

STATE OF NEW YORK

8370

2017-2018 Regular Sessions

IN ASSEMBLY

June 12, 2017

Introduced by M. of A. SIMANOWITZ -- read once and referred to the
Committee on Consumer Affairs and Protection

AN ACT to amend the general business law and the vehicle and traffic
law, in relation to requiring the consent of all parties for any tran-
saction involving a motor vehicle where there are multiple purchasers,
sellers, or lessees

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Safe Vehicle Transfer Act".
3 § 2. Section 396-qq of the general business law, as added by chapter
4 553 of the laws of 1996, is amended to read as follows:
5 § 396-qq. New and used motor vehicles; sales and leases. 1. Defi-
6 nitions. The following terms when used in this section, shall be deemed
7 to mean and include:
8 a. "Dealer" as defined in section four hundred fifteen of the vehicle
9 and traffic law.
10 b. "Motor vehicle" as defined in section one hundred twenty-five of
11 the vehicle and traffic law and excluding class A, B and C limited use
12 motorcycles as defined in section one hundred twenty-one-b of the vehi-
13 cle and traffic law.
14 2. Whenever a dealer provides to a purchaser or lessee of a motor
15 vehicle the service of securing a registration and/or certificate of
16 title for such vehicle from the commissioner of motor vehicles or his
17 issuing agent, the dealer shall either calculate the actual registration
18 and/or certificate of title charges due, or make a good faith estimate
19 in each transaction of the amount of such charges on the sales contract
20 or lease agreement. If such charges are estimated, the dealer shall set
21 forth on such sales contract or lease agreement or on a separate docu-
22 ment to be ~~initialled~~ initialed by the purchaser or lessee in conspic-
23 uous boldface type, the following disclosure: "THE AMOUNT INDICATED ON

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

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1 THIS SALES CONTRACT OR LEASE AGREEMENT FOR REGISTRATION AND TITLE FEES
2 IS AN ESTIMATE. IN SOME INSTANCES, IT MAY EXCEED THE ACTUAL FEES DUE THE
3 COMMISSIONER OF MOTOR VEHICLES. THE DEALER WILL AUTOMATICALLY, AND WITH-
4 IN SIXTY DAYS OF SECURING SUCH REGISTRATION AND TITLE, REFUND ANY AMOUNT
5 OVERPAID FOR SUCH FEES." If such charges are estimated, the dealer
6 shall, within sixty days of securing such registration and title, refund
7 to the purchaser or lessee the difference between the estimated amount
8 collected from such purchaser or lessee by the dealer and the actual
9 fees paid to the commissioner of motor vehicles by the dealer.

10 3. A dealer shall not complete a purchase, lease, or sale of a new or
11 used motor vehicle in which there is more than one purchaser, seller, or
12 lessee without a notarized document indicating the mutual consent of
13 every party to the transaction. Such document shall not be notarized by
14 a dealer or employee otherwise directly involved with the transaction.

15 4. Where a violation of this section is alleged to have occurred, the
16 attorney general may apply in the name of the people of the state of New
17 York to the supreme court of the state of New York within the judicial
18 district in which such violation is alleged to have occurred, on notice
19 of five days, for an order enjoining or restraining the continuance of
20 such violation. In any such proceeding the court may impose a civil
21 penalty in an amount not to exceed five hundred dollars and order resti-
22 tution to aggrieved consumers.

23 § 3. The vehicle and traffic law is amended by adding a new section
24 417-c to read as follows:

25 § 417-c. Proof of consent of all parties prior to purchase, sale, or
26 lease of a motor vehicle. 1. A dealer shall not complete a purchase,
27 lease, or sale of a new or used motor vehicle in which there is more
28 than one purchaser, seller, or lessee without a notarized document indi-
29 cating the mutual consent of every party to the transaction. Such docu-
30 ment shall not be notarized by a dealer or employee otherwise directly
31 involved with the transaction.

