

# **THE TACTICAL LEMON AUTO MANUAL**

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**BY NICK C. THOMPSON**

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Updated for 2003

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**DISCLAIMER:** THIS MANUAL PROVIDES GENERAL INFORMATION ONLY ABOUT LEMON AUTO CASES. NOTHING IN THIS MANUAL SHOULD BE CONSTRUED AS LEGAL ADVICE. IF YOU HAVE QUESTIONS ABOUT A LEMON AUTO CASE, CONTACT US ABOUT YOUR PROBLEM. WE ASSUME NO LIABILITY FOR ANY ACTIONS THAT OCCUR AS A RESULT OF INFORMATION DERIVED FROM THIS MANUAL IF YOU DO NOT CONSULT US AS YOUR ATTORNEY OR IF YOU DO YOUR OWN LEGAL WORK.

## 1. A QUICK OVERVIEW OF LEMON AUTO CLAIMS

My Name is Nick Thompson, and I have been a licensed Attorney since 1988. I am a former West Virginia State Tax Department Attorney and a former Kentucky Assistant County Attorney. I practice statewide in Kentucky and in Southern Indiana if a case has to be filed but I do accept cases for negotiations or mediation from other states. You may not have to file a lawsuit to collect but you should handle your claim through a law office if you intend to collect.

Please **read** this manual very carefully if you are considering filing a lemon auto case. Some people read it more than once. If you spend just a couple of hours learning

1. what documents to get together,
2. how to get together the documents you need and
3. how to document you claim for a refund,
4. you will be a lot more likely to get that refund and your attorney fees paid for.

In this manual I outline how a lemon auto case can use one of 4 or 5 different laws to collect and how which law you pick may increase or decrease your award or leave you with nothing. If you have questions, **please** call or email us, and we will answer your question. Not only will you get the information you need, you will also let us know what needs to be added to future editions of this manual. Your questions will help others in the future and let us know what wasn't covered.

You probably have a claim under one of the lemon laws if you downloaded this manual. Most state lemon laws are similar to Kentucky's. Kentucky's state lemon auto law allows you to collect a refund for your car or an upgrade to a new car if you can show the following.

1. That the defect occurred or started to occur within the first 12 months of buying a new car
2. that you took it back
  - a. 4 or more times for a warranty repair or
  - b. had it out of service for 30 days or
  - c. took it back 2 times or more for a safety problem
3. The Defect has to be substantial which means that the defect effects the safety performance or value of the vehicle and
4. they haven't been able to fix it within that time.

The rules vary slightly from state to state. If you live in another state you may only have to take it back 3 times for repair. Some states don't allow you to collect attorney fees and some states had one year statutes of limitations. Other states may require mediation. Each state is a little different but every state has some form of the lemon law. This manual is designed specifically to provide information on Kentucky's Lemon Auto Law but the laws of other states are similar. Indiana only requires that you return the vehicle 3 times. Kentucky has a one year statute of limitations and other states may have a longer rule or shorter rule. Under Kentucky law you sue the manufacturer not the dealership unless the dealership knew of the defect. Other states allow you to sue the dealership. You could read this entire manual but to make it simple you can just gather your repair records and your purchase agreement for the car and file a claim for a refund with an attorney that handles this type of case. However, if you want to know the law this manual explains it.

If you have a new **or** a used car with some of the warranty left over, you may also have a claim under the Magnuson Moss law which is an older "Lemon Law" that enforces manufacturer warranties. If you have any part of the original manufacturer's warranty left over there are actually several "Lemon Laws" including the Uniform Commercial Code and you have to know which one to use. The consumer's problem is that the manufacturer will often ignore you unless you get an attorney. Our manual tells you exactly which law to use and how to document your claim so that you can collect. Read this manual and you will know what documents to get together and how to put together your claim for a refund.

Since I am not licensed in Alaska and 46 other states I can't say what your individual state lemon law is. However almost all of the state laws are the same with small differences in the local state rules about the number of time you must take it back or other minor differences. If you are attempting to take it to court you should seek local advise from an attorney. However if you take it to court it may probably take you 2 or 3 years to collect... if you collect at all. If you negotiate a settlement with the manufacturer instead it will probably take you about 30 to 90 days to reach a settlement and collect. The problem is that you still normally need to use an attorney to negotiate a settlement. The manufacturer will not normally negotiate in good faith until you have an attorney.

What they will do is deny your claim. Offer you peanuts normally an extended warranty or the monthly payment on your car that you spent while it sat in a shop for a month. They will never offer a buy back or an upgrade or a cash settlement with you of 3,000 to 6,000 dollars unless you file a lawsuit and wait it out or until you hire an attorney. If you mediate through the BBB system you will normally just waste your time. As of the time of this writing the Manufacturer still pays the fees for an arbitrator or mediator at the BBB. The judge will be paid by the car manufacturer and he is bought and paid for. Since the manufacturer pays the judge for the decision they want don't expect to get a decision that is fair. But you will wait and suffer with your car until you get the denial from the BBB for a refund. In 15 years of practicing cases I have never seen the BBB award a refund. That is right not once.

Our office handles lemon auto cases on a contingency fee basis. On a contingency fee basis, we do not get paid unless we get an award. We will give you a free one-hour consultation and give you our opinion as to whether you have a case or not. You must make an appointment: We do not take walk-ins and we do handle claims outside our state.

There are some car manufacturers that will be upset for us sharing these secrets, but our aim is to help you prepare and plan for your case and to help you to get the largest award that you can get. If you do have a valid claim you need to know how to make your claim properly.

## **2. WHO THE PLAYERS ARE:**

### **The Dealerships**

First let's talk about what is happening in case you don't understand why you are having problems collecting. There are actually two people you have to deal with the dealership and the manufacturer. Complaining to the dealership won't work to get you a refund for a lemon auto. A lemon auto is a warranty problem. The manufacturer is responsible for the warranty not the dealership. However, some new and used car dealership now sell warranties on used cars and under Mag Moss and the UCC you can sue the dealership if they issue the warranty but normally there is no real reason to involve the local dealership. They didn't build or design the car.

Many dealerships don't want warranty work when they can get other work. Dealerships do warranty work when they get around to it and when they feel like it. They often discourage you from making a warranty claim and they don't want to process your claim. Why is that?

Dealerships pay about 15 an hour for a mechanic. They bill you about 60 an hour to fix your car. The manufacturer will pay the shop about 20 to 30 an hour or a fixed amount for the repair. So the shop makes three times more money if you pay for the repair than if they do it as warranty work. Ford sends them a check...but Ford sends them a check every quarter...that's every 90 days. So the shop gets paid 3 times as much in profit when you pay and they get their money immediately. So is it any wonder when the shop lies to you and tells you that you will have to pay. It increases their profits dramatically. Of course all dealerships only have your interest at heart. They never only think about their profits. That's why you got such a good car deal. Yeah. Sure.

But good dealerships do rely on warranty repairs. Warranty work sent elsewhere means you start buying your car at other dealerships and you start looking and buying cars manufactured by other companies. So warranty work is important .... in the long run.

However some sales managers only want large immediate profits and forget that they need business tomorrow by building long term relationships and send away their future customers. Sales managers can easily ruin a business by ignoring long term goals and still be handsomely rewarded in the short run. These managers often move on with

glowing sales figures to ruin other dealerships. They brag about their past performances and point to how the former dealerships went out of business after they left. Often the former owner fired them just before the manager ran the dealership bankrupt. Warranty repairs pay dealerships something just not much. As a result, some dealerships don't encourage it.

### **The Manufacturer**

You normally never meet the claim adjuster that the attorney talks to. He is handed the case after you file a lawsuit to see if a settlement can be reached and he attempts to avoid litigation. The manufacturer's claim adjusters have a problem. They:

1. don't want to pay (often adjusters are paid bonuses for finding a way not to pay).
2. but they want to keep you as a customer and
3. they want to avoid the costs of litigation because the average case will take 1-2 years in litigation and cost as much as 30,000 dollars to go to trial.
4. and they have to process your warranty claim.

If the adjuster can't settle the case the attorney for the manufacturer will run with the case and burn up hours and expenses in litigation.

### **Your Goal**

Your goal is to document your claim so that the adjuster must pay your claim. If you make your claim valid under their standards you will tend to get your claim paid fast. Adjusters look at certain things in order to pay your claim

1. they like to pay purchasers not leases. Even though leases are covered under the law they don't like to pay damages to people that only lease cars. Some states do not allow leases to collect damages under their state lemon auto laws. Kentucky and Indiana does.
2. They want to pay cases where the defects are substantial blown motors and transmissions not leaky windows. But we have gotten awards and refunds for leaky windows.
3. They want to pay where the manufacturer has tried 4, 5 or more times to repair it and they have simply failed to cure it. They prefer to see in the repair record where the car has been torn down in the shop for 30 days.

It doesn't take much intelligence on your part to see that if this is what they pay for then you need to give exactly that to them. You don't send in a claim until it has been back 4 times. You allow the shop to have it for all the time they want it .....plus a little more before you pick it up. You take the car in for engine problems and you write engine wont run on the repair ticket not idles rough. Manufacturers don't like to pay at all if

they can avoid it. If you don't document the problems and if you don't have an attorney to file your claim they will always deny it.

**There is nothing illegal or wrong with planning your lemon auto, bankruptcy, or divorce case. Understanding what needs to be done and how to do it makes it far more likely that you will win your case.**

### **Your Attorney's Goal**

Your attorney should have as his goal to get you a refund new vehicle or a cash settlement award as soon as possible and as large an award as possible. All too often the attorney simply knows how to litigate. Too often he takes 2 years to litigate and gets less than he would have gotten than if he had negotiated within 30 days. However since the manufacturer pays the attorney fees in litigation some attorneys earn more litigating and in settling.

For the attorney the choice is I can negotiate a settlement in 30 days and the manufacturer will pay me about 2000 in attorney fees to negotiate a settlement. The client will be gone after I reach a settlement. Or I can litigate over the next 2 years and I will earn 150 or 200 an hour for 2 years for as much work as I want to put into this case because the state and federal laws allow me to bill for all the work I can do. Hmmmm I wonder which I should choose.

As a result too many cases go to trial. Too few attorneys attempt to settle or intentionally ask for too much. This leads to the car manufacturer paying

1. 30,000 to it's attorney
2. 30,000 for your attorney and
3. 10,000 -15,000 dollars for a car which cant be sold for more then 5,000 because it is a lemon.

If the manufacturer settles it will cost the manufacturer only 5,000 to 10,000 to buy back the car. Negotiating a settlement is best for the manufacturer. Plus it is best for you if you can get most or all of what you deserve.

Our office submits claims directly to Chrysler and GM which has early resolution programs that attempt to avoid 2 years in litigation and all the costs. It normally takes us no more than 6 months to settle a case and many are settled within 90 days. Ford has no such program to our knowledge. There are some manufacturers that refuse to negotiate and that would rather spend 100,000 litigating rather than 10,000 or so in settling up front. We belong to a system of attorneys that do litigate lemon auto claims nationwide. We litigate for Kentucky.

If you have a GM or Chrysler product we can negotiate your case regardless of the state you are in. GM and Chrysler pays all of the attorney fees and you pay nothing and you

have nothing to lose. We negotiate your settlement. If we don't get a settlement that you approve we refer you to an attorney in your state that will take your case to court. If you are in Kentucky or Southern Indiana we file the lawsuit. If you live anywhere else and you have a GM or Chrysler we can directly submit your claim to GM's or Chrysler's legal department for a settlement.

Most settlements end with one of three kinds of offers

1. If the defect is a substantial defect the manufacturer may upgrade your car to a newer model example a 2003 for a 2002 or a new 2002 for a slightly used 2002.
2. If the defect is substantial the manufacturer may offer a refund.
3. If the defect is not substantial the manufacturer may offer a lump sum award normally between 3000 and 6000 for the inconvenience. The attorney fee is normally 1/3 of that so if you get a lump sum award of 6000 the attorney fee of 2000 is deducted and you only get 4000. Even bad paint is a substantial defect but a bad radio isn't a substantial defect still you would probably still get an award for a bad radio.
4. You will not normally get as large a settlement for a lease as you would for a purchase. You will get a larger settlement if you bought a new car when compared to a used one.

If you have a GM or Chrysler product you can call us now and download our contract which has a list of the documents we will need to settle your case. If you are in Kentucky you can call and make an appointment for any make and model of a car.

If you have any other type of car you will

1. Need to get a local lawyer in your state,
2. prepare for a long trial
3. wait for your money and
4. read the rest of the manual

### **3. WHO THE PLAYERS ARE:**

### **4. QUICK REFERENCE TABLES: LEMON AUTO LAWSUITS**

This following table is provided as a basic reference for Lemon Auto lawsuits and to explain what the several types of warranties and what the auto laws are. A detailed

explanation of warranties and a copy of each law is set out in Sections 3 and 4, and in the Appendices of this manual.

## WARRANTIES TABLE

Warranty Type	Description	Example(s)	Who Makes It
<b>Express Warranty</b> A dealer or manufacturer may make an express warranty on either a new or used car. An express warranty is a written guarantee that the product will be repaired or will perform as promised.	Any promise, statement, description, or affirmation of fact. "Secret" Warranties can be express warranties because they describe proper vehicle repairs or conditions.	3 year/36,000 mile drive train warranty; or 325 hp motor described in owner's manual guarantees 325 horsepower.	Any Seller or Manufacturer. <b>Once made, an express warranty can't be disclaimed.</b>
<b>Implied Warranty of Title</b>	All sales imply that the seller owns and/or has the right to sell the product.	An assumption that the car is not stolen, for example.	The seller.
<b>Implied Warranty of Merchantability</b> Implied in every sale is a warranty that the item is worth being sold unless it is sold as is even then as is cant disclaim fraud.	All sales imply that the goods being sold are worth being sold.	An assumption that the brakes work or that the car will not explode. In other words, normal expectations that a car will be safe and usable.	The seller normally makes this warranty, but the manufacturer can be sued for violation as well.
<b>Warranty for a Particular Purpose</b> Whenever a dealer or manufacturer says an item will do a certain job he guarantees that it will	Arises in any sale of goods where the seller knows the buyer is relying on the product to perform a specific function and on the seller's expertise in choosing said product.	If you ask the salesman to help you buy a cross-country set of skis, he must sell you cross-country skis...not downhill skis.	The seller.

## LAWS TABLE (There are other laws and claims you can make, especially for fraud. This table is only for warranties only!)

