

3822

2011-2012 Regular Sessions

I N A S S E M B L Y

January 27, 2011

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

AN ACT to amend the general business law and the tax law, in relation to
warranties for vessels

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

1 Section 1. The article heading of article 11-A of the general business
2 law, as added by chapter 900 of the laws of 1956, is amended to read as
3 follows:

4 MOTOR VEHICLE AND VESSEL MANUFACTURERS AND SELLERS

5 S 2. The general business law is amended by adding two new sections
6 198-d and 198-e to read as follows:

7 S 198-D. VESSEL WARRANTIES. (A) AS USED IN THIS SECTION:

8 (1) "CONSUMER" MEANS THE PURCHASER, LESSEE OR TRANSFEREE, OTHER THAN
9 FOR PURPOSES OF RESALE, OF A VESSEL WHICH IS USED PRIMARILY FOR
10 PERSONAL, FAMILY OR HOUSEHOLD PURPOSES AND ANY OTHER PERSON ENTITLED BY
11 THE TERMS OF THE MANUFACTURER'S WARRANTY TO ENFORCE THE OBLIGATIONS OF
12 SUCH WARRANTY.

13 (2) "VESSEL" MEANS A NEW VESSEL, PROPELLED BY POWER OTHER THAN MUSCU-
14 LAR POWER, WHICH IS SOLD IN THIS STATE TO TRANSPORT PERSONS OR PROPERTY,
15 AND INCLUDES A VESSEL USED AS A DEMONSTRATOR OR LEASED VESSEL IF A
16 MANUFACTURER'S WARRANTY WAS ISSUED AS A CONDITION OF SALE, OR THE LESSEE
17 IS RESPONSIBLE FOR REPAIRS. THE TERM "VESSEL" INCLUDES THE ENGINE WHICH
18 POWERS THE VESSEL. THE TERM "VESSEL" ALSO INCLUDES PERSONAL WATERCRAFT
19 AND SPECIALTY PROP-CRAFT AS DEFINED IN THE NAVIGATION LAW.

20 (3) "MANUFACTURER'S EXPRESS WARRANTY" OR "WARRANTY" MEANS THE WRITTEN
21 WARRANTY, SO LABELED, OF THE MANUFACTURER OF A VESSEL, INCLUDING ANY
22 TERMS OR CONDITIONS PRECEDENT TO THE ENFORCEMENT OF OBLIGATIONS UNDER
23 THAT WARRANTY.

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

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1 (4) "HOURS OF USE DEDUCTION FORMULA" MEANS THE HOURS OF USE AMOUNT
2 WHICH IS IN EXCESS OF FIFTY HOURS TIMES THE PURCHASE PRICE OR THE LEASE
3 PRICE, IF APPLICABLE, OF THE VESSEL DIVIDED BY FIVE HUNDRED HOURS.

4 (5) "LESSEE" MEANS ANY CONSUMER WHO LEASES A VESSEL PURSUANT TO A
5 WRITTEN LEASE AGREEMENT WHICH PROVIDES THAT THE LESSEE IS RESPONSIBLE
6 FOR REPAIRS TO SUCH VESSEL.

7 (6) "LEASE PRICE" MEANS THE AGGREGATE OF:
8 (I) THE LESSOR'S ACTUAL PURCHASE COST;
9 (II) THE FREIGHT COST, IF APPLICABLE;
10 (III) THE COST FOR ACCESSORIES, IF APPLICABLE;
11 (IV) ANY FEE PAID TO ANOTHER TO OBTAIN THE LEASE; AND
12 (V) AN AMOUNT EQUAL TO FIVE PERCENT OF THE LESSOR'S ACTUAL PURCHASE
13 COST AS PRESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH.

14 (7) "SERVICE FEES" MEANS THE PORTION OF A LEASE PAYMENT ATTRIBUTABLE
15 TO:
16 (I) AN AMOUNT FOR EARNED INTEREST CALCULATED ON THE RENTAL PAYMENTS
17 PREVIOUSLY PAID TO THE LESSOR FOR THE LEASED VESSEL AT AN ANNUAL RATE
18 EQUAL TO TWO POINTS ABOVE THE PRIME RATE IN EFFECT ON THE DATE OF THE
19 EXECUTION OF THE LEASE; AND
20 (II) ANY INSURANCE OR OTHER COSTS EXPENDED BY THE LESSOR FOR THE BENE-
21 FIT OF THE LESSEE.

22 (8) "CAPITALIZED COST" MEANS THE AGGREGATE DEPOSIT AND RENTAL PAYMENTS
23 PREVIOUSLY PAID TO THE LESSOR FOR THE LEASED VESSEL LESS SERVICE FEES.

24 (B) (1) IF A VESSEL WHICH IS SOLD IN THIS STATE DOES NOT CONFORM TO
25 ALL EXPRESS WARRANTIES DURING THE FIRST SEVENTY-FIVE HOURS OF OPERATION
26 OR DURING THE PERIOD OF TWO YEARS FOLLOWING THE DATE OF ORIGINAL DELIV-
27 ERY OF THE VESSEL TO SUCH CONSUMER, WHICHEVER IS THE EARLIER DATE, THE
28 CONSUMER SHALL DURING SUCH PERIOD REPORT THE NONCONFORMITY, DEFECT OR
29 CONDITION TO THE MANUFACTURER, ITS AGENT OR ITS AUTHORIZED DEALER. IF
30 THE NOTIFICATION IS RECEIVED BY THE MANUFACTURER'S AGENT OR AUTHORIZED
31 DEALER, THE AGENT OR DEALER SHALL WITHIN SEVEN DAYS FORWARD WRITTEN
32 NOTICE THEREOF TO THE MANUFACTURER BY CERTIFIED MAIL, RETURN RECEIPT
33 REQUESTED, AND SHALL INCLUDE IN SUCH NOTICE A STATEMENT INDICATING
34 WHETHER OR NOT SUCH REPAIRS HAVE BEEN UNDERTAKEN. THE MANUFACTURER, ITS
35 AGENT OR ITS AUTHORIZED DEALER SHALL CORRECT SUCH NONCONFORMITY, DEFECT
36 OR CONDITION AT NO CHARGE TO THE CONSUMER, NOTWITHSTANDING THE FACT THAT
37 SUCH REPAIRS ARE MADE AFTER THE EXPIRATION OF SUCH PERIOD OF OPERATION
38 OR SUCH TWO YEAR PERIOD.

