer and lien holder, if any, as their interests may appear on the records of ownership kept by the Department of Vehicle Regulation. The provisions of this section shall not affect the interests of a lien holder, unless the lien holder consents to the replacement of the lien with a corresponding lien on the automobile accepted by the consumer in exchange for the automobile having a nonconformity, the lien holder shall be paid in full the amount due on the lien, including finance charges and other charges, before an exchange of automobiles or a refund to the consumer is made. It shall be an affirmative defense to any claim under this section that:
 1. The nonconformity, defect, or condition does not substantially impair the use, value, or safety of the motor vehicle; or
 2. The nonconformity, defect, or condition is the result of abuse, neglect, or unauthorized modification or alteration of the motor vehicle by the buyer.
3. It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranty if, within the first twelve thousand (12,000) miles of operation or during the period of, twelve (12) months following the date of original delivery of the motor vehicle to the buyer, whichever is the earlier date:
 1. The same nonconformity, defect, or condition has been subject to repair four (4) or more times by the manufacturer, but such nonconformity, defect, or condition continues to exist; or
 2. The vehicle is out of service/use by reason of repair of the same nonconformity, defect, or condition for a cumulative total of at least thirty (30) calendar days.
4. Disputes arising under subsection (2) of this section concerning refund or replacement shall be resolved through the dispute resolution system established under either KRS

367.860 to 367.870, or 16 C.F.R. part 703. Such remedy shall be pursued prior to seeking any judicial relief under KRS 367.843.

5. Nothing in this chapter may be construed as imposing any liability on a dealer or creating a cause of action by a consumer against a dealer.
6. Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a buyer under any other law.
7. Any agreement entered into by a buyer for the purchase of a new motor vehicle which waives, limits, or disclaims the rights set forth in this section shall be void as contrary to public policy.
8. Any action brought pursuant to this section shall be commenced within two (2) years after the date of original delivery of the new motor vehicle to the buyer.
9. A court may award reasonable attorney's fees to a prevailing plaintiff.

Kentucky Lemon law 367.843 Action for relief by purchaser.

Any person who purchases a motor vehicle and thereby suffers any ascertainable loss of money or property, real or personal, as a result of a violation of KRS 367.842, may bring an action under the provisions of KRS 367.220 for relief.

Kentucky Lemon law 367.844 Manufacturer prohibited from exposing franchised dealer to liability.

No manufacturer shall, directly or indirectly, by any means or methods, expose or attempt to expose any franchised dealer to liability as forbidden in KRS 367.842(4) and (5). Any violation of this section shall be subject to all applicable provisions of the law, including but not limited to the provisions of KRS 190.062(2).

Kentucky Lemon law 367.845 Enforcement of provisions of KRS 367.842 to 367.844 by Attorney General.

Noncompliance with the provisions of KRS 367.842 to 367.844 by a manufacturer shall be unlawful. The Attorney General shall have authority to enforce KRS 367.842 to 367.844 in accordance with powers provided by KRS 367.190 and 367.230, pertaining to acts declared unlawful by KRS 367.170. Any expenses accruing to the Attorney General from the provisions of KRS 367.842 to 367.844 shall be assessed by his office upon the motor vehicle manufacturer involved in any action cited in the provisions herein.

Kentucky Lemon law 367.846 Application of KRS 367.840 to 367.845.

KRS 367.840 to 367.845 shall apply to new motor vehicles purchased after July 15, 1986, and to motor vehicles leased after July 15, 1998.

Informal Dispute Resolution System Kentucky Lemon law 367.860 DEFINITIONS FOR KRS 367.865

As used in KRS 367.865 unless the context requires otherwise:

1. **"Buyer"** means any resident person who buys or contracts to buy a new motor vehicle in the Commonwealth of Kentucky.
2. **"Manufacturer"** means any person, resident or nonresident, who manufactures or assembles new motor vehicles which are sold in the Commonwealth of Kentucky.
3. **"Motor vehicle"** means any two (2) axle, motor-driven vehicle with at least four (4) wheels which is required to be registered or licensed in the Commonwealth of Kentucky before being operated upon the highways and is used or bought for use primarily for personal, family, or household purposes.
4. **"New motor vehicle"** means a motor vehicle which, after its final assembly, is either in the possession of the manufacturer, factory branch or distributor, or an authorized dealer

operating under a franchise with the manufacturer, factory branch or distributor, and the legal or equitable title to which has never been the subject of a sale or transfer other than to another dealer operating under a similar franchise with the same manufacturer, factory branch or distributor.