Law	What it Covers	Example(s) of Claims	Who You Sue/What You Collect

<p><b>Lemon Auto Law</b> (The Lemon Law only covers new autos and a defect must occur within the first 12,000 miles) It also covers leased and transferred vehicles (used vehicles which get any remaining warranty)</p>	<p>Car has been back for repairs 4 or more times for the same defect or condition (2 times for certain safety issues), or has been out of service or in the shop over 30 days, and The defect initially appeared within 12 months or 12,000 miles, and the defect substantially affects the safety, value, or performance of the auto</p>	<p>Car leaks water inside the passenger compartment, Electrical system constantly fails, or Car has a bad steering wheel.</p>	<p>Only the manufacturer is sued in Kentucky. Many other state laws exempt the auto dealer.  You may collect full purchase price of car, plus attorney fees.</p>
<p><b>Odometer Roll Backs</b></p>	<p>Prohibits sellers from “rolling back” the odometer on a vehicle. Violations are normally proven by previous odometer statements. (Some states also require disclosure of wrecks, junk title, or water damage on used cars.)</p>	<p>A car’s odometer reads 15,000 miles, but previous title reported 75,000 miles.</p>	<p>Anyone in the chain of title can be sued in state or federal court. You may collect three times the purchase price of the car, plus attorney fees and court costs.</p>
<p><b>Product Liability</b></p>	<p>An unreasonably dangerous product or a product that caused an accident due to a defect. Lawsuit for personal injury losses and property loss.</p>	<p>Brakes fail due to defective materials, design, or construction. Car is in collision due to defect.</p>	<p>Normally the manufacturer, but seller is possible if, when they sold the car, they were aware of the defect.  Allows any injured parties to collect for damages.</p>

<p><b>Magnuson-Moss Act</b> (<i>Covers new and used cars for the remainder of any warranty and any other product such as a computer etc.</i>)</p>	<p>This is the older lemon law. It doesn't require the defect to occur within 12 months. It covers any violation or failure of any implied or express warranty. Also enforces any misrepresentation or confusing warranty: If the warranty is confusing, it is presumed covered. Magnuson-Moss is in addition to the Lemon Law statutes and is enforceable separately.</p>	<p>Failure to live up to any warranty, such as fixing a defective transmission under the express warranty. Also gives you the highest level of protection if the warranty is unclear confusing vague or deceptive.</p>	<p>The Manufacturer. You do not have the Lemon Auto Law limits: You sue directly for violations.</p> <p>You can collect a full refund, plus attorney fees.</p>
<p><b>Uniform Commercial Code</b></p>	<p>This is another lemon law and it is the oldest. It allows a person to revoke or reject a contract or goods when they do not conform to the contract. Also the consumer may repair or replace the product and sue the manufacturer or dealer for non conforming goods.</p>	<p>Covers any violation or failure of any implied or express warranty made by the Dealer or Manufacturer to the consumer however the consumer must follow very strict rules in returning the car.</p>	<p>You sue the manufacturer or the dealer for violations.</p> <p>You can collect a full refund, plus in rare cases attorney fees</p>

## 5. WARRANTIES

Any warranty is essentially a contract. These contracts may be an **express contract**, an **implied contract**, and warranties may be **full**, or **limited**. The terms and obligations of the manufacturer's warranties are found in several sources. You may be given a warranty directly, (expressly) —like a 3 year/36,000 mile drive-train warranty— or you may find it in the vehicle manual or the manufacturer's published warranty manual (which is required by the Magnuson-Moss Act, discussed in Section 4.2) or in other publications from the dealer or manufacturer. Both state and federal laws control how these warranties apply and whether or not the manufacturer can weasel out of them. Although manufacturers may try to use many methods and traps to avoid paying, they cannot

advertise that they guarantee a vehicle and, at the same time, avoid the warranties (promises).

There are four major warranties that auto manufacturers make to you whenever you buy a car: The express warranties, an implied warranty of title, an implied warranty of merchantability, and an implied warranty of fitness for a particular purpose. To get your money back, you will need to know what actions to take to gather proof of the defect, how the warranty is made, who makes it to you, and what methods the manufacturer will use to try to disclaim the warranty. In order to enforce a warranty, you will normally need to get an attorney that understands this area of the law. It costs money to a manufacturer when they refund the purchase price of your car to you. They don't like to do it and they will do almost anything to avoid paying you back for their lemon.

## 5.1. EXPRESS WARRANTIES

Express warranties are any promise or affirmation of fact made by the seller or the manufacturer. In other words, if a seller claims they are selling you a gallon of milk, it must be a gallon of milk—not three liters of milk.

Express warranties are normally the written guarantees that are given to you when you purchase the car. For instance, a 36,000-mile 36-month drive train warranty is an express warranty. Express warranties include, but are not limited to, bumper-to-bumper warranties, power train warranties, corrosion warranties, and emissions warranties. Express warranties are found in the owner's manual and in other documents from the manufacturer. Express warranties are very difficult to for the manufacturer to disclaim. Even the owner's manual section that describes the paint is part of the express warranties for the car, and the manufacturer has to live by these express warranties. **When the manufacturer describes guarantees or advertises equipment, and how the car should function, these warranties or descriptions become an express warranty to you. Any description, statement, sample or model of the car or goods becomes part of the express warranty.**

The seller makes these express warranties whether or not they intend to. If a statement was made, and the buyer relies upon it, the statement will be presumed to be a part of the contract unless the seller proves otherwise. For example, if a seller claims that a car will seat 9 people safely and comfortably, the car has to seat 9 people safely and comfortably. But, remember, oral statements are hard to prove and written ones are hard to deny.

In order to recover on a theory of breach of express warranty, you must prove that the alleged malfunctioning of the auto was caused by a defect in the parts and workmanship and that the manufacturer has failed to repair or replace the parts in accordance with the warranty.

In a suit for damages for breach of a written express warranty, the burden of proof is on the plaintiff to show, by a preponderance of the evidence, the terms of the warranty, the failure of some warranted part, a demand upon the defendant to perform under the terms of the warranty, a failure of the defendant to do so, a compliance with the terms of the

warranty by the plaintiff, and damages measured by the terms of the warranty. [Haas v. Buick Motor Division of General Motors Corp., 20 Ill. App. 2d 448, 156 N.E.2d 263 (1959).] A “defect” is defined as “[t]he absence of something necessary for completeness or perfection; a deficiency in something essential to the proper use for the purpose for which a thing is to be used.” [Black’s Law Dictionary 418 (6th ed. 1990).]

## **Secret Warranties**

Since any written statement by the seller is an express warranty these express warranties can be found in other documents besides the warranty they hand to you. Bulletins and sales brochures may also be a warranty. Secret warranties include repair programs where the manufacturer will repair or replace items. These programs are “secret warranties” because the manufacturer often fails to tell you about them or publish them or give you any copy.

Often the only way you can get a replacement engine is if you know about the recall program. At any one time, there are at least over 100 secret programs from car manufacturers to repair major safety and design defects. These are warranties that the manufacturer or dealer never tells you about, because telling you about them would raise their costs (to repair all the defective cars). Customers are not told that Toyota is replacing the brakes for free on certain Celicas or that Nissan is replacing fuel injectors on 300 zx’s. You have to find out about these programs to get the repair. The manufacturer hopes that you will pay for the repair, and the dealership hopes that you will pay for it. They won’t pay unless you sue him or find out about the program. Secret warranties are normally express warranties: They are often a written promise or description about the problem and you never get a copy of the service notice that often only goes to the dealer.

Another example of a secret warranty is that all automobile pollution equipment is warranted for 100,000 miles; regardless of how many times the vehicle has been sold. This is required by a federal law. Some minimum standards for a car such as seat belts and brakes are in federal and state regulations. If your pollution air pump goes out the dealer will often attempt to charge you for it. However, the manufacturer is required by law to replace it for free up to 100,000 miles. Certain defects may become so common that the manufacturer will have a warranty program to repair them years later after a warranty has expired. They don’t tell you about them but these secret warranties are there.

## **5.2. IMPLIED WARRANTIES OF TITLE**

Warranties of title arise automatically whenever an item is sold. Implied warranties of title and odometer rollbacks are actually fraud claims. The implied warranty of title only means that the car is free of liens and that it is not stolen. Mileage odometer rollbacks and other claims can be involved in this area of litigation and such claims may allow you triple damages plus attorney fees. All sellers automatically warranty that the title is good, that the transfer is rightful, and that there are no encumbrances or liens on the goods at the time of sale. Even if the car is sold “as-is”, the warranty of title can never be

disclaimed. Often state laws will also require the dealer to disclose if the title is from a junk car or if the car was totaled due to water damage. The failure of a dealer to do so allows you a refund plus attorney fees.

### 5.3. IMPLIED WARRANTIES OF MERCHANTABILITY

Implied warranties of merchantability automatically arise whenever a car or a product is sold. It is automatically assumed that a car is **fit for its ordinary purpose**. There is no need for any oral or written promise that a car will travel at a speed of at least 55 mph—or that the brakes, heater, and tires work normally.

There are too many warranties we assume when we buy a car to list them all here or in any contract. We assume the gas tank for a Pinto will not blow up, that a Jeep will not flip over in a turn, and that Firestone tires will not explode at speeds of 45 miles per hour. We assume that brakes will work, that paint won't wash off, and that a car won't start itself in gear. All new cars are presumed to be safe, fit for sale, and that they operate normally. We assume that the car is reasonably well-built when it is new.

Often a used car dealer will disclaim the general implied warranty and state that the car is sold "as-is", with all faults. This disclaimer will be written conspicuously, in larger type and bold print, with the sales documents. But, even used car dealers cannot disclaim safety items: If the seller knows about the defect such as that a car has no brakes he is liable, even if he attempts to disclaim it. The problem is however proving that he knew about it.

### 5.4. WARRANTY FOR A PARTICULAR PURPOSE

Sometimes the seller knows you are buying the vehicle for a particular purpose. For instance, you may ask for a truck that will haul 10 tons of rock. If he sells you one that will only haul 5 tons, he has violated his own warranty to you if he represents that the truck will haul 10 tons and it won't: The dealer violates this warranty when **he knows that you are buying the goods for a particular purpose and that you are relying on his skill and judgment to select the right goods**. This warranty is different from the implied warranty of merchantability's guarantee that a vehicle is fit for its ordinary purpose—this warranty applies when you rely on the dealer or manufacturer to supply a unit for a **particular** purpose and it fails that purpose.

## 6. THE LAWS THAT PROTECT YOU

You don't have to suffer if your car is a "lemon". There are several laws and acts that work together to protect you from lemon auto manufacturers and dealers.

### 6.1. LEMON AUTO LAW

All 50 states have some sort of Lemon Auto Law. Almost all of the lemon laws were passed in the 1980's and they presume or automatically give you the right to a refund or a replacement vehicle under certain conditions. Before the lemon laws in the 1980's were

passed you had to rely on an older law the Magnuson Moss act or the UCC. Even if the Lemon law does not cover your car the other laws can apply.

The problem with the lemon law is that in each state it is just a little different and the lemon law does have limitations: Under Kentucky's lemon law there is a 2 year statute of limitation but under Magnuson Moss you only have to bring your Lemon Law claim within one year after the express warranty runs out. Some states like Kentucky require that the defect appears within the first year of ownership. But the fact that you allowed the factory time to correct the defect does not mean that the time has run out for you to make a claim for your lemon auto. You can sue the manufacturer even for a 5 year old car under Mag Moss if a defect occurs within the warranty period. So the attorney's job is to pick and choose which statute to use or to use them all.

The good part about the Lemon Law is that if a car does meet certain criteria, it is automatically presumed to be a lemon auto. In that case, the owner has **automatically** proven his case and qualified for a complete refund of his or her car, plus attorney fees. All of the states have similar lemon auto laws. To be considered as a lemon auto in Kentucky:

- The car must have been returned four or more times for repairs **or**
- been out-of-service or in the shop more than 30 days, **and**
- the defect must have started to appear within 12 months or 12,000 miles, **and**
- the defect must affect the safety, value, or performance of the auto.

Lemon Auto laws became popular in the consumer movements of the 1970s and 1980s. They are similar in almost every state, basically requiring these four items listed above. In some states, it is questionable whether the defect must be identical from repair item to repair item. For example, if within the first year, the wiring fails and then the engine blows a crank, the car is still out of service twice but it isn't the same defect.

If a car is presumed by the judge and jury to be a lemon, it is easier to win a case. **If you don't have the above conditions, it doesn't mean that you don't have a "lemon auto" case it only means that it may be harder to prove. You may still have a very good case for a warranty violation or for your defective car under the Lemon Law, Magnuson Moss act or some other statute such as the UCC. There can be several laws that will allow you to collect.**

Remember when the dealer told you that the vehicle was only covered if the engine went bad, and that you had to purchase an extra warranty to cover the paint? Well, sorry, but you paid money you didn't have to! At least in Kentucky the defects, under the Lemon Law, only have to affect the reliability, value, performance, or safety of the car—that includes the paint job which is covered under an implied warranty.

Returning the car four times, or spending 30 days in repair, gives you a legal “presumption” and shifts the burden of proof in civil litigation to the manufacturer. It becomes the manufacturer’s burden to prove it isn’t a lemon. The presumption exists even if the problem has eventually been fixed on a fourth attempt. The four repair attempts are not always required, such as when it would be futile or when a safety defect is involved. In addition, leased and used or transferred vehicles (used vehicles which get any remaining warranty) are covered. Transferred or used vehicles generally get the same protection, as long as the express warranty is still in effect (plus one year).

**When you sue in Kentucky under the lemon auto law, you sue the manufacturer only however under Magnuson Moss and all of the other statutes the Dealer may be sued.** The Lemon law in Kentucky also has provisions that talk about a two year statute of limitations and your being required to submit the matter to arbitration but you can file a claim without filing a lawsuit and you can file a claim without going through arbitration. You don’t even have to use an attorney from your state to file a claim with GM or Chrysler they will take these claims directly from an attorney from another state. Ford has the worst policy of the big three manufacturers. Ford loves to be sued and refuses to honor Lemon Laws in good faith. Ford won’t take claims directly nor will any of the imports with Ford you have to sue them to have your warranty case handled. In California in 2002 they had to pay a 10 million dollar award for selling repurchased lemon autos as demonstrators and executive program cars in a widespread fraud that endangered the lives of children. As bad as this is it gets worse.

## **6.2. THE MAGNUSON-MOSS FEDERAL WARRANTY ACT**

In 1968, President Johnson created a task force on warranties for the consumer. This task force found that, at that time, most warranties were fraudulent and meaningless due to tacked-on disclaimers. Additionally, consumers had lost confidence in American made products due to the wide spread warranty fraud by car manufacturers. Common fraudulent car warranty practices were for dealers to claim that a warranty wouldn’t cover a transmission because the car was used to tow or that adding equipment to the vehicle had “violated” the warranty. These added “conditions” were told to the client after they had problems and were nowhere on the face of the warranties.

In 1975, Congress passed a Federal Warranty Statute to enforce written warranties against manufacturers that refused to live by their warranties. The act is 15 USC § 2301 and is called the Magnuson-Moss Warranty Act. It applies not just to lemon autos but to all products, and it does not allow manufacturers to make products and then later deny liability for the warranties and guarantees that go with these products. It also requires warranties not to be confusing or the manufacturer will be held to the warranty anyway to the maximum it can mean. This federal law may be used in both federal and state court and allows the purchaser to have a replacement, a buy-back, or to repair the item at the manufacturer’s expense, plus attorney fees. The burden in these cases is on the manufacturer, not the consumer. Even circumstantial evidence can be used by the consumer to prove his case.