39 (2) IF A MANUFACTURER'S AGENT OR AUTHORIZED DEALER REFUSES TO UNDER-
40 TAKE REPAIRS WITHIN SEVEN DAYS OF RECEIPT OF THE NOTICE BY A CONSUMER OF
41 A NONCONFORMITY, DEFECT OR CONDITION PURSUANT TO PARAGRAPH ONE OF THIS
42 SUBDIVISION, THE CONSUMER MAY IMMEDIATELY FORWARD WRITTEN NOTICE OF SUCH
43 REFUSAL TO THE MANUFACTURER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.
44 THE MANUFACTURER OR ITS AUTHORIZED AGENT SHALL HAVE TWENTY DAYS FROM
45 RECEIPT OF SUCH NOTICE OF REFUSAL TO COMMENCE SUCH REPAIRS. IF WITHIN
46 SUCH TWENTY DAY PERIOD, THE MANUFACTURER OR ITS AUTHORIZED AGENT FAILS
47 TO COMMENCE SUCH REPAIRS, THE MANUFACTURER, AT THE OPTION OF THE CONSUM-
48 ER, SHALL REPLACE THE VESSEL WITH A COMPARABLE VESSEL OR ACCEPT RETURN
49 OF THE VESSEL FROM THE CONSUMER AND REFUND TO THE CONSUMER THE FULL
50 PURCHASE PRICE OR, IF APPLICABLE, THE LEASE PRICE AND ANY TRADE-IN
51 ALLOWANCE PLUS FEES AND CHARGES. SUCH FEES AND CHARGES SHALL INCLUDE BUT
52 NOT BE LIMITED TO ALL LICENSE FEES, REGISTRATION FEES AND ANY SIMILAR
53 GOVERNMENTAL CHARGES, LESS AN ALLOWANCE FOR THE CONSUMER'S USE OF THE
54 VESSEL IN EXCESS OF THE FIRST FIFTY HOURS OF OPERATION PURSUANT TO THE
55 HOURS OF USE DEDUCTION FORMULA AND A REASONABLE ALLOWANCE FOR ANY DAMAGE
56 NOT ATTRIBUTABLE TO NORMAL WEAR OR IMPROVEMENTS.

1 (C) (1) IF, WITHIN THE PERIOD SPECIFIED IN SUBDIVISION (B) OF THIS
2 SECTION, THE MANUFACTURER OR ITS AGENTS OR AUTHORIZED DEALERS ARE UNABLE
3 TO REPAIR OR CORRECT ANY DEFECT OR CONDITION WHICH SUBSTANTIALLY IMPAIRS
4 THE VALUE OF THE VESSEL TO THE CONSUMER AFTER A REASONABLE NUMBER OF
5 ATTEMPTS, THE MANUFACTURER, AT THE OPTION OF THE CONSUMER, SHALL REPLACE
6 THE VESSEL WITH A COMPARABLE VESSEL OR ACCEPT RETURN OF THE VESSEL FROM
7 THE CONSUMER AND REFUND TO THE CONSUMER THE FULL PURCHASE PRICE OR, IF
8 APPLICABLE, THE LEASE PRICE AND ANY TRADE-IN ALLOWANCE PLUS FEES AND
9 CHARGES. ANY RETURN OF A VESSEL MAY, AT THE OPTION OF THE CONSUMER, BE
10 MADE TO THE DEALER OR OTHER AUTHORIZED AGENT OF THE MANUFACTURER WHO
11 SOLD SUCH VESSEL TO THE CONSUMER OR TO THE DEALER OR OTHER AUTHORIZED
12 AGENT WHO ATTEMPTED TO REPAIR OR CORRECT THE DEFECT OR CONDITION WHICH
13 NECESSITATED THE RETURN AND SHALL NOT BE SUBJECT TO ANY FURTHER SHIPPING
14 CHARGES. SUCH FEES AND CHARGES SHALL INCLUDE BUT NOT BE LIMITED TO ALL
15 LICENSE FEES, REGISTRATION FEES AND ANY SIMILAR GOVERNMENTAL CHARGES,
16 LESS AN ALLOWANCE FOR THE CONSUMER'S USE OF THE VESSEL IN EXCESS OF THE
17 FIRST FIFTY HOURS OF OPERATION PURSUANT TO THE HOURS OF USE DEDUCTION
18 FORMULA AND A REASONABLE ALLOWANCE FOR ANY DAMAGE NOT ATTRIBUTABLE TO
19 NORMAL WEAR OR IMPROVEMENTS.