32 2. a. Upon any violation of this section, an application may be made
33 by the attorney general in the name of the people of the state of New
34 York to a court or justice having jurisdiction to issue an injunction,
35 and upon notice to the defendant of not less than five days, to enjoin
36 and restrain the continuance of the violation. If it shall appear to the
37 satisfaction of the court or justice that the defendant has violated
38 this section, an injunction may be issued by the court or justice,
39 enjoining and restraining any further violation, without requiring proof
40 that any person has, in fact, been injured or damaged thereby. In any
41 such proceeding, the court may make allowances to the attorney general
42 as provided in paragraph six of subdivision (a) of section eighty-three
43 hundred three of the civil practice law and rules, and direct restitu-
44 tion.

45 b. Whenever the court shall determine that a violation of this section
46 has occurred, it may impose a civil penalty of not more than one thou-
47 sand dollars for each violation. In connection with an application made
48 under this subdivision, the attorney general is authorized to take proof
49 and to make a determination of the relevant facts and to issue subpoenas
50 in accordance with the civil practice law and rules.

51 § 4. Subdivision (a) of section 2114 of the vehicle and traffic law,
52 as amended by chapter 521 of the laws of 1972, is amended to read as
53 follows:

54 (a) If a dealer buys a vehicle and holds it for resale and procures
55 the certificate of title from the owner within ten days after delivery
56 to him of the vehicle, he need not send the certificate to the commis-

1 sioner but, upon transferring the vehicle to another person other than
2 by the creation of a security interest, shall promptly execute the
3 assignment and warranty of title by a dealer, showing the names and
4 addresses of the transferee and of any lienholder holding a security
5 interest created or reserved at the time of the resale, in the spaces
6 provided therefor on the certificate or as the commissioner prescribes,
7 and mail or deliver the certificate to the commissioner with the
8 transferee's application for a new certificate. The dealer shall also
9 submit evidence of the unanimous consent to transfer the vehicle,
10 including submission of a notarized document with the signature of all
11 transferors possessing any interest in the vehicle with such applica-
12 tion. The assignment and warranty of title by a dealer required by this
13 section shall include a statement, signed by the dealer stating either
14 (i) any facts or information known to him that could reasonably affect
15 the validity of the title of the vehicle, or (ii) that no such facts or
16 information are known to him.

17 § 5. Paragraph 2 of subdivision (b) of section 198-a of the general
18 business law, as amended by chapter 279 of the laws of 1989, is amended
19 to read as follows:

20 (2) If a manufacturer's agent or authorized dealer refuses to under-
21 take repairs within seven days of receipt of the notice by a consumer of
22 a nonconformity, defect or condition pursuant to paragraph one of this
23 subdivision, the consumer may immediately forward written notice of such
24 refusal to the manufacturer by certified mail, return receipt requested.
25 The manufacturer or its authorized agent shall have twenty days from
26 receipt of such notice of refusal to commence such repairs. If within
27 such twenty day period, the manufacturer or its authorized agent fails
28 to commence such repairs, the manufacturer, at the option of the consum-
29 er, shall replace the motor vehicle with a comparable motor vehicle, or
30 accept return of the vehicle from the consumer and refund to the consum-
31 er the full purchase price or, if applicable, the lease price and any
32 trade-in allowance plus fees and charges; provided, however, that a
33 refund shall not be issued for a vehicle with multiple owners before
34 notarized proof of consent is provided as described in subdivision three
35 of section three hundred ninety-six-qq of this chapter. Such fees and
36 charges shall include but not be limited to all license fees, registra-
37 tion fees and any similar governmental charges, less an allowance for
38 the consumer's use of the vehicle in excess of the first twelve thousand
39 miles of operation pursuant to the mileage deduction formula defined in
40 paragraph four of subdivision (a) of this section, and a reasonable
41 allowance for any damage not attributable to normal wear or improve-
42 ments.