Both the Magnuson-Moss Act and the Lemon Auto state laws are designed to give you a fast-track method to obtain a refund. With these laws, the remedy is a refund of the purchase price, which should quickly be given by the manufacturer. If the manufacturer fails to do so, he runs the risk of running up higher attorney fees for himself. Often the damages allowed by Magnuson-Moss are minor compared to the attorney fees. In one case (Maserati v. Caplan), the damages were only \$1500 dollars, but the attorney fees allowed at trial were over \$50,000. The problem with Mag Moss is that it is slower and it is more geared towards running up attorney fees and not towards getting the consumer a fast refund. The problem with the Lemon law is sometimes it just doesn't work and you have to use Mag Moss.

Although Magnuson-Moss normally only involves the manufacturer, it may also involve the dealer. For example, if the dealer attempts repairs and does them in a faulty manner or sells a repair warranty to you, he may be liable. Often the Dealer or manufacturer may also be involved in violations of Truth in Lending or the Unfair and Deceptive Practices Act. In cases where the dealer delivers the warranty or agrees to make repairs under that warranty, he also binds himself. **When you sue in Kentucky under the lemon auto law, you sue the manufacturer only however under Magnuson Moss and other statutes the Dealer may also be sued.**

The Magnuson-Moss Act allows consumers to learn what warranty coverage is offered and to allow comparisons of warranty coverage between companies. It also allows quick resolution of your warranty claims by allowing a mediation method. However mediation is not required of the consumer unless the manufacturer complies with FTC rules in establishing and guaranteeing that the mediation is fair under 16 C.F.R. §703. At this time no car manufacturer has ever complied and been approved by the FTC.

No product is required to have a written warranty, but if any written warranty is offered, this act forces the manufacturer to honor it. All **written** warranties for **new purchasers** products costing over **\$15** are covered. Certain things must be included in all warranties under the Magnuson Moss Act. Also, under Magnuson-Moss, every product has implied warranties, including both the warranties of merchantability and warranty for a particular purpose.

In passing the act, Congress requires certain things of manufacturers that give written warranties. For example:

- All warranties must be disclosed as “full” or “limited”.
- The warranty must be written in a single, clear, easy-to-read document.
- The written warranty must be available where the item is sold, so the consumer can read it.

The Magnuson-Moss Act does not replace state warranty laws: It adds to them, to the benefit of the consumer. Claims made under Magnuson-Moss require that the buyer show the following:

- There was a defect in the auto,
- the defect was covered under the car's warranties,
- a demand for a cure was made, and
- the manufacturer either refused or was unable to fix the defect.

If this was followed then the consumer is due a refund under Magnuson Moss.

### **Warranties Must be Disclosed as Full or Limited**

The Magnuson-Moss Act makes illegal three types of warranty consumer fraud: First, the warranty requires full communication of how far the warranty goes. Second, the warranty must state if it is "full" or "limited", and what "full" and "limited" mean to the person that will hold the warranty. Third, once the warranty is written or published, it must be published to the purchaser, and it cannot be later changed or modified to give the purchaser less coverage than what he or she originally had.

The act also guarantees that, at least, the manufacturer must have the implied warranty of merchantability; however, a manufacturer can limit his warranty to the duration of the express warranty if he offers a "limited" warranty. If he offers a "full" warranty, there are no limits to the implied warranty. All full warranties have the following characteristics:

- They do not limit the duration of implied warranties.
- They are not limited to first purchasers.
- Warranty service is free of charge.
- They provide a purchaser with a replacement or a full refund.
- Purchasers do not have to do anything as a condition of repair or service.

### **Warranties Must be Clear**

Since The Magnuson-Moss Act requires that certain information must be stated in a single, clear, easy-to-read document, it protects you from certain deceptive practices. If anything limits your warranty, it must be in the warranty document. If a warranty is offered, it cannot "tie-in" repairs to the purchase of the product: In other words, a manufacturer cannot require a purchaser to buy maintenance items or services, such as oil changes, for the car from a particular company. These tie-in sales provisions are illegal. For example, in order to keep your Ford guarantee valid, you do not have to use Ford oil filters. Ford may **recommend** that you use their filters, but they can't require it. In rare cases with special complicated products that only the dealer could ordinarily repair (such as an artificial heart) the manufacturer may require dealer maintenance because of very special problems, or where the product uses very special parts that only the dealer has,

and the warranty may require that only the dealer may be able to maintain the item. In such cases the FTC gives the manufacturer a special waiver to require dealer maintenance. If the dealer requires you to use him as the repair center without a federal waiver to do so from the FTC, the dealer may be required to make the repair for free.

All warranties must describe:

- What is covered and what is not covered.
- The period of coverage.
- What the manufacturer will do to correct a problem.
- How the purchaser can get his warranty coverage.
- How state laws may affect the warranty (i.e., that the manufacturer may not limit his warranty to the express terms of the warranty). This disclaimer may read something like this: “This warranty may give you certain legal rights, and you may have other rights that vary from state-to-state.” Notice that this disclaimer does not tell you that you have all the guarantees of implied warranties, or what implied warranties mean, or that state laws may give you certain rights.

### **Warranties Must be Available to the Consumer**

The warranty must be available at the place that sells the product, so that purchasers can read it and compare it to other warranties. The warranty must be available to the purchaser prior to sale, at the seller’s location, if he or she requests it. Mail-order companies must provide the warranty on the web page or in their catalogues and advertising. Door-to-Door companies must offer a copy of the warranty before the sale is completed.

### **Attempts to Repair**

The Magnuson Moss Act and the Lemon Law notes that there are only a reasonable number of attempts that a manufacturer should be given to “get it right” and that a person has a right to rely on a warranty. When the manufacturer fails to repair a car under warranty, the buyer should not have to continually return a vehicle to for the repair: The consumer should bring a product back once and, perhaps, a second time for a warranty repair, but he is not required to bring the car back indefinitely. Under the Lemon law the number of times used to be 3 in Kentucky it is now 4. However the Lemon Law also says that for safety problems 2 times is enough. There is no stated number of times under Magnuson Moss and once or twice may be enough.

### **Aftermarket Parts or “Incorrect” Use**

Magnuson-Moss also states that a warranty can’t be avoided by a manufacturer simply because the buyer added aftermarket parts to the car or used it for a reasonable purpose. For instance, a manufacturer can’t claim that the engine and transmission warranty is

void because the vehicle was used for towing unless towing is expressly disclaimed in the warranty. Manufacturers cannot give “limited” warranties unless they conspicuously and consistently inform the consumer that the warranty is limited and what these limitations are. If a limitation or disclaimer isn’t in the warranty, it cannot be disclaimed. It is true that they are not responsible if you abuse a product, but the addition of aftermarket accessories or normal use does not void your warranty. The Magnuson-Moss Act guarantees how your warranty on all products will be handled. The dealership cannot void your warranty for any reason.

### 6.3. PRODUCT LIABILITY

Product liability laws protect anyone **injured** by a car or other product. Injured parties can sue the merchant or the manufacturer and you can recover for property damages as well. To sue for product liability, the plaintiff must prove the following:

- The seller and manufacturer sold or manufactured the product,
- the product was defectively manufactured in an unreasonably dangerous condition,
- the product caused the injury,
- and the product wasn’t substantially changed from how it was manufactured.

Sellers and manufacturers generally can’t disclaim liability for an injury claim. Just because a product is sold with a clause that says you are limited to a refund of the product purchase price doesn’t mean you can’t sue for the injury and damages it causes. Notice that you not only are allowed to recover for your injuries you are allowed to also recover for the loss of the item due to the defect and for other damages.

### 6.4. THE UNIFORM COMMERCIAL CODE

The Uniform Commercial Code is in effect in all the states except Louisiana. Article Two of the UCC requires that all goods be merchantable and fit for sale. If they are not, the purchaser may repair, replace, reject or revoke his acceptance of the goods at the cost of the seller. The consumer may 1) deduct for the cost of repairs 2 )replace the item or receive a refund of the purchase price or avoid the contract. The UCC also allows for consequential damages. Therefore, if you have been injured, the UCC will allow you to collect not only for the car, but for pain and suffering, medical costs, and lost income.

In summary, the UCC gives you the right to reject the goods or revoke the contract for goods that have been tendered or accepted. Law students know the UCC remedy as “TARR”.

TENDER- Under section 2-601, for a seller to complete the contract they must tender goods that conform to the contract. The tender portion of Section 2-601 provides that lemon auto buyers are entitled to reject automobiles and other goods that fail to conform

to the contract. Lemon autos are so technically complex that most buyers are unable to find out if they are defective or non-conforming at the time of purchasing the automobile. However, there is a technical difference as to when you have accepted, rejected, or revoked the contract. The UCC is specific in how to do this properly.

**ACCEPTANCE** - When the new car buyer accepts his automobile, he is reasonably believing and expecting that the car manufacturer will repair or correct any problem he has with a lemon auto under the warranty. He accepts the contract based on all the implied and direct warranties the auto has.

**REJECTION**- If a new car buyer discovers a defect in the car within a reasonable time of inspecting the vehicle; he may reject a defective lemon auto. However, how long can he take to reject the auto? The buyer must be given a reasonable time to inspect the automobile, but if he takes too long, it may mean he has accepted the lemon auto. In deciding what “a reasonable time to inspect a lemon auto” is, the Courts will look at the knowledge and experience of the car buyer, the difficulty in discovering the defect in the lemon auto, and the opportunity to discover the defect. In Kentucky, this is a very short time—generally, within hours or days after picking up the vehicle.

**REVOCATION**- After you have had the lemon auto for a lengthy period of time you can still revoke your contract! The UCC provides that a buyer may revoke his acceptance of goods or a lemon auto when the non-conformity substantially impairs the value of the goods to him, because the defect was difficult to discover, or if he was assured that non-conformities would be repaired. Of course, the average new car buyer rarely discovers defective lemon auto problems until hundreds or thousands of miles later. We have gotten lemon auto refunds for new cars up to three years later. You just need to know how.

## **7. WHAT TO DO IF YOU WANT A REFUND**

### **FIRST...**

**Understand what defines a lemon auto: To qualify as a lemon the defect you complain about must substantially affect the value, performance, reliability or safety of the car.** A minor defect, such as a small tear in the carpet, may not qualify as a “substantial” enough defect to qualify for a refund or replacing an entire car—but engine, transmission, safety and electrical defects often will. The definition of a substantial defect is open to argument. Often, even cosmetic items—like paint—can have substantial defects especially if all your paint falls off the car within a year. Although paint doesn’t keep you from getting to work it does substantially decrease the value of the auto. If a defect is not substantial, you still have a case to sue for the defect. It just may not be a full refund that you recover. Often in such cases a person may receive a 3,000 to 6,000 dollar settlement.

It is also important that **the defect is the fault of the manufacturer and not due to abuse, neglect, or alteration.**

Usually, only the manufacturer is held responsible for a defective car. You will rarely get very far blaming the dealer under the lemon law. In Kentucky the dealer is only responsible if he knows about the defect and he sells it with the knowledge of the defect, or if he sells it by misrepresentation, or if he violates one of the other statutes in Kentucky such as if the title is bad or fraudulent. **A Dealer can be sued under the Magnusom Moss Act and the UCC and other laws as a party but not under the lemon law.** In Kentucky, the dealer has problems if

- he fails to report substantial body damage,
- sells a junk title without disclosure,
- sells a car with flood damage without disclosure,
- fails to disclose the prior owner,
- or issues a junk title without disclosing it.

## **SECOND...**

**Keep records of all communications with the dealer or manufacturer about the defect, including records of all repairs.** Under the Kentucky Lemon Auto Law, you have the right to a full refund on a new car if a defect can't be repaired within 4 attempts (2 attempts if it impairs safety), or the car is in the shop for at least 30 days, and the defect affects the value, performance, or safety of the car. In Kentucky, records of complaints to the dealer and repairs will be sufficient and are your best way to prove your case however you must make certain that the dealer records the problems. In other states, contacting the dealer may not be considered enough notice to the manufacturer to allow a vehicle buy-back, so you may also want to write a certified letter to the manufacturer regarding the defect. Keep a copy of this letter and the receipt from the certified mailing.

**Normally, all four repair attempts must be for the same defect. More attempts are better but not required. In the case of safety problems, two attempts to repair is all that is required.**

Below is a letter from a client about a lemon auto case. The name has been changed, and details left out, to protect the client's identity. It is published here with the client's permission. By reading it, you will get some idea of what is involved in a lemon auto case if you don't have records of being back four times for the same repair. Never trust the dealer to properly write on the ticket the problem before you leave with your copy write on the repair order what the problem is.

“I cannot believe that the Dealership did not keep a written record of every time I've been back to them for this problem! In fact, the service tickets in their records don't even talk about the problem. I've even talked to the service manager several times, and he's talked about the fact that I've been back many times with this—but

now they claim they don't remember. True, I've had oil changes, tire rotations, etc., when I've had it back up there for the defect, but it's only because I had it up there anyway and the dealership is only 30 minutes from here. I thought the Lemon Law said it only had to be taken back 3 times and we do have record of that. I'd love to take the presently soaking wet car from this leaky roof (we had rain last night) right up to the dealer and make a scene and tell them what they can do with it!

My biggest problem right now is that I'm making two car payments every month and I cannot afford to do that until this lease is up in March of next year. Also, would the leasing company want to bill for the damage to the car from the leaking all this time? I just don't know what to do."

My Reply:

"Ms. Smith, you simply need to take the car back again and get it 'repaired' one more time, to have a fourth repair ticket. A new car lemon auto case only requires that you make certain that the law applies to you. First, you need to have a repair order for the defect within 12,000 miles or 12 months. Second, you need to take it back 4 times for the same repair. If you do this for a substantial defect that affects the value, performance, or safety of the automobile, you automatically qualify for a complete buy-back of the car.

Please take the car back one last time. Even if the defect wasn't found in the first 12,000 miles, and you haven't taken it back 4 times, it isn't the end of the world. No case is ever perfect. I just need 4 repair tickets and, yes, it would help if we got their affidavit to the effect that you have taken it back 4 times. If you hand the car back to the leasing company with water damage, they will only bill you for it. I therefore suggest that you take the car back again and/or that you allow me to go to trial and to sue them for what you deserve. In my opinion, without 4 repair tickets for the same repair, and a lawsuit with an attorney to represent you, they simply will not offer a repurchase. I understand that service writers often fail to write it up correctly: They may call a leaky roof a wind noise. But, unless you correct the mistake—and take the pen from the service writer's hand and write it on the ticket—you will not be offered a full repurchase. Please return it one more time then call me."

However, even if you keep records, don't think the manufacturer will simply write you a check: They won't. So, you will need to take one more step.