20 (2) A MANUFACTURER WHICH ACCEPTS RETURN OF THE VESSEL BECAUSE THE
21 VESSEL DOES NOT CONFORM TO ITS WARRANTY SHALL NOTIFY THE COMMISSIONER OF
22 MOTOR VEHICLES THAT THE VESSEL WAS RETURNED TO THE MANUFACTURER FOR
23 NONCONFORMITY TO ITS WARRANTY AND SHALL DISCLOSE, IN ACCORDANCE WITH THE
24 PROVISIONS OF SECTION ONE HUNDRED NINETY-EIGHT-E OF THIS ARTICLE, PRIOR
25 TO RESALE EITHER AT WHOLESALE OR RETAIL THAT IT WAS PREVIOUSLY RETURNED
26 TO THE MANUFACTURER FOR NONCONFORMITY TO ITS WARRANTY. REFUNDS SHALL BE
27 MADE TO THE CONSUMER AND LIENHOLDER, IF ANY, AS THEIR INTERESTS MAY
28 APPEAR ON THE RECORDS OF OWNERSHIP KEPT BY THE DEPARTMENT OF MOTOR VEHI-
29 CLES. REFUNDS SHALL BE ACCOMPANIED BY THE PROPER APPLICATION FOR CREDIT
30 OR REFUND OF STATE AND LOCAL SALES TAXES AS PUBLISHED BY THE DEPARTMENT
31 OF TAXATION AND FINANCE AND BY A NOTICE THAT THE SALES TAX PAID ON THE
32 PURCHASE PRICE, LEASE PRICE OR PORTION THEREOF BEING REFUNDED IS REFUND-
33 ABLE BY THE COMMISSIONER OF TAXATION AND FINANCE IN ACCORDANCE WITH THE
34 PROVISIONS OF SUBDIVISION (F) OF SECTION ELEVEN HUNDRED THIRTY-NINE OF
35 THE TAX LAW. IF APPLICABLE, REFUNDS SHALL BE MADE TO THE LESSOR AND
36 LESSEE AS THEIR INTERESTS MAY APPEAR ON THE RECORDS OF OWNERSHIP KEPT BY
37 THE DEPARTMENT OF MOTOR VEHICLES, AS FOLLOWS: THE LESSEE SHALL RECEIVE
38 THE CAPITALIZED COST AND THE LESSOR SHALL RECEIVE THE LEASE PRICE LESS
39 THE AGGREGATE DEPOSIT AND RENTAL PAYMENTS PREVIOUSLY PAID TO THE LESSOR
40 FOR THE LEASED VESSEL. THE TERMS OF THE LEASE SHALL BE DEEMED TERMINATED
41 CONTEMPORANEOUSLY WITH THE DATE OF THE ARBITRATOR'S DECISION AND AWARD
42 AND NO PENALTY FOR EARLY TERMINATION SHALL BE ASSESSED AS A RESULT THER-
43 EOF. REFUNDS SHALL BE ACCOMPANIED BY THE PROPER APPLICATION FORM FOR
44 CREDIT OR REFUND OF STATE AND LOCAL SALES TAX AS PUBLISHED BY THE
45 DEPARTMENT OF TAXATION AND FINANCE AND A NOTICE THAT THE SALES TAX PAID
46 ON THE LEASE PRICE OR PORTION THEREOF BEING REFUNDED IS REFUNDABLE BY
47 THE COMMISSIONER OF TAXATION AND FINANCE IN ACCORDANCE WITH THE
48 PROVISIONS OF SUBDIVISION (F) OF SECTION ELEVEN HUNDRED THIRTY-NINE OF
49 THE TAX LAW.

50 (3) IT SHALL BE AN AFFIRMATIVE DEFENSE TO ANY CLAIM UNDER THIS SECTION
51 THAT:

52 (I) THE NONCONFORMITY, DEFECT OR CONDITION DOES NOT SUBSTANTIALLY
53 IMPAIR SUCH VALUE; OR

54 (II) THE NONCONFORMITY, DEFECT OR CONDITION IS THE RESULT OF ABUSE,
55 NEGLIGENCE OR UNAUTHORIZED MODIFICATIONS OR ALTERATIONS OF THE VESSEL.

1 (D) IT SHALL BE PRESUMED THAT A REASONABLE NUMBER OF ATTEMPTS HAVE
2 BEEN UNDERTAKEN TO CONFORM A VESSEL TO THE APPLICABLE EXPRESS WARRANT-
3 TIES, IF:

4 (1) THE SAME NONCONFORMITY, DEFECT OR CONDITION HAS BEEN SUBJECT TO
5 REPAIR FOUR OR MORE TIMES BY THE MANUFACTURER OR ITS AGENTS OR AUTHOR-
6 IZED DEALERS WITHIN THE FIRST SEVENTY-FIVE HOURS OF OPERATION OR DURING
7 THE PERIOD OF TWO YEARS FOLLOWING THE DATE OF ORIGINAL DELIVERY OF THE
8 VESSEL TO A CONSUMER, WHICHEVER IS THE EARLIER DATE, BUT SUCH NONCON-
9 FORMITY, DEFECT OR CONDITION CONTINUES TO EXIST; OR

10 (2) THE VESSEL IS OUT OF SERVICE BY REASON OF REPAIR OF ONE OR MORE
11 NONCONFORMITIES, DEFECTS OR CONDITIONS FOR A CUMULATIVE TOTAL OF THIRTY
12 OR MORE CALENDAR DAYS DURING EITHER PERIOD, WHICHEVER IS THE EARLIER
13 DATE.

14 (E) THE TERM OF AN EXPRESS WARRANTY, THE TWO YEAR WARRANTY PERIOD AND
15 THE THIRTY DAY OUT OF SERVICE PERIOD SHALL BE EXTENDED BY ANY TIME
16 DURING WHICH REPAIR SERVICES ARE NOT AVAILABLE TO THE CONSUMER BECAUSE
17 OF A WAR, INVASION, STRIKE, FIRE, FLOOD OR OTHER NATURAL DISASTER.

18 (F) NOTHING IN THIS SECTION SHALL IN ANY WAY LIMIT THE RIGHTS OR REME-
19 DIES WHICH ARE OTHERWISE AVAILABLE TO A CONSUMER UNDER ANY OTHER LAW.

