S T A T E  O F  N E W  Y O R K

1029

2011-2012 Regular Sessions

I N  A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. PHEFFER, DINOWITZ, GALEF -- Multi-Sponsored by -- M. of A. CLARK, COLTON, COOK, HIKIND, MAGEE, MAYERSOHN, MILLMAN, ORTIZ, J. RIVERA, SCARBOROUGH, TOWNS -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law and the personal property law, in relation to contracts for the sale of new motor vehicles

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

Section 1. Section 396-p of the general business law, as added by chapter 736 of the laws of 1978, is amended by adding a new subdivision 4-a to read as follows:

4-A. (A) IN ADDITION TO ANY OTHER RIGHTS TO REVOKE AN OFFER, THE CONSUMER MAY CANCEL A CONTRACT, WHETHER OR NOT SUCH CONSUMER HAS RECEIVED A COPY OF SUCH CONTRACT SIGNED BY THE RETAIL DEALER, UNTIL MIDNIGHT OF THE NEXT BUSINESS DAY AFTER THE DATE ON WHICH THE CONSUMER SIGNED THE CONTRACT OR THE DATE ON WHICH THE RETAIL DEALER DELIVERED A COPY OF THE CONTRACT SIGNED BY HIM OR HER, WHICHEVER IS LATER. FOR PURPOSES OF THIS PARAGRAPH, CANCELLATION WILL BE DEEMED TO HAVE OCCURRED WHEN WRITTEN NOTICE OF CANCELLATION IS GIVEN TO THE RETAIL DEALER. NOTICE OF CANCELLATION, IF GIVEN BY MAIL, SHALL BE DEEMED DELIVERED ON THE DATE OF THE POSTMARK. NOTICE OF CANCELLATION SHALL BE SUFFICIENT IF IT INDICATES THE INTENTION OF THE CONSUMER NOT TO BE BOUND.

(B) THE CONSUMER MAY, IN ORDER TO OBTAIN IMMEDIATE DELIVERY OF A MOTOR VEHICLE, WAIVE THE RIGHT TO CANCEL AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION. SUCH WAIVER MUST BE WRITTEN AND CLEARLY INDICATE THE INTENTION OF THE CONSUMER TO WAIVE HIS OR HER RIGHT TO CANCEL THE CONTRACT.

(C) UNLESS THE CONSUMER WAIVES THE RIGHT TO CANCEL AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, THE RETAIL DEALER IS NOT REQUIRED TO DELIVER ANY MOTOR VEHICLE TO A CONSUMER UNTIL AFTER THE CLOSE OF BUSI-

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

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NESS ON THE NEXT BUSINESS DAY AFTER THE DAY ON WHICH THE CONSUMER OR RETAIL DEALER SIGNS A MOTOR VEHICLE INSTALLMENT CONTRACT.

(D) FOR PURPOSES OF A CANCELLATION PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, IF A CONSUMER, PURSUANT TO AN AGREEMENT WITH THE RETAIL DEALER, REMOVES ANY TRADE-IN MOTOR VEHICLE FROM THE RETAIL DEALER'S LOT AFTER SIGNING A MOTOR VEHICLE CONTRACT OR OFFER, BUT BEFORE THE EXPIRATION OF THE PERIOD OF TIME DURING WHICH THE CONSUMER HAS THE RIGHT TO CANCEL, THE RETAIL DEALER MAY REAPPRAISE THE VALUE OF THE TRADE-IN VEHICLE UPON ITS RETURN TO THE RETAIL DEALER IF THE VEHICLE IS IN A CONDITION THAT IS NOT SUBSTANTIALLY THE SAME AS WHEN IT WAS ORIGINALLY APPRAISED FOR TRADE-IN PURPOSES. HOWEVER, SUCH REAPPRAISAL SHALL NEITHER EXTEND THE CANCELLATION PERIOD PROVIDED FOR IN PARAGRAPH (A) OF THIS SUBDIVISION NOR ENTITLE THE CONSUMER TO ANOTHER SUCH CANCELLATION PERIOD.