5. **"System"** means an informal dispute resolution procedure adopted by each manufacturer to resolve questions of law and fact relating to disputes between the buyer and the manufacturer arising within the first two (2) years or twenty-five thousand (25,000) miles of the buyer's ownership, whichever occurs first, including but not limited to unsatisfactory warranty repairs of the buyer's motor vehicle, mechanical malfunctions of the buyer's motor vehicle, or other problems relating to the performance of the buyer's motor vehicle.

Kentucky Lemon law 367.865 INFORMAL DISPUTE RESOLUTION SYSTEM

1. Effective January 1, 1983, each motor vehicle manufacturer shall offer to the buyer a comprehensive informal dispute resolution system. By transacting business in the Commonwealth of Kentucky, each manufacturer is deemed to have voluntarily consented to participate in the system. Each system shall operate pursuant to written rules and procedures which:
 1. Ensure that the system is impartial, accessible to the buyer, and expeditious, and shall operate at no cost to the buyer;
 2. Provide that if the buyer elects to submit the dispute to the system, the manufacturer shall not refuse to submit the dispute to the system as long as the subject of the dispute occurred during the first two (2) years or twenty-five thousand (25,000) miles, whichever occurs first, of the buyer's ownership of the motor vehicle involved in the dispute;
 3. Provide that the system shall provide for an oral hearing, unless the buyer agrees in writing that the system shall render a decision based solely on documents submitted to it;
 4. Shall include, but is not limited to, procedures for informing the buyer of the existence of the system, preparing the agreement between the buyer and the manufacturer whereby the dispute may be submitted to the system, selecting the members of the decision-making panel, notifying the parties of the complaint, investigating the complaint, providing for hearings, rendering a fair and expeditious decision, and informing parties of the decision.
2. The decision of the system shall be legally binding on the manufacturer. The decision of the system shall not be legally binding on the buyer, unless the manufacturer elects to have its system binding on all buyers who submit their disputes to the system. If the system is to be binding to both parties, the written agreement between the buyer and the manufacturer whereby the dispute is submitted to the system shall include in conspicuous, bold-faced type the following statement: **"YOU SHOULD REMEMBER THAT BY ENTERING INTO THIS AGREEMENT YOU ARE DECIDING TO USE THIS DISPUTE RESOLUTION SYSTEM TO SETTLE YOUR DISPUTE INSTEAD OF GOING TO COURT. AFTER A DECISION BY AN ARBITRATOR, NORMALLY A COURT WILL REFUSE TO HEAR THE FACTS IN A CASE IN ALL BUT THE MOST UNUSUAL SITUATIONS. YOUR SIGNATURE IS REQUIRED IMMEDIATELY BELOW TO INDICATE THAT YOU HAVE READ THIS DISCLOSURE.**

SIGNATURE OF BUYER

3. Before a dispute may be submitted to a system which is legally binding on both parties, the buyer shall sign the disclosure statement required by subsection (2) of this section.
4. Each manufacturer shall take steps reasonably calculated to make the buyer aware of the existence of the system at the time the dispute arises.
5. Each manufacturer shall take all steps necessary to ensure that the system is sufficiently insulated from the manufacturer so that the decisions of the system are not influenced by the manufacturer. The system's decision-making panel shall be composed of members at least fifty-one percent (51%) of whom have no involvement in the manufacture, distribution or sale of motor vehicles. No member deciding a dispute shall be a party to the dispute; nor shall any member deciding a dispute be an employee or agent of a party to the dispute, unless solely for the purpose of impartially deciding disputes.
6. Nothing herein shall prohibit the manufacturer from participating in a system sponsored or administered by an impartial third party having no direct involvement in the manufacture, distribution, sale, or service of motor vehicles.
7. Each dispute resolution system shall provide to the office of the Attorney General, upon request, the name and address of each buyer whose complaint is resolved through its system. The Attorney General shall have the authority to monitor each dispute resolution system as well as review the records on each complaint, upon request. An annual report shall be prepared and published by the office of the Attorney General evaluating the performance, effectiveness, and benefits of the system, and shall include in this report recommendations for continuing, modifying, or terminating the requirement of this section.

