

STATE OF NEW YORK

4608--A

Cal. No. 549

2017-2018 Regular Sessions

IN SENATE

February 21, 2017

Introduced by Sen. HAMILTON -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the general business law and the vehicle and traffic law, in relation to requiring the consent of all parties for any transaction involving a motor vehicle where there are multiple purchasers, sellers, or lessees

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Safe Vehicle Transfer Act".

3 § 2. Section 396-qq of the general business law, as added by chapter
4 553 of the laws of 1996, is amended to read as follows:

5 § 396-qq. New and used motor vehicles; sales and leases. 1. Defi-
6 nitions. The following terms when used in this section, shall be deemed
7 to mean and include:

8 a. "Dealer" as defined in section four hundred fifteen of the vehicle
9 and traffic law.

10 b. "Motor vehicle" as defined in section one hundred twenty-five of
11 the vehicle and traffic law and excluding class A, B and C limited use
12 motorcycles as defined in section one hundred twenty-one-b of the vehi-
13 cle and traffic law.

14 2. Whenever a dealer provides to a purchaser or lessee of a motor
15 vehicle the service of securing a registration and/or certificate of
16 title for such vehicle from the commissioner of motor vehicles or his
17 issuing agent, the dealer shall either calculate the actual registration
18 and/or certificate of title charges due, or make a good faith estimate
19 in each transaction of the amount of such charges on the sales contract
20 or lease agreement. If such charges are estimated, the dealer shall set

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

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1 forth on such sales contract or lease agreement or on a separate docu-
2 ment to be [~~initialled~~] initialed by the purchaser or lessee in conspic-
3 uous boldface type, the following disclosure: "THE AMOUNT INDICATED ON
4 THIS SALES CONTRACT OR LEASE AGREEMENT FOR REGISTRATION AND TITLE FEES
5 IS AN ESTIMATE. IN SOME INSTANCES, IT MAY EXCEED THE ACTUAL FEES DUE THE
6 COMMISSIONER OF MOTOR VEHICLES. THE DEALER WILL AUTOMATICALLY, AND WITH-
7 IN SIXTY DAYS OF SECURING SUCH REGISTRATION AND TITLE, REFUND ANY AMOUNT
8 OVERPAID FOR SUCH FEES." If such charges are estimated, the dealer
9 shall, within sixty days of securing such registration and title, refund
10 to the purchaser or lessee the difference between the estimated amount
11 collected from such purchaser or lessee by the dealer and the actual
12 fees paid to the commissioner of motor vehicles by the dealer.

13 3. A dealer shall not complete a purchase, lease, or sale of a new or
14 used motor vehicle in which there is more than one purchaser, seller, or
15 lessee without a notarized document indicating the mutual consent of
16 every party to the transaction. Such document shall not be notarized by
17 a dealer or employee otherwise directly involved with the transaction.

18 4. Where a violation of this section is alleged to have occurred, the
19 attorney general may apply in the name of the people of the state of New
20 York to the supreme court of the state of New York within the judicial
21 district in which such violation is alleged to have occurred, on notice
22 of five days, for an order enjoining or restraining the continuance of
23 such violation. In any such proceeding the court may impose a civil
24 penalty in an amount not to exceed five hundred dollars and order resti-
25 tution to aggrieved consumers.

26 § 3. The vehicle and traffic law is amended by adding a new section
27 417-c to read as follows:

28 § 417-c. Proof of consent of all parties prior to purchase, sale, or
29 lease of a motor vehicle. 1. A dealer shall not complete a purchase,
30 lease, or sale of a new or used motor vehicle in which there is more
31 than one purchaser, seller, or lessee without a notarized document indi-
32 cating the mutual consent of every party to the transaction. Such docu-
33 ment shall not be notarized by a dealer or employee otherwise directly
34 involved with the transaction.