### THIRD...

#### Get an attorney and file a lawsuit.

**You don't have to file your lawsuit within a year after you bought the car, but you should file as soon as you can.** Your time may run out if you wait too long to file a suit; however, don't **assume** that your time has run out. We have gotten refunds on vehicles more than 3 years after the purchase date of the automobile. Many cases are filed years after the car is purchased. People often go along with the manufacturer and give them several chances to repair the car, and this may delay a lawsuit. But, the manufacturer cannot complain that you let them attempt to fix it, and then complain that you waited too long to sue them. **The longest you can normally wait to file a lawsuit is one year after the last day that your express warranty runs out under Mag Moss.** However, if the car has a design defect that causes an injury, even 10 or 20 years later, you may still collect under something like product liability. If in doubt, it is best to call and get a legal opinion from us. Remember, if you use an attorney to sue for a lemon auto, a large portion of or all your attorney fees may be paid by the manufacturer.

## 8. REVOKING ACCEPTANCE UNDER THE UCC

One part of filing a lawsuit for a defective car is communicating to the manufacturer, lender, or dealer that you have rejected or revoked your acceptance of the auto. By revoking or rejecting acceptance of the vehicle, you are communicating that the contract is broken—not just because you disliked the vehicle, but because the vehicle was so substandard that it could not be reasonably used. If it is a few minutes, hours, or even a day or two after buying the car, you may be able to reject the auto for defects. Even if you have had your car for much longer, you may still be able to revoke it under certain circumstances.

Many people give up their defective cars in voluntary repossessions and the question later arises: Did this person just let their car go back, or did they properly revoke or reject the contract due to a defective car? You can make a terrible mistake by not properly suing the auto manufacturer as soon as you return the car. You do not have to return the car to file a lawsuit. If you just return the auto to the dealership and fail to get proof that you had a lemon auto and properly rejected or revoked their contract, it may lead to bankruptcy or poor credit on your credit report as a bank repossession.

The UCC is part of the law of contracts in all 50 states. 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 non-conformity (because it was difficult to discover) or if he was assured that non-conformities would be repaired. It also allows the buyer to reject goods that are not merchantable.

The Uniform Commercial Code is very clear about how and when rejection or revocation is proper. If the used car buyer has bought the car “as-is”, he may not reject or revoke the car for wear-and-tear. However, if a buyer finds out that the car has a rolled back

odometer, undisclosed flood damage, or prior junk title, he may reject the contract at any time based on fraud. Buying a car as is does not get the dealer out of a fraudulent transaction.

It is important to document that, at the time that you return the vehicle, you are revoking or rejecting the contract **and** that you've notified the lender, dealer and manufacturer. Having revoked or rejected the contract to purchase the vehicle, you should then sue for a refund. **Failure to give notice may mean that you have accepted the vehicle, but allowed it to be voluntarily repossessed.**

## 9. DOCUMENTS YOU WILL NEED

**If you wish for us to handle your case, please fill out the intake form in the back of this manual (Section 15.5) or download the most recent intake form from our website.** We will give you a free one-hour consultation and give you our opinion as to whether you have a case or not. You must make an appointment: We do not take walk-ins. Period.

When you come to your consultation, please bring the intake form, 3-4 copies of your service records and, if you can, a short history of your complaints and trips to the dealership regarding the problem. It will speed things up if you mail or e-mail the information to us before you come. You may fax an intake form to us but, since there will be many documents; please do not fax the service records to us.

## 10. COMMON PROBLEMS: COMMON ANSWERS

If you are having a problem with an auto, others may have a similar problem. Having evidence of this problem is very beneficial to your case.

You may be able to find these common problems documented in Technical Service Bulletins, which are published by automobile manufacturers. Technical Service Bulletins discuss mechanical and electronic problems to assist service department technicians that may work on the car. These bulletins are available from cooperating dealerships, on the web, and from the Transportation Department's National Highway Traffic Safety Administration in Washington, D.C.

Design defects are common problems that cannot be fixed just by replacing parts. If your car has a design defect, it is rare that it can be fixed. Sometimes, a car is so poorly designed that it becomes a deathtrap. Design warranties never expire, whether the car is new or used. If you have been injured by a car that was poorly designed, you may have a case—even years after the manufacture or purchase of the car.

If your car can be fixed by a recall and replacement of a single part, it is often free. Many times when a recall is issued, an extended warranty is also made by the manufacturer. For example, in 1988 300 ZX autos had defective fuel injectors that were replaced on any car with up to 100,000 miles—even though the car was only warranted for 36,000 miles. You can check to see if your car has one of these warranties by

checking with the dealer or with the Transportation Department's National Highway Traffic Safety Administration in Washington, D.C.

## **11. THE MOST COMMON MISTAKES YOU CAN MAKE IN YOUR LEMON AUTO CASE**

### **11.1. MISTAKE #1: NOT GETTING FOUR REPAIRS!**

In order to receive *a refund for your defective auto*, you must complain to the dealer about the defect and give them a chance to repair it. If you don't do this, you don't have a lemon auto case and lemon auto cases are the easiest to get a refund on. Other cases often take 2 years in litigation and lots of your time. **To sue under the Kentucky Lemon Auto law, you must turn it in four or more times for the same repair or condition and have documentation to prove it.** If necessary (and it is necessary), write the problem on the service ticket yourself! Often the service writers will not write down fully what you are complaining about.

With any new car, you have the right to a full refund (plus court costs and attorney fees) if a defect can't be repaired within 4 attempts, or the car is out of service for 30 days, AND the defect affects the value, performance, or safety of the car. This means you must give the manufacturer the opportunity to repair the car. Giving the car manufacturer the opportunity to repair does not mean that you have to keep coming back forever to a dealer's repair shop that cannot or will not get it done. Some cars can never be fixed: They were designed poorly to start with. In such a case, you should get a full refund and select another car. If your car has lots of different problems and is not always returned for the same defect, you should still be able to recover—but you may have to use a Magnuson-Moss claim, UCC or some other act such as product liability to make a claim.

**Normally, all four repair attempts must be for the same defect. In the case of safety problems, it can be less than two attempts to repair.**

### **11.2. MISTAKE #2: FAILING TO RECORD ALL REPAIRS!**

If you have a lemon auto, the evidence to prove your case will be your service records. Don't just go to the dealership and drop off the car: You need to keep the records and to record what the problem was. Often the service writer cannot be relied on to record the problem you are complaining about or to fully write the problem down. Therefore when you sign the service ticket write the problem down. In addition to your service records, you may find evidence of design defects in Technical Service Bulletins or other reports that the dealer never shows you (Section 8). There may also be "secret" manufacturer's programs to repair the problem. For example, there might be a program to repaint the car if the paint delaminates and falls off. Manufacturers' often do not publicize these programs to consumers, due to the amount of money they would have to spend fixing hundreds or thousands of defective cars.

### 11.3. MISTAKE #3: WASTING TIME IN MEDIATION

In Kentucky the statute does mention mediation. But you are not required to mediate to reach a settlement first—especially if it is no longer useful to mediate the matter.

Although some factory reps will tell you that mediation is required, **Kentucky does not require mediation before a lemon auto lawsuit can be filed.** Agreeing to mediation often means that you only prolong your problem. Normally, mediation is only an attempt to get you to settle for less. At this time no car manufacturer has complied with the FTC rules for guaranteeing that mediation would be fairly conducted. It can also be a way to stall for time, in hopes that you will eventually give up, or let the statute of limitations run out. If you have a lemon auto, you are usually far better off filing a lawsuit with a proper attorney to represent you.

Mediation is supposed to be a process in which a neutral third party hears both sides of the dispute and attempts to negotiate an agreement that is fair to both parties. In reality, the manufacturer pays the person that does the mediation and, since he hires the mediator, it's obvious what you can expect.

Mediation rarely offers a buy-back, wherein the manufacturer refunds your full purchase price, and mediators rarely keep their jobs if they do offer it. Mediation is almost always a compromise: You give up something, and they give up something. Manufacturers are happy to award you a minor repair, hoping that will be the end of what they are required to pay. If you do receive an offer in mediation, you may be asked to give up your right to sue later. You may also be asked to accept pennies on the dollar compared to what you might have gotten in Court. For example, Kentucky law allows for a refund for the full purchase price of your car minus mileage. In vehicle buy-backs that are taken to court, the auto companies often allow you to pay 15 cents to 17 cents per mile for wear-and-tear: Arbitrators will often demand 40 cents per mile. The 40 cents per mile comes from the IRS allowance for how much it costs the individual to drive a car and includes gas, insurance, and interest paid to the finance company. 15 cents to 17 cents is far more appropriate as wear-and-tear, because this figure comes from the cost for wear-and-tear to a vehicle as it is driven.

By mediating, you are relying on the manufacturer for “advice” on the Lemon Auto law. Don't be fooled if a manufacturer tells you, “You can't sue us for that” or “You have to mediate this first.” Naturally, he is going to tell you that you don't have a claim and hope you will believe it and go away. What he is really saying is that he will not pay unless you sue him.

Ask an experienced warranty attorney to discuss the ramifications of your acceptance of mediation. If you do agree to mediation, you must attend and participate in good faith. You are not required to use an attorney to participate in mediation but you should at least take the offer to an attorney for his advice.

In Kentucky if mediation takes place, it is required to adhere to the following rules:

- It must be free to consumers.

- There must be an arbitrator or mediator who must not be influenced by the mediating parties.
- It must follow written rules.
- It must provide each party with notice and a reasonable opportunity to be heard, including testimony and supporting documents and evidence.
- Although both sides may agree to be bound by the arbitration, they are not required to be bound by it unless they sign their rights away.
- Complete and accurate records of the arbitration must be kept.

## **12. CAN YOU COLLECT FOR A USED DEFECTIVE CAR?**

The normal Lemon Auto Law applies to new cars, but that doesn't mean you can't sometimes collect for a used car. If the car is a used car and the warranties have run out and it was sold "as-is", you probably do not have a case unless you have a fraud claim or the dealer has violated one of the statutes listed in Section 15.4. If the dealer directly gives you a warranty, and guarantees the used auto, you have a claim against the dealer under his warranty. If the problem is a design or defect in the manufacturing of the car, you may still have a claim against the manufacturer.

New cars are covered far more by warranties and guarantees than used ones. Used car dealers rarely warranty any car, and the warranties you are "sold" by used car dealers are usually worthless (still, you may be better off getting something in writing, rather than nothing). If you buy a used car, the defects may be the design fault of the manufacturer, or it may still be under the manufacturer's warranty, or it may qualify under a secret warranty or program that the dealer doesn't even know about.

Many used car dealers attempt to get around the law by having you agree to accept the car "as-is". The idea behind the "as-is" agreement is that, if the dealer is selling a used car, he cannot be accountable for the wear-and-tear on it or claims of a bad engine or transmission. If maintenance is needed, you pay for it. However, even if a car is used, there are certain defects for which the car dealer may still be liable. For example, selling a used car with safety defects that would seriously injure or kill others violates a duty to sell a vehicle that is merchantable and fit for use. If the auto dealer knew the car had no brakes when it was driven off his lot, he would be liable for any injuries and/or property damage caused by that defect.

All used car dealers warranty that that their vehicle has not had the odometer rolled back, that the vehicle is not flood-damaged, that the title is not a junk title, and that the car does not have over \$300 in body damages. These guarantees are required by statute. Odometer tampering gives triple damages for the price of the car, plus attorney fees, under the federal statute. There are many other types of fraud and improper sales. Many of these statutes for the State of Kentucky are listed in Section 15.4 of this manual.

Suing for a used car will often be a claim of fraud against the dealer, rather than a real claim of warranty. The agreement to sell a car “as-is” does not allow a dealer to sell a car

- with a rolled back odometer,
- with safety defects **that the dealer knows** could injure the driver or others,
- that was destroyed, junked, repaired, then later titled as if it were a normal car,
- or that violates other statutes, such as the Kentucky undisclosed body damage statute.

Each state is different, and you have to look at the individual state statutes to see if the car is restricted from being sold after extensive damage from floods or collisions.

Many times, you may also have a truth-in-lending claim or unfair and deceptive practice act claim, or fraud claim in the closing documents—especially at “buy here/pay here” operations. One of the more unfair tactics used by some used car dealers is to offer a warranty with an “insurance company”. The insurance company is often actually the dealership itself, which may require you to pay half the cost of a repair or may require you to have the dealership repair any defective condition. The cost of the repair is always higher at the dealer’s lot—so much higher that, in fact, the insurance policy that was sold for \$750-\$1500 is worthless after the buyer has paid half the costs for a repair at inflated prices. In many extended warranty cases, repairs for seals or other problems may not be paid for at all and disallowed as normal “wear-and-tear”. If the warranty is offered at a new car dealership with a used car section, the policy is far more likely to be of some value. Policies at new car lots are often extended warranties from the car manufacturer. A used car dealer can be sued for warranty violations if the dealer itself issued the warranty since they sold the insurance policy.

If the car is new enough, there may be part of the original manufacturer’s warranty left on the car and this warranty may be transferable. **Limited warranties** may not be transferable, but **Full warranties** transfer from owner to owner under Magnuson-Moss.

### “Recycled” Lemon Autos: New or Used

Kentucky has become a dumping ground for junk, damaged, and defective automobiles. Other states have laws that require the dealer to disclose if you are being sold an automobile that has already been bought back under the Lemon Auto Law, but Kentucky has no such law. Often the “demo”, “executive”, or “program” car you are being sold is someone else’s returned lemon automobile. Sometimes, these cars are sold as if they were new. The auto manufacturer just launders the lemon autos it repurchases by dumping them in a state, like Kentucky, that has no reporting laws. There are ways to tell if this is the case. If you think you have such a car, call us. Recently Ford and Chrysler have paid over 10 million each in class action lawsuits over dumping such cars in California and not telling the new owners that they were buying used lemons that had been repurchased. These cars were passed off to people as demonstrators.

## 13. THE PROCESS OF APPLYING FOR A REFUND

### 13.1. STEP #1: DOCUMENT THE PROBLEM

We have already talked about documenting the problem, but we must stress how important this is: This is normally where your case is won or lost. You have to take responsibility and document your case to the manufacturer's claims adjuster, just like it was an insurance claim. No insurance adjuster or claims adjuster can help you if you do not document your case.

Specifically, you need to prove that the car has been back to the manufacturer at least 4 times or has been out of service for over 30 days for a defect that impairs the value, safety, performance, or reliability of the car. The problems that qualify a car for being a lemon auto are not limited to engine and transmission problems. Almost any problem, including the appearance or paint job will qualify a car as a lemon. Even if the problem was minor, like the paint falling off the car, the car would normally qualify and fit the definition of a lemon auto.

You need to document how many times you went to the dealer or manufacturer for help with the problem and the results of those visits. Often the service writer will fail to write down the problem correctly when you bring the car in. This keeps you from collecting. If it is not on the form, write out your complaint on the service ticket when you sign it. **This record will be your only proof of the problem when you file your claim.** Some warranty claims clerks may object (we have even known warranty clerks to destroy or tamper with records), but you have to document the problem and collect the records. The service writer may also document that they could not duplicate the problem, but you may still have a case.

**Normally, all four repair attempts must be for the same defect. In the case of safety problems, it can be less than two attempts to repair.**

#### More Tips on Documenting the Problem

If you believe your car might qualify, gather your documentation and service records to prepare for if and when it does.