20 (G) IF A MANUFACTURER HAS ESTABLISHED AN INFORMAL DISPUTE SETTLEMENT
21 MECHANISM, SUCH MECHANISM SHALL COMPLY IN ALL RESPECTS WITH THE
22 PROVISIONS OF THIS SECTION AND THE PROVISIONS OF SUBDIVISION (C) OF THIS
23 SECTION CONCERNING REFUNDS OR REPLACEMENT SHALL NOT APPLY TO ANY CONSUM-
24 ER WHO HAS NOT FIRST RESORTED TO SUCH MECHANISM. IN THE EVENT THAT AN
25 ARBITRATOR IN SUCH AN INFORMAL DISPUTE MECHANISM AWARDS A REFUND OR
26 REPLACEMENT VESSEL, HE OR SHE SHALL NOT REDUCE THE AWARD TO AN AMOUNT
27 LESS THAN THE FULL PURCHASE PRICE OR THE LEASE PRICE, IF APPLICABLE, OR
28 A VESSEL OF EQUAL VALUE, PLUS ALL FEES AND CHARGES EXCEPT TO THE EXTENT
29 SUCH REDUCTIONS ARE SPECIFICALLY PERMITTED UNDER SUBDIVISION (C) OF THIS
30 SECTION.

31 (H) A MANUFACTURER SHALL HAVE UP TO THIRTY DAYS FROM THE DATE THE
32 CONSUMER NOTIFIES THE MANUFACTURER OF HIS OR HER ACCEPTANCE OF THE
33 ARBITRATOR'S DECISION TO COMPLY WITH THE TERMS OF THAT DECISION. FAIL-
34 URE TO COMPLY WITH THE THIRTY DAY LIMITATION SHALL ALSO ENTITLE THE
35 CONSUMER TO RECOVER A FEE OF TWENTY-FIVE DOLLARS FOR EACH BUSINESS DAY
36 OF NONCOMPLIANCE UP TO FIVE HUNDRED DOLLARS. PROVIDED, HOWEVER, THAT
37 NOTHING CONTAINED IN THIS SUBDIVISION SHALL IMPOSE ANY LIABILITY ON A
38 MANUFACTURER WHERE A DELAY BEYOND THE THIRTY DAY PERIOD IS ATTRIBUTABLE
39 TO A CONSUMER WHO HAS REQUESTED A REPLACEMENT VESSEL BUILT TO ORDER OR
40 WITH OPTIONS THAT ARE NOT COMPARABLE TO THE VESSEL BEING REPLACED OR
41 OTHERWISE MADE COMPLIANCE IMPOSSIBLE WITHIN SAID PERIOD. IN NO EVENT
42 SHALL A CONSUMER WHO HAS RESORTED TO AN INFORMAL DISPUTE SETTLEMENT
43 MECHANISM BE PRECLUDED FROM SEEKING THE RIGHTS OR REMEDIES AVAILABLE BY
44 LAW.

45 (I) ANY AGREEMENT ENTERED INTO BY A CONSUMER FOR THE PURCHASE OF A NEW
46 VESSEL WHICH WAIVES, LIMITS OR DISCLAIMS THE RIGHTS SET FORTH IN THIS
47 SECTION SHALL BE VOID AS CONTRARY TO PUBLIC POLICY. SUCH RIGHTS SHALL
48 INURE TO A SUBSEQUENT TRANSFEREE OF SUCH VESSEL.

49 ANY PROVISION OF ANY AGREEMENT ENTERED INTO BY A CONSUMER FOR THE
50 PURCHASE OF A VESSEL WHICH INCLUDES AS AN ADDITIONAL COST FOR SUCH
51 VESSEL AN EXPENSE IDENTIFIED AS BEING FOR THE PURPOSE OF AFFORDING SUCH
52 CONSUMER HIS OR HER RIGHTS UNDER THIS SECTION, SHALL BE VOID AS CONTRARY
53 TO PUBLIC POLICY.

54 (J) ANY ACTION BROUGHT PURSUANT TO THIS SECTION SHALL BE COMMENCED
55 WITHIN FOUR YEARS OF THE DATE OF ORIGINAL DELIVERY OF THE VESSEL TO THE
56 CONSUMER.

1 (K) EACH CONSUMER SHALL HAVE THE OPTION OF SUBMITTING ANY DISPUTE
2 ARISING UNDER THIS SECTION UPON THE PAYMENT OF A PRESCRIBED FILING FEE
3 TO AN ALTERNATE ARBITRATION MECHANISM ESTABLISHED PURSUANT TO REGU-
4 LATIONS PROMULGATED PURSUANT TO THIS SECTION BY THE ATTORNEY GENERAL.
5 UPON APPLICATION OF THE CONSUMER AND PAYMENT OF THE FILING FEE, ALL
6 MANUFACTURERS SHALL SUBMIT TO SUCH ALTERNATE ARBITRATION.

7 SUCH ALTERNATE ARBITRATION SHALL BE CONDUCTED BY A PROFESSIONAL ARBI-
8 TRATOR OR ARBITRATION FIRM APPOINTED BY AND UNDER REGULATIONS ESTAB-
9 LISHED BY THE ATTORNEY GENERAL. SUCH MECHANISM SHALL INSURE THE PERSONAL
10 OBJECTIVITY OF ITS ARBITRATORS AND THE RIGHT OF EACH PARTY TO PRESENT
11 ITS CASE, TO BE IN ATTENDANCE DURING ANY PRESENTATION MADE BY THE OTHER
12 PARTY AND TO REBUT OR REFUTE SUCH PRESENTATION. IN ALL OTHER RESPECTS,
13 SUCH ALTERNATE ARBITRATION MECHANISM SHALL BE GOVERNED BY ARTICLE SEVEN-
14 TY-FIVE OF THE CIVIL PRACTICE LAW AND RULES.

