

6872--A

Cal. No. 615

I N S E N A T E

April 2, 2012

Introduced by Sen. ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the general business law, in relation to the refund to a consumer of money from a used car dealership for failing to correct a malfunction or defect

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph 1 of subdivision c of section 198-b of the gener-
2 al business law, as amended by chapter 444 of the laws of 1989, is
3 amended and a new paragraph 5 is added to read as follows:
4 1. If the dealer or his agent fails to correct a malfunction or defect
5 as required by the warranty specified in this section which substantial-
6 ly impairs the value of the used motor vehicle to the consumer after a
7 reasonable period of time, the dealer shall accept return of the used
8 motor vehicle from the consumer and refund to the consumer the full
9 purchase price, or in the case of a lease contract all payments made
10 under the contract, including sales or compensating use tax, less AN
11 AMOUNT EQUAL TO A MILEAGE CREDIT, AS CALCULATED PURSUANT TO PARAGRAPH
12 FIVE OF THIS SUBDIVISION, FOR EACH MILE IN EXCESS OF THE MILEAGE APPLI-
13 CABLE TO THE VEHICLE CONTAINED IN SUBDIVISION B OF THIS SECTION THAT THE
14 VEHICLE HAS BEEN DRIVEN SINCE THE CONSUMER PURCHASED OR LEASED THE VEHI-
15 CLE FROM THE DEALER, AND LESS a reasonable allowance for any damage not
16 attributable to normal wear or usage, and adjustment for any modifica-
17 tions which either increase or decrease the market value of the vehicle
18 or of the lease contract, and in the case of a lease contract, shall
19 cancel all further payments due from the consumer under the lease
20 contract. In determining the purchase price to be refunded or in deter-
21 mining all payments made under a lease contract to be refunded, the
22 purchase price, or all payments made under a lease contract, shall be
23 deemed equal to the sum of the actual cash difference paid for the used
24 motor vehicle, or for the lease contract, plus, if the dealer elects to

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 not return any vehicles traded-in by the consumer, the wholesale value
2 of any such traded-in vehicles as listed in the National Auto Dealers
3 Association Used Car Guide, or such other guide as may be specified in
4 regulations promulgated by the commissioner of motor vehicles, as
5 adjusted for mileage, improvements, and any major physical or mechanical
6 defects in the traded-in vehicle at the time of trade-in. The dealer
7 selling or leasing the used motor vehicle shall deliver to the consumer
8 a written notice including conspicuous language indicating that if the
9 consumer should be entitled to a refund pursuant to this section, the
10 value of any vehicle traded-in by the consumer, if the dealer elects to
11 not return it to the consumer, for purposes of determining the amount of
12 such refund will be determined by reference to the National Auto Dealers
13 Association Used Car Guide wholesale value, or such other guide as may
14 be approved by the commissioner of motor vehicles, as adjusted for mile-
15 age, improvements, and any major physical or mechanical defects, rather
16 than the value listed in the sales contract. Refunds shall be made to
17 the consumer and lienholder, if any, as their interests may appear on
18 the records of ownership kept by the department of motor vehicles. If
19 the amount to be refunded to the lienholder will be insufficient to
20 discharge the lien, the dealer shall notify the consumer in writing by
21 registered or certified mail that the consumer has thirty days to pay
22 the lienholder the amount which, together with the amount to be refunded
23 by the dealer, will be sufficient to discharge the lien. The notice to
24 the consumer shall contain conspicuous language warning the consumer
25 that failure to pay such funds to the lienholder within thirty days will
26 terminate the dealer's obligation to provide a refund. If the consumer
27 fails to make such payment within thirty days, the dealer shall have no
28 further responsibility to provide a refund under this section. Alterna-
29 tively, the dealer may elect to offer to replace the used motor vehicle
30 with a comparably priced vehicle, with such adjustment in price as the
31 parties may agree to. The consumer shall not be obligated to accept a
32 replacement vehicle, but may instead elect to receive the refund
33 provided under this section. It shall be an affirmative defense to any
34 claim under this section that:

35 (a) The malfunction or defect does not substantially impair such
36 value; or

37 (b) The malfunction or defect is the result of abuse, neglect or
38 unreasonable modifications or alterations of the used motor vehicle.

39 5. FOR THE PURPOSE OF CALCULATING THE MILEAGE CREDIT ALLOWANCE ESTAB-
40 LISHED BY PARAGRAPH ONE OF THIS SUBDIVISION, A DEALER SHALL BE
41 DISCOUNTED A DOLLAR FIGURE PURSUANT TO THE FOLLOWING TERMS:

42 (A) IF THE USED MOTOR VEHICLE IS SOLD WITH THIRTY-SIX THOUSAND MILES
43 OR LESS, THE MILEAGE CREDIT ALLOWANCE SHALL BE TWENTY-FIVE CENTS FOR
44 EVERY MILE DRIVEN IN EXCESS OF THE FOUR THOUSAND MILE WARRANTY.

