

## **Kansas Lemon Law**

Statutes 50-645 - 50-646

Statute # 50-645 Motor vehicle warranties; definitions; consumer rights and remedies; enforcement by attorney general.

(a) As used in this act:

(1) "Consumer" means the original purchaser or lessee, other than for purposes of resale, of a motor vehicle; and

(2) "motor vehicle" means a new motor vehicle which is sold or leased in this state, and which is registered for a gross weight of 12,000 pounds or less, and does not include the customized parts of motor vehicles which have been added or modified by second stage manufacturers, first stage converters or second stage converters as defined in K.S.A. 8-2401, and amendments thereto.

(b) If a motor vehicle does not conform to all applicable warranties, and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of any warranties or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such warranties, notwithstanding the fact that such repairs are made after the expiration of any such term or such one-year period.

(c) If the manufacturer, or its agents or authorized dealers, are unable to conform the motor vehicle to any applicable warranty after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a comparable motor vehicle under warranty or accept return of the vehicle from the consumer and refund to the consumer the full purchase or lease price including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle as calculated from the most recent edition of Your Driving Costs, published by the American automobile association. Refunds shall be made to the consumer, and lienholder if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use by the consumer and any previous consumer prior to the first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the vehicle is not out of service by reason of repair. It shall be an affirmative defense to any claim under this act that:

(1) An alleged nonconformity does not substantially impair such use and value; or

(2) a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle by a consumer.

(d) If the manufacturer receives actual notice of the nonconformity, it shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable warranties, if:

(1) The same nonconformity which substantially impairs the use and value of the motor vehicle to the consumer has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the term of any warranty or during the period of

one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but such nonconformity continues to exist;

(2) the vehicle is out of service by reason of repair for a cumulative total of 30 or more calendar days during such term or period, whichever is the earlier date; or

(3) there have been 10 or more attempts to repair any nonconformities which substantially impair the use and value of the motor vehicle to the consumer and such attempts to repair have been attempts by the manufacturer or its agents or authorized dealers.

The term of any warranty, such one-year period and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood or other natural disaster.

(e) If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of title 16, code of federal regulations, part 703, as from time to time amended, the provisions of subsection (c) concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure.

(f) The attorney general shall have jurisdiction to enforce this section.

Statute # 50-646 Same; other remedies.

Nothing in this act shall in any way limit or affect the rights or remedies which are otherwise available to a consumer under the uniform consumer credit code, or to any person under the uniform commercial code, or to any person under this or any other law statutory or otherwise.

## **Kentucky Law Statutes**

Statutes 367.840 KRS to 367.846 & 367.860 to 367.870

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.

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:
  - (a) Any vehicle substantially altered after its initial sale from a dealer to an individual;
  - (b) Motor homes;
  - (c) Motorcycles;
  - (d) Mopeds;
  - (e) Farm tractors and other machines used in the production, harvesting, and care of farm products; or

(f) 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.

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 lienholder, 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 lienholder, unless the lienholder 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 lienholder 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:

(a) The nonconformity, defect, or condition does not substantially impair the use, value, or safety of the motor vehicle; or

(b) 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:

(a) 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

(b) 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.

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.

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).

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.

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

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.

### 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:

(a) Ensure that the system is impartial, accessible to the buyer, and expeditious, and shall operate at no cost to the buyer;

(b) 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;

(c) 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;

(d) 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.

#### 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.

#### 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

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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.

The Magnuson-Moss statute gives consumers considerable rights in dealing with manufacturers of lemon cars. A car buyer is guaranteed that certain minimum requirements of warranties must be met, and provides for disclosure of warranties before purchase.

Regarding "lemon cars", this law greatly affects the rights of car buyers. For any product which has a written warranty if any part of the product, or the product itself is considered defective, the warrantor must permit the buyer the choice of either a refund or replacement of the product.

Law firms have argued successfully to juries that the lemon manufacturers should be given three attempts to fix the defect. Continued attempts to repair beyond the initial three should not be allowed. This is called the "three strikes and you're out" principle.

A consumer may pursue legal action in any court of general jurisdiction in the United States to enforce his rights under the Magnuson-Moss Law. Attorney's fees based on actual time spent will be covered if the consumer does prevail.

Due to this particular condition, there is quite a bit of financial pressure on the manufacturer to settle consumers disputes before going to court, as this would keep their expenses down.

Editorial provided by: The Consumer Law Center, Lemon Law Attorneys

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Uniform Commercial Code Summary

TARR BABY-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 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 Zabrisikie 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.

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.