15 (L) A COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING
16 PLAINTIFF OR TO A CONSUMER WHO PREVAILS IN ANY JUDICIAL ACTION OR
17 PROCEEDING ARISING OUT OF AN ARBITRATION PROCEEDING HELD PURSUANT TO
18 SUBDIVISION (K) OF THIS SECTION. IN THE EVENT A PREVAILING PLAINTIFF IS
19 REQUIRED TO RETAIN THE SERVICES OF AN ATTORNEY TO ENFORCE COLLECTION OF
20 AN AWARD GRANTED PURSUANT TO THIS SECTION, THE COURT MAY ASSESS AGAINST
21 THE MANUFACTURER REASONABLE ATTORNEY'S FEES FOR SERVICES RENDERED TO
22 ENFORCE COLLECTION OF SAID AWARD.

23 (M) (1) EACH MANUFACTURER SHALL REQUIRE THAT EACH INFORMAL DISPUTE
24 SETTLEMENT MECHANISM USED BY IT PROVIDE, AT A MINIMUM, THE FOLLOWING:

25 (I) THAT THE ARBITRATORS PARTICIPATING IN SUCH MECHANISM ARE TRAINED
26 IN ARBITRATION AND FAMILIAR WITH THE PROVISIONS OF THIS SECTION, THAT
27 THE ARBITRATORS AND CONSUMERS WHO REQUEST ARBITRATION ARE PROVIDED WITH
28 A WRITTEN COPY OF THE PROVISIONS OF THIS SECTION, TOGETHER WITH THE
29 NOTICE SET FORTH BELOW ENTITLED "NEW VESSEL LEMON LAW BILL OF RIGHTS",
30 AND THAT CONSUMERS, UPON REQUEST, ARE GIVEN AN OPPORTUNITY TO MAKE AN
31 ORAL PRESENTATION TO THE ARBITRATOR;

32 (II) THAT THE RIGHTS AND PROCEDURES USED IN THE MECHANISM COMPLY WITH
33 FEDERAL REGULATIONS PROMULGATED BY THE FEDERAL TRADE COMMISSION RELATING
34 TO INFORMAL DISPUTE SETTLEMENT MECHANISMS; AND

35 (III) THAT THE REMEDIES SET FORTH IN SUBDIVISION (C) OF THIS SECTION
36 ARE AWARDED IF, AFTER A REASONABLE NUMBER OF ATTEMPTS HAVE BEEN UNDER-
37 TAKEN UNDER SUBDIVISION (D) OF THIS SECTION TO CONFORM THE VESSEL TO THE
38 EXPRESS WARRANTIES, THE DEFECT OR NONCONFORMITY STILL EXISTS.

39 (2) THE FOLLOWING NOTICE SHALL BE PROVIDED TO CONSUMERS AND ARBITRA-
40 TORS AND SHALL BE PRINTED IN CONSPICUOUS TEN POINT BOLD FACE TYPE:

41 NEW VESSEL LEMON LAW BILL OF RIGHTS

42 (1) IN ADDITION TO ANY WARRANTIES OFFERED BY THE MANUFACTURER, YOUR
43 NEW VESSEL, IF PURCHASED AND REGISTERED IN NEW YORK STATE, IS WARRANTED
44 AGAINST ALL MATERIAL DEFECTS FOR SEVENTY-FIVE HOURS OF USE OR TWO YEARS,
45 WHICHEVER COMES FIRST.

46 (2) YOU MUST REPORT ANY PROBLEMS TO THE MANUFACTURER, ITS AGENT OR
47 AUTHORIZED DEALER.

48 (3) UPON NOTIFICATION, THE PROBLEM MUST BE CORRECTED FREE OF CHARGE.

49 (4) IF THE SAME PROBLEM CANNOT BE REPAIRED AFTER FOUR OR MORE
50 ATTEMPTS; OR IF YOUR VESSEL IS OUT OF SERVICE TO REPAIR A PROBLEM FOR A
51 TOTAL OF THIRTY DAYS DURING THE WARRANTY PERIOD; OR IF THE MANUFACTURER
52 OR ITS AGENT REFUSES TO REPAIR A SUBSTANTIAL DEFECT OR CONDITION WITHIN
53 TWENTY DAYS OF RECEIPT OF NOTICE SENT BY YOU TO THE MANUFACTURER BY
54 CERTIFIED MAIL, RETURN RECEIPT REQUESTED; THEN YOU MAY BE ENTITLED TO
55 EITHER A COMPARABLE VESSEL OR A REFUND OF YOUR PURCHASE PRICE, PLUS
56 LICENSE AND REGISTRATION FEES, MINUS AN HOURS OF USE ALLOWANCE ONLY IF

1 THE VESSEL HAS BEEN OPERATED MORE THAN FIFTY HOURS. SPECIAL NOTIFICA-
2 TION REQUIREMENTS MAY APPLY TO HOUSEBOATS.

3 (5) A MANUFACTURER MAY DENY LIABILITY IF THE PROBLEM IS CAUSED BY
4 ABUSE, NEGLIGENCE OR UNAUTHORIZED MODIFICATIONS OF THE VESSEL.

5 (6) A MANUFACTURER MAY REFUSE TO EXCHANGE A COMPARABLE VESSEL OR
6 REFUND YOUR PURCHASE PRICE IF THE PROBLEM DOES NOT SUBSTANTIALLY IMPAIR
7 THE VALUE OF YOUR VESSEL.

8 (7) IF A MANUFACTURER HAS ESTABLISHED AN ARBITRATION PROCEDURE, THE
9 MANUFACTURER MAY REFUSE TO EXCHANGE A COMPARABLE VESSEL OR REFUND YOUR
10 PURCHASE PRICE UNTIL YOU FIRST RESORT TO THE PROCEDURE.

11 (8) IF THE MANUFACTURER DOES NOT HAVE AN ARBITRATION PROCEDURE, YOU
12 MAY RESORT TO ANY REMEDY BY LAW AND MAY BE ENTITLED TO YOUR ATTORNEY'S
13 FEES IF YOU PREVAIL.

14 (9) NO CONTRACT OR AGREEMENT CAN VOID ANY OF THESE RIGHTS.

