

893

2011-2012 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 5, 2011

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

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 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 TWENTY-FIVE CENTS PER MILE FOR EACH MILE IN EXCESS OF  
12    THE MILEAGE APPLICABLE TO THE VEHICLE CONTAINED IN SUBDIVISION B OF THIS  
13    SECTION THAT THE VEHICLE HAS BEEN DRIVEN SINCE THE CONSUMER PURCHASED OR  
14    LEASED THE VEHICLE FROM THE DEALER, AND LESS a reasonable allowance for  
15    any damage not attributable to normal wear or usage, and adjustment for  
16    any modifications which either increase or decrease the market value of  
17    the vehicle or of the lease contract, and in the case of a lease  
18    contract, shall cancel all further payments due from the consumer under  
19    the lease contract. In determining the purchase price to be refunded or  
20    in determining all payments made under a lease contract to be refunded,  
21    the purchase price, or all payments made under a lease contract, shall  
22    be deemed equal to the sum of the actual cash difference paid for the  
23    used motor vehicle, or for the lease contract, plus, if the dealer

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

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elects to not return any vehicles traded-in by the consumer, the whole-sale value of any such traded-in vehicles as listed in the National Auto Dealers Association Used Car Guide, or such other guide as may be specified in regulations promulgated by the commissioner of motor vehicles, as adjusted for mileage, improvements, and any major physical or mechanical defects in the traded-in vehicle at the time of trade-in. The dealer selling or leasing the used motor vehicle shall deliver to the consumer a written notice including conspicuous language indicating that if the consumer should be entitled to a refund pursuant to this section, the value of any vehicle traded-in by the consumer, if the dealer elects to not return it to the consumer, for purposes of determining the amount of such refund will be determined by reference to the National Auto Dealers Association Used Car Guide wholesale value, or such other guide as may be approved by the commissioner of motor vehicles, as adjusted for mileage, improvements, and any major physical or mechanical defects, rather than the value listed in the sales contract. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear on the records of ownership kept by the department of motor vehicles. If the amount to be refunded to the lienholder will be insufficient to discharge the lien, the dealer shall notify the consumer in writing by registered or certified mail that the consumer has thirty days to pay the lienholder the amount which, together with the amount to be refunded by the dealer, will be sufficient to discharge the lien. The notice to the consumer shall contain conspicuous language warning the consumer that failure to pay such funds to the lienholder within thirty days will terminate the dealer's obligation to provide a refund. If the consumer fails to make such payment within thirty days, the dealer shall have no further responsibility to provide a refund under this section. Alternatively, the dealer may elect to offer to replace the used motor vehicle with a comparably priced vehicle, with such adjustment in price as the parties may agree to. The consumer shall not be obligated to accept a replacement vehicle, but may instead elect to receive the refund provided under this section. It shall be an affirmative defense to any claim under this section that:

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

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

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

5. If the same problem cannot be repaired after three or more attempts, you are entitled to return the car and receive a refund of your purchase price or of all payments made under your lease contract, and of sales tax and fees, minus AN AMOUNT EQUAL TO TWENTY-FIVE CENTS PER MILE FOR EACH MILE IN EXCESS OF THE MILEAGE APPLICABLE TO THE VEHICLE CONTAINED ABOVE THAT THE VEHICLE HAS BEEN DRIVEN SINCE THE CONSUMER PURCHASED OR LEASED THE VEHICLE FROM THE DEALER, AND LESS a reasonable allowance for any damage not attributable to normal usage or wear, and, in the case of a lease contract, a cancellation of all further payments you are otherwise required to make under the lease contract.

6. If your car is out of service to repair a problem for a total of fifteen days or more during the warranty period you are entitled to return the car and receive a refund of your purchase price or of all payments made under your lease contract, and of sales tax and fees, minus AN AMOUNT EQUAL TO TWENTY-FIVE CENTS PER MILE FOR EACH MILE IN

1 EXCESS OF THE MILEAGE APPLICABLE TO THE VEHICLE CONTAINED ABOVE THAT THE  
2 VEHICLE HAS BEEN DRIVEN SINCE THE CONSUMER PURCHASED OR LEASED THE VEHI-  
3 CLE FROM THE DEALER, AND LESS a reasonable allowance for any damage not  
4 attributable to normal usage or wear, and, in the case of a lease  
5 contract, a cancellation of all further payments you are otherwise  
6 required to make under the lease contract.

7 S 3. This act shall take effect immediately.