

6872--B

Cal. No. 615

I N S E N A T E

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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 -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the general business law and the executive 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 ALLOWANCE AS CALCULATED PURSUANT TO THE
12 METHODS SET FORTH IN PARAGRAPH FIVE OF THIS SUBDIVISION, FOR EACH MILE
13 IN EXCESS OF THE WARRANTY MILEAGE APPLICABLE TO THE VEHICLE CONTAINED IN
14 SUBDIVISION B OF THIS SECTION THAT THE VEHICLE HAS BEEN DRIVEN SINCE THE
15 DATE OF DELIVERY OF SUCH VEHICLE BY THE DEALER TO THE CONSUMER, AND LESS
16 a reasonable allowance for any damage not attributable to normal wear or
17 usage, and adjustment for any modifications which either increase or
18 decrease the market value of the vehicle or of the lease contract, and
19 in the case of a lease contract, shall cancel all further payments due
20 from the consumer under the lease contract. In determining the purchase
21 price to be refunded or in determining all payments made under a lease
22 contract to be refunded, the purchase price, or all payments made under
23 a lease contract, shall be deemed equal to the sum of the actual cash

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

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

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

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

40 5. THE MILEAGE CREDIT ALLOWANCE AUTHORIZED BY PARAGRAPH ONE OF THIS
41 SUBDIVISION SHALL BE EQUAL TO THE DEPRECIATION ADJUSTMENT FOR STANDARD
42 MILEAGE RATE, AS PUBLISHED IN INTERNAL REVENUE SERVICE PUBLICATION FOUR
43 HUNDRED SIXTY-THREE, APPLICABLE FOR THE SAME TAX YEAR, OR THE YEAR PRIOR
44 TO IT, WHICHEVER IS LOWEST, IN WHICH THE CONSUMER PURCHASED OR LEASED
45 THE VEHICLE FROM THE DEALER. IN THE EVENT THAT AN ARBITRATOR RENDERS A
46 DECISION OR A TRIAL COURT RENDERS A JUDGMENT THAT DIRECTS THE DEALER TO
47 ACCEPT RETURN OF THE VEHICLE, THE CONSUMER SHALL HAVE THE RIGHT TO
48 RETURN THE VEHICLE TO THE DEALER'S PLACE OF BUSINESS ON THE FIRST BUSI-
49 NESS DAY FOLLOWING SUCH DECISION UP TO AND INCLUSIVE OF THE THIRTIETH
50 DAY, AND WITHIN NORMAL BUSINESS HOURS. WHETHER OR NOT THE DEALER
51 ACCEPTS THE VEHICLE, THE DEALER AND CONSUMER SHALL COMPLETE AND SIGN A
52 MILEAGE CREDIT CALCULATION FORM AS PUBLISHED BY THE ATTORNEY GENERAL,
53 WHICH SHALL BE USED TO RECORD THE MILEAGE OF THE VEHICLE AT THE TIME OF
54 DELIVERY OR ATTEMPTED DELIVERY. FOR THE PURPOSES OF THIS SECTION, THE
55 MILEAGE CREDIT ALLOWANCE SHALL NOT BE APPLIED TO ANY MILES THAT THE
56 VEHICLE HAS BEEN DRIVEN AFTER SUCH FORM IS SIGNED. IN THE EVENT THAT A

1 DEALER REFUSES TO SIGN SUCH FORM, THE EFFECTIVE MILEAGE CREDIT ALLOWANCE
2 SHALL BE NO GREATER THAN THE SPECIFIC SUM WHICH WAS SET FORTH IN THE
3 DECISION OF AN ARBITRATOR OR JUDGMENT OF THE TRIAL COURT. THE DEALER
4 SHALL PROVIDE A COPY OF THE COMPLETED FORM, WHICH SHALL CONTAIN THE
5 SIGNATURE OF THE DEALER AND CONSUMER ATTESTING TO THE ODOMETER READING
6 OF THE MOTOR VEHICLE, TO: THE ARBITRATOR OR COURT THAT RENDERED THE
7 DECISION OR JUDGMENT; AND, AT NO CHARGE, THE CONSUMER.

8 S 2. The opening paragraph of paragraph 1 of subdivision f of section
9 198-b of the general business law, as separately amended by chapters 444
10 and 609 of the laws of 1989, is amended to read as follows:

11 If a dealer has established or participates in an informal dispute
12 settlement procedure which complies in all respects with the provisions
13 of part seven hundred three of title sixteen of the code of federal
14 regulations the provisions of this article concerning refunds or
15 replacement shall not apply to any consumer who has not first resorted
16 to such procedure. Dealers utilizing informal dispute settlement proce-
17 dures pursuant to this subdivision shall insure that arbitrators partic-
18 ipating in such informal dispute settlement procedures are familiar with
19 the provisions of this section and shall provide to arbitrators and
20 consumers who seek arbitration a copy of the provisions of this section
21 AND THE APPLICABLE MILEAGE CREDIT ALLOWANCE RATE AS CALCULATED PURSUANT
22 TO THE METHOD SET FORTH IN PARAGRAPH FIVE OF SUBDIVISION C OF THIS
23 SECTION, together with the following notice in conspicuous ten point
24 bold face type:

25 S 3. Subparagraphs 5 and 6 of paragraph 1 of subdivision f of section
26 198-b of the general business law, as separately amended by chapters 444
27 and 609 of the laws of 1989, are amended to read as follows:

28 5. If the same problem cannot be repaired after three or more
29 attempts, you are entitled to return the car and receive a refund of
30 your purchase price or of all payments made under your lease contract,
31 and of sales tax and fees, minus THE MILEAGE CREDIT ALLOWANCE FOR EACH
32 MILE IN EXCESS OF THE WARRANTY MILEAGE APPLICABLE TO THE VEHICLE
33 CONTAINED IN SUBDIVISION B OF THIS SECTION THAT THE VEHICLE HAS BEEN
34 DRIVEN SINCE THE DATE OF DELIVERY OF SUCH VEHICLE BY THE DEALER TO THE
35 CONSUMER, AND LESS a reasonable allowance for any damage not attribut-
36 able to normal usage or wear, and, in the case of a lease contract, a
37 cancellation of all further payments you are otherwise required to make
38 under the lease contract.

