

4744

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. MONSERRATE -- read twice and ordered printed, and
when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to automobile
manufacturers' warranty adjustment programs

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

1 Section 1. The general business law is amended by adding a new section
2 198-c to read as follows:
3 S 198-C. AUTOMOBILE MANUFACTURERS' WARRANTY ADJUSTMENT PROGRAMS. (A)
4 FOR THE PURPOSES OF THIS SECTION:
5 (1) "CONSUMER" MEANS THE PURCHASER, OTHER THAN FOR PURPOSES OF RESALE,
6 OF A MOTOR VEHICLE, A LESSEE OF A MOTOR VEHICLE, ANY PERSON TO WHOM SUCH
7 MOTOR VEHICLE IS TRANSFERRED DURING THE DURATION OF AN EXPRESS WARRANTY
8 APPLICABLE TO SUCH MOTOR VEHICLE AND ANY PERSON ENTITLED BY THE TERMS OF
9 SUCH WARRANTY TO ENFORCE THE OBLIGATIONS OF THE WARRANTY.
10 (2) "DEALER" MEANS ANY PERSON SELLING OR AGREEING TO SELL, LEASING OR
11 AGREEING TO LEASE IN THIS STATE ONE OR MORE MOTOR VEHICLES UNDER A
12 RETAIL AGREEMENT WITH A MANUFACTURER, MANUFACTURER BRANCH, DISTRIBUTOR
13 OR DISTRIBUTOR BRANCH, OR AGENT OF ANY OF THEM.
14 (3) "LESSEE" MEANS ANY CONSUMER WHO LEASES A MOTOR VEHICLE PURSUANT TO
15 A WRITTEN LEASE WHICH PROVIDES THAT THE LESSEE IS RESPONSIBLE FOR
16 REPAIRS TO SUCH MOTOR VEHICLES.
17 (4) "ADJUSTMENT PROGRAM" MEANS ANY PROGRAM OR POLICY THAT EXPANDS OR
18 EXTENDS THE CONSUMER'S WARRANTY BEYOND ITS STATED LIMIT OR UNDER WHICH A
19 MANUFACTURER OFFERS TO PAY FOR ALL OR ANY PART OF THE COST OF REPAIRING,
20 OR TO REIMBURSE CONSUMERS FOR ALL OR ANY PART OF THE COST OF REPAIRING,
21 ANY CONDITION THAT MAY SUBSTANTIALLY AFFECT VEHICLE DURABILITY, RELI-
22 ABILITY OR PERFORMANCE, OTHER THAN SERVICE PROVIDED UNDER A SAFETY OR
23 EMISSION-RELATED RECALL CAMPAIGN. THIS TERM DOES NOT INCLUDE ADJUSTMENTS
24 MADE BY A MANUFACTURER ON A CASE BY CASE BASIS.

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

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1 (5) "MANUFACTURER" MEANS (I) ANY PERSON WHO MANUFACTURES OR ASSEMBLES
2 NEW MOTOR VEHICLES FOR SALE OR DISTRIBUTION OR (II) ANY PERSON WHO IS
3 ENGAGED IN THE BUSINESS OF IMPORTING NEW MOTOR VEHICLES FOR SALE OR
4 DISTRIBUTION TO DEALERS OR THROUGH DISTRIBUTORS, OR FACTORY BRANCHES.

5 (6) "MOTOR VEHICLE" MEANS A MOTOR VEHICLE EXCLUDING OFF-ROAD VEHICLES,
6 WHICH WAS SUBJECT TO A MANUFACTURER'S EXPRESS WARRANTY AT THE TIME OF
7 ORIGINAL DELIVERY AND EITHER (I) WAS PURCHASED, LEASED OR TRANSFERRED IN
8 THIS STATE WITHIN EITHER THE FIRST EIGHTEEN THOUSAND MILES OF OPERATION
9 OR TWO YEARS FROM THE DATE OF ORIGINAL DELIVERY, WHICHEVER IS EARLIER,
10 OR (II) IS REGISTERED IN THIS STATE.

