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I N   S E N A T E

April 2, 2012

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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

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  
24 elects to not return any vehicles traded-in by the consumer, the whole-  
25 sale value of any such traded-in vehicles as listed in the National Auto  
26 Dealers Association Used Car Guide, or such other guide as may be speci-  
27 fied in regulations promulgated by the commissioner of motor vehicles,  
28 as adjusted for mileage, improvements, and any major physical or mechan-  
29 ical defects in the traded-in vehicle at the time of trade-in. The deal-  
30 er selling or leasing the used motor vehicle shall deliver to the

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

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

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

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

32 S 2. Subparagraphs 5 and 6 of paragraph 1 of subdivision f of section  
33 198-b of the general business law, as separately amended by chapters 444  
34 and 609 of the laws of 1989, are amended to read as follows:

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

45 6. If your car is out of service to repair a problem for a total of  
46 fifteen days or more during the warranty period you are entitled to  
47 return the car and receive a refund of your purchase price or of all  
48 payments made under your lease contract, and of sales tax and fees,  
49 minus AN AMOUNT EQUAL TO TWENTY-FIVE CENTS PER MILE FOR EACH MILE IN  
50 EXCESS OF THE MILEAGE APPLICABLE TO THE VEHICLE CONTAINED ABOVE THAT THE  
51 VEHICLE HAS BEEN DRIVEN SINCE THE CONSUMER PURCHASED OR LEASED THE VEHI-  
52 CLE FROM THE DEALER, AND LESS a reasonable allowance for any damage not  
53 attributable to normal usage or wear, and, in the case of a lease  
54 contract, a cancellation of all further payments you are otherwise  
55 required to make under the lease contract.

56 S 3. This act shall take effect immediately.