

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

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2011-2012 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. ABBATE, P. RIVERA -- read once and referred to the Committee on Consumer Affairs and Protection -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the executive 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 and a new paragraph 5 is added 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 A MILEAGE CREDIT ALLOWANCE AS CALCULATED PURSUANT TO THE
12 METHODS SET FORTH IN PARAGRAPH FIVE OF THIS SUBDIVISION, FOR EACH MILE
13 IN EXCESS OF THE WARRANTY MILEAGE APPLICABLE TO THE VEHICLE CONTAINED IN
14 SUBDIVISION B OF THIS SECTION THAT THE VEHICLE HAS BEEN DRIVEN SINCE THE
15 DATE OF DELIVERY OF SUCH VEHICLE BY THE DEALER TO THE CONSUMER, AND LESS
16 a reasonable allowance for any damage not attributable to normal wear or
17 usage, and adjustment for any modifications which either increase or

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

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1 decrease the market value of the vehicle or of the lease contract, and
2 in the case of a lease contract, shall cancel all further payments due
3 from the consumer under the lease contract. In determining the purchase
4 price to be refunded or in determining all payments made under a lease
5 contract to be refunded, the purchase price, or all payments made under
6 a lease contract, shall be deemed equal to the sum of the actual cash
7 difference paid for the used motor vehicle, or for the lease contract,
8 plus, if the dealer elects to not return any vehicles traded-in by the
9 consumer, the wholesale value of any such traded-in vehicles as listed
10 in the National Auto Dealers Association Used Car Guide, or such other
11 guide as may be specified in regulations promulgated by the commissioner
12 of motor vehicles, as adjusted for mileage, improvements, and any major
13 physical or mechanical defects in the traded-in vehicle at the time of
14 trade-in. The dealer selling or leasing the used motor vehicle shall
15 deliver to the consumer a written notice including conspicuous language
16 indicating that if the consumer should be entitled to a refund pursuant
17 to this section, the value of any vehicle traded-in by the consumer, if
18 the dealer elects to not return it to the consumer, for purposes of
19 determining the amount of such refund will be determined by reference to
20 the National Auto Dealers Association Used Car Guide wholesale value, or
21 such other guide as may be approved by the commissioner of motor vehi-
22 cles, as adjusted for mileage, improvements, and any major physical or
23 mechanical defects, rather than the value listed in the sales contract.
24 Refunds shall be made to the consumer and lienholder, if any, as their
25 interests may appear on the records of ownership kept by the department
26 of motor vehicles. If the amount to be refunded to the lienholder will
27 be insufficient to discharge the lien, the dealer shall notify the
28 consumer in writing by registered or certified mail that the consumer
29 has thirty days to pay the lienholder the amount which, together with
30 the amount to be refunded by the dealer, will be sufficient to discharge
31 the lien. The notice to the consumer shall contain conspicuous language
32 warning the consumer that failure to pay such funds to the lienholder
33 within thirty days will terminate the dealer's obligation to provide a
34 refund. If the consumer fails to make such payment within thirty days,
35 the dealer shall have no further responsibility to provide a refund
36 under this section. Alternatively, the dealer may elect to offer to
37 replace the used motor vehicle with a comparably priced vehicle, with
38 such adjustment in price as the parties may agree to. The consumer shall
39 not be obligated to accept a replacement vehicle, but may instead elect
40 to receive the refund provided under this section. It shall be an affir-
41 mative defense to any claim under this section that:

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

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

46 5. THE MILEAGE CREDIT ALLOWANCE AUTHORIZED BY PARAGRAPH ONE OF THIS
47 SUBDIVISION SHALL BE EQUAL TO THE DEPRECIATION ADJUSTMENT FOR STANDARD
48 MILEAGE RATE, AS PUBLISHED IN INTERNAL REVENUE SERVICE PUBLICATION FOUR
49 HUNDRED SIXTY-THREE, APPLICABLE FOR THE SAME TAX YEAR, OR THE YEAR PRIOR
50 TO IT, WHICHEVER IS LOWEST, IN WHICH THE CONSUMER PURCHASED OR LEASED
51 THE VEHICLE FROM THE DEALER. IN THE EVENT THAT AN ARBITRATOR RENDERS A
52 DECISION OR A TRIAL COURT RENDERS A JUDGMENT THAT DIRECTS THE DEALER TO
53 ACCEPT RETURN OF THE VEHICLE, THE CONSUMER SHALL HAVE THE RIGHT TO
54 RETURN THE VEHICLE TO THE DEALER'S PLACE OF BUSINESS ON THE FIRST BUSI-
55 NESS DAY FOLLOWING SUCH DECISION UP TO AND INCLUSIVE OF THE THIRTIETH
56 DAY, AND WITHIN NORMAL BUSINESS HOURS. WHETHER OR NOT THE DEALER