Kentucky Lemon law 367.867 OTHER DISPUTE RESOLUTION SYSTEM SATISFIES REQUIREMENTS OF KRS 367.865

Notwithstanding the provisions of KRS 367.860 to 367.870, a dispute resolution system which is established pursuant to and in compliance with 16 C.F.R. Part 703 satisfies the requirements of KRS 367.865, as long as the dispute resolution system provides each party to the dispute with the right to an oral hearing.

Kentucky Lemon law 367.870 ENFORCEMENT OF INFORMAL DISPUTE RESOLUTION SYSTEM

Noncompliance with KRS 367.865 by a manufacturer shall be unlawful. The Attorney General shall have authority to enforce KRS 367.865 in accordance with powers provided by KRS 367.190 and 367.230 to 367.300, pertaining to acts declared unlawful by KRS 367.170

The Magnuson-Moss Warranty Act

The Magnuson-Moss Warranty Act is a Federal Law that protects the buyer of any product which costs more than \$25 and comes with an express written warranty. This law applies to any product that you buy that does not perform as it should.

Your car is a major investment, rationalized by the peace of mind that flows from its expected dependability and safety. Accordingly, you are entitled to expect an automobile properly constructed and regulated to provide reasonably safe, trouble-free, and dependable transportation – regardless of the exact make and model you bought. Unfortunately, sometimes these principles do not hold true and defects arise in automobiles. Although one defect is not actionable, repeated defects are as there exists a generally accepted rule that unsuccessful repair efforts render the warrantor liable. Simply put, there comes a time when “enough is enough” – when after having

to take your car into the shop for repairs an inordinate number of times and experiencing all of the attendant inconvenience, you are entitled to say, 'That's all,' and revoke, notwithstanding the seller's repeated good faith efforts to fix the car. The rationale behind these basic principles is clear: once your faith in the vehicle is shaken, the vehicle loses its real value to you and becomes an instrument whose integrity is impaired and whose operation is fraught with apprehension. The question thus becomes when is "enough"?

As you know, enough is never enough from your warrantor's point of view and you should simply continue to have your defective vehicle repaired – time and time again. However, you are not required to allow a warrantor to tinker with your vehicle indefinitely in the hope that it may eventually be fixed. Rather, you are entitled to expect your vehicle to be repaired within a reasonable opportunity. To this end, both the federal Moss Warranty Act, and the various state "lemon laws," require repairs to your vehicle be performed within a reasonable opportunity. Under the Magnuson-Moss Warranty Act, a warrantor should perform adequate repairs in at least two, and possibly three, attempts to correct a particular defect. Further, the Magnuson-Moss Warranty Act's reasonableness requirement applies to your vehicle as a whole rather than to each individual defect that arises. Although most of the Lemon Laws vary from state to state, each individual law usually require a warrantor to cure a specific defect within four to five attempts or the automobile as a whole within thirty days. If the warrantor fails to meet this obligation, most of the lemon laws provide for a full refund or new replacement vehicle. Further, this reasonable number of attempts/reasonable opportunity standard, whether it be that of the Magnuson-Moss Warranty Act or that of the Lemon Laws, is akin to strict liability – once this threshold has been met, the continued existence of a defect is irrelevant and you are still entitled to relief.

You may also derive additional warranty rights from the Uniform Commercial Code; however, the Code does not allow you in most states to recover your attorney fees and is also not as consumer friendly as the Magnuson-Moss Warranty Act or the various state lemon laws.

The narrative information on Magnuson-Moss, UCC and Kentucky lemon laws on these pages is provided by Marshall Meyers, attorney.

Uniform Commercial Code Summary

The Uniform Commercial Code or UCC has been enacted in all 50 states and some of the territories of the United States. It is the primary source of law in all contracts dealing with the sale of products. The TARR refers to Tender, Acceptance, Rejection, Revocation and applies to different aspects of the consumer's "relationship" with the purchased goods.