43 § 6. Paragraphs 1 and 2 of subdivision (c) of section 198-a of the
44 general business law, paragraph 1 as amended by chapter 234 of the laws
45 of 1990, and paragraph 2 as amended by chapter 29 of the laws of 1989,
46 are amended to read as follows:

47 (1) If, within the period specified in subdivision (b) of this
48 section, the manufacturer or its agents or authorized dealers are unable
49 to repair or correct any defect or condition which substantially impairs
50 the value of the motor vehicle to the consumer after a reasonable number
51 of attempts, the manufacturer, at the option of the consumer, shall
52 replace the motor vehicle with a comparable motor vehicle, or accept
53 return of the vehicle from the consumer and refund to the consumer the
54 full purchase price or, if applicable, the lease price and any trade-in
55 allowance plus fees and charges; provided, however, that a refund shall
56 not be issued for a vehicle with multiple owners before notarized proof

1 of consent is provided as described in subdivision three of section
2 three hundred ninety-six-qq of this chapter. Any return of a motor vehi-
3 cle may, at the option of the consumer, be made to the dealer or other
4 authorized agent of the manufacturer who sold such vehicle to the
5 consumer or to the dealer or other authorized agent who attempted to
6 repair or correct the defect or condition which necessitated the return
7 and shall not be subject to any further shipping charges. Such fees and
8 charges shall include but not be limited to all license fees, registra-
9 tion fees and any similar governmental charges, less an allowance for
10 the consumer's use of the vehicle in excess of the first twelve thousand
11 miles of operation pursuant to the mileage deduction formula defined in
12 paragraph four of subdivision (a) of this section, and a reasonable
13 allowance for any damage not attributable to normal wear or improve-
14 ments.

15 (2) A manufacturer which accepts return of the motor vehicle because
16 the motor vehicle does not conform to its warranty shall notify the
17 commissioner of the department of motor vehicles that the motor vehicle
18 was returned to the manufacturer for nonconformity to its warranty and
19 shall disclose, in accordance with the provisions of section four
20 hundred seventeen-a of the vehicle and traffic law prior to resale
21 either at wholesale or retail, that it was previously returned to the
22 manufacturer for nonconformity to its warranty. Refunds shall be made to
23 the consumer and lienholder, if any, as their interests may appear on
24 the records of ownership kept by the department of motor vehicles;
25 provided, however, that a refund shall not be issued for a vehicle with
26 multiple owners or lessees before notarized proof of consent is provided
27 as described in subdivision three of section three hundred ninety-six-qq
28 of this chapter. Refunds shall be accompanied by the proper application
29 for credit or refund of state and local sales taxes as published by the
30 department of taxation and finance and by a notice that the sales tax
31 paid on the purchase price, lease price or portion thereof being
32 refunded is refundable by the commissioner of taxation and finance in
33 accordance with the provisions of subdivision (f) of section eleven
34 hundred thirty-nine of the tax law. If applicable, refunds shall be made
35 to the lessor and lessee as their interests may appear on the records of
36 ownership kept by the department of motor vehicles, as follows: the
37 lessee shall receive the capitalized cost and the lessor shall receive
38 the lease price less the aggregate deposit and rental payments previous-
39 ly paid to the lessor for the leased vehicle. The terms of the lease
40 shall be deemed terminated contemporaneously with the date of the
41 arbitrator's decision and award and no penalty for early termination
42 shall be assessed as a result thereof. Refunds shall be accompanied by
43 the proper application form for credit or refund of state and local
44 sales tax as published by the department of taxation and finance and a
45 notice that the sales tax paid on the lease price or portion thereof
46 being refunded is refundable by the commissioner of taxation and finance
47 in accordance with the provisions of subdivision (f) of section eleven
48 hundred thirty-nine of the tax law.

