

942

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. PHEFFER -- Multi-Sponsored by -- M. of A. BRENNAN, CLARK, FARRELL, GLICK, GOTTFRIED, HOOPER, JACOBS, MAGEE, MILLMAN, ORTIZ, TOWNS, WEINSTEIN -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the personal property law and the general business law, in relation to enhancing consumer protection in motor vehicle retail leasing, conforming to federal requirements, and providing for a cooling off period for leasing and purchasing and to repeal subdivision 7 of section 331 of the personal property law relating to "initial early termination charge"

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

1 Section 1. Subdivision 7 of section 331 of the personal property law,
2 as amended by chapter 111 of the laws of 1995, is REPEALED.
3 S 2. Section 331 of the personal property law, as added by chapter 1
4 of the laws of 1994, subdivisions 6, 7, 9, 11, 12 and 19 as amended and
5 subdivision 24 as renumbered by chapter 140 of the laws of 1995, subdivisions
6 14 and 18 as amended by chapter 111 of the laws of 1995, and
7 subdivision 13 as separately amended by chapters 111 and 140 of the laws
8 of 1995, is amended to read as follows:
9 S 331. Definitions. In this article, unless the context or subject
10 matter otherwise requires:
11 1. "Motor vehicle" or "vehicle" means any device propelled or drawn by
12 any power other than muscular power, upon or by which any person or
13 property is or may be transported or drawn upon a public highway, road
14 or street. The term does not include a "snowmobile" as defined in subdivision
15 three of section 21.05 of the parks, recreation and historic
16 preservation law or other vehicles not designed primarily for highway
17 transportation, but which may incidentally transport persons or property
18 on a public highway.

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

LBD00742-01-1

1 2. "Retail lessee" or "lessee" means a natural person who leases a
2 motor vehicle from a retail lessor primarily for personal, family or
3 household use and who executes a retail lease agreement in connection
4 therewith. For purposes of section three hundred thirty-four and subdivi-
5 sions two and three of section three hundred forty-six of this arti-
6 cle, the term also includes a person who makes a payment to a lessor or
7 leaves his vehicle with a lessor pending the execution of a retail lease
8 agreement. Except as provided in sections three hundred forty-eight and
9 three hundred forty-nine of this article, the term does not include a
10 person who leases a motor vehicle primarily for agricultural, business
11 or commercial use or for the purpose of subleasing.

12 3. "Retail lessor" or "lessor" means a person regularly engaged in the
13 business of leasing or selling motor vehicles who leases a motor vehicle
14 to a retail lessee under or subject to a retail lease agreement.

15 4. "Retail lease" or "lease" means a transfer from a retail lessor to
16 a retail lessee of the right to possession and use of a motor vehicle in
17 return for consideration. The term does not include a sale, including a
18 sale on approval or a sale or return, a retail instalment sale as
19 defined in article nine of this chapter or the retention or creation of
20 a security interest in a motor vehicle.

21 5. "Retail lease agreement" or "agreement" means an agreement, entered
22 into in this state, for the lease of a motor vehicle, and which may
23 include the purchase of goods or services incidental thereto, by a
24 retail lessee for a scheduled term exceeding four months, whether or not
25 the lessee has the option to purchase or otherwise become the owner of
26 the vehicle at the expiration of the agreement. The term includes such
27 an agreement wherever entered into if executed by the lessee in this
28 state and if solicited in person by a person acting on his OR HER own
29 behalf or that of the lessor. The term does not include a retail instal-
30 ment contract or a rental-purchase agreement as defined in articles nine
31 and eleven of this chapter. An agreement that substantially complies
32 with this article does not create a security interest in a motor vehicle
33 as the term "security interest" is defined in subdivision thirty-seven
34 of section 1-201 of the uniform commercial code.

35 6. "Additional early termination charge" means the initial dollar
36 amount of the early termination charge the portion of which is recovera-
37 ble by the holder upon early termination in addition to the amounts
38 specified in paragraphs (a) through (e) of subdivision one of section
39 three hundred forty-one of this article. [The additional early termi-
40 nation charge may only include amounts which are reasonable in light of
41 the anticipated or actual harm caused by the delinquency, default or
42 early termination, the difficulties of proof of loss and the inconven-
43 ience or nonfeasibility of otherwise obtaining an adequate remedy.] Any
44 fees or charges included in the additional early termination charge may
45 not also be included in the capitalized cost.

46 7. "Adjusted capitalized cost" means the GROSS capitalized cost less
47 any capitalized cost reduction payments made by the lessee at the incep-
48 tion of the lease and any net trade-in allowance granted by the lessor.

49 8. "Anticipated assignee" means the person to whom the lessor antic-
50 ipates that the agreement will be assigned and to whom the agreement
51 subsequently is assigned by the lessor.

52 9. "Base rental payment" means that portion of the monthly or other
53 periodic rental payment which is equal to the sum of: (a) the average
54 monthly or other periodic lease charge; and (b) the average monthly or
55 other periodic depreciation. For purposes of this article, the average
56 monthly or other periodic depreciation may include a monthly or other

1 periodic charge for any item that the lessor has included in the GROSS
2 capitalized cost.

3 10. "Conspicuous" means that a term or clause is so written that a
4 reasonable person against whom it is to operate ought to have noticed
5 it. Whether or not a term or clause is conspicuous is a question of law
6 for decision by the court.

7 11. "[Capitalized] GROSS CAPITALIZED cost" means the agreed upon
8 amount which serves as the basis for determining the base rental payment
9 and a portion of the early termination liability of the lessee. The
10 GROSS capitalized cost may include any taxes, registration, license
11 acquisition, assignment and other fees and charges for insurance, for a
12 waiver of the contractual obligation to pay the gap amount, for accesso-
13 ries and their installation, for delivering, servicing, repairing or
14 improving the motor vehicle and for other services incidental to the
15 agreement. It also may include the unpaid balance of any amount financed
16 under an outstanding motor vehicle loan agreement or motor vehicle
17 retail instalment contract or the unpaid portion of the early termi-
18 nation obligation under an outstanding motor vehicle retail lease agree-
19 ment. The term does not include any lease charge or any amount included
20 in the additional early termination charge.

21 12. "Capitalized cost reduction" means any payments made by cash,
22 check or similar means that are in the nature of downpayments made by
23 the lessee at the inception of the lease for the purpose of reducing the
24 GROSS capitalized cost.

25 13. "Constant yield method" means: (a) in the case of a periodic
26 payment lease, that method of determining the lease charge portion of
27 each base rental payment pursuant to which the lease charge for each
28 computational period is earned in advance by multiplying the constant
29 rate implicit in the lease times the balance subject to lease charge as
30 it declines during the lease term. At any given time during the sched-
31 uled term of a periodic payment lease, the balance subject to lease
32 charge is the difference between the adjusted capitalized cost and the
33 sum of: (i) all depreciation amounts accrued during the preceding
34 computational periods; and (ii) the first base rental payment; (b) in
35 the case of a single or advance payment lease, that method of determin-
36 ing the periodic earning of lease charges pursuant to which the lease
37 charge for each computational period is earned in advance by multiplying
38 the constant rate implicit in the lease times the balance subject to
39 lease charge as it increases during the scheduled lease term. At any
40 given time during the scheduled term of a single or advance payment
41 lease, the balance subject to lease charge is determined by subtracting
42 from the [estimated] residual value the total lease charge scheduled to
43 be earned over the term of the lease and adding to the difference all
44 lease charges accrued during the preceding computational periods; (c) in
45 the case of either type of lease, the periodic lease charge calculations
46 are based on the assumption that the holder will receive the rental
47 payments on their exact due dates and that the lease goes to its full
48 term.

49 14. "[Estimated residual] RESIDUAL value" means the estimated value of
50 the leased vehicle at the scheduled end of the lease term, used by the
51 lessor in determining the base rental payment, as established by the
52 lessor at the time he enters into a retail lease agreement.

53 15. "Gap amount" has the meaning ascribed to it in paragraph fifty-two
54 of subsection (a) of section one hundred seven of the insurance law.

55 16. "Gap insurance" has the meaning ascribed to it in paragraph twen-
56 ty-six of subsection (a) of section one thousand one hundred thirteen of

the insurance law. For purposes of paragraphs (a) and (b) of subdivision six of section three hundred thirty-seven of this article, gap insurance shall not be deemed "liability insurance or insurance on the vehicle".

17. "Group credit insurance" means group credit life insurance, group credit accident insurance, group credit health insurance, group credit accident and health insurance or group credit unemployment insurance.

18. "Holder" means the retail lessor of a motor vehicle under or subject to a retail lease agreement or, if the agreement is purchased by an assignee, the assignee. Unless and until it realizes upon its security interest therein, the term does not include a pledgee of one or more lease agreements to secure a bona fide loan thereon.

19. "Lease charge" means the charge to be paid by the retail lessee for the privilege of making the rental payments as scheduled under a retail lease agreement. The term does not include any amount included in the GROSS capitalized cost. The term also does not include any delinquency, default, disposition, early termination, collection, or reinstatement charge and the amount, if any, included in a retail lease agreement for taxes, registration, license acquisition, assignment and other fees and charges for insurance, for accessories and their installation, for delivering, servicing, repairing or improving the motor vehicle and for other services incidental to the agreement, whether or not such amounts are included in the GROSS capitalized cost, paid for separately at lease inception by cash, check or similar means or paid for on a monthly or other periodic basis in addition to the base rental payment.

20. "Person" means an individual, partnership, corporation, association or other group, however organized.

21. "Precomputed lease transaction" means a retail lease transaction in which the base rental obligation is a sum comprising the total depreciation estimated to occur during the scheduled term of the lease and the amount of the lease charge computed in advance. A disclosure required by the act of Congress entitled "Consumer Leasing Act of 1976" AND THE REGULATIONS PROMULGATED THEREUNDER, AS SUCH ACT AND REGULATIONS MAY FROM TIME TO TIME BE AMENDED, does not in itself make a lease charge or transaction precomputed.

22. "Realized value" means: (a) the price received by the holder for the leased vehicle at disposition; (b) the highest offer received by the holder for disposition of the leased vehicle; or (c) the fair market value of the vehicle, determined pursuant to subdivision one of section three hundred forty of this article by a mutually acceptable independent appraiser, at the scheduled end of the lease term or, if the lease is terminated prior thereto, at early termination. The realized value of the vehicle may be its value in the customary wholesale market.

23. "Renegotiation" means the satisfaction of an existing retail lease agreement and the replacement of the existing agreement by a new lease agreement undertaken by the same lessor or holder and the same lessee. The term does not include: (a) the ADDITION, DELETION, OR substitution of the leased vehicle [or the addition or return of a vehicle] in a multiple-vehicle lease, if in either case the average payment allocable to a rental period is not increased by more than twenty-five percent; (b) a deferral or extension of one or more periodic payments, or portions of a periodic payment, WHETHER OR NOT A FEE IS CHARGED; (c) a reduction in charges in the agreement; (d) an agreement involving a court proceeding; [or] (e) THE EXTENSION OF A LEASE FOR NOT MORE THAN SIX MONTHS ON A MONTH-TO-MONTH BASIS OR OTHERWISE; (F) A SUBSTITUTION OF THE MOTOR VEHICLE SUBJECT TO THE RETAIL LEASE AGREEMENT WITH A MOTOR

VEHICLE THAT HAS A SUBSTANTIALLY EQUIVALENT OR GREATER ECONOMIC VALUE, PROVIDED NO OTHER LEASE TERMS ARE CHANGED; OR (G) any other agreement or event which does not constitute a "renegotiation" under the act of Congress entitled "Consumer Leasing Act of 1976" and the regulations thereunder, as such act and regulations may from time to time be amended.

24. Words in the singular include the plural and vice versa.

25. "CLOSED-END LEASE" MEANS A RETAIL LEASE AGREEMENT OTHER THAN AN OPEN-END LEASE AS DEFINED IN SUBDIVISION TWENTY-SIX OF THIS SECTION.

26. "OPEN-END LEASE" MEANS A RETAIL LEASE AGREEMENT IN WHICH THE LESSEE'S LIABILITY AT THE END OF THE LEASE TERM IS BASED ON THE DIFFERENCE BETWEEN THE RESIDUAL VALUE OF THE MOTOR VEHICLE AND ITS REALIZED VALUE.

S 3. Section 333 of the personal property law, as added by chapter 1 of the laws of 1994, is amended to read as follows:

S 333. Pre-lease availability of sample form of agreement. 1. The lessor of a motor vehicle shall make a blank sample copy of its current form of retail lease agreement AND A BLANK COPY OF ITS CURRENT FORM OF THE DISCLOSURES REQUIRED TO BE SEGREGATED PURSUANT TO SECTION THREE HUNDRED THIRTY-SEVEN-A OF THIS ARTICLE AND TITLE 12, CHAPTER 2, PART 213 OF THE CODE OF FEDERAL REGULATIONS readily available for examination by prospective lessees by:

(a) Furnishing it upon request prior to the consummation of a retail lease [transaction] AGREEMENT; and

(b) Posting in its place of business a sign stating that a blank sample copy of [its form of] A retail lease agreement [is] AND ALL REQUIRED DISCLOSURES ARE available upon request.

THE LESSOR MAY NOT PREVENT THE PROSPECTIVE LESSEE FROM REMOVING ANY BLANK SAMPLE COPIES FROM THE PREMISES.