(E) IF A CONSUMER CANCELS A CONTRACT PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION, THE RETAIL DEALER MAY RETAIN, FROM ANY CASH DOWN PAYMENT PAID BY THE CONSUMER TO THE RETAIL DEALER, COMPENSATION FOR CANCELLATION OF THE CONTRACT THAT SHALL NOT EXCEED ONE HUNDRED DOLLARS, BUT SHALL NOT IMPOSE ANY OTHER PENALTY OR OBLIGATION.

S 2. Section 198-b of the general business law is amended by adding a new subdivision a-1 to read as follows:

A-1. CONTRACTS; CANCELLATION. 1. IN ADDITION TO ANY OTHER RIGHTS TO REVOKE AN OFFER, A CONSUMER MAY CANCEL A CONTRACT FOR THE SALE OR LEASE OF A USED MOTOR VEHICLE, WHETHER OR NOT SUCH CONSUMER HAS RECEIVED A COPY OF SUCH CONTRACT SIGNED BY THE DEALER, PRIOR TO MIDNIGHT OF THE NEXT BUSINESS DAY AFTER EITHER THE DATE ON WHICH THE CONSUMER SIGNED THE CONTRACT OR THE DATE ON WHICH THE DEALER DELIVERED A SIGNED COPY OF THE CONTRACT, WHICHEVER IS LATER. FOR THE PURPOSES OF THIS PARAGRAPH, CANCELLATION WILL BE DEEMED TO HAVE OCCURRED WHEN WRITTEN NOTICE OF CANCELLATION IS GIVEN TO THE DEALER. IF GIVEN BY MAIL, A NOTICE OF CANCELLATION SHALL BE DEEMED DELIVERED ON THE DATE OF THE POSTMARK. NOTICE OF CANCELLATION SHALL BE SUFFICIENT IF IT INDICATES THE INTENTION OF THE CONSUMER NOT TO BE BOUND.

2. THE CONSUMER MAY, IN ORDER TO OBTAIN IMMEDIATE DELIVERY OF A MOTOR VEHICLE, WAIVE THE RIGHT TO CANCEL A SALE OR LEASE CONTRACT WITHIN ONE DAY AS PROVIDED IN PARAGRAPH ONE OF THIS SUBDIVISION. SUCH WAIVER MUST BE WRITTEN AND CLEARLY INDICATE THE INTENTION OF THE CONSUMER TO WAIVE HIS OR HER RIGHT TO CANCEL THE CONTRACT.

3. UNLESS THE CONSUMER WAIVES THE RIGHT TO CANCEL A SALE OR LEASE CONTRACT WITHIN ONE DAY AS PROVIDED IN PARAGRAPH TWO OF THIS SUBDIVISION, THE DEALER IS NOT REQUIRED TO DELIVER ANY MOTOR VEHICLE TO A CONSUMER UNTIL AFTER THE CLOSE OF BUSINESS ON THE NEXT BUSINESS DAY AFTER THE DAY ON WHICH THE CONSUMER OR DEALER SIGNS A MOTOR VEHICLE INSTALLMENT CONTRACT.

4. FOR THE PURPOSES OF A CANCELLATION PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION, IF A CONSUMER, PURSUANT TO AN AGREEMENT WITH THE DEALER, REMOVES ANY TRADE-IN MOTOR VEHICLE FROM THE DEALER'S LOT AFTER SIGNING A MOTOR VEHICLE CONTRACT OR OFFER, BUT BEFORE THE EXPIRATION OF THE PERIOD OF TIME DURING WHICH THE CONSUMER HAS THE RIGHT TO CANCEL, THE DEALER MAY REAPPRAISE THE VALUE OF THE TRADE-IN VEHICLE UPON ITS RETURN TO THE DEALER IF THE VEHICLE IS IN A CONDITION THAT IS NOT SUBSTANTIALLY THE SAME AS WHEN IT WAS ORIGINALLY APPRAISED FOR TRADE-IN PURPOSES. HOWEVER, SUCH REAPPRAISAL SHALL NEITHER EXTEND THE CANCELLATION PERIOD PROVIDED FOR IN PARAGRAPH ONE OF THIS SUBDIVISION NOR ENTITLE THE CONSUMER TO ANOTHER SUCH CANCELLATION PERIOD.