49 § 7. Subdivision (k) of section 198-a of the general business law, as
50 amended by chapter 611 of the laws of 2005, is amended to read as
51 follows:

52 (k) Each consumer shall have the option of submitting any dispute
53 arising under this section upon the payment of a prescribed filing fee
54 to an alternate arbitration mechanism established pursuant to regu-
55 lations promulgated hereunder by the New York state attorney general.
56 Upon application of the consumer and payment of the filing fee, all

1 manufacturers shall submit to such alternate arbitration; provided,
2 however, the consent of all consumers is needed prior to submission of
3 an application for a vehicle involving multiple consumers.

4 Such alternate arbitration shall be conducted by a professional arbit-
5 rator or arbitration firm appointed by and under regulations estab-
6 lished by the New York state attorney general. Such mechanism shall
7 insure the personal objectivity of its arbitrators and the right of each
8 party to present its case, to be in attendance during any presentation
9 made by the other party and to rebut or refute such presentation. In all
10 other respects, such alternate arbitration mechanism shall be governed
11 by article seventy-five of the civil practice law and rules; provided,
12 however, that notwithstanding paragraph (i) of subdivision (a) of
13 section seventy-five hundred two of the civil practice law and rules,
14 special proceedings brought before a court pursuant to such article
15 seventy-five in relation to an arbitration hereunder shall be brought
16 only in the county where the consumer resides or where the arbitration
17 was held or is pending.

18 § 8. Subparagraphs (iii) and (iv) of paragraph 3 of subdivision (m) of
19 section 198-a of the general business law, as added by chapter 799 of
20 the laws of 1986, is amended and a new subparagraph (v) is added to read
21 as follows:

22 (iii) the number and total dollar amount of awards where some form of
23 reimbursement for expenses or compensation for losses was the most prom-
24 inent remedy, the amount or value of each award and the number of such
25 awards that were complied with in a timely manner; ~~and~~

26 (iv) the average number of days from the date of a consumer's initial
27 request to arbitrate until the date of the final arbitrator's decision
28 and the average number of days from the date of the final arbitrator's
29 decision to the date on which performance was satisfactorily carried
30 out; and

31 (v) the notarized proof of consent form as described in subdivision
32 three of section three hundred ninety-six-qq of this chapter if the
33 motor vehicle has multiple consumers.

34 § 9. Paragraph 1 of subdivision c of section 198-b of the general
35 business law, as amended by chapter 444 of the laws of 1989, is amended
36 to read as follows:

37 1. If the dealer or his agent fails to correct a malfunction or defect
38 as required by the warranty specified in this section which substantial-
39 ly impairs the value of the used motor vehicle to the consumer after a
40 reasonable period of time, the dealer shall accept return of the used
41 motor vehicle from the consumer and refund to the consumer the full
42 purchase price, or in the case of a lease contract all payments made
43 under the contract, including sales or compensating use tax, less a
44 reasonable allowance for any damage not attributable to normal wear or
45 usage, and adjustment for any modifications which either increase or
46 decrease the market value of the vehicle or of the lease contract, and
47 in the case of a lease contract, shall cancel all further payments due
48 from the consumer under the lease contract. A dealer shall not refund
49 the purchase price or cancel the lease for a motor vehicle involving
50 multiple consumers before the dealer is in possession of a notarized
51 proof of consent form as described in subdivision three of section three
52 hundred ninety-six-qq of this chapter. In determining the purchase price
53 to be refunded or in determining all payments made under a lease
54 contract to be refunded, the purchase price, or all payments made under
55 a lease contract, shall be deemed equal to the sum of the actual cash
56 difference paid for the used motor vehicle, or for the lease contract,