2. An assignee who has prepared a form of retail lease agreement AND A FORM OF THE DISCLOSURES REQUIRED TO BE SEGREGATED PURSUANT TO SECTION THREE HUNDRED THIRTY-SEVEN-A OF THIS ARTICLE AND TITLE 12, CHAPTER 2, PART 213 OF THE CODE OF FEDERAL REGULATIONS that is used by a lessor shall provide the lessor with blank sample copies of [that form of agreement] SUCH FORMS which the lessor may use to comply with the delivery requirement imposed upon it by paragraph (a) of subdivision one of this section. An assignee who does so shall have no liability if the lessor to whom those materials are provided fails to comply with this section.

S 4. Subdivision 3 of section 334 of the personal property law, as added by chapter 1 of the laws of 1994, is amended to read as follows:

3. If a lessee leaves his OR HER motor vehicle with the lessor in lieu of or in addition to a payment by cash, check or similar means, and the lessor and lessee agree that the parties shall enter into a retail lease agreement, the lessor shall not sell or transfer the vehicle traded-in until the [lessee and the lessor execute a retail lease agreement] EXPIRATION OR WAIVER OF THE CANCELLATION PERIOD PROVIDED PURSUANT TO PARAGRAPH (G) OF SUBDIVISION FIVE OF SECTION THREE HUNDRED THIRTY-SEVEN OF THIS ARTICLE. In the event a lease agreement is not executed, the lessor shall promptly return to the lessee the vehicle traded-in.

S 5. Section 337 of the personal property law, as added by chapter 1 of the laws of 1994, subdivision 1 and paragraph (i) of subdivision 14 as amended by chapter 111 of the laws of 1995, subdivision 5 and paragraph (b) of subdivision 7 as amended by chapter 140 of the laws of 1995, is amended to read as follows:

1 S 337. Requirements as to retail lease agreements. 1. A retail lease
2 agreement shall be in a writing and, except as otherwise provided in
3 subdivision two of section three hundred forty-five of this article,
4 signed contemporaneously by the lessor and the lessee. Except as
5 provided in sections three hundred thirty-five [and], three hundred
6 thirty-six AND THREE HUNDRED THIRTY-SEVEN-A of this article AND AS
7 PROVIDED IN TITLE 12, CHAPTER 2, PART 213 OF THE CODE OF FEDERAL REGU-
8 LATIONS, a retail lease agreement shall contain in a single document all
9 the agreements of the parties.

10 2. The printed portion of the agreement shall be printed in at least
11 eight-point type in ink that contrasts with the paper used. The agree-
12 ment shall contain the following items printed or written in a size
13 equal to at least ten-point bold type:

14 (a) Both at the top of the agreement and directly above the space
15 reserved for the signature of the lessee, the words "LEASE AGREEMENT",
16 "RETAIL LEASE AGREEMENT" or "MOTOR VEHICLE LEASE AGREEMENT";

17 (b) A [specific statement that physical damage or liability insurance
18 coverage for bodily injury and property damage caused to others is not
19 included, if that is the case] BRIEF IDENTIFICATION OF INSURANCE IN
20 CONNECTION WITH THE RETAIL LEASE AGREEMENT INCLUDING: (I) THE TYPES AND
21 AMOUNTS OF COVERAGE AND THE COST TO THE LESSEE, IF THE INSURANCE IS
22 PROVIDED BY OR PAID THROUGH THE LESSOR; OR (II) THE TYPES AND AMOUNTS OF
23 COVERAGE REQUIRED BY FEDERAL, STATE, OR LOCAL LAW OR REQUIRED BY THE
24 LESSOR OF THE LESSEE, IF THE LESSEE MUST OBTAIN THE INSURANCE; and

25 (c) Directly [above the acknowledgment permitted by subdivision three
26 of this section to appear] above the space reserved for the signature of
27 the lessee, a written notice informing the lessee that: (i) the lessee
28 should not sign the agreement before he or she reads it AND ANY SEGRE-
29 GATED DISCLOSURES REQUIRED TO BE PROVIDED TO THE LESSEE PURSUANT TO
30 SECTION THREE HUNDRED THIRTY-SEVEN-A OF THIS ARTICLE AND TITLE 12, CHAP-
31 TER 2, PART 213 OF THE CODE OF FEDERAL REGULATIONS or if [it contains]
32 THE AGREEMENT OR SUCH SEGREGATED DISCLOSURES CONTAIN any blank [space]
33 SPACES; and (ii) the lessee is entitled to a completely filled in copy
34 of the agreement AND THE SEGREGATED DISCLOSURES REQUIRED PURSUANT TO
35 SECTION THREE HUNDRED THIRTY-SEVEN-A OF THIS ARTICLE AND TITLE 12, CHAP-
36 TER 2, PART 213 OF THE CODE OF FEDERAL REGULATIONS when he or she signs
37 it. A notice substantially similar to the following notice complies with
38 the requirements of this paragraph: "NOTICE TO THE LESSEE: 1. Do not
39 sign this agreement before you read it AND THE SEGREGATED DISCLOSURES
40 ENTITLED "FEDERAL CONSUMER LEASING ACT DISCLOSURES" or if [it contains]
41 THIS AGREEMENT OR THE SEGREGATED DISCLOSURES CONTAIN any blank [space]
42 SPACES.

43 2. You are entitled to a completely filled in copy of this agreement
44 when you sign it. ACCORDING TO STATE LAW AND FEDERAL REGULATIONS, YOU
45 ARE ENTITLED TO THE FEDERAL CONSUMER LEASING ACT DISCLOSURES PRIOR TO
46 THE CONSUMMATION OF YOUR LEASE AGREEMENT."

47 3. The lessor shall deliver to the lessee, or mail to him or her at
48 his or her address shown on the agreement, a copy of the agreement
49 signed by the lessor. Until the lessor does so, a lessee who has not
50 received delivery of the motor vehicle shall have an unconditional right
51 to cancel the agreement and to receive an immediate refund of all
52 payments made and redelivery of all goods traded-in to the lessor on
53 account of or in contemplation of the agreement. Any acknowledgment by
54 the lessee of delivery of a copy of the agreement shall be printed or
55 written in a size equal to at least eight-point bold type and[, if
56 contained in the agreement, shall appear directly above the legend

1 required by paragraph (a) of subdivision two of this section to appear
2 directly above the space reserved for the signature of the lessee] SHALL
3 BE PROVIDED FOR ON A SEPARATE DOCUMENT FROM THE RETAIL LEASE AGREEMENT.
4 PROVIDED, HOWEVER, ANY SUCH DELIVERY BY MAIL OF A COPY OF THE AGREEMENT
5 AND ACKNOWLEDGMENT DOCUMENT SHALL BE DELIVERED BY CERTIFIED OR REGIS-
6 TERED MAIL, RETURN RECEIPT REQUESTED.

7 4. The agreement shall contain the names of the lessor and the lessee,
8 the place of business of the lessor, the residence or place of business
9 of the lessee as specified by the lessee and a description of the motor
10 vehicle including its make, year model, model and identification number
11 or marks.

12 5. The agreement shall contain:

13 (a) All items required to be disclosed by the act of Congress entitled
14 "Consumer Leasing Act of 1976" and the regulations thereunder, as such
15 act and regulations may from time to time be amended IN THE MANNER
16 REQUIRED BY SUCH ACT AND/OR REGULATIONS; provided, however, that the
17 disclosures required by the "Consumer Leasing Act of 1976" shall be: (I)
18 PRINTED OR WRITTEN IN A SIZE EQUAL TO AT LEAST TEN-POINT TYPE; AND (II)
19 made in all leasing transactions covered by this article regardless of
20 the exemption in the "Consumer Leasing Act of 1976" for lease trans-
21 actions in which the total contractual obligation exceeds twenty-five
22 thousand dollars;

23 (b) [The capitalized cost, using the term "capitalized cost" and a
24 descriptive explanation such as "the sum of the adjusted capitalized
25 cost and any capitalized cost reduction. The capitalized cost and the
26 amount of the rental payment may be negotiable";

27 (c) The adjusted capitalized cost of the vehicle, using the term
28 "adjusted capitalized cost", a descriptive explanation such as "the
29 amount which is capitalized in connection with the lease and is used in
30 determining the amount of your periodic payment" and immediately there-
31 after one of the following additional explanatory statements:

32 (i) In the case of an agreement which provides for an "additional
33 early termination charge" and whose early termination provisions
34 expressly refer to the "adjusted capitalized cost," a statement that
35 "this amount plus the additional early termination charge will be used
36 in determining your early termination liability";

37 (ii) In the case of an agreement which provides for an "additional
38 early termination charge" and whose early termination provisions do not
39 expressly refer to the "adjusted capitalized cost," a statement that
40 "this amount plus the additional early termination charge will be used
41 in determining the legal limit on your early termination liability";

42 (iii) In the case of an agreement which does not provide for an "addi-
43 tional early termination charge" and whose early termination provisions
44 expressly refer to the "adjusted capitalized cost," a statement that
45 "this amount will be used in determining your early termination liabil-
46 ity"; or

47 (iv) In the case of an agreement which does not provide for an "addi-
48 tional early termination charge" and whose early termination provisions
49 do not expressly refer to the "adjusted capitalized cost," a statement
50 that "this amount will be used in determining the legal limit on your
51 early termination liability";

52 (d) The amount, if any, included for insurance and other benefits,
53 specifying and describing the coverages and the amount included for each
54 type of coverage;

55 (e) In close proximity to the adjusted capitalized cost disclosure
56 required by paragraph (c) of this subdivision and only as applicable,

1 any additional early termination charge provided for under the agree-
2 ment, using the term "additional early termination charge", and one of
3 the following descriptive explanations:

4 (i) In the case of an agreement whose early termination provisions
5 expressly refer to the "adjusted additional early termination charge," a
6 descriptive explanation such as "an additional amount the unamortized
7 portion of which will be used in determining your early termination
8 liability"; or

9 (ii) In the case of an agreement whose provisions do not expressly
10 refer to the "additional early termination charge," a descriptive expla-
11 nation such as "an additional amount the unamortized portion of which
12 will be used in determining the legal limit on your early termination
13 liability"; and immediately after the descriptive explanation additional
14 explanatory statements that "this amount represents the total costs and
15 damages, in addition to the adjusted capitalized cost, which we would
16 incur if this agreement were to be terminated before you had made any
17 rental payments."

18 (f) In close proximity to the "adjusted capitalized cost" and "addi-
19 tional early termination charge" disclosures required by paragraphs (c)
20 and (e) of this subdivision, one of the following statements:

21 (i) In the case of an agreement which provides for an "additional
22 early termination charge" and whose early termination provisions do not
23 expressly refer to either the "adjusted capitalized cost" or the "addi-
24 tional early termination charge," a statement that "although they are
25 not referred to in the early termination provisions of this lease, the
26 'adjusted capitalized cost' and the 'additional early termination
27 charge' may be used to compare the early termination provisions of
28 competing lessors";

29 (ii) In the case of an agreement which provides for an "additional
30 early termination charge" and whose early termination provisions do not
31 expressly refer to the "additional early termination charge," a state-
32 ment that "although the 'additional early termination charge' is not
33 referred to in the early termination provisions of this lease, the
34 'additional early termination charge' and the 'adjusted capitalized
35 cost' may be used to compare the early termination provisions of compet-
36 ing lessors";

37 (iii) In the case of an agreement which provides for an "additional
38 early termination charge" and whose early termination provisions do not
39 expressly refer to the "adjusted capitalized cost," a statement that
40 "although the 'adjusted capitalized cost' is not referred to in the
41 early termination provisions of this lease, the 'adjusted capitalized
42 cost' and the 'additional early termination charge' may be used to
43 compare the early termination provisions of competing lessors";

44 (iv) In the case of an agreement which provides for an "additional
45 early termination charge" and whose early termination provisions
46 expressly refer to both the "adjusted capitalized cost," and the "addi-
47 tional early termination charge," a statement that "the 'adjusted capi-
48 talized cost' and the 'additional early termination charge' may be used
49 to compare the early termination provisions of competing lessors";

50 (v) In the case of an agreement which does not provide for any "addi-
51 tional early termination charge" and whose early termination provisions
52 do not expressly refer to the "adjusted capitalized cost," a statement
53 that "although the 'adjusted capitalized cost' is not referred to in the
54 early termination provisions of this lease, the 'adjusted capitalized
55 cost' may be used to compare the early termination provisions of compet-
56 ing lessors"; or

(vi) In the case of an agreement which does not provide for any "additional early termination charge" and whose early termination provisions expressly refer to the "adjusted capitalized cost," a statement that "the 'adjusted capitalized cost' may be used to compare the early termination provisions of competing lessors."

(g)] A NOTICE TO THE LESSEE REGARDING FEES AND CHARGES. SUCH NOTICE SHALL INCLUDE THE FOLLOWING STATEMENT, AS SET FORTH HEREIN:

"SEGREGATED FROM YOUR LEASE AGREEMENT ARE CERTAIN DISCLOSURES REQUIRED BY FEDERAL REGULATIONS AND STATE LAW. THERE MAY BE FEES AND CHARGES INCLUDED IN YOUR GROSS CAPITALIZED COST. YOU MAY WANT TO INQUIRE OF YOUR LESSOR WHAT THESE FEES AND/OR CHARGES MAY BE. ALSO, FEES AND CHARGES MAY BE ASSESSED AT THE TERMINATION OF THE LEASE AGREEMENT. YOU MAY WANT TO INQUIRE AS TO THE CAUSES OR REASONS FOR THESE FEES/CHARGES. AS WITH ALL CONTRACT AGREEMENTS, ALL FEES AND CHARGES ARE NEGOTIABLE AND MAY BE USED TO COMPARE WITH COMPETING LESSORS."

