

# **MISSOURI REVISED STATUTES**

## Chapter 407 – Merchandising Practices

### Sections 407.560 – 407.579

#### **Definitions.**

407.560. As used in sections 407.560 to 407.579, the following terms mean: (1) "Collateral charges", those additional charges to a consumer not directly attributable to a manufacturer's suggested retail price label for the new motor vehicle. For the purposes of sections 407.560 to 407.579, "collateral charges" includes all sales tax, license fees, registration fees, title fees and motor vehicle inspections;

(2) "Comparable motor vehicle", an identical or reasonably equivalent motor vehicle; (3) "Consumer", the purchaser, other than for the purposes of resale, of a new motor vehicle, primarily used for personal, family, or household purposes, and any person to whom such new motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such new motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty; (4) "Express warranty", any written affirmation of the fact or promise made by a manufacturer to a consumer in connection with the sale of new motor vehicles which relates to the nature of the material or workmanship or will meet a specified level of performance over a specified period of time; (5) "Manufacturer", any person engaged in the manufacturing or assembling of new motor vehicles as a regular business; (6) "New motor vehicle", any motor vehicle being transferred for the first time from a manufacturer, distributor or new vehicle dealer, which has not been registered or titled in this state or any other state and which is offered for sale, barter or exchange by a dealer who is franchised to sell, barter or exchange that particular make of new motor vehicle. The term "new motor vehicle" shall include only those vehicles propelled by power other than muscular power, but the term shall not include vehicles used as a commercial motor vehicle, off-road vehicles, mopeds, motorcycles or recreational motor vehicles as defined in section 301.010, except for the chassis, engine, powertrain and component parts of recreational motor vehicles. The term "new motor vehicle" shall also include demonstrators or lease-purchase vehicles as long as a manufacturer's warranty was issued as a condition of sale. (L. 1984 H.B. 992 § 1)

#### **Law applicable to breach of new motor vehicles warranties.**

407.563. The provisions of sections 400.2-602 to 400.2-609 shall not apply to sales of new motor vehicles and such sales shall be governed by the provisions

of sections 407.560 to 407.579. (L. 1984 H.B. 992 § 2)

**Report of nonconformity required, when--repairs, duty of manufacturer or agent, when.**

407.565. For the purposes of sections 407.560 to 407.579, if a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, or its agent, during the term of such express warranties, or during the period of one year following the date of original delivery of the new motor vehicle to the consumer, whichever period expires earlier, the manufacturer, or its agent, shall make such repairs as are necessary to conform the new vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period. (L. 1984 H.B. 992 § 3)

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

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

2. Refunds shall be made to the consumer and lienholder of record, if any, as their interests may appear.

3. (1) Upon taking the title to a vehicle under this section, the manufacturer may apply to the department of revenue for a reimbursement equal to any amounts refunded to a consumer for any sales tax, license fees, registration fees, and title fees paid by the consumer as a result of purchasing the vehicle. Upon the receipt of a written request for a refund, accompanied by satisfactory proof that such sales tax and fees on the vehicle were paid when or after the vehicle was purchased and that the manufacturer has refunded such sales tax and fees to the consumer, lienholder, or lessor of the vehicle, the department of revenue shall refund to the manufacturer an amount equal to the amounts refunded to a consumer for such sales tax and fees paid by the consumer as a result of purchasing the vehicle.

(2) The manufacturer may, in lieu of applying to the department of revenue for a

reimbursement under this subsection, direct the consumer to apply to the department of revenue for a refund of any sales tax, license fees, registration fees, and title fees paid by the consumer as a result of purchasing the vehicle. The manufacturer shall provide the consumer with the documentation required to prove that the consumer paid such sales tax and fees to the manufacturer. Upon the receipt of a written request by the consumer for a refund, accompanied by satisfactory proof that such sales tax and fees on the vehicle were paid when or after the vehicle was purchased, and a written statement from the manufacturer that such sales tax and fees were not refunded to the consumer, lienholder, or lessor of the vehicle, the department of revenue shall refund to the consumer an amount equal to the amounts for such sales tax and fees paid by the consumer as a result of purchasing the vehicle. (L. 1984 H.B. 992 § 4 subsecs. 1, 2, A.L. 2004 S.B. 1233, et al.)

### **Affirmative defenses.**

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

- (1) An alleged nonconformity does not substantially impair the use, market value, or safety of the motor vehicle;
- (2) A nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle;
- (3) A claim by a consumer was not filed in good faith; or
- (4) Any other affirmative defense allowed by law. (L. 1984 H.B. 992 § 4 subsec. 3)

### **Presumptions of nonconformity--exception.**

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

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

conditions beyond the control of the manufacturer or its agents. (L. 1984 H.B. 992 § 4 subsec. 4)

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

407.573. 1. The terms, conditions, or limitations of the express warranty, or\* the period of one year following the date of original delivery of the new motor vehicle to a consumer, whichever expires earlier, may be extended if the new motor vehicle warranty problem has been reported but has not been repaired by the manufacturer, or its agent, by the expiration of the applicable time period.

2. The manufacturer shall provide information for consumer complaint remedies with each new motor vehicle. It shall be the responsibility of the consumer, or his representative, prior to availing himself of the provisions of sections 407.560 to 407.579, to give written notification to the manufacturer of the need for the repair of the nonconformity, in order to allow the manufacturer an opportunity to cure the alleged defect. The manufacturer shall immediately notify the consumer of a reasonably accessible repair facility of a franchised new vehicle dealer to conform the new vehicle to the express warranty. After delivery of the new vehicle to an authorized repair facility by the consumer, the manufacturer shall have ten calendar days to conform the new motor vehicle to the express warranty.

Upon notification from the consumer that the new vehicle has not been conformed to the express warranty, the manufacturer shall inform the consumer if an informal dispute settlement procedure has been established by the manufacturer in accordance with section 407.575. However, if prior notice by the manufacturer of an informal dispute settlement procedure has been given, no further notice is required.

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

(L. 1984 H.B. 992 § 5) \*Word "of" appears in original rolls.

**Manufacturer with approved settlement procedure, consumer's duty.**

407.575. If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of the code of Federal Regulations, 16 CFR 703, provisions of sections 407.560 to 407.579

concerning refunds or replacements shall not apply to any consumer who has not first resorted to such procedure. (L. 1984 H.B. 992 § 6)

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

407.577. 1. If a consumer undertakes a court action after complying with the provisions of sections 407.560 to 407.579 and finally prevails in that action, he shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action.

2. If any claim by a consumer under sections 407.560 to 407.579 is found by a court to have been filed in bad faith, or solely for the purpose of harassment, or in the absence of a substantial justifiable issue of either law or fact raised by the consumer, or for which the final recovery is not at least ten percent greater than any settlement offer made by the manufacturer prior to the commencement of the court action, then the consumer shall be liable for all costs and reasonable attorney's fees incurred by the manufacturer, or its agent, as a direct result of the bad faith claim. (L. 1984 H.B. 992 § 7)

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

407.579. 1. Except as provided in subdivision (1) of section 407.560, nothing in sections 407.560 to 407.579 shall in any way limit the rights or remedies which are otherwise available to a consumer at law or in equity. 2. Sections 407.560 to 407.579 shall apply to any new motor vehicle sold after January 1, 1985.