35 2. a. Upon any violation of this section, an application may be made
36 by the attorney general in the name of the people of the state of New
37 York to a court or justice having jurisdiction to issue an injunction,
38 and upon notice to the defendant of not less than five days, to enjoin
39 and restrain the continuance of the violation. If it shall appear to the
40 satisfaction of the court or justice that the defendant has violated
41 this section, an injunction may be issued by the court or justice,
42 enjoining and restraining any further violation, without requiring proof
43 that any person has, in fact, been injured or damaged thereby. In any
44 such proceeding, the court may make allowances to the attorney general
45 as provided in paragraph six of subdivision (a) of section eighty-three
46 hundred three of the civil practice law and rules, and direct restitu-
47 tion.

48 b. Whenever the court shall determine that a violation of this section
49 has occurred, it may impose a civil penalty of not more than one thou-
50 sand dollars for each violation. In connection with an application made
51 under this subdivision, the attorney general is authorized to take proof
52 and to make a determination of the relevant facts and to issue subpoenas
53 in accordance with the civil practice law and rules.

54 § 4. Subdivision (a) of section 2114 of the vehicle and traffic law,
55 as amended by chapter 521 of the laws of 1972, is amended to read as
56 follows:

(a) If a dealer buys a vehicle and holds it for resale and procures the certificate of title from the owner within ten days after delivery to him of the vehicle, he need not send the certificate to the commissioner but, upon transferring the vehicle to another person other than by the creation of a security interest, shall promptly execute the assignment and warranty of title by a dealer, showing the names and addresses of the transferee and of any lienholder holding a security interest created or reserved at the time of the resale, in the spaces provided therefor on the certificate or as the commissioner prescribes, and mail or deliver the certificate to the commissioner with the transferee's application for a new certificate. The dealer shall also submit evidence of the unanimous consent to transfer the vehicle, including submission of a notarized document with the signature of all transferors possessing any interest in the vehicle with such application. The assignment and warranty of title by a dealer required by this section shall include a statement, signed by the dealer stating either (i) any facts or information known to him that could reasonably affect the validity of the title of the vehicle, or (ii) that no such facts or information are known to him.

§ 5. Paragraph 2 of subdivision (b) of section 198-a of the general business law, as amended by chapter 279 of the laws of 1989, is amended to read as follows:

(2) If a manufacturer's agent or authorized dealer refuses to undertake repairs within seven days of receipt of the notice by a consumer of a nonconformity, defect or condition pursuant to paragraph one of this subdivision, the consumer may immediately forward written notice of such refusal to the manufacturer by certified mail, return receipt requested. The manufacturer or its authorized agent shall have twenty days from receipt of such notice of refusal to commence such repairs. If within such twenty day period, the manufacturer or its authorized agent fails to commence such repairs, the manufacturer, at the option of the consumer, shall replace the motor vehicle with a comparable motor vehicle, or accept return of the vehicle from the consumer and refund to the consumer the full purchase price or, if applicable, the lease price and any trade-in allowance plus fees and charges; provided, however, that a refund shall not be issued for a vehicle with multiple owners before notarized proof of consent is provided as described in subdivision three of section three hundred ninety-six-qq of this chapter. Such fees and charges shall include but not be limited to all license fees, registration fees and any similar governmental charges, less an allowance for the consumer's use of the vehicle in excess of the first twelve thousand miles of operation pursuant to the mileage deduction formula defined in paragraph four of subdivision (a) of this section, and a reasonable allowance for any damage not attributable to normal wear or improvements.

§ 6. Paragraphs 1 and 2 of subdivision (c) of section 198-a of the general business law, paragraph 1 as amended by chapter 234 of the laws of 1990, and paragraph 2 as amended by chapter 29 of the laws of 1989, are amended to read as follows:

(1) If, within the period specified in subdivision (b) of this section, the manufacturer or its agents or authorized dealers are unable to repair or correct any defect or condition which substantially impairs the value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer, at the option of the consumer, shall replace the motor vehicle with a comparable motor vehicle, or accept return of the vehicle from the consumer and refund to the consumer the