(C) A statement in at least eight-point bold type informing the lessee that he or she has the right to terminate the agreement voluntarily at any time after the first fifty percent of the total number of months constituting the full scheduled lease term, or earlier if the agreement so provides, if he or she is in full compliance with the terms of the agreement and satisfies his or her early termination obligation. SUCH STATEMENT MUST ALSO DISCLOSE ANY CONDITIONS UNDER WHICH THE LESSEE OR LESSOR MAY TERMINATE THE LEASE PRIOR TO THE END OF THE LEASE TERM AND A DESCRIPTION OF THE METHOD FOR DETERMINING THE AMOUNT OF ANY PENALTY OR OTHER CHARGES FOR EARLY TERMINATION IN ACCORDANCE WITH SECTION THREE HUNDRED FORTY-ONE OF THIS ARTICLE;

[(h) A statement in at least eight-point bold type to the effect that "early termination may require you to pay a substantial charge";

(i)](D) A provision permitting a lessee whose default consists solely of the failure to make timely rental payments to cure his or her default and reinstate the agreement, without losing any rights or options previously acquired under the agreement, by paying all past due rental and delinquency charges and, if the agreement so provides, a reinstatement fee not to exceed ten dollars and the actual and reasonable costs of repossession, storage, pickup and redelivery within twenty-five days after the lessee is sent written notice of his or her reinstatement rights. The reinstatement right granted pursuant to this paragraph may be restricted to a lessee who has not previously been afforded the opportunity to reinstate the agreement. For purposes of this paragraph, a [rental] LEASE charge is past due if it is not paid by its scheduled due date or within any grace period specified in the agreement;

[(j) The estimated residual value of the vehicle, using the term "estimated residual value";

(k)] (E) In the case of an agreement which does not obligate the lessee upon a total loss of the vehicle occasioned by its theft or physical damage for any of the items specified in paragraphs (e) and (f) of subdivision one of section three hundred forty-one of this article, a conspicuous notice that the lessee has no such obligation.

Nothing in this subdivision prevents a holder from attempting to repossess a vehicle, accepting its voluntary surrender or selling it during the reinstatement period, but such a repossession, voluntary surrender, or sale shall not affect the reinstatement right of the lessee. Upon reinstatement, the holder shall provide the lessee with the same vehicle leased by the lessee prior to reinstatement or, if that vehicle is not available, a substitute vehicle of comparable worth, quality and condition.

(F) A STATEMENT NOTIFYING THE LESSEE OF HIS OR HER RIGHT TO CANCEL SUCH RETAIL LEASE AGREEMENT IN ACCORDANCE WITH PARAGRAPH (C) OF THIS SUBDIVISION. A NOTICE SUBSTANTIALLY SIMILAR TO THE FOLLOWING NOTICE COMPLIES WITH REQUIREMENTS OF THIS PARAGRAPH: "NOTICE TO THE LESSOR: YOU, THE LESSEE, MAY CANCEL THIS LEASE CONTRACT WITHIN THREE (3) BUSINESS DAYS AFTER THE DATE OF THIS CONTRACT. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

(G) ABSOLUTE RIGHT TO CANCEL PROVISIONS. (I) IN ADDITION TO ANY OTHER RIGHTS TO REVOKE AN OFFER, A PERSON MAY CANCEL A RETAIL LEASE AGREEMENT, WHETHER OR NOT SUCH PERSON HAS RECEIVED A COPY OF SUCH AGREEMENT SIGNED BY THE LESSOR, PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER EITHER THE DATE ON WHICH THE PERSON SIGNED THE AGREEMENT OR THE DATE ON WHICH THE LESSOR DELIVERED A SIGNED COPY OF THE AGREEMENT TO THE PERSON, 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 SENT BY CERTIFIED OR REGISTERED UNITED STATES MAIL AND SHALL BE DEEMED DELIVERED ON THE DATE OF THE POSTMARK. NOTICE OF CANCELLATION SHALL BE SUFFICIENT IF IT INDICATES THE INTENTION OF THE PERSON NOT TO BE BOUND. RETURN OF THE NOTICE OF CANCELLATION FORM PROVIDED PURSUANT TO SECTION THREE HUNDRED THIRTY-SEVEN-B OF THIS ARTICLE BY THE LESSEE TO THE LESSOR IS SUFFICIENT TO COMPLY WITH THE REQUIREMENT OF THIS PARAGRAPH.

(II) IN ORDER TO OBTAIN IMMEDIATE DELIVERY OF A MOTOR VEHICLE, A PERSON MAY WAIVE THE RIGHT TO CANCEL PROVIDED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH. SUCH WAIVER MUST BE WRITTEN AND CLEARLY INDICATE THE INTENTION OF THE PERSON TO WAIVE HIS OR HER RIGHT TO CANCEL THE AGREEMENT.

(III) UNLESS THE PERSON WAIVES THE RIGHT TO CANCEL AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE LESSOR IS NOT REQUIRED TO DELIVER ANY MOTOR VEHICLE TO A PERSON UNTIL AFTER THE CLOSE OF BUSINESS ON THE THIRD BUSINESS DAY AFTER THE DAY ON WHICH THE PERSON OR LESSOR SIGNS THE RETAIL LEASE AGREEMENT.

(IV) FOR THE PURPOSES OF A CANCELLATION PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH, IF A PERSON, PURSUANT TO AN UNDERSTANDING WITH THE LESSOR, REMOVES ANY TRADE-IN MOTOR VEHICLE FROM THE LESSOR'S LOT AFTER SIGNING A RETAIL LEASE AGREEMENT OR OFFER, BUT BEFORE THE EXPIRATION OF THE PERIOD OF TIME DURING WHICH THE PERSON 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 SUBPARAGRAPH (I) OF THIS PARAGRAPH NOR ENTITLE THE PERSON TO ANOTHER SUCH CANCELLATION PERIOD.

(V) IF A PERSON CANCELS AN AGREEMENT PURSUANT TO THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH: (A) THE LESSOR MAY RETAIN, FROM ANY DOWN PAYMENT PAID BY THE PERSON TO THE LESSOR, COMPENSATION FOR CANCELLATION OF THE AGREEMENT THAT SHALL NOT EXCEED ONE HUNDRED DOLLARS, BUT SHALL NOT IMPOSE ANY OTHER PENALTY OR OBLIGATION; AND (B) THE LESSOR SHALL REFUND TO THE LESSEE ANY PAYMENTS, LESS THOSE PROVIDED BY CLAUSE (A) OF THIS SUBPARAGRAPH, WITHIN TEN BUSINESS DAYS OF SUCH CANCELLATION.

6. (a) (i) The amount, if any, included for liability insurance or insurance on the vehicle, shall not exceed the premiums charged by the insurance company for such insurance. The holder, if the cost of liability insurance or insurance on the motor vehicle is included in a retail lease agreement and the policy or policies are delivered to the holder, shall within thirty days after execution of the retail lease agreement,

1 send or cause to be sent to the lessee a copy of the policy or policies
2 of insurance, issued by an insurance company authorized to do that kind
3 of insurance business in this state, clearly setting forth the amount of
4 the premium, the kind or kinds of insurance and the scope of the cover-
5 age and all the terms, exceptions, limitations, restrictions and condi-
6 tions of the contract or contracts of insurance.

7 (ii) The lessee of a motor vehicle under a retail lease agreement
8 shall have the privilege of purchasing such insurance from an agent or
9 broker of his or her own selection and of selecting an insurance company
10 acceptable to the lessor; provided, however, that the inclusion of the
11 insurance premium in the retail lease agreement when the lessee selects
12 the agent, broker or company, shall be optional with the lessor and in
13 such case the lessor or assignee shall have no obligation to send, or
14 cause to be sent, to the lessee a copy of the policy of insurance.

15 (b) If any such policy of liability insurance or insurance on the
16 motor vehicle is cancelled, the unearned insurance premium refund
17 received or receivable by the holder of the agreement or, if the amount
18 included therefor in the agreement exceeds the cost to the holder of the
19 agreement for such insurance, the unearned portion of the amount so
20 included, shall be either: (i) refunded to the lessee within ten busi-
21 ness days after it is received by the holder; or (ii) credited, together
22 with the unearned portion of the lease charge applicable thereto, to the
23 final maturing rental payments or, at the option of the holder, to the
24 end of term obligations under the retail lease agreement except to the
25 extent applied toward payment for similar insurance protecting the
26 interests of the lessee and the holder of the agreement or either of
27 them, provided that no such credit or refund need be made if the amount
28 thereof would be less than one dollar.

29 (c) The amount, if any, included for group credit insurance or for
30 insurance other than gap insurance, liability insurance or insurance on
31 the motor vehicle shall not exceed the premiums charged by the insurance
32 company for such insurance. If such group credit or other insurance is
33 cancelled the refund for unearned insurance premiums received or receiv-
34 able by the holder of the agreement, or the excess of the amount
35 included in the agreement for group credit or other insurance over the
36 premiums paid or payable by the holder of the agreement therefor shall
37 be either: (i) refunded to the lessee within ten business days after it
38 is received by the holder; or (ii) credited, together with, in either
39 case, the unearned portion of the lease charge applicable thereto, to
40 the final maturing rental payments or, at the option of the holder, to
41 the end of term obligations under the retail lease agreement, provided
42 that no such credit or refund need be made if the amount thereof would
43 be less than one dollar.

44 (d) The amount of any separate charge included for a waiver by the
45 lessor of its contractual right to hold the lessee liable for the gap
46 amount shall not exceed the cost of lessor gap insurance covering the
47 retail lease transaction.

48 7. (a) If the lessee is obligated in connection with the lease to
49 maintain liability insurance or insurance on the motor vehicle that is
50 the subject of the agreement and if subsequent to the execution of the
51 agreement the lessee fails to maintain the required insurance, the hold-
52 er may make advances to procure the equivalent limits of insurance for
53 either the interests of the lessee and the holder or the interest of
54 either of them, and any amount so advanced may be the subject of a lease
55 charge as though such amount was part of the initial lease value.

1 (b) If under subdivision two of section three hundred thirty-five of
2 this article, the lessor waives its contractual right to hold the lessee
3 liable for the gap amount, and lessor gap insurance coverage which the
4 lessor or holder purchased in connection with the transaction subse-
5 quently is terminated prior to the filing of a claim due to the insol-
6 vency of the insurance company, notwithstanding the provisions of para-
7 graph three of subsection (b) of section one thousand one hundred one of
8 the insurance law the holder may make an advance to procure equivalent
9 limits of lessor gap insurance covering the transaction and any amount
10 so advanced may be the subject of a lease charge as though such amount
11 [was] WERE part of the GROSS capitalized cost.

12 (c) Each amount so advanced shall be subject to the default provisions
13 of the lease agreement if so provided in the agreement and if the holder
14 notifies the lessee in writing of the advance of such amount and of his
15 or her option to repay such amount in any one of the following ways:

16 (i) Full payment within ten days from the date of giving or mailing
17 the notice;

18 (ii) Full amortization during the term of the insurance or the remain-
19 ing term of the agreement, at the option of the holder;

20 (iii) If offered by the holder, as a final balloon payment payable one
21 month after the last scheduled payment under the agreement;

22 (iv) If offered by the holder, full amortization after the term of the
23 agreement, to be made in periodic payments which do not exceed the aver-
24 age periodic payment under the agreement; or

25 (v) If offered by the holder, any other amortization plan.

26 If the lessee neither pays in full the amount so advanced nor notifies
27 the holder in writing of his or her choice regarding the amortization
28 options before the expiration of ten days from the date of giving or
29 mailing the notice by the holder, the holder shall amortize the amount
30 so advanced pursuant to subparagraph (ii) of paragraph (c) of this
31 subdivision.

32 8. (a) The holder of a retail lease agreement may, if the agreement so
33 provides, collect a delinquency and collection charge on each rental
34 payment in default for a period not less than ten days in an amount not
35 in excess of the amount or amounts agreed to in the agreement. In addi-
36 tion to a delinquency and collection charge, the retail lease agreement
37 may provide for the payment of reasonable attorneys' fees not exceeding
38 fifteen percent of the amount due and payable under the agreement where
39 the agreement is referred to an attorney not a salaried employee of the
40 holder of the agreement for collection, plus the court costs.

41 (b) The holder may not assess or collect a delinquency and collection
42 charge under paragraph (a) of this subdivision on a rental payment,
43 which payment is otherwise a full payment for the applicable period and
44 is paid within ten days after its scheduled or deferred due date, when
45 the only delinquency is attributable to delinquency and collection
46 charges assessed on an earlier rental payment or payments.

47 9. No retail lease agreement shall be signed by any party thereto when
48 it contains blank spaces to be filled in after it has been signed except
49 that, if delivery of the motor vehicle is not made at the time of the
50 execution of the agreement, the identifying numbers or marks of the
51 motor vehicle or similar information and the due date of the first
52 payment may be inserted in the agreement after its execution. The
53 lessee's written acknowledgment, conforming to the requirements of
54 subdivision three of this section, of delivery of a copy of the agree-
55 ment shall be conclusive proof of such delivery and of compliance with
56 this subdivision in any action or proceeding by or against an assignee

1 of the agreement without knowledge to the contrary when he or she
2 purchases the agreement.

3 10. No retail lease agreement shall contain any provision by which the
4 lessee agrees not to assert against a holder a claim or defense or
5 require or entail the execution of any note or series of notes which,
6 when separately negotiated, will cut off as to third parties any right
7 of action or defense which the lessee may have against the lessor. The
8 holder of a retail lease agreement shall be subject to all claims and
9 defenses of the lessee against the lessor arising from the lease
10 notwithstanding any agreement to the contrary, but the holder's liability
11 under this subdivision shall not exceed the amount owing to the
12 holder at the time the claim or defense is asserted against the holder.
13 The holder shall have recourse against the lessor to the extent of any
14 liability incurred by the holder pursuant to this subdivision regardless
15 of whether the assignment of the agreement was with or without recourse.