11 (7) "OFF-ROAD VEHICLE" MEANS ANY SELF-PROPELLED VEHICLE WHICH IS MANU-
12 FACTURED FOR SALE FOR OPERATION PRIMARILY ON OFF-HIGHWAY TRAILS OR OFF-
13 HIGHWAY COMPETITIONS AND ONLY INCIDENTALLY OPERATED ON PUBLIC HIGHWAYS
14 PROVIDED THAT SUCH VEHICLE DOES NOT EXCEED SEVENTY INCHES IN WIDTH OR
15 ONE THOUSAND POUNDS DRY WEIGHT.

16 (8) "SERVICE BULLETIN" MEANS ANY DOCUMENT ISSUED BY A MANUFACTURER
17 PERTAINING TO ANY ADJUSTMENT PROGRAM.

18 (B) (1) A MANUFACTURER SHALL, WITHIN NINETY DAYS OF THE ADOPTION OF AN
19 ADJUSTMENT PROGRAM, NOTIFY, BY FIRST-CLASS MAIL, ALL CONSUMERS ELIGIBLE
20 UNDER SUCH PROGRAM OF THE CONDITION IN THE MOTOR VEHICLE WHICH IS
21 COVERED BY AN ADJUSTMENT PROGRAM AND THE PRINCIPAL TERMS AND CONDITIONS
22 OF THE ADJUSTMENT PROGRAM.

23 (2) WITHIN THIRTY DAYS OF THE ADOPTION OF ANY NEW ADJUSTMENT PROGRAM,
24 A MANUFACTURER SHALL NOTIFY ITS DEALERS, IN WRITING, OF ALL THE TERMS
25 AND CONDITIONS THEREOF.

26 (3) COPIES OF ALL NOTICES MAILED IN ACCORDANCE WITH THIS SUBDIVISION
27 SHALL BE SENT TO THE CONSUMER PROTECTION BOARD AND THE DEPARTMENT OF
28 MOTOR VEHICLES AND MADE AVAILABLE FOR PUBLIC INQUIRIES.

29 (C) EACH MANUFACTURER EITHER DIRECTLY OR THROUGH ITS AUTHORIZED AGENT
30 SHALL CAUSE TO BE GIVEN TO THE ORIGINAL PURCHASER OF A NEW MOTOR VEHI-
31 CLE, AT THE TIME OF PURCHASE, A NOTICE OUTLINING THE PROVISIONS OF THIS
32 SECTION AND THE RIGHTS AND REMEDIES PROVIDED UNDER THIS SECTION. THE
33 WRITTEN NOTICE SHALL BE DEEMED SUFFICIENT IF DONE IN SUBSTANTIALLY THE
34 FOLLOWING FORM:

35 "SOMETIMES (INSERT MANUFACTURER'S NAME) OFFERS A SPECIAL ADJUSTMENT
36 PROGRAM TO PAY ALL OR PART OF THE COST OF CERTAIN REPAIRS BEYOND THE
37 TERMS OF THE WARRANTY. CHECK WITH YOUR DEALER TO DETERMINE WHETHER ANY
38 ADJUSTMENT PROGRAM IS APPLICABLE TO YOUR MOTOR VEHICLE."

39 (D) (1) A DEALER SHALL DISCLOSE TO A CONSUMER SEEKING REPAIRS FOR A
40 PARTICULAR CONDITION AT ITS REPAIR SHOP, THE PRINCIPAL TERMS AND CONDI-
41 TIONS OF THE MANUFACTURER'S ADJUSTMENT PROGRAM COVERING SUCH CONDITION
42 IF THE DEALER HAS RECEIVED A SERVICE BULLETIN CONCERNING SUCH ADJUSTMENT
43 PROGRAM OR OTHERWISE HAS KNOWLEDGE OF IT.