1 full purchase price or, if applicable, the lease price and any trade-in
2 allowance plus fees and charges; provided, however, that a refund shall
3 not be issued for a vehicle with multiple owners before notarized proof
4 of consent is provided as described in subdivision three of section
5 three hundred ninety-six-qq of this chapter. Any return of a motor vehi-
6 cle may, at the option of the consumer, be made to the dealer or other
7 authorized agent of the manufacturer who sold such vehicle to the
8 consumer or to the dealer or other authorized agent who attempted to
9 repair or correct the defect or condition which necessitated the return
10 and shall not be subject to any further shipping charges. Such fees and
11 charges shall include but not be limited to all license fees, registra-
12 tion fees and any similar governmental charges, less an allowance for
13 the consumer's use of the vehicle in excess of the first twelve thousand
14 miles of operation pursuant to the mileage deduction formula defined in
15 paragraph four of subdivision (a) of this section, and a reasonable
16 allowance for any damage not attributable to normal wear or improve-
17 ments.

18 (2) A manufacturer which accepts return of the motor vehicle because
19 the motor vehicle does not conform to its warranty shall notify the
20 commissioner of the department of motor vehicles that the motor vehicle
21 was returned to the manufacturer for nonconformity to its warranty and
22 shall disclose, in accordance with the provisions of section four
23 hundred seventeen-a of the vehicle and traffic law prior to resale
24 either at wholesale or retail, that it was previously returned to the
25 manufacturer for nonconformity to its warranty. Refunds shall be made to
26 the consumer and lienholder, if any, as their interests may appear on
27 the records of ownership kept by the department of motor vehicles;
28 provided, however, that a refund shall not be issued for a vehicle with
29 multiple owners or lessees before notarized proof of consent is provided
30 as described in subdivision three of section three hundred ninety-six-qq
31 of this chapter. Refunds shall be accompanied by the proper application
32 for credit or refund of state and local sales taxes as published by the
33 department of taxation and finance and by a notice that the sales tax
34 paid on the purchase price, lease price or portion thereof being
35 refunded is refundable by the commissioner of taxation and finance in
36 accordance with the provisions of subdivision (f) of section eleven
37 hundred thirty-nine of the tax law. If applicable, refunds shall be made
38 to the lessor and lessee as their interests may appear on the records of
39 ownership kept by the department of motor vehicles, as follows: the
40 lessee shall receive the capitalized cost and the lessor shall receive
41 the lease price less the aggregate deposit and rental payments previous-
42 ly paid to the lessor for the leased vehicle. The terms of the lease
43 shall be deemed terminated contemporaneously with the date of the
44 arbitrator's decision and award and no penalty for early termination
45 shall be assessed as a result thereof. Refunds shall be accompanied by
46 the proper application form for credit or refund of state and local
47 sales tax as published by the department of taxation and finance and a
48 notice that the sales tax paid on the lease price or portion thereof
49 being refunded is refundable by the commissioner of taxation and finance
50 in accordance with the provisions of subdivision (f) of section eleven
51 hundred thirty-nine of the tax law.

52 § 7. Subdivision (k) of section 198-a of the general business law, as
53 amended by chapter 611 of the laws of 2005, is amended to read as
54 follows:

55 (k) Each consumer shall have the option of submitting any dispute
56 arising under this section upon the payment of a prescribed filing fee

1 to an alternate arbitration mechanism established pursuant to regu-
2 lations promulgated hereunder by the New York state attorney general.
3 Upon application of the consumer and payment of the filing fee, all
4 manufacturers shall submit to such alternate arbitration; provided,
5 however, the consent of all consumers is needed prior to submission of
6 an application for a vehicle involving multiple consumers.

7 Such alternate arbitration shall be conducted by a professional arbi-
8 trator or arbitration firm appointed by and under regulations estab-
9 lished by the New York state attorney general. Such mechanism shall
10 insure the personal objectivity of its arbitrators and the right of each
11 party to present its case, to be in attendance during any presentation
12 made by the other party and to rebut or refute such presentation. In all
13 other respects, such alternate arbitration mechanism shall be governed
14 by article seventy-five of the civil practice law and rules; provided,
15 however, that notwithstanding paragraph (i) of subdivision (a) of
16 section seventy-five hundred two of the civil practice law and rules,
17 special proceedings brought before a court pursuant to such article
18 seventy-five in relation to an arbitration hereunder shall be brought
19 only in the county where the consumer resides or where the arbitration
20 was held or is pending.