TENDER - The tender provisions of the Uniform Commercial Code contained in Section 2-601 provide that the buyer is entitled to reject any goods that fail in any respect to conform to the contract. Unfortunately, new cars are often technically complex and their innermost workings are beyond the understanding of the average new car buyer. The buyer, therefore, does not know whether the goods are then conforming.

ACCEPTANCE - The new car buyer accepts the goods believing and expecting that the manufacturer will repair any problem he has with the goods under the warranty.

REJECTION - The new car buyer may discover a problem with the vehicle within the first few miles of his purchase. This would allow the new car buyer to reject the goods. If the new car buyer discovers a defect in the car within a reasonable time to inspect the vehicle, he may reject the vehicle. This period is not defined. On the one hand, the buyer must be given a reasonable time to inspect and that reasonable time to inspect will be held as an acceptance of the vehicle. The Courts will decide this reasonable time to inspect based on the knowledge and experience of

the buyer, the difficulty in discovering the defect, and the opportunity to discover the defect. The following is an example of a case of rejection: Mr. Zabriskie purchase a new 1966 Chevrolet Biscayne. After picking up the car on Friday evening, while en route to his home 2.5 miles away, and within 7/10ths of a mile from the dealership, the car stalled and stalled again within 15 feet. Thereafter, the car would only drive in low gear. The buyer rejected the vehicle and stopped payment on his check. The dealer contended that the buyer could not reject the car because he had driven it around the block and that was his reasonable opportunity to inspect. The New Jersey Court said;

To the layman, the complicated mechanisms of today's automobile are a complete mystery. To have the automobile inspected by someone with sufficient expertise to disassemble the vehicle in order to discover latent defects before the contract is signed, is assuredly impossible and highly impractical. Consequently, the first few miles of driving become even more significant to the excited new car buyer. This is the buyer's first reasonable opportunity to enjoy his new vehicle to see if it conforms to what it was represented to be and whether he is getting what he bargained for. How long the buyer may drive the new car under the guise of inspection of new goods is not an issue in the present case because 7/10th of a mile is clearly within the ambit of a reasonable opportunity to inspect. *Zabriskie Chevrolet, Inc. v. Smith*, 240 A. 2d 195(1968)

It is suggested that Courts will tend to excuse use by consumers if possible.

REVOCATION - What happens when the consumer has used the new car for a lengthy period of time? This is the typical lemon car case. The UCC provides that a buyer may revoke his acceptance of goods whose non-conformity substantially impairs the value of the goods to him when he has accepted the goods without discovery of a non-conformity because it was difficult to discover or if he was assured that non-conformities would be repaired. Of course, the average new car buyer does not learn of the nonconformity until hundreds of thousands of miles later. And because quality is job one, and manufacturers are competing on the basis of their warranties, the consumer always is assured that any nonconformities he does discover will be remedied. What is a nonconformity substantially impairing the value of the vehicle?

1. A nonconformity may include a number of relatively minor defects whose cumulative total adds up to a substantial impairment. This is the "Shake Faith" Doctrine first stated in the *Zabriskie* case. "For a majority of people the purchase of a new car is a major investment, rationalized by the peace of mind that flows from its dependability and safety. Once their faith is shaken, the vehicle loses not only its real value in their eyes, but becomes an instrument whose integrity is substantially impaired and whose operation is fraught with apprehension".
2. A substantial nonconformity may include a failure or refusal to repair the goods under the warranty. In *Durfee V. Rod Baxter Imports*, the Minnesota Court held that the Saab owner that was plagued by a series of annoying minor defects and stalling, which were never repaired after a number of attempts, could revoke, "if repairs are not successfully undertaken within a reasonable time", the consumer may elect to revoke.
3. Substantial Non Conformity and Lemon Laws often define what may be considered a substantial impairment. These definitions have been successfully used to flesh out the substantial impairment in the UCC.

Additional narrative information on Magnusson-Moss, UCC and Kentucky lemon laws on these pages is provided by T. Michael Flinn, attorney.