44 (2) A DEALER SHALL PROVIDE NOTICE TO PROSPECTIVE PURCHASERS AND
45 LESSEES THAT PROVIDES INFORMATION ON HOW TO GET COPIES OF SERVICE BULLE-
46 TINS. NOTHING IN THIS NOTICE SHALL BE CONSTRUED AS AN ADMISSION BY THE
47 DEALER OR MANUFACTURER OF THE EXISTENCE OR NONEXISTENCE OF A VEHICLE
48 DEFECT. THE NOTICE SHALL BE DEEMED SUFFICIENT IF POSTED IN THE SHOWROOM
49 OR OTHER AREA CONSPICUOUS TO MOTOR VEHICLE PURCHASERS AND WRITTEN IN THE
50 FOLLOWING FORM:

51 FEDERAL LAW REQUIRES MANUFACTURERS TO FURNISH THE NATIONAL HIGHWAY
52 TRAFFIC SAFETY ADMINISTRATION (N.H.T.S.A.) WITH BULLETINS DESCRIBING ANY
53 DEFECTS IN THEIR VEHICLES.

54 YOU MAY OBTAIN COPIES OF THESE BULLETINS, FOR A FEE, FROM EITHER OF
55 THE FOLLOWING:

56 THE MANUFACTURER (ASK YOUR DEALER FOR THE TOLL-FREE NUMBER); OR

1 N.H.T.S.A.--TECHNICAL REFERENCE DIVISION (INSERT THE CURRENT MAILING
2 ADDRESS AND TELEPHONE NUMBER ESTABLISHED BY THE NATIONAL HIGHWAY TRAFFIC
3 SAFETY ADMINISTRATION FOR RECEIVING REQUESTS FOR SERVICE BULLETINS).

4 IN ADDITION, CERTAIN CONSUMER PUBLICATIONS PUBLISH THESE BULLETINS
5 AND SOME COMPANIES WILL SEND THEM TO YOU, FOR A FEE.

6 SUCH SIGN SHALL BE PRINTED WITH LETTERING THAT IS LEGIBLE AND SHALL BE
7 AT LEAST THREE-QUARTERS OF AN INCH BOLDFACE TYPE.

8 (E) A MANUFACTURER WHO ESTABLISHES AN ADJUSTMENT PROGRAM SHALL IMPL-
9 MENT PROCEDURES TO ASSURE REIMBURSEMENT OF EACH CONSUMER ELIGIBLE UNDER
10 AN ADJUSTMENT PROGRAM WHO INCURS EXPENSES FOR REPAIR OF A CONDITION
11 SUBJECT TO THE PROGRAM PRIOR TO ACQUIRING KNOWLEDGE OF THE PROGRAM.
12 SUCH REIMBURSEMENT SHALL BE CONSISTENT WITH THE TERMS AND CONDITIONS OF
13 THE PARTICULAR PROGRAM.

14 ANY CLAIM FOR REIMBURSEMENT UNDER THIS SUBDIVISION SHALL BE MADE IN
15 WRITING TO THE MANUFACTURER WITHIN TWO YEARS OF THE DATE OF THE CONSUM-
16 ER'S PAYMENT FOR REPAIR OF THE CONDITION. THE MANUFACTURER SHALL NOTIFY
17 THE CONSUMER WITHIN TWENTY-ONE BUSINESS DAYS OF RECEIVING A CLAIM FOR
18 REIMBURSEMENT WHETHER THE CLAIM WILL BE ALLOWED OR DENIED. IF THE CLAIM
19 IS DENIED, THE SPECIFIC REASONS FOR THE DENIAL SHALL BE STATED IN WRIT-
20 ING.

21 (F) A VIOLATION OF ANY OF THE PROVISIONS OF THIS SECTION SHALL BE
22 DEEMED A DECEPTIVE ACT OR PRACTICE UNDER ARTICLE TWENTY-TWO-A OF THIS
23 CHAPTER.

24 (G) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO EXCLUDE, MODIFY, OR
25 OTHERWISE LIMIT ANY OTHER REMEDY PROVIDED BY LAW TO A CONSUMER OR
26 LESSEE.

27 S 2. This act shall take effect on the one hundred twentieth day after
28 it shall have become a law.