15 (10) AS AN ALTERNATIVE TO THE ARBITRATION PROCEDURE MADE AVAILABLE
16 THROUGH THE MANUFACTURER, YOU MAY INSTEAD CHOOSE TO SUBMIT YOUR CLAIM TO
17 AN INDEPENDENT ARBITRATOR, APPROVED BY THE ATTORNEY GENERAL. YOU MAY
18 HAVE TO PAY A FEE FOR SUCH AN ARBITRATION. CONTACT YOUR LOCAL CONSUMER
19 OFFICE OR ATTORNEY GENERAL'S OFFICE TO FIND OUT HOW TO ARRANGE FOR INDE-
20 PENDENT ARBITRATION.

21 (3) ALL INFORMAL DISPUTE SETTLEMENT MECHANISMS SHALL MAINTAIN THE
22 FOLLOWING RECORDS:

23 (I) THE NUMBER OF PURCHASE PRICE AND LEASE PRICE REFUNDS AND VESSEL
24 REPLACEMENTS REQUESTED, THE NUMBER OF EACH AWARDED IN ARBITRATION, THE
25 AMOUNT OF EACH AWARD AND THE NUMBER OF AWARDS THAT WERE COMPLIED WITH IN
26 A TIMELY MANNER;

27 (II) THE NUMBER OF AWARDS WHERE ADDITIONAL REPAIRS OR A WARRANTY
28 EXTENSION WAS THE MOST PROMINENT REMEDY, THE AMOUNT OR VALUE OF EACH
29 AWARD, AND THE NUMBER OF SUCH AWARDS THAT WERE COMPLIED WITH IN A TIMELY
30 MANNER;

31 (III) THE NUMBER AND TOTAL DOLLAR AMOUNT OF AWARDS WHERE SOME FORM OF
32 REIMBURSEMENT FOR EXPENSES OR COMPENSATION FOR LOSSES WAS THE MOST PROM-
33 INENT REMEDY, THE AMOUNT OR VALUE OF EACH AWARD AND THE NUMBER OF SUCH
34 AWARDS THAT WERE COMPLIED WITH IN A TIMELY MANNER; AND

35 (IV) THE AVERAGE NUMBER OF DAYS FROM THE DATE OF A CONSUMER'S INITIAL
36 REQUEST TO ARBITRATE UNTIL THE DATE OF THE FINAL ARBITRATOR'S DECISION
37 AND THE AVERAGE NUMBER OF DAYS FROM THE DATE OF THE FINAL ARBITRATOR'S
38 DECISION TO THE DATE ON WHICH PERFORMANCE WAS SATISFACTORILY CARRIED
39 OUT.

40 (N) SPECIAL PROVISIONS APPLICABLE TO HOUSEBOATS:

41 (1) TO THE EXTENT THAT THE PROVISIONS OF THIS SUBDIVISION ARE INCON-
42 SISTENT WITH THE OTHER PROVISIONS OF THIS SECTION, THE PROVISIONS OF
43 THIS SUBDIVISION SHALL APPLY.

44 (2) FOR PURPOSES OF THIS SECTION, THE "MANUFACTURER OF A HOUSEBOAT" IS
45 ANY PERSON, PARTNERSHIP, CORPORATION, FACTORY BRANCH OR OTHER ENTITY
46 ENGAGED IN THE BUSINESS OF MANUFACTURING OR ASSEMBLING HOUSEBOATS FOR
47 SALE IN THIS STATE.

48 (3) THIS SECTION SHALL NOT APPLY TO NONCONFORMITIES, DEFECTS OR CONDI-
49 TIONS IN HOUSEBOAT SYSTEMS, FIXTURES, COMPONENTS, APPLIANCES,
50 FURNISHINGS OR ACCESSORIES THAT ARE RESIDENTIAL IN CHARACTER.

51 (4) IF, WITHIN THE PERIOD SPECIFIED IN SUBDIVISION (B) OF THIS
52 SECTION, THE MANUFACTURER OF A HOUSEBOAT OR ITS AGENTS OR ITS AUTHORIZED
53 DEALERS OR REPAIR SHOPS TO WHICH THEY REFER A CONSUMER ARE UNABLE TO
54 REPAIR OR CORRECT ANY DEFECT OR CONDITION WHICH SUBSTANTIALLY IMPAIRS
55 THE VALUE OF THE HOUSEBOAT TO THE CONSUMER AFTER A REASONABLE NUMBER OF
56 ATTEMPTS, THE HOUSEBOAT MANUFACTURER, AT THE OPTION OF THE CONSUMER,

1 SHALL REPLACE THE HOUSEBOAT WITH A COMPARABLE HOUSEBOAT OR ACCEPT RETURN
2 OF THE HOUSEBOAT FROM THE CONSUMER AND REFUND TO THE CONSUMER THE FULL
3 PURCHASE PRICE OR, IF APPLICABLE, THE LEASE PRICE AND ANY TRADE-IN
4 ALLOWANCE PLUS FEES AND CHARGES AS WELL AS THE OTHER FEES AND CHARGES
5 SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (C) OF THIS SECTION.