Pay close attention to the mileage for your warranty. Never put off taking the car back to the shop. You want to establish how you gave the manufacturer every opportunity to repair the vehicle. If you continue driving the vehicle, and never attempt to repair it until you exceed the warranty mileage, the manufacturer will claim that it is just normal wear-and-tear.

Always leave the car in the shop when it can't be used. A car is "out-of-service" whether it is being repaired or waiting for parts. The best evidence of being without the car for 30 days is showing that it was in the shop for 30 days. You are returning the vehicle to create a "paper trail" to prove that the manufacturer has had the opportunity to repair the car, has received notice of the problem, and can't or won't repair it.

When you start having problems with your car, take a couple of minutes to create a paper file. This is where you will keep all the information about your lemon auto problem. Your file could be a simple envelope, or a three-hole notebook. Keep notes, records, and a diary of the problem. Make certain that you document the dates, times, and names for every time you bring the car to the dealer. Keep your repair orders, warranty papers, and dealer and manufacturer correspondence in sections, organized by date. Especially make sure to keep the receipts for the repair, estimates, invoices, and all other expenses related to the vehicle.

When you take the vehicle for a repair, they will ask you to sign the repair order. When they ask for your signature, check the repair order to see if the problem is listed correctly. If not, put it on the repair order yourself. This creates a record that the problem happened and that you, at least, asked that it be repaired. Even if the repair tech or service writer claims they won't fix it, **WRITE THE PROBLEM ON THE REPAIR ORDER AND KEEP A COPY WITH YOUR RECORDS.**

### 13.2. STEP #2: GET AN ATTORNEY

Many attorneys do not want a Lemon Auto case: They may feel that it brings in too little money or takes too much time to litigate. This area of the law is outside what most attorneys normally deal with. Most attorneys see wills, deeds, bankruptcy, and divorce cases everyday and they understand those matters. One of our clients asked a local bar association to refer him to an attorney. That attorney asked to be paid \$1500 dollars just to research the problem and learn how to do the case. He then wanted to be paid \$150 an hour, with no guarantee of success.

Find an attorney that wants the case and that likes doing this kind of work. Even if you accept an offer in mediation, get an attorney to look it over.

Not every case requires that you have an attorney's understanding of the law, but do not expect to get a refund for your car if you represent yourself or if you agree to mediation: Getting the largest recovery normally requires that you use an attorney. Knowing the law will dramatically help you to recover. Remember, if you use an attorney to sue for a lemon auto, a large portion of or all your attorney fees is normally paid by the manufacturer.

It normally takes us about 90-120 days to settle a case from the time we file the suit to the date we get the check however some manufacturers would rather die than pay. This is a table of the average length of time it has taken to recover from some manufacturers in my experience and opinion. Notice that GM and Chrysler have the best attitudes towards warranty claims. They will often settle early because they have set up programs to handle and process lemon law and warranty complaints. Some manufacturers refuse to pay any claims and often force you to litigate for years.

Manufacturer	Claims handled by:	Time to get your claim
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		processed
Chrysler one of the 2 best	An internal claims department will handle your claim and make an attempt to pay or settle your claim within 30 days after any claim is filed by an attorney	Claims settled in 60-90 days 120 at most
GM one of the 2 best	An internal claims department will handle your claim and make an attempt to pay or settle your claim within 30 days after any claim is filed by an attorney	Claims settled in 60-90 days 120 at most
Ford  Third place out of three	This company does have an internal claims department but it rarely offer refunds or exchanges. The department does not contact the plaintiff attorney to offer any settlement in good faith after a claim is made by an attorney. Litigation is handled by attorneys which slows the process and increases time and costs for both sides. Sometimes it settles early but often no settlement is reached until after discovery is filed and a trial date is set. Also slow to issue the check.	Claims settled within 6 months
Nissan Toyota Honda Hyundai  In the top 10	These companies do have internal claims departments but rarely offer refunds or exchanges. The departments do not contact the plaintiff attorney to offer settlement in good faith after a claim is made by an attorney. Litigation is handled by attorneys which slows the process and increases time and costs for both sides.	6 months or more
Honda, Volkswagen  Bottom of the top 10	These companies do have internal claims departments but rarely offer refunds or exchanges. The departments do not contact the plaintiff attorney to offer settlement in good faith after a claim is made by an attorney. Litigation is handled by attorneys which slows the process and increases time and costs for both sides. However these guys don't even register their companies and have agents for service of process which slows it down more.	6 months – 1 year
Mercedes and Lexus  Dead Last	Nightmares. Simply put the worst companies in the business. These companies are more likely to force you to take it all the way to trial and then appeal it if you ask for a refund or an exchange than any other.	2 Years to go to trial

### **13.3. STEP #3: FILE A LAWSUIT**

If repair attempts can't solve the problem, you have a decision to make. You can either live with the defective car or file a lawsuit for a refund of the purchase price. In Kentucky, any lawsuit over \$4500 dollars is filed in Circuit Court, where you will need an experienced attorney. Your major expense will be the \$130 court cost to file your case. Kentucky provides that the vehicle's manufacturer must cover your legal expenses. In most cases, some, but not all, of your legal fees are paid. Some minor legal expenses may have to be paid by you—especially if you settle early. In order to avoid years in court, it may be best to pay for some part of the attorney fees. If you settle quickly, you may have a very small attorney fee and almost all the money you would collect anyway. Going to trial makes litigation expensive for the manufacturer and lengthy for you.

### **14. WHAT TO EXPECT IF YOU DON'T USE AN ATTORNEY**

Many people attempt to send a “demand” letter directly to the manufacturer, offering to settle the case without going to an attorney. Sending a letter to the manufacturer is almost useless. Some states do require a letter to the manufacturer and a last chance to repair, but Kentucky does not. The manufacturer doesn't want to replace the car or refund your money: They want to fix the problem at the least cost to them. Writing the dealer or manufacturer a certified letter is not a good idea. It often only lets them know you are about to make a claim. Once they know you are about to make a claim, they start to prepare a file against you to deny your claim. They have even been known to lose, destroy, or tamper with the records. They may offer to repair the defect; but some cars just cannot be repaired, and this may only be a stall tactic.

If you do not use an attorney, do not expect a full refund. A manufacturer may offer to let you trade your car in (and they make even more money off you), or they may offer an extended warranty, or they may offer something else less than a full buy-back. If you handle the lemon auto process yourself, you will usually be forced to accept far less than what the attorney would have gotten. Often you are just wasting time with delay tactics from the manufacturer.

After you have asked for a buy-back, the manufacturer may request that you return the car to a service center for more diagnosis or repair attempts by a “zone”, “regional”, or corporate service expert. This is also often just a great waste of time. This expert will be often be used to gather evidence that somehow the defect is your fault. The excuses will run from you abusing the car to the problem being normal wear-and-tear. The time for repairs and fixing the problem was the first four times they promised to fix the auto. Now, it is time to place the car in a vehicle buy-back program.

The manufacturer may also ask if you will accept a new replacement vehicle instead of a refund. Remember that you may be just accepting another lemon. If all Ford Pintos have the same exploding gas tank, a replacement will do you no good. If you do accept another new vehicle, you can typically expect to pay for the mileage cents you put on the old vehicle (normally 17 cents per mile).

## 15. THE KENTUCKY LITIGATION PROCESS

**Litigation should be your simplest step. If you cannot reach an agreement to your satisfaction, bring your file to a qualified lemon auto attorney. Within a one-hour consultation, you should know if you have a case. If you do have a lemon auto case, a qualified attorney should be able to settle the matter for a refund for your vehicle within 3 to 5 months. You have probably already taken 3 to 6 months trying to do this yourself. If you attempt to handle the matter yourself, you will normally waste more of your own time and assets than the attorney would ever cost. Manufacturers rarely offer a vehicle buy-back until after you have filed a lawsuit.**

When a lemon auto case is filed, it often takes about 3 or 4 months before it is settled and your car is paid for. After the lawsuit is filed, the attorney for the car manufacturer has about 30 days to reply to the lawsuit. Once your attorney receives a copy of the answer, he may make a demand or offer a settlement to the other side, giving the car manufacturer the opportunity to avoid further litigation expense by buying back the auto.

If the offer is accepted (and it normally is), the car is bought back within about 60 to 90 days. If the offer is not accepted, the case continues to trial. It is rare that an auto manufacturer refuses to buy back the auto if there are substantial documented problems: As long as you can prove your claim, and they know you mean business, the manufacturer will normally buy back your car.

If you obtain a vehicle buy-back, arrangements will be made for you to return the vehicle and pay off your loan. In most cases, you will have some equity in the vehicle, and your attorney may pay some part of his fees from that equity when it is refunded to you. Some attorneys charge 1/3 of the refund. If you purchased an extended warranty or credit life insurance, you are also due a pro-rata refund of the premiums you paid when you bought the car; however, to get your money back, you will have to contact both the warranty company and the credit life company to advise them that you no longer own the car and wish to cancel the contracts. Your demand for a refund should be made by certified letter to them: Warranty companies and insurance companies are just as bad as the manufacturer, and they often claim they never got the request.

Under Kentucky law, new car dealers are never sued for defects unless the dealer knew about the defect and sold it in a defective condition. Banks can be, but are also not normally, a party. Banks may be liable in some cases, under Regulation Z, but there is no need to sue them when the auto manufacturer will pay you completely. Your lender should be notified if you are filing a lemon auto case, though, because the auto manufacturer will need to pay off the balance of the loan. However, you will normally just continue to make the payments during negotiations. Not making payments will damage your credit.

## 16. MANUFACTURERS' TACTICS AND DEFENSES

To avoid paying, the manufacturer or dealer may claim that you are at fault. The following are common tactics and defenses you may hear from the manufacturer.

**You misused or damaged the car.** Be prepared for this one. They act like they expect you to prove that you didn't damage the car on purpose, as if the exploding gas tank was your fault. Even if a car is damaged, the warranties may still apply—especially if the defect caused the damage. You are not required to prove that you didn't damage the car: They are required to prove you did.

**Your alterations or aftermarket additions to the vehicle void the warranty.** Manufacturers can't avoid the warranty just because you added something to the car. Any product is meant to be used and you can add a radio or other normal aftermarket products to it. Unless they expressly say an item can't be added in their warranty, the Magnuson-Moss Act forbids them from using this excuse.

**You voided the warranty by going somewhere else for maintenance.** Under the Magnuson-Moss Act, the manufacturer can't avoid the warranty if you go somewhere else for repairs, unless the manufacturer gives the repair for free.

**The defect is only minor or it isn't substantial.** Even minor defects can substantially impair the value, safety, or performance of the car. There is no such thing as being "just a little" dead from a safety defect. Almost any defect is substantial if it is your car.

**You continued to use the car.** This is irrelevant.

**The statute of limitations has run out.** Different states have different statutes of limitations. Kentucky has a 2 year rule under the lemon law and one year after the warranty runs out under Magnuson Moss. You are required to bring the defect to the attention of the manufacturer and file your lawsuit within a certain period of time. They may try to stall as a way of letting the statute run out. Normally, you must find the defect and offer the vehicle for repair within a year of purchase or within a year of the expiration of the express written warranty.

**You didn't give them a final notice.** Some states require a certified letter and/or one last opportunity to repair the defect. Kentucky has no notice requirement.

**You didn't mediate your claim.** Mediation is required in some states. Kentucky allows mediation, but does not require it. Generally, mediation is a stall tactic or simply done in hopes that you will settle for less. Few or none of the manufacturers have complied with the mediation standards set by the FTC to guarantee that the mediation is fair and unbiased. Kentucky has no mediation requirement.

None of these above (BS) defenses are valid. If you have proven your case, you will get a free replacement or refund. In many states, a replacement is a replacement vehicle **at no charge to you** (other than a charge for the mileage that you used on the original

vehicle). If you upgrade, you get the full retail value of your car. Charging you for exchanging your vehicle is not allowed by the statute. Mileage charges are often allowed in negotiations.

## **17. THE MOST FREQUENTLY ASKED QUESTIONS AT OUR OFFICE**

We are just starting this FAQ and are constantly adding questions to it. Please e-mail us with your questions: We may add them to this ever-growing list if they are of general consumer interest. Although these answers are for the Kentucky Lemon Auto, the law of your state will often be the same or similar. Because Lemon Auto cases are based on warranties, which are based on some federal laws and regulations, most state laws are similar; however, differences are governed by your individual state law. In some cases, we explain these differences, but you should always refer to a qualified attorney in your state.

### **The Top 5 Questions**

**Q1: I bought a 99 Chrysler at Henry's Dodge in Lexington, Ky. I need to know if I am able to use the lemon law act on my car. I bought the car July the 26th, 2002. It had a small warranty that has ran out. They tried to get me to take the extended warranty, I couldn't afford it, so I didn't. My transmission and brakes have been acting up in the past week. Do I have a case?** No you don't have a lemon auto case in my opinion. The Lemon auto law covers cars with warranties. Your warranty ran out. You chose not to buy an extended warranty. The repairs are now your responsibility. This may not be what you want to hear but that is the law. Lemon auto cases are about warranties Some warranties are unwritten but after a car gets so old and the warranties run out the repairs are normally yours. Also some parts are always your responsibility to replace such as tires and brakes which are always replaced by the owner as the car gets old. Car manufacturers warranty the car but unless the tires wore out or blew up within 1000 miles or were other wise defective the tires have no warranty and if they did your complaint would be with Goodyear not Ford.

**Q2: Why shouldn't I sue the new car dealership?** If you have a problem with a dealer poor pay is often why you are not getting it fixed. The manufacturer often doesn't pay the dealer enough to make the repair properly. If you are involved in a Lemon Auto case with a new car, your warranty is with the company that manufactured the car not the dealership. Repair work is paid for by the manufacturer based on how long a mechanic should take to make the repair. The manufacturer often doesn't pay enough for the repair for dealers or mechanics to want warranty work. As a result Dealers and Mechanics can't "find or duplicate the problem" as a means to turn down work. Low pay causes some dealers or mechanics to spend minimum time doing the work and to discourage warranty work overall. Dealers charge more hours at full rates when car buyers pay for the work. Dealers often let other dealers who like warranty work do the repair.

In Kentucky, the dealership cannot be sued under the lemon law unless the dealer knew of the defect at the time of sale and it is often difficult to prove that the dealer knew about

the defect. The dealership can also have it in his best interest to keep the car in the shop repairing the car over and over again and billing the manufacturer for it. Often a dealer may repair the same item 4, 5 or more times never fixing the real problem. Every time the dealer works on the car he makes more and more profit from the car manufacturer and the Dealer has little or no interest in getting you a refund on what may be a car that will never be right. When a dealer does repair work he works for a small profit percentage but he does work and make some profit so he keeps on repairing it. **It isn't his job to get the refund for you and no one pays him for that.** The answer is often to sue the manufacturer for a full refund of the car not the dealership. Dealers can be sued for fraud or under Magnuson Moss for warranties. But unless the dealership was involved in fraud you normally have no real need to sue him and no case against him.