21 § 8. Subparagraphs (iii) and (iv) of paragraph 3 of subdivision (m) of
22 section 198-a of the general business law, as added by chapter 799 of
23 the laws of 1986, is amended and a new subparagraph (v) is added to read
24 as follows:

25 (iii) the number and total dollar amount of awards where some form of
26 reimbursement for expenses or compensation for losses was the most prom-
27 inent remedy, the amount or value of each award and the number of such
28 awards that were complied with in a timely manner; ~~and~~

29 (iv) the average number of days from the date of a consumer's initial
30 request to arbitrate until the date of the final arbitrator's decision
31 and the average number of days from the date of the final arbitrator's
32 decision to the date on which performance was satisfactorily carried
33 out; and

34 (v) the notarized proof of consent form as described in subdivision
35 three of section three hundred ninety-six-qq of this chapter if the
36 motor vehicle has multiple consumers.

37 § 9. Paragraph 1 of subdivision c of section 198-b of the general
38 business law, as amended by chapter 444 of the laws of 1989, is amended
39 to read as follows:

40 1. If the dealer or his agent fails to correct a malfunction or defect
41 as required by the warranty specified in this section which substantial-
42 ly impairs the value of the used motor vehicle to the consumer after a
43 reasonable period of time, the dealer shall accept return of the used
44 motor vehicle from the consumer and refund to the consumer the full
45 purchase price, or in the case of a lease contract all payments made
46 under the contract, including sales or compensating use tax, less a
47 reasonable allowance for any damage not attributable to normal wear or
48 usage, and adjustment for any modifications which either increase or
49 decrease the market value of the vehicle or of the lease contract, and
50 in the case of a lease contract, shall cancel all further payments due
51 from the consumer under the lease contract. A dealer shall not refund
52 the purchase price or cancel the lease for a motor vehicle involving
53 multiple consumers before the dealer is in possession of a notarized
54 proof of consent form as described in subdivision three of section three
55 hundred ninety-six-qq of this chapter. In determining the purchase price
56 to be refunded or in determining all payments made under a lease

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

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

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

42 § 10. Subparagraph 5 of paragraph 1 of subdivision f of section 198-b
43 of the general business law, as separately amended by chapters 444 and
44 609 of the laws of 1989, is amended to read as follows:

45 5. If the same problem cannot be repaired after three or more
46 attempts, you are entitled to return the car and receive a refund of
47 your purchase price or of all payments made under your lease contract,
48 and of sales tax and fees, minus a reasonable allowance for any damage
49 not attributable to normal usage or wear, and, in the case of a lease
50 contract, a cancellation of all further payments you are otherwise
51 required to make under the lease contract. If there are multiple indi-
52 viduals who signed for the car, all individuals must indicate their
53 consent before you may receive a refund for the car or have your lease
54 cancelled.

1 § 11. Paragraph 3 of subdivision (b) and subdivision (c) of section
2 198-c of the general business law, as added by chapter 254 of the laws
3 of 2010, are amended to read as follows:

4 (3) The time period specified in paragraph one or two of this subdivi-
5 sion may be shortened if the dealer and consumer agree, in writing, to a
6 shorter time period; provided, however, when there are multiple consum-
7 ers to the transaction the dealer shall be in possession of the nota-
8 rized proof of consent form as described in subdivision three of section
9 three hundred ninety-six-qq of this chapter before such agreement is
10 executed.

11 (c) If the agreement gives either party the right to rescind the
12 entire agreement within a reasonable time period, rescission of the
13 entire agreement shall effectively rescind the obligations pursuant to
14 this section without violating this section; provided, however, when
15 there are multiple consumers to the transaction the dealer shall be in
16 possession of the notarized proof of consent form as described in subdivi-
17 vision three of section three hundred ninety-six-qq of this chapter
18 before such agreement is executed in order for such rescission to be
19 valid.

20 § 12. This act shall take effect on the one hundred eightieth day
21 after it shall have become a law; provided, however, that effective
22 immediately, the addition, amendment and/or repeal of any rule or regu-
23 lation necessary for the implementation of this act on its effective
24 date are authorized and directed to be made and completed on or before
25 such effective date.