6 (5) IF AN AGENT OR AUTHORIZED DEALER OF A HOUSEBOAT MANUFACTURER OR A
7 REPAIR SHOP TO WHICH THEY REFER A CONSUMER REFUSES TO UNDERTAKE REPAIRS
8 WITHIN SEVEN DAYS OF RECEIPT OF NOTICE BY A CONSUMER OF A NONCONFORMITY,
9 DEFECT OR CONDITION PURSUANT TO PARAGRAPH ONE OF SUBDIVISION (B) OF THIS
10 SECTION, THE CONSUMER MAY IMMEDIATELY FORWARD WRITTEN NOTICE OF SUCH
11 REFUSAL TO THE HOUSEBOAT MANUFACTURER BY CERTIFIED MAIL, RETURN RECEIPT
12 REQUESTED. THE HOUSEBOAT MANUFACTURER OR ITS AUTHORIZED AGENT OR A
13 REPAIR SHOP TO WHICH THEY REFER A CONSUMER SHALL HAVE TWENTY DAYS FROM
14 RECEIPT OF SUCH NOTICE OF REFUSAL TO COMMENCE SUCH REPAIRS. IF WITHIN
15 SUCH TWENTY DAY PERIOD, THE HOUSEBOAT MANUFACTURER OR ITS AUTHORIZED
16 AGENT OR REPAIR SHOP TO WHICH THEY REFER A CONSUMER, FAILS TO COMMENCE
17 SUCH REPAIRS, THE HOUSEBOAT MANUFACTURER, AT THE OPTION OF THE CONSUMER,
18 SHALL REPLACE THE HOUSEBOAT WITH A COMPARABLE HOUSEBOAT, OR ACCEPT
19 RETURN OF THE HOUSEBOAT FROM THE CONSUMER AND REFUND TO THE CONSUMER THE
20 FULL PURCHASE PRICE OR, IF APPLICABLE, THE LEASE PRICE, AND ANY TRADE-IN
21 ALLOWANCE OR OTHER CHARGES OR ALLOWANCES AS SET FORTH IN PARAGRAPH TWO
22 OF SUBDIVISION (B) OF THIS SECTION.

23 (6) IF WITHIN THE PERIOD SPECIFIED IN SUBDIVISION (B) OF THIS SECTION,
24 THE SAME NONCONFORMITY, DEFECT OR CONDITION IN A HOUSEBOAT HAS BEEN
25 SUBJECT TO REPAIR THREE TIMES OR A HOUSEBOAT HAS BEEN OUT OF SERVICE BY
26 REASON OF REPAIR FOR TWENTY-ONE DAYS, WHICHEVER OCCURS FIRST, THE
27 CONSUMER MUST HAVE REPORTED THIS TO THE HOUSEBOAT MANUFACTURER OR ITS
28 AUTHORIZED DEALER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED PRIOR TO
29 INSTITUTING ANY PROCEEDING OR OTHER ACTION PURSUANT TO THIS SECTION;
30 PROVIDED, HOWEVER, THAT THE SPECIAL NOTIFICATION REQUIREMENTS OF THIS
31 PARAGRAPH SHALL ONLY APPLY IF THE MANUFACTURER OR ITS AUTHORIZED DEALER
32 PROVIDES A PRIOR WRITTEN COPY OF THE REQUIREMENTS OF THIS PARAGRAPH TO
33 THE CONSUMER AND RECEIPT OF THE NOTICE IS ACKNOWLEDGED BY THE CONSUMER
34 IN WRITING. IF THE CONSUMER WHO HAS RECEIVED NOTICE FROM THE MANUFACTUR-
35 ER FAILS TO COMPLY WITH THE SPECIAL NOTIFICATION REQUIREMENTS OF THIS
36 PARAGRAPH, ADDITIONAL REPAIR ATTEMPTS OR DAYS OUT OF SERVICE BY REASON
37 OF REPAIR SHALL NOT BE TAKEN INTO ACCOUNT IN DETERMINING WHETHER THE
38 CONSUMER IS ENTITLED TO A REMEDY PROVIDED IN PARAGRAPH FOUR OF THIS
39 SUBDIVISION. HOWEVER, ADDITIONAL REPAIR ATTEMPTS OR DAYS OUT OF SERVICE
40 BY REASON OF REPAIR THAT OCCUR AFTER THE CONSUMER COMPLIES WITH SUCH
41 SPECIAL NOTIFICATION REQUIREMENTS SHALL BE TAKEN INTO ACCOUNT IN MAKING
42 THAT DETERMINATION.

43 (7) NOTHING IN THIS SECTION SHALL IN ANY WAY LIMIT ANY RIGHTS, REME-
44 DIES OR CAUSES OF ACTION THAT A CONSUMER OR HOUSEBOAT MANUFACTURER MAY
45 OTHERWISE HAVE AGAINST THE MANUFACTURER OF THE HOUSEBOAT'S CHASSIS, OR
46 ITS PROPULSION AND OTHER COMPONENTS.

47 (O) AT THE TIME OF PURCHASE OR LEASE OF A VESSEL FROM AN AUTHORIZED
48 DEALER IN THIS STATE, THE MANUFACTURER SHALL PROVIDE TO THE DEALER OR
49 LEASEHOLDER, AND THE DEALER OR LEASEHOLDER SHALL PROVIDE TO THE CONSUMER
50 A NOTICE, PRINTED IN NOT LESS THAN EIGHT POINT BOLD FACE TYPE, ENTITLED
51 "NEW VESSEL LEMON LAW BILL OF RIGHTS". THE TEXT OF SUCH NOTICE SHALL BE
52 IDENTICAL WITH THE NOTICE REQUIRED BY PARAGRAPH TWO OF SUBDIVISION (M)
53 OF THIS SECTION.

54 S 198-E. MANDATORY DISCLOSURES BY SELLERS OF VESSELS PRIOR TO RESALE.
55 (A) CERTIFICATE OF PRIOR USE BY DEALER. UPON THE SALE OR TRANSFER OF
56 TITLE BY A DEALER OF ANY SECOND-HAND PASSENGER VESSEL, THE DEALER SHALL

1 EXECUTE AND DELIVER TO THE BUYER AN INSTRUMENT IN WRITING IN A FORM
2 PRESCRIBED BY THE COMMISSIONER OF MOTOR VEHICLES WHICH SHALL SET FORTH
3 THE NATURE OF THE PRINCIPAL PRIOR USE OF SUCH VESSEL WHICH HAS BEEN
4 REPURCHASED PURSUANT TO SECTION ONE HUNDRED NINETY-EIGHT-D OF THIS ARTI-
5 CLE, A SIMILAR STATUTE OF ANOTHER STATE, OR AN ARBITRATION OR ALTERNA-
6 TIVE DISPUTE PROCEDURE.