45 (B) IF THE USED MOTOR VEHICLE IS SOLD WITH MORE THAN THIRTY-SIX THOU-
46 SAND MILES, BUT LESS THAN EIGHTY THOUSAND MILES, THE MILEAGE CREDIT
47 ALLOWANCE SHALL BE TWENTY CENTS FOR EVERY MILE DRIVEN IN EXCESS OF THE
48 THREE THOUSAND MILE WARRANTY.

49 (C) IF THE USED MOTOR VEHICLE IS SOLD WITH EQUAL TO OR MORE THAN
50 EIGHTY THOUSAND MILES, BUT LESS THAN ONE HUNDRED THOUSAND MILES, THE
51 MILEAGE CREDIT ALLOWANCE SHALL BE FIFTEEN CENTS FOR EVERY MILE DRIVEN IN
52 EXCESS OF THE ONE THOUSAND MILE WARRANTY.

53 S 2. Subparagraphs 5 and 6 of paragraph 1 of subdivision f of section
54 198-b of the general business law, as separately amended by chapters 444
55 and 609 of the laws of 1989, are amended to read as follows:

1 5. If the same problem cannot be repaired after three or more
2 attempts, you are entitled to return the car and receive a refund of
3 your purchase price or of all payments made under your lease contract,
4 and of sales tax and fees, minus THE MILEAGE CREDIT ALLOWANCE APPLICABLE
5 TO THE VEHICLE DESCRIBED ABOVE THAT THE VEHICLE HAS BEEN DRIVEN SINCE
6 THE CONSUMER PURCHASED OR LEASED THE VEHICLE FROM THE DEALER, AND LESS a
7 reasonable allowance for any damage not attributable to normal usage or
8 wear, and, in the case of a lease contract, a cancellation of all
9 further payments you are otherwise required to make under the lease
10 contract.

11 6. If your car is out of service to repair a problem for a total of
12 fifteen days or more during the warranty period you are entitled to
13 return the car and receive a refund of your purchase price or of all
14 payments made under your lease contract, and of sales tax and fees,
15 minus THE MILEAGE CREDIT ALLOWANCE APPLICABLE TO THE VEHICLE DESCRIBED
16 ABOVE THAT THE VEHICLE HAS BEEN DRIVEN SINCE THE CONSUMER PURCHASED OR
17 LEASED THE VEHICLE FROM THE DEALER, AND LESS a reasonable allowance for
18 any damage not attributable to normal usage or wear, and, in the case of
19 a lease contract, a cancellation of all further payments you are other-
20 wise required to make under the lease contract.

21 S 3. Subparagraphs 7, 8, 9, 10 and 11 of paragraph 1 of subdivision f
22 of section 198-b of the general business law are renumbered subpara-
23 graphs 8, 9, 10, 11 and 12 and a new subparagraph 7 is added to read as
24 follows:

25 7. THE MILEAGE CREDIT ALLOWANCE DESCRIBED IN PARAGRAPHS FIVE AND SIX
26 OF THIS NOTICE WILL BE CALCULATED ACCORDING TO THE FOLLOWING TERMS:

27 (A) IF YOUR USED CAR HAS MORE THAN EIGHTEEN THOUSAND MILES AND UP TO
28 AND INCLUDING THIRTY-SIX THOUSAND MILES, THE MILEAGE CREDIT ALLOWANCE
29 WILL BE TWENTY-FIVE CENTS FOR EVERY MILE DRIVEN IN EXCESS OF THE FOUR
30 THOUSAND MILE WARRANTY.

31 (B) IF YOUR USED CAR HAS MORE THAN THIRTY-SIX THOUSAND MILES BUT LESS
32 THAN EIGHTY THOUSAND MILES, THE MILEAGE CREDIT ALLOWANCE WILL BE TWENTY
33 CENTS FOR EVERY MILE DRIVEN IN EXCESS OF THE THREE THOUSAND MILE WARRANT-
34 TY.

35 (C) IF YOUR USED CAR HAS EQUAL TO OR MORE THAN EIGHTY THOUSAND MILES,
36 BUT LESS THAN ONE HUNDRED THOUSAND MILES, THE MILEAGE CREDIT ALLOWANCE
37 WILL BE FIFTEEN CENTS FOR EVERY MILE DRIVEN IN EXCESS OF THE ONE THOU-
38 SAND MILE WARRANTY.

39 S 4. This act shall take effect immediately.