16 11. Notwithstanding any contrary provision of this chapter, the lien
17 law, banking law or other law: (a) a person may purchase a retail lease
18 agreement from a lessor on such terms and conditions and for such price
19 as may be mutually agreed upon; and (b) no filing of the assignment, no
20 notice to the lessee of the assignment, and no requirement that the
21 lessor be deprived of dominion over payments upon the agreement or over
22 the vehicle if repossessed by or returned to the lessor, shall be necessary
23 to the validity of a written assignment of a retail lease agreement
24 as against creditors, subsequent purchasers, pledgees, mortgagees or
25 encumbrancers of the lessor.

26 12. Unless the lessee has notice of actual or intended assignment of a
27 retail lease agreement, payment thereunder made by the lessee to the
28 last known holder of such agreement shall be binding upon all subsequent
29 holders or assignees. A notification which does not reasonably identify
30 the rights assigned is ineffective. If requested by the lessee, the
31 assignee shall furnish reasonable proof that the assignment has been
32 made and unless he or she does so the lessee may pay the original
33 lessor.

34 13. (a) Upon written request from the lessee, the holder of a retail
35 lease agreement shall give or forward to the lessee a written statement
36 of the dates and amounts of the rental payments that have been made
37 under the agreement and the total amount of the remaining rental
38 payments. A lessee shall be given a written receipt for any payment when
39 made in cash.

40 (b) Upon written request from a lessee who is then entitled to terminate
41 the agreement early, the holder of a retail lease agreement shall
42 give or forward to the lessee a written statement of his or her gross
43 early termination liability under the agreement.

44 14. No retail lease agreement shall contain any provision applicable
45 to a natural person who leases a vehicle primarily for personal, family
46 or household use by which:

47 (a) in the absence of the lessee's default, the holder may, arbitrarily
48 and without reasonable cause, accelerate the maturity of any part or
49 all of the amount owing thereon;

50 (b) a power of attorney is given to confess judgment, or an assignment
51 of wages is given;

52 (c) the lessor or holder of the agreement or other person acting on
53 his or her behalf is given authority to enter upon the lessee's premises
54 unlawfully, or to commit any breach of the peace in the repossession of
55 the motor vehicle;

(d) the lessee waives any right of action against the lessor or holder of the agreement, or other person acting on his or her behalf, for any illegal act committed in the collection of payments under the agreement or in the repossession of the motor vehicle;

(e) the lessee executes a power of attorney appointing the lessor or holder of the agreement, or other person acting on his or her behalf, as the lessee's agent in collection of payments under the agreement or in the repossession of the motor vehicle; provided, however, that this paragraph shall not prohibit the inclusion in a retail lease agreement of a limited power of attorney or other provision authorizing the holder to execute in the name of the lessee any proofs of insurance claims or losses or to endorse the name of the lessee on any insurance settlement draft or check;

(f) the lessor is relieved from liability for any legal remedy which the lessee may have had against the lessor under the agreement, or any separate instrument executed in connection therewith;

(g) the maturity of any part or all of the amount owing thereon is accelerated where, following a default consisting solely of the failure to make timely rental payments, a lessee who has the right to reinstate the agreement makes timely tender of an amount which would be sufficient to reinstate the agreement under paragraph [(i)] (D) of subdivision five of this section;

(h) the lessee waives any right to a trial by jury in any action or proceeding arising out of the agreement; or

(i) a lessee who is not in default of his or her obligations under the agreement would be prohibited from terminating the agreement at any time after the expiration of the first fifty percent of the total number of months of the lease term. The exercise of this right to terminate early voluntarily is contingent upon the lessee discharging fully his or her liability under the early termination provisions of the agreement.

15. Any such prohibited provision shall be void but shall not otherwise affect the validity of the agreement.

16. Where necessary to ensure consistency with the pronoun usage in the underlying agreement, any language required by this article to be used in connection with a required disclosure may be modified to refer to the lessee in the first person and the holder in the second person.

S 6. The personal property law is amended by adding three new sections 337-a, 337-b and 337-c to read as follows:

S 337-A. OTHER REQUIRED DISCLOSURES. 1. FOR ANY RETAIL LEASE AGREEMENT SUBJECT TO THIS ARTICLE, THE LESSOR SHALL PROVIDE THE FOLLOWING DISCLOSURES, PRIOR TO THE CONSUMMATION OF SUCH LEASE, TO BE SEGREGATED FROM THE LEASE AGREEMENT:

(A) AMOUNT DUE AT LEASE SIGNING. THE TOTAL AMOUNT TO BE PAID PRIOR TO OR AT CONSUMMATION, USING THE TERM "AMOUNT DUE AT LEASE SIGNING." THE LESSOR SHALL ITEMIZE EACH COMPONENT BY TYPE AND AMOUNT, INCLUDING ANY REFUNDABLE SECURITY DEPOSIT, ADVANCE MONTHLY OR OTHER RENTAL PAYMENT, AND CAPITALIZED COST REDUCTION. THE LESSOR SHALL ITEMIZE HOW THE AMOUNT DUE WILL BE PAID, BY TYPE AND AMOUNT, INCLUDING ANY NET TRADE-IN ALLOWANCE, REBATES, NONCASH CREDITS, AND CASH PAYMENTS.

(B) PAYMENT SCHEDULE AND TOTAL AMOUNT OF RENTAL PAYMENTS. THE NUMBER, AMOUNT, AND DUE DATES OR PERIODS OF PAYMENTS SCHEDULED UNDER THE LEASE AGREEMENT AND THE TOTAL AMOUNT OF THE RENTAL PAYMENTS.

(C) OTHER CHARGES. THE TOTAL AMOUNT OF OTHER CHARGES PAYABLE TO THE LESSOR, ITEMIZED BY TYPE AND AMOUNT, THAT ARE NOT INCLUDED IN THE RENTAL PAYMENTS. SUCH CHARGES INCLUDE, BUT ARE NOT LIMITED TO, THE AMOUNT OF ANY LIABILITY THE RETAIL LEASE AGREEMENT IMPOSES UPON THE LESSEE AT THE

1 END OF THE LEASE TERM; PROVIDED, HOWEVER, THAT THE POTENTIAL DIFFERENCE
2 BETWEEN THE RESIDUAL AND REALIZED VALUES REFERRED TO IN PARAGRAPH (E) OF
3 SUBDIVISION TWO OF THIS SECTION SHALL BE EXCLUDED FROM THIS REQUIREMENT.
4 (D) TOTAL OF PAYMENTS. THE TOTAL OF PAYMENTS, WITH A DESCRIPTION SUCH
5 AS "THE AMOUNT YOU WILL HAVE PAID BY THE END OF THE LEASE". THIS AMOUNT
6 IS THE SUM OF THE AMOUNT DUE AT LEASE SIGNING (LESS ANY REFUNDABLE
7 AMOUNTS), THE TOTAL AMOUNT OF RENTAL PAYMENTS (LESS ANY PORTION OF THE
8 RENTAL PAYMENT PAID AT LEASE SIGNING), AND OTHER CHARGES UNDER PARA-
9 GRAPHS (A), (B), AND (C) OF THIS SUBDIVISION. IN AN OPEN-END LEASE, A
10 DESCRIPTION SUCH AS "YOU WILL OWE AN ADDITIONAL AMOUNT IF THE ACTUAL
11 VALUE OF THE VEHICLE IS LESS THAN THE RESIDUAL VALUE" SHALL ACCOMPANY
12 THE DISCLOSURE.

13 (E) PAYMENT CALCULATION. A MATHEMATICAL PROGRESSION OF HOW THE SCHED-
14 ULED RENTAL PAYMENT IS DERIVED WHICH SHALL CONTAIN:

15 (I) THE GROSS CAPITALIZED COST, INCLUDING A DISCLOSURE OF THE AGREED
16 UPON VALUE OF THE VEHICLE, WITH A DESCRIPTION SUCH AS "THE AGREED UPON
17 VALUE OF THE VEHICLE (STATE THE AMOUNT) AND ANY ITEMS YOU PAY FOR OVER
18 THE LEASE TERM (SUCH AS SERVICE CONTRACTS, INSURANCE, AND ANY OUTSTAND-
19 ING PRIOR LOAN OR LEASE BALANCE)", AND A STATEMENT OF THE LESSEE'S
20 OPTION TO RECEIVE A SEPARATE WRITTEN ITEMIZATION OF THE GROSS CAPITAL-
21 IZED COST. IF REQUESTED BY THE LESSEE, THE ITEMIZATION SHALL BE PROVIDED
22 BEFORE CONSUMMATION;

23 (II) THE CAPITALIZED COST REDUCTION, WITH A DESCRIPTION SUCH AS "THE
24 AMOUNT OF ANY NET TRADE-IN ALLOWANCE, REBATE, NONCASH CREDIT, OR CASH
25 YOU PAY THAT REDUCES THE GROSS CAPITALIZED COST";

26 (III) THE ADJUSTED CAPITALIZED COST, WITH A DESCRIPTION SUCH AS "THE
27 AMOUNT USED IN CALCULATING YOUR BASE (OR PERIODIC) RENTAL PAYMENT";

28 (IV) THE RESIDUAL VALUE, WITH A DESCRIPTION SUCH AS "THE VALUE OF THE
29 VEHICLE AT THE END OF THE LEASE USED IN CALCULATING YOUR BASE (OR PERI-
30 ODIC) RENTAL PAYMENT";

31 (V) THE DEPRECIATION AND ANY AMORTIZED AMOUNTS, WHICH IS THE DIFFER-
32 ENCE BETWEEN THE ADJUSTED CAPITALIZED COST AND THE RESIDUAL VALUE, WITH
33 A DESCRIPTION SUCH AS "THE AMOUNT CHARGED FOR THE VEHICLE'S DECLINE IN
34 VALUE THROUGH NORMAL USE AND FOR ANY OTHER ITEMS PAID OVER THE LEASE
35 TERM";

36 (VI) THE LEASE CHARGE, WITH A DESCRIPTION SUCH AS "THE AMOUNT CHARGED
37 IN ADDITION TO THE DEPRECIATION AND ANY AMORTIZED AMOUNTS". THIS AMOUNT
38 IS THE DIFFERENCE BETWEEN THE TOTAL OF THE BASE RENTAL PAYMENTS OVER THE
39 LEASE TERM MINUS THE DEPRECIATION AND ANY AMORTIZED AMOUNTS;

40 (VII) THE TOTAL OF BASE RENTAL PAYMENTS, WITH A DESCRIPTION SUCH AS
41 "DEPRECIATION AND ANY AMORTIZED AMOUNTS PLUS THE LEASE CHARGE";

42 (VIII) THE LEASE TERM, WITH A DESCRIPTION SUCH AS "THE NUMBER OF
43 (PERIODS OF REPAYMENT) IN YOUR LEASE";

44 (IX) THE TOTAL OF THE BASE RENTAL PAYMENTS DIVIDED BY THE NUMBER OF
45 PAYMENT PERIODS IN THE RETAIL LEASE AGREEMENT;

46 (X) AN ITEMIZATION OF OTHER CHARGES THAT ARE PART OF THE RENTAL
47 PAYMENT; AND

48 (XI) THE SUM OF THE BASE RENTAL PAYMENTS AND ANY OTHER CHARGES THAT
49 ARE PART OF THE RENTAL PAYMENT.

50 (F) EARLY TERMINATION NOTICE. A NOTICE SUBSTANTIALLY SIMILAR TO THE
51 FOLLOWING: "EARLY TERMINATION. YOU MAY HAVE TO PAY A SUBSTANTIAL CHARGE
52 IF YOU END THIS LEASE EARLY. THE CHARGE MAY BE UP TO SEVERAL THOUSAND
53 DOLLARS. THE ACTUAL CHARGE WILL DEPEND ON WHEN THE LEASE IS TERMINATED.
54 THE EARLIER YOU END THE LEASE, THE GREATER THIS CHARGE IS LIKELY TO BE."

55 (G) NOTICE OF WEAR AND USE STANDARD. A NOTICE REGARDING WEAR AND USE
56 SUBSTANTIALLY SIMILAR TO THE FOLLOWING: "EXCESSIVE WEAR AND USE. YOU MAY

1 BE CHARGED FOR EXCESSIVE WEAR BASED ON OUR STANDARDS FOR NORMAL USE."
2 SUCH NOTICE SHALL ALSO SPECIFY THE AMOUNT OR METHOD FOR DETERMINING ANY
3 CHARGE FOR EXCESS MILEAGE.

4 (H) PURCHASE OPTION. A STATEMENT OF WHETHER OR NOT THE LESSEE HAS THE
5 OPTION TO PURCHASE THE MOTOR VEHICLE AT THE END OF THE LEASE TERM AND,
6 IF SO, THE PURCHASE PRICE AT THE END OF THE LEASE TERM.

7 (I) STATEMENT REFERENCING RETAIL LEASE AGREEMENT DISCLOSURES. A STATE-
8 MENT THAT THE LESSEE SHOULD REFER TO THE LEASE DOCUMENTS FOR ADDITIONAL
9 INFORMATION ON EARLY TERMINATION, PURCHASE OPTIONS AND MAINTENANCE
10 RESPONSIBILITIES, WARRANTIES, LATE AND DEFAULT CHARGES, AND INSURANCE,
11 IF APPLICABLE.

12 (J) LIABILITY AT END OF LEASE TERM BASED ON RESIDUAL VALUE. IF THE
13 RETAIL LEASE AGREEMENT IS AN OPEN-END LEASE, THE LEASE CHARGE AND OTHER
14 CHARGES, PAID BY THE LESSEE AND REQUIRED BY THE LESSOR AS AN INCIDENT TO
15 THE LEASE TRANSACTION, WITH A DESCRIPTION SUCH AS "THE TOTAL AMOUNT OF
16 RENT AND OTHER CHARGES IMPOSED IN CONNECTION WITH YOUR LEASE (STATE THE
17 AMOUNT)".