**Q3: Why not mediate?** You are not required to mediate the problem, if mediation will not solve the problem—and it rarely does. Mediators will rarely offer more than a minor repair, because Mediators are paid by the manufacturer. Generally, they are pro-business.

**Q4: Can I sue the Used Car Lot?** For used cars, there are normally no warranties from the dealer. Any warranty or guarantee you have is what is left over from the original express warranties, or what you purchase as a warranty from the dealer. If you paid for one of these warranties from a used car dealer, you have often paid for a useless warranty.

Often in Kentucky, cars are sold “as-is”. This means that you are responsible for any wear-and-tear on the vehicle. If the dealer gives a warranty, it is often given for 30 days or 1,000 miles and only on the drive train. There are other guarantees and warranties that are given: Warnings and disclosures have to be given to the buyer if the car is flood-damaged or if it is made from the parts of other cars. Other laws prevent mileage rollbacks. Often fraud like this is used to sue used car dealers. Used car lemon auto cases are far more difficult to win, and they normally don't rely on the lemon auto statute. The buyer must be far more careful when he purchases a used auto.

If the dealer knew of a safety defect when he sold you the car, he is liable. This can be used to sue for injuries that were later sustained.

**Q5: What happens in a normal lemon auto case: What is the process?** Normally, our lemon auto cases with new car manufacturers follow this order of events: After the initial interview, we file a complaint that requires a \$120 filing fee from the client. (This fee is refunded as court costs if the client wins the lemon auto case.) The manufacturer files an answer to the complaint within 30 days. As soon as we receive this answer, we make an offer to the opposing counsel. The offer is that the manufacturer buys back the vehicle for its full purchase price, plus court costs. Every manufacturer we have dealt with, including all the US and Japanese manufacturers, has had a buy-back program. A deduction from the purchase price is allowed for the mileage incurred. This offer is almost always accepted within 20 to 60 days. When we accept the offer, the vehicle is returned to the dealership and the manufacturer. It takes time after the vehicle is returned

before the check is processed and received from the manufacturer. During that time, you may have to look for another car as well as pay on the old loan.

## **The Other 15 or so Questions**

**1. Why do I need an attorney for my Lemon Auto claim?** The manufacturer normally won't pay unless you file a lawsuit. Filing the suit makes the manufacturer far more willing to settle, since the average cost of litigation is far more than the cost of a refund of the purchase price of your car. Individuals simply don't know how to process a lawsuit.

In 1985, the Mississippi Workers Comp board did a study. That study concluded that if an attorney represented a person in Mississippi, they obtained about twice what the average person got without an attorney. If you want to get your money faster, and you want to get more, use an attorney. If you want to get less, do it yourself. Without an attorney, what you collect will often be far less.

**2. What are the costs of filing a lemon auto lawsuit?** Your initial cost is the \$120 filing fee. However, if you win your lemon auto case, your filing fees and part of the attorney fees are paid by the manufacturer.

**3. How much time does a lawsuit take?** Normally, these cases are settled within 6 months. However, litigation is always a possibility when both sides think the other is wrong. Our first 20 cases took less than a year, and over 90% are done in less than 6 months. Although any case could drag out for years, most settle within 6 months.

**4. How do I choose an attorney?** Many attorneys do not want a Lemon Auto case: They may feel that it brings in too little money or takes too much time to litigate. This area of the law is outside what most attorneys normally deal with. However, you can go to [www.lemonlawamerica.com](http://www.lemonlawamerica.com), or a lawyer referral service, which will refer you to attorneys that have specifically asked to be referred for these types of cases.

**5. What can I expect if I try to handle this myself?** If your car is new, the new car dealer will normally refer you to the manufacturer (after all, they didn't make or design the new car). The manufacturer will normally deny that there is a defect. Often, the manufacturer will offer to repair a problem over and over again, even if it can't be repaired, hoping that you will eventually go away. Paying for the repair, even multiple times, can be a lot cheaper than litigation or refunding the price of the car.

If your car is used, an unethical dealership will often try to blame the problem on you. This outrageous attitude may be difficult to comprehend, but it is common. An unethical used car dealership will often claim that you caused the defect or collision damage, or deny that there is any problem at all. If there is a problem they can't deny or pin on you, they will claim they had no way of knowing about the problem, or that somehow **you** should have known about it. As a final resort, they may claim that the damage is very minor and you should just accept it.

These are the “standard” defenses. Used car dealers are never going to admit that they suckered and defrauded you, even if it is their day-to-day practice. It doesn’t matter how blatant, calculated and disgusting the fraud was. Even if the dealership agrees to settle with you out of court, they will often want you to sign a “release” stating that the settlement is “for a disputed and doubtful claim” and containing a “confidentiality clause” to cover up how he put a car that could have killed you and others on the road just for profit. His settlement with you is just a cost of “doing business”, and thousands of others will never sue him.

The suffering that unscrupulous Kentucky used car dealerships cause to unwary consumers is difficult to forgive and harder to forget. We have seen a lot of people file bankruptcy due to one of these dealers. Others have been injured and killed by cars that dealers knew were unsafe at any speed. You may pay more than book value, plus high interest rates, for a used car that is worthless. Then you are stuck with making car payments for a vehicle you can’t even use. You may not be able to afford another car while paying for the worthless one. But, if you stop making payments, the car may be repossessed, which will seriously damage your credit. In such a case, don’t sit there. Get legal help.

**6. Can’t I just return the car within 3 days?** If a person sells something to you in your home, there is an FTC (Federal Trade Commission) rule that you have 3 days to revoke the contract. Often, state laws repeat this guarantee. Auto sales on the dealer’s lot **do not qualify**.

Under the UCC (Uniform Commercial Code), you can reject a contract for non-conforming goods. However, to reject a contract for non-conforming goods, you have to return the goods immediately—as soon as you’ve had a chance to inspect them. So, if you have just left the lot with a car, realize the engine’s shot, and immediately bring it back, you have probably properly rejected the contract. If you keep it 3 or more days, you have probably waited too long and have accepted the contract. In this case, you do have the right to revoke the contract later. Revoking requires proper notice and for to follow certain rules.

**7. What if the warranty is expired or I have over 12 months/12,000 miles?** Your car may still be covered. You only need to have the problem start, and complain about it or bring it in for repairs, within 12 months or 12,000 miles. The lawsuit does not have to be filed at this time.

**8. Is my leased car covered by the Lemon Auto Law?** Yes. All leases have options to buy. It is a part of the UCC that leases are, in essence, a “purchase”. It was years before this part of the law was corrected and explained. Many judges allowed leases as sales years before the law was amended and clarified. Now all the states include leases as sales.

**9. Is my demo car covered by the Lemon Auto Law?** Yes. Please note that a lot of lemon cars the dealer has bought back are resold as “demonstrators” and factory cars.

**10. What is the statute of limitations? It has been 3 years, so what kind of chance do I have in getting my car “bought back” by the Manufacturer? It has been repaired now, but apparently still meets all of the qualifications of being a lemon.** Under the Lemon Auto Law, the defect has to affect performance, value, or safety and the defect has to first appear within 12 months of purchase or 12,000 miles; however, you can bring the suit at a much later date. Under Magnuson-Moss, the defect normally has to be covered under the express warranty and appear within the express warranty period. To make a claim, the limit is the warranty period, plus one year. In any situation, after a point, your case becomes too old. Normally, the maximum time limit for bringing a case is within one year after the drive train warranty runs out. The time limit is always different. For instance, a KIA with a 10 year/100,000 mile warranty gives you much more time.

**11. What does “as-is” mean?** It means that the buyer is responsible for any repairs, and that items with wear-and-tear are not under warranty. Some part of the original warranty may be left over from the manufacturer. For example, if the used car only has 12,000 miles on it, you get the remainder of the original 36,000 mile drive train warranty.

**12. What is auto fraud?** The sale or leasing of vehicles (including motorcycles and boats) with known defects and dangerous conditions, without proper disclosure, is auto fraud. These dangerous conditions may be flood or collision damage, or lemon auto histories that the dealer knew about. Rolled-back odometers and other cases of fraud may subject the dealer to harsh penalties. Other fraud can include forged signatures, falsifying figures on a loan, selling a used lemon auto as a new “demonstrator”, putting a consumer into a lease when he believed he was purchasing the car, non-disclosure of warranty restrictions and limitations, or charging for items that weren’t actually sold with the car. Certain car repair schemes may also qualify as fraud. The defendants can include insurance companies, car dealers, car manufacturers, extended warranty companies, service contract companies, and car finance companies. Fraud cases have even higher awards than normal lemon auto cases. Juries and Judges especially don’t like the fraudulent concealment of serious defects that can cause serious injury to you and to others on the road—far beyond the normal risks.

California’s Civil Code requires disclosing any collision damage amounting to over \$500 dollars; however, Kentucky has no such protection specifically in its code.

**13. How much is my used car lot warranty from a “buy here/pay here” worth?**

Welcome to another form of warranty fraud: If you purchased a warranty from an unscrupulous used car lot, you probably paid about \$1000 to \$1500 plus tax and interest—which adds about \$2000 to the cost of the car. It may be issued by an “insurance company”. It may require you to use the dealership’s shop, where he merely turns down the warranty, claiming that the problem is only normal wear-and-tear and not “defective”. Often (for example, if the policy was from Western General), the dealership actually owns the insurance company, which never has paid a claim and never will.

If you purchased one of these warranties, you just lost \$2000 as the victim of another type of dealership insurance fraud. You rarely get to fully read or inspect such warranties

before you buy them. You only see a brochure that makes promises, with misleading wording, about coverage. For example, it may promise to fix the power train, but with wear-and-tear excluded. When you make a claim, everything will be excluded as wear-and-tear. Generally, only extended warranties issued by the manufacturer or by a used car section of a new car dealer are reliable.

**14. How do I avoid buying a lemon auto?** The following tips will help you avoid ending up with a lemon auto in the first place. This will save you time, heartache, and frustration.

- Get a warranty from the used car dealer, even if it is a 30-day warranty. If you can't get one, ask the dealer (and yourself): If this is such a good car, why won't he guarantee it?
- Get a statement from the dealer that the car has no collision damage, and that it has not been returned to the dealer or the manufacturer for lemon law defects. You can get a print-out of its warranty service history from the nearest auto dealership.
- TMU stands for "true miles unknown". TMU cars may have odometer-tampering. LOOK OUT if you see this acronym printed anywhere in the car's documents.
- Take at least a 10-mile test drive in varying road conditions.
- Have a trustworthy mechanic inspect the car for you.
- Research National Highway Traffic Safety Administration documents, and any other lemon auto information sources, for any warranty defect and repair info for your model.
- Carefully consider the extended warranty. If the policy is from the car manufacturer or from a lot that also sells new cars, the policy is probably reputable. It should not have any disclaimers for wear-and-tear. We would recommend purchasing it, if the price is affordable.

**15. (Question From a Client used with the client's permission.) I contacted a lawyer in my area. I was referred to him by The Kentucky Bar Association. The gentlemen not only told me he had no experience with the lemon law, but that I should continue to bring the car back to the dealer. (The whole purpose of the lemon law is to help the consumer avoid taking a non-repairable car in time after time after time.) He then told me that charges for this would be enormous, and he would require \$1500 from me just to research the problem, because no lawyer would take the chance of losing and not being paid by the manufacturer. What do I do?**

An attorney should not charge you for learning how to do his job. You should not have to continue returning the car for repairs after the 4 times required to qualify for the Lemon Auto Law.

We require the filing fee of \$120 dollars upfront. That is for Court Costs, not an attorney fee, and you will get that back if you win. If we don't collect, we don't charge...PERIOD. If you don't win, there is no cost to you beyond that \$120 fee.

The car manufacturer often pays a small amount towards your attorney fees. However, this is normally only \$500, which doesn't even cover the cost of filing and drafting the petition. Additional fees are taken from your refund. Normally, we receive 1/3 of the amount refunded to you **after the vehicle loan is paid off** (i.e., we do not take 1/3 of the entire refund) as a contingency fee. Expect this kind of offer from most attorneys who normally do this type of case.

## 18. APPENDICES

### 18.1. THE FTC'S USED CAR RULE

The Federal Trade Commission enforces the Magnuson-Moss Act and other laws against unfair trade practices. It has a section governing used car warranties. We could not write a better explanation of the FTC's used car rule than what has been prepared by the State Attorney General. The following is a reprint of the Kentucky AG's article on the FTC Used Car Rule. We have paraphrased the article, and the article has been changed slightly to include our comments. The Attorney General is required to enforce the law, but they do not normally represent private citizens in lemon auto cases.

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If you are buying a used car, the Federal Trade Commission's Used Car Rule may help you. The Rule requires all used car dealers to place a large sticker, called the "Buyer's Guide", in a conspicuous place on each used vehicle they offer for sale. The Buyer's Guide will state:

- whether or not the vehicle comes with a warranty and, if so, what specific warranty protection the dealer will provide;
- if the vehicle comes with no warranty (i.e., is sold "as-is");
- that you should ask to have the car inspected by your own mechanic before you buy;
- that you should get all promises in writing; and
- certain major problems that may occur in any car.

When you purchase a used car from a dealer, you should receive the original, or an identical copy, of the Buyer's Guide that appeared in the vehicle you bought. The Buyer's Guide must reflect any changes in warranty coverage that you may have negotiated with the dealer. This becomes a part of your sales contract and overrides any contrary provisions that may be in that contract.

Dealers are required to post the Buyer's Guide on all used vehicles, including used automobiles, light-duty vans, and light-duty trucks. A "used vehicle" is one that has been driven more than the distance necessary to deliver a new car to the dealership or to test-drive it. Therefore, "demonstrator" cars are covered by the rule. Motorcycles are excluded by federal law; however, some states include motor homes and motorcycles in state laws. Kentucky's Lemon Law applies to motor homes and motorcycles.

#### **Warranty Information in the Buyer's Guide**

A major portion of the Buyer's Guide gives you new and important information you can use when you select a used car. In the past, lack of information and misunderstandings about warranties were frequently a source of purchaser problems. The following sections explain the warranty portion of the Buyers Guide.

## **“As-Is”**

If a car is sold “as-is”, it means that, if you have problems with the car after you buy it, you must pay for any needed repairs yourself. The dealer has no responsibility for the car once the sale is complete and you drive off the lot. If the dealer offers a vehicle for sale, “as-is”, without any warranties, the box provided next to the “as-is” disclosure will be checked.

## **Warranties**

If a dealer offers a warranty on a used vehicle, he or she must fill in the warranty portion of the Buyer’s Guide. Examine the warranty carefully, before you buy, to see what is covered and what is not. The warranty the dealer offers may give you some idea of what the dealer thinks about the condition of the vehicle. If the dealer makes any promises to repair the vehicle that are not listed on the Buyer’s Guide, ask that those promises be added to the contract. The sales contract must also include other specific information about your warranty.