7 (B) CERTIFICATE OF PRIOR NONCONFORMITY BY MANUFACTURER OR DEALER. UPON
8 THE SALE OR TRANSFER OF TITLE BY A MANUFACTURER, ITS AGENT OR ANY DEALER
9 OF ANY SECOND-HAND VESSEL, PREVIOUSLY RETURNED TO A MANUFACTURER OR
10 DEALER FOR NONCONFORMITY TO ITS WARRANTY OR AFTER FINAL DETERMINATION,
11 ADJUDICATION OR SETTLEMENT PURSUANT TO SECTION ONE HUNDRED
12 NINETY-EIGHT-D OF THIS ARTICLE, THE MANUFACTURER OR DEALER SHALL EXECUTE
13 AND DELIVER TO THE BUYER AN INSTRUMENT IN WRITING IN A FORM PRESCRIBED
14 BY THE COMMISSIONER OF MOTOR VEHICLES SETTING FORTH THE FOLLOWING INFOR-
15 MATION IN TEN POINT, ALL CAPITAL TYPE: "IMPORTANT: THIS VESSEL WAS
16 RETURNED TO THE MANUFACTURER OR DEALER BECAUSE IT DID NOT CONFORM TO ITS
17 WARRANTY AND THE DEFECT OR CONDITION WAS NOT FIXED WITHIN A REASONABLE
18 TIME AS PROVIDED BY NEW YORK LAW." SUCH NOTICE THAT A VESSEL WAS
19 RETURNED TO THE MANUFACTURER OR DEALER BECAUSE IT DID NOT CONFORM TO ITS
20 WARRANTY SHALL ALSO BE CONSPICUOUSLY PRINTED ON THE VESSEL'S CERTIFICATE
21 OF TITLE.

22 (C) VIOLATION. THE FAILURE OF A DEALER TO DELIVER TO THE BUYER THE
23 INSTRUMENT REQUIRED BY THIS SECTION OR THE DELIVERY OF AN INSTRUMENT
24 CONTAINING FALSE OR MISLEADING INFORMATION SHALL CONSTITUTE A VIOLATION
25 OF THIS SECTION.

26 (D) PRIVATE REMEDY. A CONSUMER INJURED BY A VIOLATION OF THIS SECTION
27 MAY BRING AN ACTION TO RECOVER DAMAGES. JUDGMENT MAY BE ENTERED FOR
28 THREE TIMES THE ACTUAL DAMAGES SUFFERED BY A CONSUMER OR ONE HUNDRED
29 DOLLARS, WHICHEVER IS GREATER. A COURT ALSO MAY AWARD REASONABLE ATTOR-
30 NEYS' FEES TO A PREVAILING PLAINTIFF BUYER.

31 (E) (1) ACTION BY THE ATTORNEY GENERAL. UPON ANY VIOLATION OF THIS
32 SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME
33 OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING
34 JURISDICTION TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF
35 NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF THE
36 VIOLATION. IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR
37 JUSTICE THAT THE DEFENDANT HAS VIOLATED THIS SECTION, AN INJUNCTION MAY
38 BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER
39 VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN
40 INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE
41 ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF
42 SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE
43 LAW AND RULES, AND DIRECT RESTITUTION.

44 (2) WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS
45 SECTION HAS OCCURRED, IT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE
46 THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH AN APPLICATION
47 MADE UNDER THIS SUBDIVISION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE
48 PROOF AND TO MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE
49 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

50 S 3. Subdivision 3 of section 399-w of the general business law, as
51 added by chapter 372 of the laws of 1995, is amended to read as follows:

52 3. This section shall not apply to: (a) rental purchase agreements as
53 regulated by article eleven of the personal property law [and], (b)
54 motor vehicle rentals under paragraph two of subdivision (a) of section
55 one hundred ninety-eight-a and paragraph two of subdivision a of section
56 one hundred ninety-eight-b of this chapter, AND (C) VESSEL RENTALS UNDER

1 PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION ONE HUNDRED NINETY-EIGHT-D
2 OF THIS CHAPTER.

3 S 4. Subdivision (f) of section 1139 of the tax law, as amended by
4 chapter 12 of the laws of 1990, is amended to read as follows:

5 (f) Where a consumer returns a motor vehicle OR VESSEL to and receives
6 a refund of the full purchase price, capitalized cost or a portion ther-
7 eof from the manufacturer in accordance with the provisions of section
8 one hundred ninety-eight-a [or], subdivision five of section three
9 hundred ninety-six-p, OR SECTION ONE HUNDRED NINETY-EIGHT-D of the
10 general business law, the commissioner [of taxation and finance] shall
11 refund to such consumer any tax paid by the consumer on the amount of
12 the purchase price, capitalized costs and fees and charges refunded by
13 the manufacturer which is not in excess of the receipts and propor-
14 tionate to the receipts subject to tax. All the provisions of this
15 section shall apply to the refund authorized by this subdivision,
16 provided, however, that a request for a refund under this subdivision
17 shall be timely made if such request for a refund is made within three
18 years of the date the refund from the manufacturer is received by a
19 consumer pursuant to subdivision (c) of section one hundred ninety-
20 eight-a OR SUBDIVISION (C) OF SECTION ONE HUNDRED NINETY-EIGHT-D of the
21 general business law and further provided that interest allowable under
22 subdivision (d) of this section shall be payable from the date which is
23 three months after the date the application for refund in processible
24 form is received.

25 S 5. This act shall take effect on the first of January next succeed-
26 ing the date on which it shall have become a law; provided that the
27 commissioners of motor vehicles, taxation and finance, and parks, recre-
28 ation and historic preservation and the attorney general are authorized
29 to promulgate any and all rules and regulations and take any other meas-
30 ures necessary to implement the provisions of this act on its effective
31 date on or before such date.