39 6. If your car is out of service to repair a problem for a total of
40 fifteen days or more during the warranty period you are entitled to
41 return the car and receive a refund of your purchase price or of all
42 payments made under your lease contract, and of sales tax and fees,
43 minus THE MILEAGE CREDIT ALLOWANCE FOR EACH MILE IN EXCESS OF THE
44 WARRANTY MILEAGE APPLICABLE TO THE VEHICLE CONTAINED IN SUBDIVISION B OF
45 THIS SECTION THAT THE VEHICLE HAS BEEN DRIVEN SINCE THE DATE OF DELIVERY
46 OF SUCH VEHICLE BY THE DEALER TO THE CONSUMER, AND LESS a reasonable
47 allowance for any damage not attributable to normal usage or wear, and,
48 in the case of a lease contract, a cancellation of all further payments
49 you are otherwise required to make under the lease contract.

50 S 4. Subparagraphs 7, 8, 9, 10 and 11 of paragraph 1 of subdivision f
51 of section 198-b of the general business law are renumbered subpara-
52 graphs 8, 9, 10, 11 and 12 and a new subparagraph 7 is added to read as
53 follows:

54 7. THE MILEAGE CREDIT ALLOWANCE DESCRIBED IN PARAGRAPHS FIVE AND SIX
55 OF THIS SUBDIVISION SHALL BE CALCULATED PURSUANT TO THE METHOD ESTAB-
56 LISHED IN PARAGRAPH FIVE OF SUBDIVISION C OF THIS SECTION. THE MILEAGE

1 CREDIT ALLOWANCE SHALL BE NO GREATER THAN (INSERT THE DEPRECIATION
2 ADJUSTMENT FOR STANDARD MILEAGE RATE, AS PUBLISHED IN INTERNAL REVENUE
3 SERVICE PUBLICATION FOUR HUNDRED SIXTY-THREE, APPLICABLE FOR THE SAME
4 TAX YEAR, OR THE YEAR PRIOR TO IT, WHICHEVER IS LOWEST, IN WHICH THE
5 CONSUMER PURCHASED OR LEASED THE VEHICLE FROM THE DEALER) CENTS PER
6 MILE.

7 S 5. Paragraphs 4, 5 and 6 of subdivision f of section 198-b of the
8 general business law are renumbered paragraphs 5, 6 and 7 and a new
9 paragraph 4 is added to read as follows:

10 4. IN THE EVENT THAT AN ARBITRATOR OR TRIAL COURT RENDERS A DECISION
11 THAT DIRECTS THE DEALER TO ACCEPT RETURN OF THE VEHICLE, THE ARBITRATOR
12 OR COURT SHALL, UPON RENDERING SUCH DECISION, PROVIDE THE FOLLOWING
13 NOTICE TO THE CONSUMER ON A SEPARATE WRITING AND IN AT LEAST TWELVE
14 POINT BOLD FONT:

15 AS A PREVAILING CONSUMER YOU HAVE THE RIGHT TO RETURN THE VEHICLE TO
16 THE DEALER'S PLACE OF BUSINESS ON THE FIRST BUSINESS DAY FOLLOWING THIS
17 DECISION AND UP TO AND INCLUSIVE OF THE THIRTIETH DAY (WITHIN NORMAL
18 BUSINESS HOURS). WHETHER OR NOT THE DEALER ACCEPTS THE VEHICLE, YOU AND
19 THE DEALER SHALL COMPLETE AND SIGN A MILEAGE CREDIT CALCULATION FORM.
20 YOU ARE NOT RESPONSIBLE FOR ANY MILEAGE ACCRUED WHILE YOU ARE LAWFULLY
21 USING THE VEHICLE DURING AN APPEAL THAT A DEALER BRINGS TO VACATE OR
22 MODIFY AN ARBITRATOR'S DECISION OR A TRIAL COURT JUDGMENT.

23 S 6. Section 63 of the executive law is amended by adding a new subdi-
24 vision 16 to read as follows:

25 16. PROMULGATE REGULATIONS PROVIDING FOR THE CREATION AND PUBLICATION
26 OF A MILEAGE CREDIT CALCULATION FORM TO BE USED BY CONSUMERS AND DEALERS
27 PURSUANT TO SECTION ONE HUNDRED NINETY-EIGHT-B OF THE GENERAL BUSINESS
28 LAW. SUCH FORM SHALL BE MADE AVAILABLE TO DEALERS BY THE DEPARTMENT ON
29 ITS WEBSITE.

30 S 7. This act shall take effect on the ninetieth day after it shall
31 have become a law; provided, however, that the provisions of this act
32 shall not apply to any contract executed prior to the effective date of
33 this act; provided, further, that effective immediately, the department
34 of law shall publish on its website on or before such effective date the
35 mileage credit calculation form, as described in section one of this
36 act, that is to be used by consumers and dealers in the manner set forth
37 in such section, with such form, including instructions, necessary for
38 the proper completion of such form by a dealer.