18 2. FOR ANY RETAIL LEASE AGREEMENT SUBJECT TO THIS ARTICLE, THE LESSOR
19 SHALL PROVIDE THE FOLLOWING DISCLOSURES PRIOR TO THE CONSUMMATION OF THE
20 RETAIL LEASE AGREEMENT TO BE GIVEN TO THE LESSEE TOGETHER WITH A DATED
21 STATEMENT THAT IDENTIFIES THE LESSOR AND THE LESSEE. THE DISCLOSURES MAY
22 BE MADE EITHER IN A SEPARATE STATEMENT THAT IDENTIFIES THE RETAIL LEASE
23 AGREEMENT OR IN THE CONTRACT OR OTHER DOCUMENT EVIDENCING THE LEASE:

24 (A) A STATEMENT SPECIFYING WHETHER THE LESSOR OR THE LESSEE IS RESPON-
25 SIBLE FOR MAINTAINING OR SERVICING THE MOTOR VEHICLE, TOGETHER WITH A
26 BRIEF DESCRIPTION OF THE RESPONSIBILITY;

27 (B) A STATEMENT OF THE LESSOR'S STANDARDS FOR WEAR AND USE (IF ANY),
28 WHICH MUST BE REASONABLE;

29 (C) A STATEMENT REGARDING THE PURCHASE PRICE OR THE METHOD FOR DETER-
30 MINING THE PRICE AND WHEN THE LESSEE MAY EXERCISE THIS OPTION UPON EARLY
31 TERMINATION OF A RETAIL LEASE AGREEMENT;

32 (D) A STATEMENT OF THE LESSEE'S LIABILITY, IF ANY, AT EARLY TERMI-
33 NATION OR AT THE END OF THE LEASE TERM FOR THE DIFFERENCE BETWEEN THE
34 RESIDUAL VALUE OF THE MOTOR VEHICLE AND ITS REALIZED VALUE;

35 (E) IF AN AGREEMENT IS TERMINATED EARLY AND THERE IS NO OPTION TO
36 PURCHASE THE VEHICLE OR THE LESSEE DOES NOT EXERCISE ANY OPTION HE OR
37 SHE MAY HAVE TO PURCHASE THE VEHICLE, OR IF THE LESSEE DOES NOT EXERCISE
38 ANY OPTION HE OR SHE MAY HAVE TO PURCHASE THE VEHICLE AT THE SCHEDULED
39 END OF AN OPEN-END LEASE, A STATEMENT THAT THE LESSEE MAY OBTAIN, AT THE
40 LESSEE'S EXPENSE, A PROFESSIONAL APPRAISAL BY AN INDEPENDENT THIRD PARTY
41 (AGREED TO BY THE LESSEE AND THE LESSOR) OF THE VALUE THAT COULD BE
42 REALIZED AT SALE OF THE MOTOR VEHICLE IN ACCORDANCE WITH SECTION THREE
43 HUNDRED FORTY OF THIS ARTICLE;

44 (F) A STATEMENT ABOUT A REBUTTABLE PRESUMPTION THAT, AT THE END OF THE
45 LEASE TERM, THE RESIDUAL VALUE OF THE MOTOR VEHICLE IS UNREASONABLE AND
46 NOT IN GOOD FAITH TO THE EXTENT THAT THE RESIDUAL VALUE EXCEEDS THE
47 REALIZED VALUE BY MORE THAN THREE TIMES THE BASE RENTAL PAYMENT; AND
48 THAT THE LESSOR CANNOT COLLECT THE EXCESS AMOUNT UNLESS THE LESSOR
49 BRINGS A SUCCESSFUL COURT ACTION AND PAYS THE LESSEE'S REASONABLE ATTOR-
50 NEY'S FEES, OR UNLESS THE EXCESS OF THE RESIDUAL VALUE OVER THE REALIZED
51 VALUE IS DUE TO UNREASONABLE OR EXCESSIVE WEAR AND USE OF THE MOTOR
52 VEHICLE (IN WHICH CASE THE REBUTTABLE PRESUMPTION DOES NOT APPLY);

53 (G) A STATEMENT PROVIDING THE TOTAL DOLLAR AMOUNT FOR ALL OFFICIAL AND
54 LICENSE FEES, REGISTRATION, TITLE, OR TAXES REQUIRED TO BE PAID TO THE
55 LESSOR IN CONNECTION WITH THE RETAIL LEASE AGREEMENT;

(H) A STATEMENT IDENTIFYING ALL EXPRESS WARRANTIES AND GUARANTEES FROM THE MANUFACTURER OR LESSOR WITH RESPECT TO THE MOTOR VEHICLE THAT APPLY TO THE LESSEE; AND

(I) A STATEMENT OF THE AMOUNT OR THE METHOD OF DETERMINING THE AMOUNT OF ANY PENALTY OR OTHER CHARGE FOR DELINQUENCY, OR LATE PAYMENTS, IN ACCORDANCE WITH PARAGRAPH (E) OF SUBDIVISION FIVE AND SUBDIVISION EIGHT OF SECTION THREE HUNDRED THIRTY-SEVEN OF THIS ARTICLE.

3. ADDITIONAL INFORMATION MAY BE PROVIDED WITH ANY DISCLOSURE NOT LISTED IN THIS SECTION, BUT SHALL NOT BE STATED, USED, OR PLACED SO AS TO MISLEAD OR CONFUSE THE LESSEE OR CONTRADICT, OBSCURE, OR DETRACT ATTENTION FROM ANY DISCLOSURE REQUIRED BY THIS SECTION.

4. IF AN AMOUNT OR OTHER ITEM NEEDED TO COMPLY WITH A REQUIRED DISCLOSURE IS UNKNOWN OR UNAVAILABLE AFTER REASONABLE EFFORTS HAVE BEEN MADE TO ASCERTAIN THE INFORMATION, THE LESSOR MAY USE A REASONABLE ESTIMATE THAT IS BASED ON THE BEST INFORMATION AVAILABLE TO THE LESSOR, IS CLEARLY IDENTIFIED AS AN ESTIMATE, AND IS NOT USED TO CIRCUMVENT OR EVADE ANY DISCLOSURES REQUIRED BY THIS SECTION.

5. IF A REQUIRED DISCLOSURE BECOMES INACCURATE BECAUSE OF AN EVENT OCCURRING AFTER CONSUMMATION, THE INACCURACY IS NOT A VIOLATION OF THIS SECTION IF THE HOLDER GIVES NOTICE TO THE LESSEE OF SUCH INACCURACY AND PROVIDES THE APPROPRIATE CORRECTION WITHIN A REASONABLE TIME AFTER THE INACCURACY IS DISCOVERED.

6. A LESSOR MAY DISREGARD THE EFFECTS OF THE FOLLOWING IN MAKING DISCLOSURES: (A) THAT PAYMENTS MUST BE COLLECTED IN WHOLE CENTS; (B) THAT DATES OF SCHEDULED PAYMENTS MAY BE DIFFERENT BECAUSE A SCHEDULED DATE IS NOT A BUSINESS DAY; (C) THAT MONTHS HAVE DIFFERENT NUMBERS OF DAYS; AND (D) THAT FEBRUARY TWENTY-NINE OCCURS IN A LEAP YEAR.

7. IF A LESSOR PROVIDES A PERCENTAGE RATE IN AN ADVERTISEMENT OR IN DOCUMENTS EVIDENCING THE RETAIL LEASE AGREEMENT, INCLUDING THOSE DISCLOSURES REQUIRED BY THIS SECTION, A NOTICE STATING THAT "THIS PERCENTAGE MAY NOT MEASURE THE OVERALL COST OF FINANCING THIS LEASE" SHALL ACCOMPANY THE RATE DISCLOSURE. THE LESSOR SHALL NOT USE THE TERM "ANNUAL PERCENTAGE RATE", "ANNUAL LEASE RATE", OR ANY EQUIVALENT TERM.

S 337-B. RIGHT OF CANCELLATION FORM. AT THE TIME A LESSEE SIGNS A RETAIL LEASE AGREEMENT SUBJECT TO THE TERMS OF THIS ARTICLE, A COMPLETED FORM IN DUPLICATE, CAPTIONED "NOTICE OF CANCELLATION", SHALL BE ATTACHED TO THE LEASE CONTRACT AND SHALL BE EASILY DETACHABLE, AND SHALL CONTAIN IN NOT LESS THAN TEN-POINT BOLD FACE TYPE THE FOLLOWING INFORMATION AND STATEMENTS IN THE SAME LANGUAGE, E.G., SPANISH, AS THAT USED IN THE LEASE AGREEMENT:

NOTICE OF CANCELLATION
(ENTER DATE OF TRANSACTION)
(DATE)

YOU MAY CANCEL THIS CONTRACT WITHIN THREE (3) BUSINESS DAYS AFTER THE DATE OF THIS CONTRACT WITHOUT PENALTY OR OBLIGATION, EXCEPT THAT THE LESSOR IS ENTITLED TO KEEP NO MORE THAN \$100 FROM ANY DOWN PAYMENT YOU HAVE PAID. IF YOU CANCEL, ANY ADDITIONAL PAYMENTS MADE BY YOU UNDER THE CONTRACT WILL BE RETURNED WITHIN TEN (10) BUSINESS DAYS FOLLOWING RECEIPT BY THE LESSOR OF THIS CANCELLATION NOTICE OR OTHER WRITTEN DOCUMENTATION WHICH INDICATES YOUR INTENTION NOT TO BE BOUND. TO CANCEL THIS TRANSACTION, YOU MUST EITHER: DELIVER THIS CANCELLATION NOTICE OR OTHER WRITTEN DOCUMENTATION WHICH INDICATES YOUR INTENTION NOT TO BE BOUND TO THE LESSOR IN PERSON OR MAIL, BY CERTIFIED OR REGISTERED UNITED STATES MAIL, A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR OTHER DOCUMENTATION TO THE LESSOR AT THE ADDRESS SPECIFIED HEREIN:

1 (NAME OF LESSOR) NOT LATER THAN (ENTER FINAL DATE)
2 (ADDRESS OF LESSOR) (DATE)
3 (CONSUMER SIGNATURE)

4 S 337-C. PLAIN LANGUAGE. 1. ANY RETAIL LEASE AGREEMENT ENTERED INTO
5 PURSUANT TO THIS ARTICLE AND ITS SEGREGATED DISCLOSURES REQUIRED TO BE
6 PROVIDED TO A LESSEE SHALL BE WRITTEN IN CLEAR AND UNDERSTANDABLE
7 LANGUAGE INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING GUIDELINES:

8 (A) AN AGREEMENT MUST BE WRITTEN IN THE ACTIVE VOICE, WHERE PRACTICA-
9 BLE;

10 (B) AN AGREEMENT MAY NOT USE LATIN OR OTHER FOREIGN WORDS (UNLESS
11 REQUESTED BY THE CONSUMER OR OTHERWISE REQUIRED BY APPLICABLE LAW);

12 (C) IN INSTANCES WHEN AN AGREEMENT REFERS TO THE PARTIES ENTERING INTO
13 THE RETAIL LEASE AGREEMENT, THE REFERENCE SHOULD USE PERSONAL PRONOUNS,
14 THE ACTUAL OR SHORTENED NAMES OF THE PARTIES, OR THE TERMS "LESSOR" AND
15 "LESSEE"; AND

16 (D) WHENEVER POSSIBLE, AN AGREEMENT MAY NOT USE SENTENCES WITH DOUBLE
17 NEGATIVES OR EXCEPTIONS TO EXCEPTIONS.

18 2. ANY USE OF LANGUAGE REQUIRED, RECOMMENDED, OR APPROVED BY A FEDERAL
19 OR NEW YORK STATE STATUTE, RULE, REGULATION, OR OFFICIAL INTERPRETATION
20 OR THE USE OF MODEL FORMS REQUIRED, AUTHORIZED, APPROVED, OR RECOMMENDED
21 BY FEDERAL OR NEW YORK STATE AUTHORITIES SHALL NOT CONSTITUTE A
22 VIOLATION OF THIS SECTION.

23 3. NO PERSON, FIRM, PARTNERSHIP, CORPORATION, OR ASSOCIATION SHALL BE
24 DEEMED TO HAVE VIOLATED THE PROVISIONS OF THIS SECTION, IF ANY OF THE
25 FOLLOWING OCCURS:

26 (A) ALL PARTIES HAVE FULFILLED THEIR OBLIGATIONS UNDER THE AGREEMENT;

27 (B) THE LESSEE WROTE THE CONTRACT OR THE PROVISIONS THAT VIOLATE THIS
28 SECTION;

29 (C) THE LESSOR MADE A GOOD FAITH AND REASONABLE EFFORT TO COMPLY WITH
30 THIS SECTION. CORRECTION OF THE AGREEMENT OR THE PROVISIONS THAT VIOLATE
31 THIS SECTION SHALL BE CONCLUSIVE EVIDENCE OF GOOD FAITH.

