

Missouri Lemon Law Statutes

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Merchandising Practices Missouri Lemon law Section 407.560 August 28, 2000

Missouri Lemon law Definitions. 407.560. As used in sections 407.560 to 407.579, the following terms mean:

1. **"Collateral charges"**, those additional charges to a consumer not directly attributable to a manufacturer's suggested retail price label for the new motor vehicle. For the purposes of sections 407.560 to 407.579, "collateral charges" includes all sales tax, license fees, registration fees, title fees and motor vehicle inspections;
2. **"Comparable motor vehicle"**, an identical or reasonably equivalent motor vehicle;
3. **"Consumer"**, the purchaser, other than for the purposes of resale, of a new motor vehicle, primarily used for personal, family, or household purposes, and any person to whom such new motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such new motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty;
4. **"Express warranty"**, any written affirmation of the fact or promise made by a manufacturer to a consumer in connection with the sale of new motor vehicles which relates to the nature of the material or workmanship or will meet a specified level of performance over a specified period of time;
5. **"Manufacturer"**, any person engaged in the manufacturing or assembling of new motor vehicles as a regular business;
6. **"New motor vehicle"**, any motor vehicle being transferred for the first time from a manufacturer, distributor or new vehicle dealer, which has not been registered or titled in this state or any other state and which is offered for sale, barter or exchange by a dealer who is franchised to sell, barter or exchange that particular make of new motor vehicle. The term "new motor vehicle" shall include only those vehicles propelled by power other than muscular power, but the term shall not include vehicles used as a commercial motor vehicle, off-road vehicles, mopeds, motorcycles or recreational motor vehicles as defined in section 301.010, RSMo, except for the chassis, engine, powertrain and component parts of recreational motor vehicles. The term "new motor vehicle" shall also include demonstrators or lease-purchase vehicles as long as a manufacturer's warranty was issued as a condition of sale.

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Report of nonconformity required, when--repairs, duty of manufacturer or agent, when. 407.565. For the purposes of sections 407.560 to 407.579, if a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, or its agent, during the term of such express warranties, or during the period of one year following the date of original delivery of the new motor vehicle to the consumer, whichever period expires earlier, the manufacturer, or its agent, shall make such repairs as are necessary to conform the new vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

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Replacement of motor vehicle or refund of purchase price, when-- allowance deducted for consumer's use. 407.567.

1. If the manufacturer, through its authorized dealer or its agent, cannot conform the new motor vehicle to any applicable express warranty by repairing or correcting any default or condition which impairs the use, market value, or safety of the new motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall, at its option, either replace the new motor vehicle with a comparable new vehicle acceptable to the consumer, or take title of the vehicle from the consumer and refund to the consumer the full purchase price, including all reasonably incurred collateral charges, less a reasonable allowance for the consumer's use of the vehicle. The subtraction of a reasonable allowance for use shall apply when either a replacement or refund of the new motor vehicle occurs.
2. Refunds shall be made to the consumer and lienholder of record, if any, as their interests may appear.

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Affirmative defenses. 407.569. It shall be an affirmative defense to any claim under sections 407.560 to 407.579 that:

1. An alleged nonconformity does not substantially impair the use, market value, or safety of the motor vehicle;
2. A nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle;
3. A claim by a consumer was not filed in good faith; or
4. Any other affirmative defense allowed by law.

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Presumptions of nonconformity--exception. 407.571. It shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties if within the terms, conditions, or limitations of the express warranty, or during the period of one year following the date of original delivery of the new motor vehicle to a consumer, whichever expires earlier, either:

1. The same nonconformity has been subject to repair four or more times by the manufacturer, or its agents, and such nonconformity continues to exist; or
2. The new vehicle is out of service by reason of repair of the nonconformity by the manufacturer, through its authorized dealer or its agents, for a cumulative total of thirty or more working days, exclusive of down time for routine maintenance as prescribed by the manufacturer, since delivery of the new vehicle to the consumer. The thirty-day period may be extended by a period of time during which repair services are not available to the consumer because of conditions beyond the control of the manufacturer or its agents.