1 ACCEPTS THE VEHICLE, THE DEALER AND CONSUMER SHALL COMPLETE AND SIGN A
2 MILEAGE CREDIT CALCULATION FORM AS PUBLISHED BY THE ATTORNEY GENERAL,
3 WHICH SHALL BE USED TO RECORD THE MILEAGE OF THE VEHICLE AT THE TIME OF
4 DELIVERY OR ATTEMPTED DELIVERY. FOR THE PURPOSES OF THIS SECTION, THE
5 MILEAGE CREDIT ALLOWANCE SHALL NOT BE APPLIED TO ANY MILES THAT THE
6 VEHICLE HAS BEEN DRIVEN AFTER SUCH FORM IS SIGNED. IN THE EVENT THAT A
7 DEALER REFUSES TO SIGN SUCH FORM, THE EFFECTIVE MILEAGE CREDIT ALLOWANCE
8 SHALL BE NO GREATER THAN THE SPECIFIC SUM WHICH WAS SET FORTH IN THE
9 DECISION OF AN ARBITRATOR OR JUDGMENT OF THE TRIAL COURT. THE DEALER
10 SHALL PROVIDE A COPY OF THE COMPLETED FORM, WHICH SHALL CONTAIN THE
11 SIGNATURE OF THE DEALER AND CONSUMER ATTESTING TO THE ODOMETER READING
12 OF THE MOTOR VEHICLE, TO: THE ARBITRATOR OR COURT THAT RENDERED THE
13 DECISION OR JUDGMENT; AND, AT NO CHARGE, THE CONSUMER.

14 S 2. The opening paragraph of paragraph 1 of subdivision f of section
15 198-b of the general business law, as separately amended by chapters 444
16 and 609 of the laws of 1989, is amended to read as follows:

17 If a dealer has established or participates in an informal dispute
18 settlement procedure which complies in all respects with the provisions
19 of part seven hundred three of title sixteen of the code of federal
20 regulations the provisions of this article concerning refunds or
21 replacement shall not apply to any consumer who has not first resorted
22 to such procedure. Dealers utilizing informal dispute settlement proce-
23 dures pursuant to this subdivision shall insure that arbitrators partic-
24 ipating in such informal dispute settlement procedures are familiar with
25 the provisions of this section and shall provide to arbitrators and
26 consumers who seek arbitration a copy of the provisions of this section
27 AND THE APPLICABLE MILEAGE CREDIT ALLOWANCE RATE AS CALCULATED PURSUANT
28 TO THE METHOD SET FORTH IN PARAGRAPH FIVE OF SUBDIVISION C OF THIS
29 SECTION, together with the following notice in conspicuous ten point
30 bold face type:

31 S 3. Subparagraphs 5 and 6 of paragraph 1 of subdivision f of section
32 198-b of the general business law, as separately amended by chapters 444
33 and 609 of the laws of 1989, are amended to read as follows:

34 5. If the same problem cannot be repaired after three or more
35 attempts, you are entitled to return the car and receive a refund of
36 your purchase price or of all payments made under your lease contract,
37 and of sales tax and fees, minus THE MILEAGE CREDIT ALLOWANCE FOR EACH
38 MILE IN EXCESS OF THE WARRANTY MILEAGE APPLICABLE TO THE VEHICLE
39 CONTAINED IN SUBDIVISION B OF THIS SECTION THAT THE VEHICLE HAS BEEN
40 DRIVEN SINCE THE DATE OF DELIVERY OF SUCH VEHICLE BY THE DEALER TO THE
41 CONSUMER, AND LESS a reasonable allowance for any damage not attribut-
42 able to normal usage or wear, and, in the case of a lease contract, a
43 cancellation of all further payments you are otherwise required to make
44 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 THE MILEAGE CREDIT ALLOWANCE FOR EACH MILE IN EXCESS OF THE
50 WARRANTY MILEAGE APPLICABLE TO THE VEHICLE CONTAINED IN SUBDIVISION B OF
51 THIS SECTION THAT THE VEHICLE HAS BEEN DRIVEN SINCE THE DATE OF DELIVERY
52 OF SUCH VEHICLE BY THE DEALER TO THE CONSUMER, AND LESS a reasonable
53 allowance for any damage not attributable to normal usage or wear, and,
54 in the case of a lease contract, a cancellation of all further payments
55 you are otherwise required to make under the lease contract.