5. IF A CONSUMER CANCELS A CONTRACT PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION, THE DEALER MAY RETAIN, FROM ANY CASH DOWN PAYMENT PAID BY THE CONSUMER TO THE SELLER, COMPENSATION FOR CANCELLATION OF THE CONTRACT NOT EXCEEDING ONE HUNDRED DOLLARS, BUT SHALL NOT IMPOSE ANY OTHER PENALTY OR OBLIGATION.

S 3. Section 337 of the personal property law is amended by adding a new subdivision 5-a to read as follows:

5-A. (A) IN ADDITION TO ANY OTHER RIGHTS TO REVOKE AN OFFER, A CONSUMER MAY CANCEL A CONTRACT FOR THE LEASE OF A MOTOR VEHICLE, WHETHER OR NOT SUCH CONSUMER HAS RECEIVED A COPY OF SUCH CONTRACT SIGNED BY THE LESSOR, PRIOR TO MIDNIGHT OF THE NEXT BUSINESS DAY AFTER EITHER THE DATE ON WHICH THE CONSUMER SIGNED THE CONTRACT OR THE DATE ON WHICH THE LESSOR DELIVERED A SIGNED COPY OF THE CONTRACT TO THE CONSUMER, WHICHEVER IS LATER. FOR THE PURPOSES OF THIS PARAGRAPH, CANCELLATION WILL BE DEEMED TO HAVE OCCURRED WHEN WRITTEN NOTICE OF CANCELLATION IS GIVEN TO THE LESSOR. IF GIVEN BY MAIL, A NOTICE OF CANCELLATION SHALL BE DEEMED DELIVERED ON THE DATE OF THE POSTMARK. NOTICE OF CANCELLATION SHALL BE SUFFICIENT IF IT INDICATES THE INTENTION OF THE CONSUMER NOT TO BE BOUND.

(B) THE CONSUMER MAY, IN ORDER TO OBTAIN IMMEDIATE DELIVERY OF A MOTOR VEHICLE, WAIVE THE RIGHT TO CANCEL AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION. SUCH WAIVER MUST BE WRITTEN AND CLEARLY INDICATE THE INTENTION OF THE CONSUMER TO WAIVE HIS OR HER RIGHT TO CANCEL THE CONTRACT.

(C) UNLESS THE CONSUMER WAIVES THE RIGHT TO CANCEL AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, THE LESSOR IS NOT REQUIRED TO DELIVER ANY MOTOR VEHICLE TO A CONSUMER UNTIL AFTER THE CLOSE OF BUSINESS ON THE NEXT BUSINESS DAY AFTER THE DAY ON WHICH THE CONSUMER OR LESSOR SIGNS THE CONTRACT.

(D) FOR THE PURPOSES OF A CANCELLATION PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, IF A CONSUMER, PURSUANT TO AN AGREEMENT WITH THE LESSOR, REMOVES ANY TRADE-IN MOTOR VEHICLE FROM THE LESSOR'S LOT AFTER SIGNING A MOTOR VEHICLE CONTRACT OR OFFER, BUT BEFORE THE EXPIRATION OF THE PERIOD OF TIME DURING WHICH THE CONSUMER HAS THE RIGHT TO CANCEL, THE LESSOR MAY REAPPRAISE THE VALUE OF THE TRADE-IN VEHICLE UPON ITS RETURN TO THE LESSOR IF THE VEHICLE IS IN A CONDITION THAT IS NOT SUBSTANTIALLY THE SAME AS WHEN IT WAS ORIGINALLY APPRAISED FOR TRADE-IN PURPOSES. HOWEVER, SUCH REAPPRAISAL SHALL NEITHER EXTEND THE CANCELLATION PERIOD PROVIDED FOR IN PARAGRAPH (A) OF THIS SUBDIVISION NOR ENTITLE THE CONSUMER TO ANOTHER SUCH CANCELLATION PERIOD.

(E) IF A CONSUMER CANCELS A CONTRACT PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION, THE LESSOR MAY RETAIN, FROM ANY DOWN PAYMENT PAID BY THE CONSUMER TO THE LESSOR, COMPENSATION FOR CANCELLATION OF THE CONTRACT THAT SHALL NOT EXCEED ONE HUNDRED DOLLARS, BUT SHALL NOT IMPOSE ANY OTHER PENALTY OR OBLIGATION.

S 4. This act shall take effect on the first of July next succeeding the date on which it shall have become a law.