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Warranty extension, when--complaint remedies information to be furnished--notice to manufacturer required--manufacturer's duties, time limitation. 407.573.

1. The terms, conditions, or limitations of the express warranty, or* the period of one year following the date of original delivery of the new motor vehicle to a consumer, whichever expires earlier, may be extended if the new motor vehicle warranty problem has been reported but has not been repaired by the manufacturer, or its agent, by the expiration of the applicable time period.
2. The manufacturer shall provide information for consumer complaint remedies with each new motor vehicle. It shall be the responsibility of the consumer, or his representative,

prior to availing himself of the provisions of sections 407.560 to 407.579, to give written notification to the manufacturer of the need for the repair of the nonconformity, in order to allow the manufacturer an opportunity to cure the alleged defect. The manufacturer shall immediately notify the consumer of a reasonably accessible repair facility of a franchised new vehicle dealer to conform the new vehicle to the express warranty. After delivery of the new vehicle to an authorized repair facility by the consumer, the manufacturer shall have ten calendar days to conform the new motor vehicle to the express warranty. Upon notification from the consumer that the new vehicle has not been conformed to the express warranty, the manufacturer shall inform the consumer if an informal dispute settlement procedure has been established by the manufacturer in accordance with section 407.575. However, if prior notice by the manufacturer of an informal dispute settlement procedure has been given, no further notice is required.

3. Any action brought under sections 407.560 to 407.579 shall be commenced within six months following expiration of the terms, conditions, or limitations of the express warranty, or within eighteen months following the date of original delivery of the new motor vehicle to a consumer, whichever is earlier, or, in the event that a consumer resorts to an informal dispute settlement procedure as provided in sections 407.560 to 407.579, within ninety days following the final action of any panel established pursuant to such procedure.

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Manufacturer with approved settlement procedure, consumer's duty. 407.575. If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of the code of Federal Regulations, 16 C.F.R. 703, provisions of sections 407.560 to 407.579 concerning refunds or replacements shall not apply to any consumer who has not first resorted to such procedure.

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Court action by consumer, costs, expenses, attorney's fees, how paid. 407.577.

1. If a consumer undertakes a court action after complying with the provisions of sections 407.560 to 407.579 and finally prevails in that action, he shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action.
2. If any claim by a consumer under sections 407.560 to 407.579 is found by a court to have been filed in bad faith, or solely for the purpose of harassment, or in the absence of a substantial justifiable issue of either law or fact raised by the consumer, or for which the final recovery is not at least ten percent greater than any settlement offer made by the manufacturer prior to the commencement of the court action, then the consumer shall be liable for all costs and reasonable attorney's fees incurred by the manufacturer, or its agent, as a direct result of the bad faith claim.

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Consumer's right to other remedies--law to apply, when. 407.579.

1. Except as provided in subdivision (1) of section 407.560, nothing in sections 407.560 to 407.579 shall in any way limit the rights or remedies which are otherwise available to a consumer at law or in equity.

2. Sections 407.560 to 407.579 shall apply to any new motor vehicle sold after January 1, 1985.

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.

One of the most important parts of the Magnuson-Moss Warranty Act is its fee shifting provision. This provision provides that you may recover the attorney fees incurred in the prosecution of your case if you are successful – independent of how much you actually win. That rationale behind this fee shifting provision is twofold: (1) to ensure you will be able to vindicate your rights without having to expend large sums on attorney's fees and (2) because automobile manufacturers are able to write off all expenses of defense as a legitimate business expense, whereas you, the average consumer, obviously does not have that kind of economic staying power. Most of the Lemon Laws contain similar fee shifting provisions.

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 Missouri 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.

REVOCAION - 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 Zabisikie 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 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 Missouri lemon laws on these pages is provided by T. Michael Flinn, attorney.