1 S 4. Subparagraphs 7, 8, 9, 10 and 11 of paragraph 1 of subdivision f
2 of section 198-b of the general business law are renumbered subpara-
3 graphs 8, 9, 10, 11 and 12 and a new subparagraph 7 is added to read as
4 follows:

5 7. THE MILEAGE CREDIT ALLOWANCE DESCRIBED IN PARAGRAPHS FIVE AND SIX
6 OF THIS SUBDIVISION SHALL BE CALCULATED PURSUANT TO THE METHOD ESTAB-
7 LISHED IN PARAGRAPH FIVE OF SUBDIVISION C OF THIS SECTION. THE MILEAGE
8 CREDIT ALLOWANCE SHALL BE NO GREATER THAN (INSERT THE DEPRECIATION
9 ADJUSTMENT FOR STANDARD MILEAGE RATE, AS PUBLISHED IN INTERNAL REVENUE
10 SERVICE PUBLICATION FOUR HUNDRED SIXTY-THREE, APPLICABLE FOR THE SAME
11 TAX YEAR, OR THE YEAR PRIOR TO IT, WHICHEVER IS LOWEST, IN WHICH THE
12 CONSUMER PURCHASED OR LEASED THE VEHICLE FROM THE DEALER) CENTS PER
13 MILE.

14 S 5. Paragraphs 4, 5 and 6 of subdivision f of section 198-b of the
15 general business law are renumbered paragraphs 5, 6 and 7 and a new
16 paragraph 4 is added to read as follows:

17 4. IN THE EVENT THAT AN ARBITRATOR OR TRIAL COURT RENDERS A DECISION
18 THAT DIRECTS THE DEALER TO ACCEPT RETURN OF THE VEHICLE, THE ARBITRATOR
19 OR COURT SHALL, UPON RENDERING SUCH DECISION, PROVIDE THE FOLLOWING
20 NOTICE TO THE CONSUMER ON A SEPARATE WRITING AND IN AT LEAST TWELVE
21 POINT BOLD FONT:

22 AS A PREVAILING CONSUMER YOU HAVE THE RIGHT TO RETURN THE VEHICLE TO
23 THE DEALER'S PLACE OF BUSINESS ON THE FIRST BUSINESS DAY FOLLOWING THIS
24 DECISION AND UP TO AND INCLUSIVE OF THE THIRTIETH DAY (WITHIN NORMAL
25 BUSINESS HOURS). WHETHER OR NOT THE DEALER ACCEPTS THE VEHICLE, YOU AND
26 THE DEALER SHALL COMPLETE AND SIGN A MILEAGE CREDIT CALCULATION FORM.
27 YOU ARE NOT RESPONSIBLE FOR ANY MILEAGE ACCRUED WHILE YOU ARE LAWFULLY
28 USING THE VEHICLE DURING AN APPEAL THAT A DEALER BRINGS TO VACATE OR
29 MODIFY AN ARBITRATOR'S DECISION OR A TRIAL COURT JUDGMENT.

30 S 6. Section 63 of the executive law is amended by adding a new subdi-
31 vision 16 to read as follows:

32 16. PROMULGATE REGULATIONS PROVIDING FOR THE CREATION AND PUBLICATION
33 OF A MILEAGE CREDIT CALCULATION FORM TO BE USED BY CONSUMERS AND DEALERS
34 PURSUANT TO SECTION ONE HUNDRED NINETY-EIGHT-B OF THE GENERAL BUSINESS
35 LAW. SUCH FORM SHALL BE MADE AVAILABLE TO DEALERS BY THE DEPARTMENT ON
36 ITS WEBSITE.

37 S 7. This act shall take effect on the ninetieth day after it shall
38 have become a law; provided, however, that the provisions of this act
39 shall not apply to any contract executed prior to the effective date of
40 this act; provided, further, that effective immediately, the department
41 of law shall publish on its website on or before such effective date the
42 mileage credit calculation form, as described in section one of this
43 act, that is to be used by consumers and dealers in the manner set forth
44 in such section, with such form, including instructions, necessary for
45 the proper completion of such form by a dealer.