Look for the following information on the Buyer’s Guide:

- See if the warranty offered is “full” or “limited”. A “full” warranty provides the following terms and conditions:
  - Warranty service will be provided to anyone who owns the vehicle during the warranty period when a problem is reported.
  - Warranty service will be provided free of charge, including such costs as returning the vehicle or removing and reinstalling a system covered by the warranty, when necessary.
  - At your choice, the dealer will provide either a replacement or a full refund if the dealer is unable, after a reasonable number of tries, to repair the vehicle or a system covered by the warranty.
  - Warranty service is provided without requiring that you return a warranty registration card.

If any one of the above statements is not true, then the warranty is “limited”. A “full” or “limited” warranty need not cover the entire vehicle. The dealer may specify only certain systems for coverage under a warranty. By giving a “limited” warranty, the dealer is telling you that there are some costs or responsibilities that the dealer will not assume for systems covered by the warranty.

- Check the percentage of the repair cost that the dealer will pay. For example, “the dealer will pay 100% of the labor and 100% of the parts...”

- Check to see which specific systems are covered. The exact systems covered (such as frame and body, brake system, etc.) must be listed. A list of descriptive names of the major systems of an automobile is printed on the back of the Buyer's Guide.
- Check the duration of the warranty for each covered system. For example, "30 days or 1000 miles, whichever occurs first."

### **Unexpired Manufacturers' Warranties**

If the used vehicle is still covered under the terms of the manufacturer's original warranty, the dealer may add the following paragraph in the space below the warranty disclosure.

"MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle. Consult the manufacturer's warranty booklet for details as to guarantee coverage, service location, etc."

This does not necessarily mean that dealers also offer their own warranty in addition to the manufacturers. If you have any questions about warranty coverage, ask the dealer to let you examine any unexpired warranty on the vehicle.

## **Other Parts of the Buyer's Guide**

There are other important sections of the Buyer's Guide. These sections are explained below.

### **Spoken Promises**

A statement appears on the Buyer's Guide that warns purchasers not to rely on spoken promises. Oral promises are difficult, if not impossible, to enforce. Have the dealership put any promises in writing—or don't count on the promise.

This statement also reminds you to keep the Buyer's Guide after purchasing the vehicle. The Buyer's Guide will serve as proof of written promises.

### **Service Contracts**

When you buy a car, you may be offered a service contract. Although often called "extended warranties", service contracts are not warranties. Warranties are included in the price of the product. Service contracts come separately from the vehicle, at an extra cost. To decide whether you need a service contract, you should consider several factors: whether or not the warranty already covers the repairs that you would get under the service contract; whether or not the vehicle is likely to need repairs and their potential costs; how long the service contract is in effect; and the reputation of the dealer offering the service contract.

### **Pre-Purchase Independent Inspection**

The Buyer's Guide also includes a suggestion that you ask the dealer whether you may have the vehicle inspected by your own mechanic, either on or off the premises. An independent inspection lets you find out about the mechanical condition of the vehicle before you buy it.

Some dealers will permit you to take the car to an independent mechanic. Others may have good reasons for denying this request.

With the dealer's permission, you can bring an independent mechanic to the used car lot.

If you do not already have a mechanic you rely on, ask someone who knows about cars for the names of competent, reputable mechanics. You also can find mechanics through advertisements, car repair establishments, automobile associations, and auto diagnostic centers in your community.

### **Vehicle Systems**

The Buyer's Guide includes a list of the 14 major systems of an automobile and some of the major problems that may occur in these systems. You may find this list helpful to evaluate the mechanical condition of the vehicle. The list may also be useful when comparing warranties offered on different cars or by different dealers.

### **Dealer Identification and Consumer Complaint Information**

On the back of the Buyer's Guide, you will find the name and address of the dealership. In the space below that, you will find the name and telephone number of the person at the dealership who should be contacted if any complaints arise after the sale.

## **18.2. THE MAGNUSON-MOSS WARRANTY ACT**

This following is only a topical Summary of the Magnuson-Moss Warranty Act. It is not the full text of the Act: It is only an outline of the Federal Law. The complete text is too long to include in this manual, but the major points are discussed in other parts of the manual. If you have the downloaded version of this book, and are connected to the Internet, you may click on the hyperlinks to read any section in its entirety.

### **Chapter 50 - Consumer Product Warranties**

- [§ 2301](#). Definitions.
- [§ 2302](#). Rules governing contents of warranties.
  - (a) Full and conspicuous disclosure of terms and conditions; additional requirements for contents.
  - (b) Availability of terms to consumer; manner and form for presentation and display of information; duration; extension of period for written warranty or service contract.
  - (c) Prohibition on conditions for written or implied warranty; waiver by Commission.

- (d) Incorporation by reference of detailed substantive warranty provisions.
  - (e) Applicability to consumer products costing more than \$5.
- [§ 2303](#). Designation of written warranties.
  - (a) Full (statement of duration) or limited warranty.
  - (b) Applicability of requirements, standards, etc., to representations or statements of customer satisfaction.
  - (c) Exemptions by Commission.
  - (d) Applicability to consumer products costing more than \$10 and not designated as full warranties.
- [§ 2304](#). Federal minimum standards for warranties.
  - (a) Remedies under written warranty; duration of implied warranty; exclusion or limitation on consequential damages for breach of written or implied warranty; election of refund or replacement.
  - (b) Duties and conditions imposed on consumer by warrantor.
  - (c) Waiver of standards.
  - (d) Remedy without charge.
  - (e) Incorporation of standards to products designated with full warranty for purposes of judicial actions.
- [§ 2305](#). Full and limited warranting of a consumer product.
- [§ 2306](#). Service contracts; rules for full, clear and conspicuous disclosure of terms and conditions; addition to or in lieu of written warranty.
- [§ 2307](#). Designation of representatives by warrantor to perform duties under written or implied warranty.
- [§ 2308](#). Implied warranties.
  - (a) Restrictions on disclaimers or modifications.
  - (b) Limitation on duration.
  - (c) Effectiveness of disclaimers, modifications, or limitations.
- [§ 2309](#). Procedures applicable to promulgation of rules by Commission.
  - (a) Oral presentation.
  - (b) Warranties and warranty practices involved in sale of used motor vehicles.
- [§ 2310](#). Remedies in consumer disputes.
  - (a) Informal dispute settlement procedures; establishment; rules setting forth minimum requirements; effect of compliance by warrantor; review of informal procedures or implementation by Commission; application to existing informal procedures.
  - (b) Prohibited acts.
  - (c) Injunction proceedings by Attorney General or Commission for deceptive warranty, noncompliance with requirements, or violating prohibitions; procedures; definitions.
  - (d) Civil action by consumer for damages, etc.; jurisdiction; recovery of costs and expenses; cognizable claims.
  - (e) Class actions; conditions; procedures applicable.
  - (f) Warrantors subject to enforcement of remedies.
- [§ 2311](#). Applicability to other laws.
  - (a) Federal Trade Commission Act and Federal Seed Act.
  - (b) Rights, remedies, and liabilities.

- (c) State warranty laws.
  - (d) Other Federal warranty laws.
- [§ 2312](#). Effective dates.
  - (a) Effective date of chapter.
  - (b) Effective date of section 2302(a).
  - (c) Promulgation of rules.

### 18.3. LINKS TO HELPFUL WEB SITES

<http://www.lemonlawamerica.com> is a group of consumer attorneys, organized by state.

[www.ftc.gov](http://www.ftc.gov) provides Federal Trade Commission information on the federal Lemon Auto Law.

<http://www.nhtsa.gov> collects data on lemon autos and can provide you with reports on your lemon auto problem.

<http://www.autosafety.org> is the Ralph Nader lemon auto information center. You can get a complete list of the common complaints for cars similar to yours. If everyone else that has your car has the same lemon problems, here is where you can get proof that it is a common problem or a design defect that warrants a vehicle buy-back. This group is great place for research (however, we suggest getting your attorney through the resources at <http://www.lemonlawamerica.com>).

<http://autopedia.com> provides lemon auto summaries.

<http://www.edmunds.com> has general auto information.

<http://www.consumerbroadcastgroup.com/QCF> is where you go to file a consumer complaint with the Kentucky Attorney General's office, and most of the offices in other states.

<http://www.naca.net> (National Association of Consumer Law Attorneys) provides information on attorneys in your area. However, if you are in Kentucky, please call us.

<http://www.consumerlaw.org> offer "Return to Sender", a book published by the consumer law center.

[www.alldata.com](http://www.alldata.com) is a source for Technical Service Bulletins.

[www.carfax.com](http://www.carfax.com) can provide you with a title history on the car you plan to purchase. You will need the VIN.

Other excellent guides are the Consumer Reports Guide to Used Cars at [www.consumerworld.org](http://www.consumerworld.org). It provides consumer product safety guides and consumer product safety reviews.

## 18.4. THE KENTUCKY LEMON AUTO LAWS: THE COMPLETE TEXT

(Editor's Note: Kentucky has copied the model lemon auto statute. We have included the complete lemon auto statutes from Kentucky in this manual. These statutes are very similar to the statutes of other states that have lemon auto laws. Almost all of the lemon auto statutes in America are based on these statutes. We have also included a couple of the other statutes from Kentucky. Other states have similar laws.)

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367.840 KRS 367.841 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 does 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.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 54, sec. 1, effective July 15, 1998. -- Created 1986 Ky. Acts ch. 387, sec. 1, effective July 15, 1986.

367.840 KRS 367.841 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.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 54, sec. 1, effective July 15, 1998. -- Created 1986 Ky. Acts ch. 387, sec. 1, effective July 15, 1986.

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.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 54, sec. 2, effective July 15, 1998; and ch. 96, sec. 1, effective July 15, 1998. -- Created 1986 Ky. Acts ch. 387, sec. 2, effective July 15, 1986.

Legislative Research Commission Note (7/15/98). This section was amended by 1998 Ky. Acts chs. 54 and 96 which do not appear to be in conflict and have been codified together.

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.

Effective: July 15, 1986

History: Created 1986 Ky. Acts ch. 387, sec. 3, effective July 15, 1986.

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.

Effective: July 15, 1986

History: Created 1986 Ky. Acts ch. 387, sec. 4, effective July 15, 1986.

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).

Effective: July 15, 1986

History: Created 1986 Ky. Acts ch. 387, sec. 5, effective July 15, 1986.

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.

Effective: July 15, 1986

History: Created 1986 Ky. Acts ch. 387, sec. 6, effective July 15, 1986.

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.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 54, sec. 3, effective July 15, 1998. -- Created 1986 Ky. Acts ch. 387, sec. 7, effective July 15, 1986.

## **Disclosure of Damages**

### **186A.540 WRITTEN DISCLOSURE OF DAMAGES TO MOTOR VEHICLE**

An individual or a dealer required to be licensed pursuant to KRS Chapter 190 shall disclose all damages to a motor vehicle which result in repairs or repair estimates that exceed three hundred dollars (\$300) and that occur while the motor vehicle is in his possession and prior to delivery to a purchaser. Disclosure shall be in writing and shall require the purchaser's signature acknowledging the disclosure of damages.

### **190.080 PREVIOUS CONSUMER-OWNER INFORMATION PROVIDED UPON REQUEST; NOTICE TO BE AFFIXED**

(1) As used in this section, "previous consumer-owner" shall mean the last owner of the vehicle who could reasonably be expected to have operated the used car for personal, family, household, or business purposes, but shall not mean an owner who possessed the vehicle primarily for resale purposes.

(2) It shall be unlawful for any motor vehicle dealer or motor vehicle salesperson to refuse to furnish, upon request of a prospective purchaser, the name, address, and telephone number, if known or available, of the previous consumer-owner of any used car offered for sale.

(3) It shall be unlawful for any motor vehicle dealer or motor vehicle salesperson to sell or offer to sell to a consumer a used car which does not have affixed to its windshield, when the car is first offered for sale, in a conspicuous manner in at least ten-point, boldface type, the following notice: "NOTICE: KENTUCKY LAW REQUIRES THAT, IF REQUESTED, WE SHALL FURNISH YOU WITH THE NAME, ADDRESS, AND TELEPHONE NUMBER, IF AVAILABLE, OF THE PREVIOUS CONSUMER-OWNER OF THIS VEHICLE. (KRS 190.080)".

(4) It shall be unlawful for any person to transfer a motor vehicle in order to avoid compliance with this section.

## **Salvaged, Rebuilt, Water Damaged Motor Vehicles**

*Note: The Kentucky Transportation Cabinet is the primary regulatory agency under KRS Chapter 186A*

### **186A.500 LEGISLATIVE FINDING**

The General Assembly finds that purchasers when buying vehicles are entitled to know if the vehicle has sustained prior severe damage. The most feasible mechanism for conveying that information is a designation on the title that the vehicle has previously sustained severe damage or has been rebuilt after being declared "junk," "salvage," or "water damaged."

### **186A.510 DEFINITIONS FOR KRS 186A.500 TO 186A.550**

As used in KRS 186A.500 to 186A.550, unless the context otherwise requires:

- (1) "Brand" means a designation affixed to a motor vehicle title that establishes a portion of the history of the motor vehicle and that shall be fixed to all subsequently issued titles for that vehicle;
- (2) "Dealer" means a person or business as defined in KRS 190.010 who sells or offers for sale a motor vehicle;
- (3) "Junk vehicle" means a vehicle which meets the description set forth in KRS 186A.295(1)(a);
- (4) "Motor vehicle" means a motor vehicle as defined in KRS 186.010(8)(a) and (b);
- (5) "Owner" means a person who holds the legal title of a vehicle or a person who pursuant to a bona fide sale has received physical possession of the vehicle subject to any applicable security interest;
- (6) "Rebuilt vehicle" means a vehicle that has been repaired to a road worthy condition after having been registered as a salvage vehicle pursuant to KRS 186A.520, or a similar salvage designation from another licensing jurisdiction; and

(7) "Water damage" means damage to a motor vehicle caused by submerging or partially submerging the vehicle in water to the extent that the vehicle was submerged or partially submerged at any water level above the dashboard of the vehicle, regardless of the actual dollar amount of the damage.

#### **186A.520 SALVAGE TITLES; CONDITIONS FOR ISSUANCE; OPERATION OF VEHICLE WITH SALVAGE TITLE**

(1) A salvage title shall be obtained by the owner of a motor vehicle that meets the following definition of a salvage vehicle:

(a) A vehicle which has been wrecked, destroyed, or damaged, to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the vehicle to its preaccident condition and for legal operation on the roads or highways exceeds seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Automobile Dealer's Association price guide.

(b) The value of repair parts for purposes of this definition shall be determined by using the current published retail cost of the parts equal in kind and quality to the parts to be replaced or the actual retail cost of the repair parts used in repair.

(c) The labor costs of repairs for purposes of this section shall be computed by using the hourly labor rate and time allocations which are reasonable and customary in the automobile repair industry in the community where the repairs are performed.

