

**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.