32 S 7. Section 340 of the personal property law, as added by chapter 1
33 of the laws of 1994, is amended to read as follows:

34 S 340. Establishment of realized value at lease termination when
35 purchase option not exercised; notice of intention to sell motor vehi-
36 cle. 1. If an agreement is terminated early and there is no option to
37 purchase the vehicle or the lessee does not exercise any option he or
38 she may have to purchase the vehicle, or if the [lessee's liability at
39 the scheduled end of the lease term is based upon the estimated residual
40 value of the vehicle] RETAIL LEASE AGREEMENT IS AN OPEN-END LEASE and
41 the lessee does not exercise any option he or she may have to purchase
42 the vehicle, the holder shall act in a commercially reasonable manner
43 when disposing of the vehicle or obtaining cash bids for the purpose of
44 establishing the realized value of the vehicle, which may be its value
45 in the customary wholesale market. A lessee whose agreement is termi-
46 nated early without the exercise of a purchase option or whose [liabil-
47 ity at the scheduled end of the lease term is based upon the estimated
48 residual value of the vehicle] RETAIL LEASE AGREEMENT IS AN OPEN-END
49 LEASE may obtain, at his or her expense, a professional appraisal by an
50 independent third party agreed to by the lessee and the holder of the
51 wholesale value which could be realized at sale of the leased vehicle.
52 If a professional appraisal is obtained by such a lessee, the appraised
53 value shall be final and binding upon the parties and shall be used as
54 the realized value in determining the liability of the lessee at early
55 termination or at the scheduled end of the lease term.

1 2. If an agreement is terminated early and there is no option to
2 purchase the vehicle or the lessee does not exercise any option he or
3 she may have to purchase the vehicle, or if [the lessee's liability at
4 the scheduled end of the lease term is based upon the estimated residual
5 value of the vehicle] THE RETAIL LEASE AGREEMENT IS AN OPEN-END LEASE
6 and the lessee does not exercise any option he or she may have to
7 purchase the vehicle, the holder shall give the lessee at least ten days
8 written notice of its intention to sell the motor vehicle. A notice of
9 intention to sell the vehicle need not be given if the holder and lessee
10 have agreed in writing to the amount of the lessee's liability under the
11 retail lease agreement after the lessee returns the vehicle to the hold-
12 er or the lessee has fully satisfied his or her obligations under the
13 agreement. A holder gives notice to the lessee under this subdivision
14 when he or she delivers the notice to the lessee or mails the notice to
15 him or her at his or her last known address.

16 3. The notice of intention to sell the vehicle shall set forth sepa-
17 rately any charges or sums due under the agreement and shall clearly and
18 conspicuously state that the lessee will be liable for the difference
19 between the [estimated] residual value of the vehicle and its realized
20 value, if such liability exists. The notice also shall state that the
21 lessee has the right to submit a cash bid for the purchase of the vehi-
22 cle. SUCH NOTICE SHALL NOTIFY THE LESSEE OF HIS OR HER RIGHT TO OBTAIN
23 A PROFESSIONAL APPRAISAL BY A PARTY AGREED TO BY BOTH THE LESSEE AND THE
24 HOLDER IN ORDER TO DETERMINE THE REALIZED VALUE OF THE MOTOR VEHICLE AND
25 THAT ANY SUCH APPRAISAL WOULD BE BINDING.

26 S 8. Subdivision 2 of section 341 of the personal property law, as
27 amended by chapter 140 of the laws of 1995, is amended to read as
28 follows:

29 2. This section does not limit or restrict the manner of calculating
30 the early termination liability of a lessee, whether by way of unamor-
31 tized GROSS capitalized cost, discounted present value of remaining
32 rental payments, multiples of monthly payments or otherwise, so long as
33 the early termination liability of the lessee does not exceed that
34 permitted by this section.

35 S 9. Section 343 of the personal property law, as amended by chapter
36 111 of the laws of 1995, is amended to read as follows:

37 S 343. Assessment of excess wear and [damage] USE to the vehicle. 1.
38 (a) Upon the scheduled termination of a retail lease agreement, the
39 holder shall not charge, receive or collect a charge for excess wear and
40 [damage] USE to the vehicle which exceeds: (i) the actual cost of
41 repairs, reduced by all discounts, paid by the holder; or (ii) a true
42 itemized estimate of the cost of such repairs by an appraiser licensed
43 pursuant to section three hundred ninety-eight-d of the vehicle and
44 traffic law selected by the holder, of the cost of such repairs.

45 (b) Upon early termination of a retail lease agreement, the holder
46 shall not charge, receive or collect a charge for excess wear and
47 [damage] USE to the vehicle which exceeds the actual costs of repairs,
48 reduced by all discounts, paid by the holder.

49 2. [In order for a holder to impose a charge for excess wear and
50 damage to a vehicle subject to a retail lease agreement, such agreement
51 shall contain a clause describing the excess wear and damage to the
52 vehicle for which the lessee may be liable. Such] THE holder shall, not
53 more than forty days nor less than twenty days prior to the scheduled
54 termination date, or, not more than ten business days after the date of
55 an early termination of a lease agreement, mail or deliver to the lessee

1 a notice advising the lessee of the following rights and obligations of
2 the parties, herein granted and imposed:

3 (a) Such notice shall include the following statement, as set forth
4 herein, at the beginning of the notice in at least ten-point bold type:

5 "YOUR LEASE AGREEMENT ALLOWS (HOLDER) TO ASSESS A
6 CHARGE FOR EXCESS WEAR AND [DAMAGE] USE TO THE VEHI-
7 CLE. YOU SHOULD OBTAIN YOUR OWN EVIDENCE OF THE
8 CURRENT CONDITION OF THE VEHICLE NOT MORE THAN TWEN-
9 TY (20) DAYS PRIOR TO THE SCHEDULED TERMINATION OF
10 YOUR LEASE. YOU ALSO WILL HAVE THE RIGHT TO SUBMIT
11 DISPUTES TO THE ALTERNATE ARBITRATION MECHANISM
12 ESTABLISHED UNDER REGULATIONS PROMULGATED BY THE NEW
13 YORK STATE ATTORNEY GENERAL."

14 (b) In the case of a scheduled termination, of the lessee's right to
15 turn the vehicle in with a copy of an itemized appraisal of excess wear
16 and [damage] USE to the vehicle prepared by an appraiser licensed under
17 section three hundred ninety-eight-d of the vehicle and traffic law,
18 selected by the lessee and conducted not more than twenty days prior to
19 the scheduled termination date;

20 (c) Of the right of the holder to, within thirty days after the date
21 on which the vehicle comes into the actual physical possession of the
22 holder, obtain a written itemized appraisal of excessive wear and
23 [damage] USE to the vehicle prepared by an appraiser licensed under
24 section three hundred ninety-eight-d of the vehicle and traffic law
25 selected by the holder;

26 (d) That if the lessee had not previously obtained and submitted to
27 the holder a written itemized appraisal on the lessee's own behalf in
28 accordance with paragraph (b) of this subdivision, the lessee will have
29 the greater of ten business days after the lessee has received or four-
30 teen business days to do so after the holder has sent, in conformance
31 with subdivision three of this section, an itemized bill for excess wear
32 and [damage] USE and a copy of the itemized appraisal prepared on behalf
33 of the holder, unless the lessee does not dispute any of the items
34 contained therein. In the case where the holder bases the charge for
35 excess wear and [damage] USE on the actual cost of repairs, the notice
36 shall also inform the lessee that should the lessee fail to obtain an
37 itemized written appraisal, he or she is entitled to dispute only wheth-
38 er any items claimed exist and/or are excess wear and [damage] USE to
39 the vehicle, but not the actual cost of making the repairs;

40 (e) That if the lessee disputes that any of the items claimed for
41 excess wear and [damage] USE to the vehicle exist or are excessive in
42 nature, the lessee may submit the dispute within sixty days of the date
43 on which the vehicle comes into the actual physical possession of the
44 holder to the holder's informal dispute settlement procedure, if any,
45 or, upon the payment of the prescribed filing fee which is refundable if
46 the arbitrator finds in the lessee's favor, to an alternative arbi-
47 tration mechanism established under regulations promulgated by the
48 attorney general of the state of New York;

49 (f) That if there exists a discrepancy between the itemized appraisals
50 obtained by the holder and the lessee, if any, the holder shall submit
51 the dispute within sixty days of the date on which the vehicle comes
52 into the actual physical possession of the holder to the holder's
53 informal dispute settlement procedure, if any, unless the lessee exer-
54 cises the option granted by paragraph (b) of subdivision five of this
55 section; provided, however, that in the event the holder has complied
56 with the provisions of this subdivision, a lessee who has failed to

1 obtain an itemized appraisal of the excessive wear and [damage] USE to
2 the vehicle in accordance with either paragraph (b) or (c) of this
3 subdivision may dispute only the existence of any item or whether the
4 wear is excessive in nature, but may not dispute the actual cost of
5 repairs.

6 3. (a) Itemized bill. (i) In the event that the holder wishes to
7 impose a charge for excess wear and [damage] USE to the vehicle, the
8 holder shall send by registered mail or hand-deliver to the lessee a
9 bill containing an itemized list of the estimated or actual cost of
10 repairing or replacing each item as to which an excess wear and [damage]
11 USE charge is claimed and specifying the address to which any response
12 must be mailed. The bill shall be mailed or hand-delivered to the
13 lessee within thirty days after the date on which the vehicle comes into
14 the actual possession of the holder.

15 (ii) The itemized bill shall include the following statements printed
16 in at least ten-point type: "You are being asked to pay an amount
17 claimed for excess wear and [damage] USE to the vehicle. If you wish to
18 contest this amount, you must obtain an itemized appraisal from an
19 appraiser licensed by the New York State Department of Motor Vehicles,
20 and mail or deliver a copy of such appraisal to (NAME AND ADDRESS OF
21 HOLDER) within the greater of fourteen business days after (NAME OF
22 HOLDER) has sent, or ten business days of receipt of this bill and (NAME
23 OF HOLDER'S) itemized appraisal. If you fail to do so, you will forfeit
24 your right to contest in arbitration any actual repair costs incurred by
25 the (HOLDER) for excess wear and [damage] USE; however, you do not
26 forfeit your right to contest the existence of any item or whether the
27 wear is excessive in nature."

28 (iii) The itemized bill shall also notify lessees of their material
29 rights and obligations for dispute resolution in arbitration.

30 (b) Itemized appraisal. (i) A holder who imposes a charge for excess
31 wear and [damage] USE to the vehicle shall send by registered mail or
32 hand-deliver, within thirty days after the date on which the vehicle
33 comes into actual physical possession of the holder, a written itemized
34 appraisal prepared by an appraiser licensed under section three hundred
35 ninety-eight-d of the vehicle and traffic law. The appraisal shall be
36 dated, signed by the holder or its agent, and identify by type each item
37 of excess wear and [damage] USE.

38 (ii) The following notice shall be included at the beginning of the
39 itemized appraisal prepared on behalf of the holder and furnished to the
40 lessee,

41 "ALL ITEMS OF DAMAGE FOR WHICH A CHARGE FOR EXCES-
42 SIVE WEAR OR [DAMAGE] USE WILL BE CLAIMED BY THE
43 HOLDER MUST BE NOTED IN THIS APPRAISAL. IF YOU
44 DISPUTE THE EXISTENCE OR NATURE OF ANY ITEM OF
45 DAMAGE IDENTIFIED IN THIS NOTICE, YOU MAY SUBMIT THE
46 DISPUTE TO THE ALTERNATE ARBITRATION MECHANISM
47 ESTABLISHED UNDER REGULATIONS PROMULGATED BY THE NEW
48 YORK STATE ATTORNEY GENERAL."

49 4. (a) The itemized bill and appraisal required by subdivision three
50 of this section may be combined into a single document. Mere acknowl-
51 edgement by the lessee of receipt of an itemized bill, an appraisal, or
52 a combination of the two shall not operate as an admission of the exist-
53 ence, nature or amount of any of the items therein.

54 (b) (i) The holder shall grant the lessee access to the vehicle at a
55 reasonable time and place in order for the lessee to obtain an itemized
56 appraisal on the lessee's own behalf. The holder shall not be required,

1 however, to deliver the vehicle to, or produce the vehicle at, a desti-
2 nation designated by the lessee for such purpose. FOR THE PURPOSES OF
3 THIS PARAGRAPH, A REASONABLE PLACE SHALL BE LIMITED TO TWENTY-FIVE MILES
4 FROM THE LOCATION WHERE THE VEHICLE WAS SURRENDERED BY THE LESSEE AT THE
5 TERMINATION OF THE LEASE.

6 (ii) A holder may not fail to provide, either intentionally or by
7 actions or omissions, reasonable access to the vehicle by the licensed
8 appraiser chosen by the lessee within the period during which a lessee
9 must obtain and submit an appraisal. If the holder fails to so provide
10 reasonable access to the vehicle, the holder shall be deemed to have
11 forfeited its contractual right to charge, receive or collect any charge
12 for excessive wear and [damage] USE to the vehicle from the lessee.

13 (c) A lessor or holder of a retail lease agreement shall not report an
14 unsatisfied claim for excess wear and [damage] USE to a credit reporting
15 agency as a derogatory item of information until: (i) the expiration of
16 the time granted under article seventy-five of the civil practice law
17 and rules for the filing of a petition to vacate or modify an
18 arbitrator's award; (ii) the issue has been a subject of a final judg-
19 ment; or (iii) where the holder and the lessee execute a settlement,
20 thirty days after the date a payment is due under the settlement if no
21 payment has been made.

22 5. (a) Arbitration and enforcement. If a holder has established or
23 participates in an informal dispute settlement procedure which is
24 consistent in all respects with the provisions of part seven hundred
25 three of title sixteen of the code of federal regulations, any dispute,
26 disparity or conflict between any appraisal report prepared by an
27 appraiser licensed by the state department of motor vehicles on behalf
28 of the holder and one prepared on behalf of the lessee shall be decided
29 by such informal dispute settlement procedure. Holders utilizing
30 informal dispute settlement procedures pursuant to this subdivision
31 shall insure that the arbitrators participating in such informal dispute
32 settlement procedures are familiar with the provisions of this section.