(2) The owner or an authorized agent of a motor vehicle that meets the definition of a salvage vehicle as set forth in subsection (1) of this section shall, within fifteen (15) days from the loss or settlement of the loss, submit an application to the county clerk, on a form prescribed by the Department of Vehicle Regulation, for a salvage title, accompanied by a properly endorsed certificate of title and any lien satisfactions, if any appear, as may be required.

(3) The county clerk shall retain a copy of each salvage title application received and shall forward the original and its supporting documents to the Department of Vehicle Regulation in a manner similar to that for handling of an application for a title.

(4) The Department of Vehicle Regulation shall process the salvage title application in a manner similar to that used in processing a title application and the salvage title shall be delivered in a like manner of a title. Salvage titles shall be construed as proof of ownership of a vehicle in a state as to be unusable upon the highways of the Commonwealth. A vehicle shall not be issued a registration for highway use as long as a salvage title is in force.

(5) The only time a vehicle with a salvage title may be operated upon the highways of the Commonwealth is when it is in route to or from an inspection by the certified inspector prior to obtaining a certificate of title after having been rebuilt as per KRS 186.115.

**186A.530 TITLES OF REBUILT, WATER-DAMAGED, AND JUNK VEHICLES;  
INSURANCE CLAIM SETTLEMENTS FOR SALVAGE VEHICLES;  
DISCLOSURE OF TITLE BRAND BY OWNER OR DEALER; VOIDABILITY  
OF SALE WITHOUT DISCLOSURE; EXEMPTION; ADMINISTRATIVE  
REGULATIONS**

(1) The owner of a motor vehicle that meets the definition of a salvage vehicle as set forth in KRS 186A.520(1) and has been issued a salvage certificate of title in Kentucky, or the equivalent thereof by another licensing jurisdiction, and has been rebuilt, may make application for a new certificate of title pursuant to KRS 186.115. The Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A governing the form of application.

(2) Upon receipt of a salvage certificate of title issued pursuant to KRS 186A.335 or subsection (5) of this section, or similar title issued by another state, and proof of passing the inspection required by KRS 186A.115, the cabinet shall issue a new certificate of title with the words "rebuilt vehicle" printed on the face of the title. The brand shall be carried forward and printed in the appropriate section on the face of all titles issued thereafter for that motor vehicle.

(3) If ownership of a motor vehicle has been transferred to an insurance company through payment of damages, the insurance company making the payment of damages shall be deemed the owner of the vehicle.

(4) The owner of a water damaged vehicle shall make application to the cabinet for a salvage certificate of title as provided for in KRS 186A.520. The owner of a vehicle with a brand from another jurisdiction identifying the vehicle as water damaged or other similar designation who is making application for a Kentucky title shall be issued a title with the words "water damaged" printed on the face of the title.

(5) A Kentucky salvage certificate of title may be issued from an out-of-state junking certificate or other ownership document bearing a designation of "junk," "unrebuildable," or other similar classification with the following provisions:

(a) The out-of-state junking certificate of title or other ownership certificate shall be an original, secure document.

(b) The applicant shall submit a minimum of two (2) photographs of the motor vehicle showing the damage to the motor vehicle. The photographs shall be included in the application for a salvage certificate of title.

(c) The applicant shall submit a minimum of two (2) notarized estimates of damage verifying that the condition of the vehicle which has been issued the junking certificate constitutes less than seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Auto Dealers' Association N.A.D.A price guide.

(6) (a) When an insurance company makes a claim settlement on a vehicle that has been stolen and recovered, if the vehicle meets the definition of a salvage vehicle as set forth in KRS 186A.520, the company shall apply for a salvage certificate of title as provided

for in KRS 186A.520. Upon receipt of this information, the cabinet shall issue the company a certificate of title to replace a salvage certificate of title. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A regarding the forms and any additional information which insurance companies shall be required to obtain and submit when seeking a certificate of title to replace a salvage certificate of title.

(b) In claim settlements that do not involve transfer of the vehicle to the insurance company, an insurer shall not render payment on a damage claim for a vehicle whose damage meets or exceeds seventy-five percent (75%) of the value of the vehicle, until the insurer has received proof that the owner has surrendered the title or has applied for a salvage certificate of title as set forth in KRS 186A.520. The owner shall apply for a salvage certificate of title within three (3) working days of the agreed settlement.

(c) An insurance company shall not refuse coverage to, and shall not reclassify coverage of, a vehicle that has been issued a rebuilt title pursuant to the provisions of this section.

(7) A motor vehicle owner or a motor vehicle dealer licensed in this state who offers for sale, trade, or transfer a motor vehicle which carries a title brand, as set forth in subsection (2) of this section, shall disclose the nature of the brand to any prospective buyer or transferee, prior to the sale, and according to the following:

(a) Dealer disclosure shall be located on the previous consumer-owner sticker provided for in KRS 190.080. The sticker notification shall appear in a color different from that of the previous consumer-owner sticker and shall be set apart from other information required by KRS 190.080. The sticker wording shall be printed in at least ten (10) point, bold face type, on a background of obviously different color, and shall include the following: "THIS IS A REBUILT VEHICLE." This disclosure information shall not appear on previous consumer-owner stickers for vehicles that do not have a branded title. Dealer disclosure shall also be located on a buyer's notification form to be approved by the Transportation Cabinet. The form shall inform the buyer that the vehicle is a rebuilt vehicle and may include any other information the cabinet deems necessary.

(b) Nondealer disclosure shall be made on the vehicle transaction record form provided for by KRS 186A.060. The cabinet shall design the form so that disclosure information appears near the beginning and informs the buyer that the vehicle is a rebuilt vehicle.

(8) Failure of a dealer to procure the buyer's acknowledgment signature on the buyer's notification form or failure of any person other than a dealer to procure the buyer's acknowledgment signature on the vehicle transaction record form shall render the sale voidable at the election of the buyer. The election to render the sale voidable shall be limited to forty-five (45) days after issuance of the title. This provision shall not bar any other remedies otherwise available to the purchaser.

(9) The notification provisions of this section shall not apply to motor vehicles more than ten (10) model years old.

(10) The Transportation Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A, regarding the administration of the title branding procedure within ninety (90) days from July 15, 1994. The administrative regulations may include designation of additional brands which provide significant information to the owner.

## **186A.990 PENALTIES**

(1) Any person who knowingly gives false, fraudulent, or erroneous information in connection with an application for the registration, and when required, titling of a vehicle, or any application for assignment of a vehicle identification number, or replacement documents, or gives information in connection with his review of applications, or falsely certifies the truthfulness and accuracy of information supplied in connection with the registration and when required, titling of a vehicle, shall be guilty of forgery in the second degree.

\* \* \*

(5) Any person who violates the disclosure provisions of KRS 186A.530(7) shall be guilty of a Class A misdemeanor.

(6) Any person who violates any provisions of this chapter, or regulations promulgated pursuant thereto, and for which a specific penalty is not prescribed by statute, shall be guilty of a Class A misdemeanor.

(7) Criminal remedies or sanctions provided in this chapter are in addition to, and not exclusive of, any other criminal remedies or sanctions provided elsewhere in the statutes.

## **Odometer Rollbacks**

*Note: The provisions in KRS Chapter 190 and Chapter 367 for making odometer rollbacks unlawful are separate and distinct statutes. Pursuant to KRS 190.990, the Attorney General has jurisdiction to seek civil penalties only for violations of KRS 190.270 to 190.320. Other enforcement is through the Motor Vehicle Commission of the Transportation Cabinet and/or local county and commonwealth attorneys. Suing under the Kentucky or the Federal Statute will give your triple damages and attorney fees.*

## **190.260 DEFINITIONS**

As used in KRS 190.270 to 190.320:

(1) "Odometer" means an instrument for measuring and recording the actual distance a motor vehicle travels while in operation; but shall not include any auxiliary odometer designed to be reset by the operator of the motor vehicle for the purpose of recording mileage on trips.

(2) "Repair and replacement" means to restore to a sound working condition by replacing the odometer or any part thereof or by correcting what is inoperative.

(3) "Transfer" means to change ownership by purchase, gift, or any other means.

## **190.270 UNLAWFUL ACTS; SUSPENSION AND REVOCATION SCHEDULE FOR VIOLATIONS**

(1) It is unlawful for any person to advertise for sale, to sell, to use, or to install or to have installed, any device which causes an odometer to register any mileage other than the true mileage driven. For purposes of this section, the true mileage driven is that mileage the vehicle has been driven as registered by the odometer within the manufacturer's designed tolerance.

(2) It is unlawful for any person or his agent to disconnect, reset, or alter the odometer of any motor vehicle with the intent to change the number of miles indicated thereon.

(3) It is unlawful for any person with the intent to defraud to operate a motor vehicle on any street or highway knowing that the odometer of such vehicle is disconnected or nonfunctional.

(4) The commission shall deny, suspend or revoke the license of any person who violates or causes, aids or abets any violation of this section which denial, suspension or revocation may be in addition to, and not exclusive of, any other penalties provided for elsewhere in this chapter.

#### **190.280 CONSPIRACY TO VIOLATE PROVISIONS OF KRS 190.260 TO 190.320**

No person shall conspire with any other person to violate the provisions of KRS 190.260 to 190.320.

#### **190.290 SERVICE, REPAIR OR REPLACEMENT OF ODOMETER**

Nothing in KRS 190.260 to 190.320 shall prevent the service, repair, or replacement of an odometer, provided the mileage indicated thereon remains the same before the service, repair, or replacement. Where the odometer is incapable of registering the same mileage as before such service, repair, or replacement, the odometer shall be adjusted to read zero and a notice in writing shall be attached to the left door frame of the vehicle by the owner or his agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced. Any removal or alteration of such notice so affixed shall be unlawful.

#### **190.300 DISCLOSURE OF MILEAGE UPON TRANSFER OF VEHICLE**

(1) Any transferor must give a written disclosure to the transferee in connection with the transfer of ownership of a motor vehicle:

(a) Disclosing the cumulative mileage registered on the odometer.

(b) Disclosure that the actual mileage is unknown, if the odometer reading is known to the transferor to be different from the number of miles the vehicle has actually traveled.

(2) It shall be a violation of this section for any transferor to knowingly give a false statement to a transferee in making any disclosure required by this section.

#### **190.310 LIABILITY FOR VIOLATION OF KRS 190.270 TO 190.320 WITH INTENT TO DEFRAUD**

(1) Any person who, with intent to defraud, violates any requirement imposed under KRS 190.270 to 190.320 shall be liable to the transferee in an amount equal to the sum of:

(a) Three (3) times the amount of actual damages sustained or fifteen hundred dollars (\$1,500), whichever is the greater; and

(b) In the case of any successful action to enforce the foregoing liability, the costs of the action together with reasonable attorney fees as determined by the court.

(2) An action to enforce any liability created under subsection (1) of this section, may be brought in a Circuit Court of a county in which the purchaser of the motor vehicle resides.

### **190.320 FORMS**

Compliance with KRS 190.300 shall be effected by use of forms prescribed by 15 U.S.C. Section 1981 et seq.

### **190.990 PENALTIES**

(1) Any person who violates or causes, aids or abets any violation of any provision of KRS 190.010 to 190.080 or any order, rule or regulation lawfully issued pursuant to authority granted by KRS 190.010 to 190.080 shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or imprisoned for not more than thirty (30) days, or both. Any person who violates paragraphs (l), (m) or (n) of subsection (1) of KRS 190.040 may also be subject to a suspension or revocation sentence of not more than a year effective only in the territory formerly served by the unfairly canceled dealer, except that in a metropolitan area serviced by several dealers handling the same motor vehicle, the suspension or revocation order shall not be applicable to the remaining dealers.

(2) Any person who willfully and intentionally violates any provision of KRS 190.090 to 190.140 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars (\$500).

(3) A willful violation of KRS 190.100 or 190.110 by any person shall bar his recovery of any finance charge, delinquency or collection charge on the retail installment contract involved.

(4) Any person who willfully violates KRS 190.270 to 190.320 shall be subject to a penalty of five thousand dollars (\$5,000) per violation, which may be recovered on behalf of the Commonwealth by the Attorney General.

\* \* \*

### **KRS 367.990 PENALTIES**

\* \* \*

(18) Any dealer in motor vehicles or any other person who fraudulently changes, sets back, disconnects, fails to connect, or causes to be changed, set back, or disconnected, the speedometer or odometer of any motor vehicle, to effect the sale of the motor vehicle shall be guilty of a Class D felony. *(Note: There are no provisions regarding odometer rollbacks in KRS Chapter 367).*

## 18.5. OUR LEMON AUTO INTAKE FORM

DATE \_\_\_\_\_

	You	Spouse (or other Info)
Name (full legal)		
Residence address		
City State Zip		
Resident of this state since		
Your Social Security #		
Home phone #		
Work phone #		
Pager/fax #		
Your line of work or job		
Your employer		
Lien Holder's Account Number Phone Address		
Date and place of purchase		
Purchase price		
Amount of down payment		

Pay off good for 60 days		
Amount of payments you have made: No. Pmts x amt		
Current Mileage		
Have you made any changes to the car? Is it Damaged?		
Dealership		
Manufacturer		
Model of car		
VIN Number		
What are the car's problems?		
Condition of the car?		
Have you found any TSB(s) (Technical Service Bulletins) on the car?		
Has the car caused any accidents?		

I will need a copy of the following information if you have an interview with me

- 1 Copy of your car title, registration and Vin Number
- 2 Copy of your finance agreement
- 3 Copy of your Buyers agreement
- 4 Copy of all service tickets
- 5 At some time I will also need a release allowing us to get the payoff amount from your bank

If you have any questions please call. Our interview will be much faster if you send me a completed intake form within 2 or 3 days prior to your appointment I will try to have your complaint already drafted for your review at the interview.



## 18.6. CALCULATING YOUR DAMAGES

We normally think of the damages in a lemon auto case as being limited to the refund of the price of the car. However, under the UCC, if persons are injured they can recover their injuries to property or to themselves. This can include medical costs, pain and suffering, and loss of income.

Different states have different rules, but other items you can collect for may include taxes, title fees, license fees, registration fees, finance charges, insurance premiums, transportation charges, dealer preparation and added options such as rust-proofing or fabric protection or other add-ons, extended warranties, and service contracts.

Whether or not you collect depends on how you settle your case but, generally, an auto manufacturer will not just hand over a check unless you are represented by a qualified attorney. When you first sit down with your attorney, you need to have records that show what your car has actually cost you. To collect, and to have a well-plead complaint, you need to document all your damages. Here is a well-thought out form for calculating your recovery.

Purchase Price	
Total of Payments Made on the Loan	
Loan Payoff	
Subsequent Registration Costs	
Finance Charges or Lease Costs	
Insurance Since Purchase	
Rentals	
Repairs, including Maintenance	
Aftermarket Equipment	
Expense of Returning Car for Repair	
Legal Costs for Mediation (Travel, Postage, etc)	

All Other Legal Costs	
All Other Costs of Owning the Car or Repairing it	
Damages the Defect did to Property or Person	
Loss of Use (not in Kentucky)	
Civil Penalties (not in Kentucky)	
Total	

**THIS IS AN ADVERTISEMENT**