1 plus, if the dealer elects to not return any vehicles traded-in by the
2 consumer, the wholesale value of any such traded-in vehicles as listed
3 in the National Auto Dealers Association Used Car Guide, or such other
4 guide as may be specified in regulations promulgated by the commissioner
5 of motor vehicles, as adjusted for mileage, improvements, and any major
6 physical or mechanical defects in the traded-in vehicle at the time of
7 trade-in. The dealer selling or leasing the used motor vehicle shall
8 deliver to the consumer a written notice including conspicuous language
9 indicating that if the consumer should be entitled to a refund pursuant
10 to this section, the value of any vehicle traded-in by the consumer, if
11 the dealer elects to not return it to the consumer, for purposes of
12 determining the amount of such refund will be determined by reference to
13 the National Auto Dealers Association Used Car Guide wholesale value, or
14 such other guide as may be approved by the commissioner of motor vehi-
15 cles, as adjusted for mileage, improvements, and any major physical or
16 mechanical defects, rather than the value listed in the sales contract.
17 Refunds shall be made to the consumer and lienholder, if any, as their
18 interests may appear on the records of ownership kept by the department
19 of motor vehicles. If the amount to be refunded to the lienholder will
20 be insufficient to discharge the lien, the dealer shall notify the
21 consumer in writing by registered or certified mail that the consumer
22 has thirty days to pay the lienholder the amount which, together with
23 the amount to be refunded by the dealer, will be sufficient to discharge
24 the lien. The notice to the consumer shall contain conspicuous language
25 warning the consumer that failure to pay such funds to the lienholder
26 within thirty days will terminate the dealer's obligation to provide a
27 refund. If the consumer fails to make such payment within thirty days,
28 the dealer shall have no further responsibility to provide a refund
29 under this section. Alternatively, the dealer may elect to offer to
30 replace the used motor vehicle with a comparably priced vehicle, with
31 such adjustment in price as the parties may agree to. The consumer shall
32 not be obligated to accept a replacement vehicle, but may instead elect
33 to receive the refund provided under this section. It shall be an affir-
34 mative defense to any 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 § 10. Subparagraph 5 of paragraph 1 of subdivision f of section 198-b
40 of the general business law, as separately amended by chapters 444 and
41 609 of the laws of 1989, is amended to read as follows:

42 5. If the same problem cannot be repaired after three or more
43 attempts, you are entitled to return the car and receive a refund of
44 your purchase price or of all payments made under your lease contract,
45 and of sales tax and fees, minus a reasonable allowance for any damage
46 not attributable to normal usage or wear, and, in the case of a lease
47 contract, a cancellation of all further payments you are otherwise
48 required to make under the lease contract. If there are multiple indi-
49 viduals who signed for the car, all individuals must indicate their
50 consent before you may receive a refund for the car or have your lease
51 cancelled.

52 § 11. Paragraph 3 of subdivision (b) and subdivision (c) of section
53 198-c of the general business law, as added by chapter 254 of the laws
54 of 2010, are amended to read as follows:

55 (3) The time period specified in paragraph one or two of this subdivi-
56 sion may be shortened if the dealer and consumer agree, in writing, to a

1 shorter time period; provided, however, when there are multiple consum-
2 ers to the transaction the dealer shall be in possession of the nota-
3 rized proof of consent form as described in subdivision three of section
4 three hundred ninety-six-qq of this chapter before such agreement is
5 executed.

6 (c) If the agreement gives either party the right to rescind the
7 entire agreement within a reasonable time period, rescission of the
8 entire agreement shall effectively rescind the obligations pursuant to
9 this section without violating this section; provided, however, when
10 there are multiple consumers to the transaction the dealer shall be in
11 possession of the notarized proof of consent form as described in subdi-
12 vision three of section three hundred ninety-six-qq of this chapter
13 before such agreement is executed in order for such rescission to be
14 valid.

15 § 12. This act shall take effect on the one hundred eightieth day
16 after it shall have become a law; provided, however, that effective
17 immediately, the addition, amendment and/or repeal of any rule or regu-
18 lation necessary for the implementation of this act on its effective
19 date are authorized and directed to be made and completed on or before
20 such effective date.