33 (b) Upon the payment of a prescribed filing fee, a [consumer] LESSEE
34 shall have the option of submitting any dispute arising under this
35 section to an alternate arbitration mechanism established pursuant to
36 regulations to be promulgated hereunder by the attorney general. Upon
37 application of the [consumer] LESSEE and payment of the filing fee, the
38 holder shall submit to such alternate arbitration. Such alternate arbi-
39 tration shall be conducted by a professional arbitrator or arbitration
40 firm appointed by and under regulations established by the attorney
41 general. Such alternate arbitration mechanism shall ensure the personal
42 objectivity of its arbitrators and the right of each party to present
43 its case, to be in attendance during any presentation made by the other
44 party and to rebut or refute such presentation. In all other respects,
45 such alternate arbitration mechanism shall be governed by article seven-
46 ty-five of the civil practice law and rules. Holder or lessee shall have
47 thirty days from the date of mailing of a copy of the arbitrator's deci-
48 sion to such holder or lessee to comply with the terms of such decision.

49 (c) In no event shall any person who has participated in an informal
50 dispute settlement procedure be precluded from seeking the rights or
51 remedies available to such person under applicable law.

52 (d) Nothing in this section shall be deemed to prohibit: (i) the
53 holder and the lessee from agreeing upon termination of the agreement to
54 the payment by the lessee, in satisfaction of his or her obligation
55 under the provisions of the agreement, of an amount which the lessor and
56 the lessee agree is a reasonable figure to compensate for damage to the

1 vehicle RESULTING FROM EXCESSIVE WEAR AND USE; (ii) the holder from
2 retaining any portion of a security deposit in satisfaction of amounts
3 owed to the holder that are not attributable to excess wear and [tear]
4 USE; or (iii) to restrict or otherwise regulate the assessment of charg-
5 es for excess mileage.

6 (E)(I) NOTWITHSTANDING THE PROVISIONS OF SECTION THREE HUNDRED FIFTY
7 OF THIS ARTICLE, FOR ANY RETAIL AGREEMENT WHICH DOES NOT CHARGE OR
8 ASSESS A FEE FOR THE TERMINATION OF THE RETAIL LEASE AGREEMENT, OR FOR
9 THE STORAGE, RETAKING, RE-REGISTRATION, PREPARING FOR SALE, OR SELLING
10 OF A MOTOR VEHICLE, OR ANY OTHER FEE OR CHARGE WHICH IS RELATED TO THE
11 TERMINATION OR DISPOSITION OF THE RETAIL LEASE AGREEMENT, A HOLDER AND
12 LESSEE MAY AGREE TO WAIVE ANY OF THEIR RIGHTS UNDER THIS SECTION,
13 PROVIDED THAT THE HOLDER AND LESSEE HAVE AGREED, PURSUANT TO SUBPARA-
14 GRAPH (I) OF PARAGRAPH (D) OF THIS SUBDIVISION, TO AN AMOUNT REPRESENT-
15 ING A REASONABLE FIGURE TO COMPENSATE THE HOLDER FOR DAMAGE TO THE VEHI-
16 CLE RESULTING FROM EXCESS WEAR AND USE.

17 (II) SUCH AGREEMENT AND WAIVER SHALL INCLUDE THE FOLLOWING STATEMENT,
18 AS SET FORTH HEREIN, AT THE BEGINNING OF THE AGREEMENT IN AT LEAST TEN-
19 POINT BOLD TYPE: "(HOLDER) AND (LESSEE) AGREE THAT THE AMOUNT DUE FOR
20 EXCESS WEAR AND USE TO THE VEHICLE SHALL BE (AGREED AMOUNT). THIS
21 AGREEMENT SHALL CONSTITUTE A WAIVER OF RIGHTS UNDER SECTION 343 OF THE
22 PERSONAL PROPERTY LAW, WHICH INCLUDE THE RIGHT FOR EACH PARTY TO OBTAIN
23 SEPARATE APPRAISALS OF THE AMOUNT DUE AND HAVE ANY DISPUTES SUBMITTED TO
24 AN ALTERNATE ARBITRATION MECHANISM."

25 S 10. Section 345 of the personal property law, as added by chapter 1
26 of the laws of 1994 and subdivision 2 as amended by chapter 140 of the
27 laws of 1995, is amended to read as follows:

28 S 345. Renegotiations and extensions. 1. A renegotiation is a new
29 lease which is subject to the disclosure requirements of [section]
30 SECTIONS three hundred thirty-seven AND THREE HUNDRED THIRTY-SEVEN-A of
31 this article.

32 2. The disclosure requirements of [section] SECTIONS three hundred
33 thirty-seven AND THREE HUNDRED THIRTY-SEVEN-A of this article are not
34 applicable to any extension of a retail lease agreement. An extension of
35 a retail lease agreement need not be signed contemporaneously by the
36 holder and the lessee if the extension is transacted by mail, is for a
37 period of [twenty-four] SIX months or less and is first signed by the
38 holder prior to signature by the lessee.

39 S 11. Section 346 of the personal property law, as added by chapter 1
40 of the laws of 1994 and subdivision 2 as amended by chapter 111 of the
41 laws of 1995, is amended to read as follows:

42 S 346. Penalties. 1. A lessee who has suffered a loss due to a
43 violation of any provision of this article by a lessor or holder is
44 entitled to recover his or her actual damages from the lessor or holder;
45 PROVIDED, HOWEVER, THAT A LESSEE WHO HAS SUFFERED A LOSS DUE TO A
46 VIOLATION OF SECTION THREE HUNDRED THIRTY-SEVEN OR THREE HUNDRED THIR-
47 TY-SEVEN-A OF THIS ARTICLE IS ENTITLED TO RECEIVE THE SUM OF: (I) HIS OR
48 HER ACTUAL DAMAGES FROM THE LESSOR OR HOLDER; AND (II) TWENTY-FIVE PER
49 CENTUM OF THE TOTAL AMOUNT OF MONTHLY PAYMENTS UNDER THE LEASE, EXCEPT
50 THAT THE LIABILITY UNDER THIS CLAUSE SHALL NOT BE LESS THAN ONE HUNDRED
51 DOLLARS NOR GREATER THAN ONE THOUSAND DOLLARS.

52 2. Any lessor who fails to refund any payment made pending the
53 execution of a retail lease agreement within the time required by subdi-
54 vision one of section three hundred thirty-four of this article shall be
55 liable to the lessee for twice the amount of the payment not refunded
56 within the time required.

1 3. Any lessor who fails to return a vehicle which the lessee left with
2 the lessor pending the execution of a retail lease agreement, or who
3 sells or transfers such a vehicle contrary to the provisions of subdivi-
4 sion three of section three hundred thirty-four of this article, shall
5 be liable to the lessee for the value of the vehicle traded-in and all
6 costs and expenses incurred by the lessee because of the loss of the
7 vehicle.

8 4. In an action in which it is determined that a lessor or holder has
9 violated this article, the court shall award to the lessee a civil
10 penalty of one hundred dollars.

11 5. (a) In an action in which it is determined that a lessor or holder
12 has violated this article, the court also shall award to the lessee the
13 costs of the action and to his or her attorneys their reasonable fees.
14 In determining the award of attorney's fees, the amount of the recovery
15 on the behalf of the lessee is not controlling.

16 (b) In an action for the recovery of an amount claimed for excess wear
17 and [tear] USE, the court shall award to the lessee the costs of the
18 action and to his or her attorneys their reasonable fees if the holder
19 is awarded an amount less than an amount that the lessee offered, in
20 writing and prior to the institution of the action, to pay in satisfac-
21 tion of the contested portion of the amount claimed for excess wear and
22 [tear] USE.

23 6. A violation of subdivision fourteen of section three hundred thir-
24 ty-seven of this article is a deceptive trade practice under section
25 three hundred forty-nine of the general business law.

26 7. Whenever there shall be a violation of this article an application
27 may be made by the attorney general in the name of the people of the
28 state of New York to a court or justice having jurisdiction by a special
29 proceeding to issue an injunction, and upon notice to the defendant of
30 not less than five days, to enjoin and restrain the continuance of such
31 violations; and if it shall appear to the satisfaction of the court or
32 justice that the defendant has, in fact, violated this [section]
33 ARTICLE, an injunction may be issued by the court or justice, enjoining
34 and restraining any further violations, without requiring proof that any
35 person has, in fact, been injured or damaged thereby. In any such
36 proceeding, the court may make allowances to the attorney general as
37 provided in paragraph six of subdivision (a) of section eighty-three
38 hundred three of the civil practice law and rules, and direct restitu-
39 tion. Whenever the court shall determine in any such proceeding that a
40 violation of this [section] ARTICLE has occurred, the court may impose a
41 civil penalty of not more than five hundred dollars for each violation.
42 In connection with any such proposed application the attorney general is
43 authorized to take proof and make a determination of the relevant facts
44 and to issue subpoenas in accordance with the civil practice law and
45 rules.

46 8. (a) Notwithstanding the provisions of this section, and except as
47 provided in subdivisions two and three of this section, any failure to
48 comply with the substantive provisions of this article, EXCEPT SECTION
49 THREE HUNDRED THIRTY-SEVEN-A OF THIS ARTICLE, may be corrected within
50 sixty days after the holder is notified thereof in writing by the lessee
51 or, in the absence of such notice, the lessor or holder may voluntarily
52 correct any such failure to comply and, if so corrected, neither the
53 lessor nor the holder shall be liable to a lessee for any penalty under
54 this section. Within sixty days after discovering a violation of the
55 disclosure provisions of this article, and prior to the institution of
56 an action under this section or the receipt of written notice of the

1 violation from the lessee, the lessor or holder may correct the disclo-
2 sure violation and, if so corrected, neither the lessor nor the holder
3 shall be subject to any penalty under this section.

4 (b) Nothing in this subdivision shall be construed so as to nullify or
5 impair the right of the attorney general to proceed, under subdivision
6 seven of this section or subdivision twelve of section sixty-three of
7 the executive law, against a lessor or holder who has violated this
8 article.

9 9. A lessor or holder may not be held liable in an action brought
10 under this article for a violation of this article that was uninten-
11 tional and resulted from a bona fide error notwithstanding the mainte-
12 nance of procedures reasonably adapted to avoid any such error. Examples
13 of a bona fide error include, but are not limited to, clerical, calcu-
14 lation, computer malfunction and programming, and printing errors,
15 except that an error of legal judgment with respect to a person's obli-
16 gations under this article is not a bona fide error.

17 10. An action shall not be brought under this article more than four
18 years after the occurrence of the act, method or practice which is the
19 subject of the action or more than one year after the last payment in a
20 transaction involving the method, act or practice which is the subject
21 of the action, whichever is later.

22 S 12. Section 396-p of the general business law, as added by chapter
23 736 of the laws of 1978, is amended by adding two new subdivisions 2-a
24 and 4-a to read as follows:

25 2-A. EVERY CONTRACT PROVIDED FOR IN PARAGRAPH (B) OF SUBDIVISION ONE
26 OF THIS SECTION SHALL CONTAIN A STATEMENT NOTIFYING THE CONSUMER OF HIS
27 OR HER RIGHT TO CANCEL SUCH CONTRACT IN ACCORDANCE WITH SUBDIVISION
28 FOUR-A OF THIS SECTION. A NOTICE SUBSTANTIALLY SIMILAR TO THE FOLLOWING
29 NOTICE COMPLIES WITH REQUIREMENTS OF THIS SUBDIVISION: "NOTICE TO THE
30 CONSUMER: YOU, THE BUYER, MAY CANCEL THIS CONTRACT WITHIN THREE (3)
31 BUSINESS DAYS AFTER THE DATE OF THIS CONTRACT. SEE THE ATTACHED NOTICE
32 OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

33 4-A. (A) IN ADDITION TO ANY OTHER RIGHTS TO REVOKE AN OFFER, THE
34 CONSUMER MAY CANCEL A CONTRACT, WHETHER OR NOT SUCH CONSUMER HAS
35 RECEIVED A COPY OF SUCH CONTRACT SIGNED BY THE RETAIL DEALER, UNTIL
36 MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE ON WHICH THE CONSUMER
37 SIGNED THE CONTRACT OR THE DATE ON WHICH THE RETAIL DEALER DELIVERED A
38 COPY OF THE CONTRACT SIGNED BY HIM OR HER, WHICHEVER IS LATER. FOR
39 PURPOSES OF THIS PARAGRAPH, CANCELLATION WILL BE DEEMED TO HAVE OCCURRED
40 WHEN WRITTEN NOTICE OF CANCELLATION IS GIVEN TO THE RETAIL DEALER. IF
41 GIVEN BY MAIL, A NOTICE OF CANCELLATION SHALL BE SENT BY CERTIFIED OR
42 REGISTERED UNITED STATES MAIL AND SHALL BE DEEMED DELIVERED ON THE DATE
43 OF THE POSTMARK. NOTICE OF CANCELLATION SHALL BE SUFFICIENT IF IT INDI-
44 CATES THE INTENTION OF THE CONSUMER NOT TO BE BOUND. RETURN OF THE
45 NOTICE OF CANCELLATION FORM PROVIDED PURSUANT TO PARAGRAPH (F) OF THIS
46 SUBDIVISION BY THE LESSEE TO THE LESSOR IS SUFFICIENT TO COMPLY WITH THE
47 REQUIREMENTS OF THIS SUBDIVISION.

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

52 (C) UNLESS THE CONSUMER WAIVES THE RIGHT TO CANCEL AS PROVIDED IN
53 PARAGRAPH (B) OF THIS SUBDIVISION, THE RETAIL DEALER IS NOT REQUIRED TO
54 DELIVER ANY MOTOR VEHICLE TO A CONSUMER UNTIL AFTER THE CLOSE OF BUSI-
55 NESS ON THE THIRD BUSINESS DAY AFTER THE DAY ON WHICH THE CONSUMER OR
56 RETAIL DEALER SIGNS A MOTOR VEHICLE INSTALMENT CONTRACT.

1 (D) FOR PURPOSES OF A CANCELLATION PURSUANT TO PARAGRAPH (A) OF THIS
2 SUBDIVISION, IF A CONSUMER, PURSUANT TO AN AGREEMENT WITH THE RETAIL
3 DEALER, REMOVES ANY TRADE-IN MOTOR VEHICLE FROM THE RETAIL DEALER'S LOT
4 AFTER SIGNING A MOTOR VEHICLE CONTRACT OR OFFER, BUT BEFORE THE EXPIRA-
5 TION FOR THE PERIOD OF TIME DURING WHICH THE CONSUMER HAS THE RIGHT TO
6 CANCEL, THE RETAIL DEALER MAY REAPPRAISE THE VALUE OF THE TRADE-IN VEHI-
7 CLE UPON ITS RETURN TO THE RETAIL DEALER IF THE VEHICLE IS IN A CONDI-
8 TION THAT IS NOT SUBSTANTIALLY THE SAME AS WHEN IT WAS ORIGINALLY
9 APPRAISED FOR TRADE-IN PURPOSES. HOWEVER, SUCH REAPPRAISAL SHALL
10 NEITHER EXTEND THE CANCELLATION PERIOD PROVIDED FOR IN PARAGRAPH (A) OF
11 THIS SUBDIVISION NOR ENTITLE THE CONSUMER TO ANOTHER SUCH CANCELLATION
12 PERIOD.

13 (E) IF A CONSUMER CANCELS A CONTRACT PURSUANT TO THE PROVISIONS OF
14 THIS SUBDIVISION: (I) THE RETAIL DEALER MAY RETAIN, FROM ANY CASH DOWN
15 PAYMENT PAID BY THE CONSUMER TO THE RETAIL DEALER, COMPENSATION FOR
16 CANCELLATION OF THE CONTRACT THAT SHALL NOT EXCEED ONE HUNDRED DOLLARS,
17 BUT SHALL NOT IMPOSE ANY OTHER PENALTY OR OBLIGATION; AND (II) THE
18 LESSOR SHALL REFUND TO THE LESSEE ANY PAYMENTS, LESS THOSE PROVIDED BY
19 SUBPARAGRAPH (I) OF THIS PARAGRAPH, WITHIN TEN BUSINESS DAYS OF SUCH
20 CANCELLATION.

21 (F) AT THE TIME A CONSUMER SIGNS A CONTRACT SUBJECT TO THE TERMS OF
22 THIS SECTION, A COMPLETED FORM IN DUPLICATE, CAPTIONED "NOTICE OF
23 CANCELLATION", SHALL BE ATTACHED TO THE CONTRACT AND SHALL BE EASILY
24 DETACHABLE, AND SHALL CONTAIN IN NOT LESS THAN TEN-POINT BOLD FACE TYPE
25 THE FOLLOWING INFORMATION AND STATEMENTS IN THE SAME LANGUAGE, E.G.,
26 SPANISH, AS THAT USED IN THE CONTRACT:

27 NOTICE OF CANCELLATION
28 (ENTER DATE OF TRANSACTION)
29 (DATE)

30 YOU MAY CANCEL THIS CONTRACT WITHIN THREE (3) BUSINESS DAYS AFTER THE
31 DATE OF THIS CONTRACT WITHOUT PENALTY OR OBLIGATION, EXCEPT THAT THE
32 SELLER IS ENTITLED TO KEEP NO MORE THAN \$100 FROM ANY DOWN PAYMENT YOU
33 HAVE PAID. IF YOU CANCEL, ANY ADDITIONAL PAYMENTS MADE BY YOU UNDER THIS
34 CONTRACT WILL BE RETURNED WITHIN TEN (10) BUSINESS DAYS FOLLOWING
35 RECEIPT BY THE SELLER OF THIS CANCELLATION NOTICE OR OTHER WRITTEN
36 DOCUMENTATION WHICH INDICATES YOUR INTENTION NOT TO BE BOUND. TO CANCEL
37 THIS TRANSACTION, YOU MUST EITHER: DELIVER THIS CANCELLATION NOTICE OR
38 OTHER WRITTEN DOCUMENTATION WHICH INDICATES YOUR INTENTION NOT TO BE
39 BOUND TO THE SELLER IN PERSON; OR MAIL, BY CERTIFIED OR REGISTERED
40 UNITED STATES MAIL, A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE
41 OR OTHER WRITTEN DOCUMENTATION TO THE SELLER AT THE ADDRESS SPECIFIED
42 HEREIN:

43 (NAME OF SELLER) NOT LATER THAN (ENTER FINAL DATE)
44 (ADDRESS OF SELLER) (DATE)
45 (CONSUMER SIGNATURE)

46 S 13. The general business law is amended by adding a new section
47 198-d to read as follows:

48 S 198-D. USED MOTOR VEHICLE SALES AGREEMENTS; REQUIRED CANCELLATION
49 PROVISIONS. A. AS USED IN THIS SECTION, THE FOLLOWING WORDS SHALL HAVE
50 THE FOLLOWING MEANINGS:

51 1. "CONSUMER" MEANS THE PURCHASER, OTHER THAN FOR THE PURPOSES OF
52 RESALE, OF A USED MOTOR VEHICLE NORMALLY USED FOR PERSONAL, FAMILY, OR
53 HOUSEHOLD PURPOSES AND SUBJECT TO A WARRANTY, AND THE SPOUSE OR CHILD OF
54 THE PURCHASER IF SUCH MOTOR VEHICLE IS TRANSFERRED TO THE SPOUSE OR
55 CHILD DURING THE DURATION OF ANY WARRANTY APPLICABLE TO SUCH MOTOR VEHI-

1 CLE, AND ANY OTHER PERSON ENTITLED BY THE TERMS OF SUCH WARRANTY TO
2 ENFORCE THE OBLIGATIONS OF THE WARRANTY;

3 2. "USED MOTOR VEHICLE" MEANS A MOTOR VEHICLE, EXCLUDING MOTORCYCLES,
4 MOTOR HOMES, AND OFF-ROAD VEHICLES, WHICH HAS BEEN PURCHASED OR TRANS-
5 FERRED EITHER AFTER EIGHTEEN THOUSAND MILES OF OPERATION OR TWO YEARS
6 FROM THE DATE OF ORIGINAL DELIVERY, WHICHEVER IS EARLIER; AND

7 3. "DEALER" HAS THE SAME MEANING AS PARAGRAPH THREE OF SUBDIVISION A
8 OF SECTION ONE HUNDRED NINETY-EIGHT-B OF THIS ARTICLE.

9 B. IN ADDITION TO ANY OTHER RIGHTS TO REVOKE AN OFFER, A CONSUMER MAY
10 CANCEL A CONTRACT FOR THE RETAIL SALE OF A MOTOR VEHICLE, WHETHER OR NOT
11 SUCH CONSUMER HAS RECEIVED A COPY OF SUCH CONTRACT SIGNED BY THE DEALER,
12 UNTIL MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE ON WHICH THE
13 CONSUMER SIGNED THE CONTRACT OR THE DATE ON WHICH THE DEALER DELIVERED A
14 COPY OF THE CONTRACT SIGNED BY HIM OR HER, WHICHEVER IS LATER. FOR
15 PURPOSES OF THIS SUBDIVISION, CANCELLATION WILL BE DEEMED TO HAVE
16 OCCURRED WHEN WRITTEN NOTICE OF CANCELLATION IS GIVEN TO THE DEALER. IF
17 GIVEN BY MAIL, A NOTICE OF CANCELLATION SHALL BE SENT BY REGISTERED OR
18 CERTIFIED UNITED STATES MAIL AND SHALL BE DEEMED DELIVERED ON THE DATE
19 OF THE POSTMARK. NOTICE OF CANCELLATION SHALL BE SUFFICIENT IF IT INDI-
20 CATES THE INTENTION OF THE CONSUMER NOT TO BE BOUND. RETURN OF THE
21 NOTICE OF CANCELLATION FORM PROVIDED PURSUANT TO SUBDIVISION H OF THIS
22 SECTION BY THE LESSEE TO THE LESSOR IS SUFFICIENT TO COMPLY WITH THE
23 REQUIREMENT OF THIS SUBDIVISION.

24 C. THE CONSUMER MAY, IN ORDER TO OBTAIN IMMEDIATE DELIVERY OF A MOTOR
25 VEHICLE, WAIVE THE RIGHT TO CANCEL PROVIDED IN SUBDIVISION B OF THIS
26 SECTION. SUCH WAIVER MUST BE WRITTEN AND CLEARLY INDICATE THE INTENTION
27 OF THE CONSUMER TO WAIVE HIS OR HER RIGHT TO CANCEL THE CONTRACT.

28 D. UNLESS THE CONSUMER WAIVES THE RIGHT TO CANCEL AS PROVIDED IN
29 SUBDIVISION C OF THIS SECTION, THE DEALER IS NOT REQUIRED TO DELIVER ANY
30 MOTOR VEHICLE TO A CONSUMER UNTIL AFTER THE CLOSE OF BUSINESS ON THE
31 THIRD BUSINESS DAY AFTER THE DAY ON WHICH THE CONSUMER OR DEALER SIGNS A
32 MOTOR VEHICLE INSTALMENT CONTRACT OR OTHER CONTRACT FOR THE RETAIL SALE
33 OF A MOTOR VEHICLE.

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

45 F. IF A CONSUMER CANCELS A CONTRACT PURSUANT TO THE PROVISIONS OF THIS
46 SECTION: (I) THE DEALER MAY RETAIN, FROM ANY CASH DOWN PAYMENT PAID BY
47 THE CONSUMER TO THE DEALER, COMPENSATION FOR CANCELLATION OF THE
48 CONTRACT THAT SHALL NOT EXCEED ONE HUNDRED DOLLARS, BUT SHALL NOT IMPOSE
49 ANY OTHER PENALTY OR OBLIGATION; AND (II) THE DEALER SHALL REFUND TO THE
50 CONSUMER ANY PAYMENTS, LESS THOSE PROVIDED BY PARAGRAPH (I) OF THIS
51 SUBDIVISION, WITHIN TEN BUSINESS DAYS OF SUCH CANCELLATION.

52 G. EVERY CONTRACT SUBJECT TO THE PROVISIONS OF THIS SECTION SHALL
53 CONTAIN A STATEMENT NOTIFYING THE CONSUMER OF HIS OR HER RIGHT TO CANCEL
54 SUCH CONTRACT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. A
55 NOTICE SUBSTANTIALLY SIMILAR TO THE FOLLOWING NOTICE COMPLIES WITH
56 REQUIREMENTS OF THIS SUBDIVISION: "NOTICE TO THE CONSUMER: YOU, THE

1 BUYER, MAY CANCEL THIS CONTRACT WITHIN THREE (3) BUSINESS DAYS AFTER THE
2 DATE ON THIS CONTRACT. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR
3 AN EXPLANATION OF THIS RIGHT."

4 H. AT THE TIME A CONSUMER SIGNS A CONTRACT SUBJECT TO THE TERMS OF
5 THIS SECTION, A COMPLETED FORM IN DUPLICATE, CAPTIONED "NOTICE OF
6 CANCELLATION", SHALL BE ATTACHED TO THE CONTRACT AND SHALL BE EASILY
7 DETACHABLE, AND SHALL CONTAIN IN NOT LESS THAN TEN-POINT BOLD FACE TYPE
8 THE FOLLOWING INFORMATION AND STATEMENTS IN THE SAME LANGUAGE, E.G.,
9 SPANISH, AS THAT USED IN THE CONTRACT:

10 NOTICE OF CANCELLATION

11 (ENTER DATE OF TRANSACTION)

12 (DATE)

13 YOU MAY CANCEL THIS CONTRACT WITHIN THREE (3) BUSINESS DAYS AFTER THE
14 DATE OF THIS CONTRACT WITHOUT PENALTY OR OBLIGATION, EXCEPT THAT THE
15 SELLER IS ENTITLED TO KEEP NOT MORE THAN \$100 FROM ANY DOWN PAYMENT YOU
16 HAVE PAID. IF YOU CANCEL, ANY ADDITIONAL PAYMENTS MADE BY YOU UNDER THE
17 CONTRACT WILL BE RETURNED WITHIN TEN (10) BUSINESS DAYS FOLLOWING
18 RECEIPT BY THE SELLER OF THIS CANCELLATION NOTICE OR OTHER WRITTEN
19 DOCUMENTATION WHICH INDICATES YOUR INTENTION NOT TO BE BOUND. TO CANCEL
20 THIS TRANSACTION, YOU MUST EITHER: DELIVER THIS CANCELLATION NOTICE OR
21 OTHER WRITTEN DOCUMENTATION WHICH INDICATES YOUR INTENTION NOT TO BE
22 BOUND TO THE SELLER IN PERSON; OR MAIL, BY CERTIFIED OR REGISTERED
23 UNITED STATES MAIL, A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE
24 OR OTHER WRITTEN DOCUMENTATION TO THE SELLER AT THE ADDRESS SPECIFIED
25 HEREIN:

26 (NAME OF SELLER)

NOT LATER THAN (ENTER FINAL DATE)

27 (ADDRESS OF SELLER)

(DATE)

28 (CONSUMER SIGNATURE)

29 S 14. This act shall take effect on the first of January next succeed-
30 ing the date on which it shall have become a law.