

STATE OF NEW YORK

8251

IN SENATE

April 23, 2018

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law and the vehicle and traffic law, in relation to warranties of fire vehicles and ambulances

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

1 Section 1. The general municipal law is amended by adding a new
2 section 109-d to read as follows:

3 § 109-d. Emergency vehicle warranties. 1. Definitions. As used in this
4 section:

5 a. "Ambulance" means a motor vehicle designed, appropriately equipped
6 and used for the purpose of: (i) transporting emergency medical person-
7 nel and equipment to sick or injured persons; and (ii) carrying sick or
8 injured persons by a person or entity registered or certified as an
9 ambulance service by the department of health, that was subject to a
10 manufacturer's express warranty at the time of original delivery and was
11 purchased or transferred in this state within either the first eighteen
12 thousand miles of operation or two years from the date of original
13 delivery, whichever is earlier.

14 b. "Fire vehicle" means a motor vehicle specially designed and
15 equipped for firefighting purposes which was subject to a manufacturer's
16 express warranty at the time of original delivery and was purchased or
17 transferred in this state within either the first two thousand hours of
18 service or two years from the date of original delivery, whichever is
19 earlier.

20 c. "Municipal consumer" means a political subdivision or fire company
21 which is the purchaser or transferee of a fire vehicle or ambulance and
22 any other person entitled by the terms of the warranty to enforce the
23 obligations of such warranty.

24 d. "Warranty" means the written warranty, so labeled, of the manufac-
25 turer and any other warranties set forth in the manufacturer's or its
26 agent's bid or offer submitted where competitive bidding is required by
27 statute, rule, regulation or local law, including but not limited to, a
28 bid or offer submitted pursuant to the competitive bidding requirements

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

LBD15268-01-8

1 of section one hundred three of this article, and including any condi-
2 tions precedent to the enforcement of obligations under such warranties.

3 2. Warranties. a. (i) If a new fire vehicle which is sold and regis-
4 tered in this state does not conform to all express warranties during
5 the first two thousand hours of service or during the period of two
6 years following the date of original delivery of the fire vehicle to the
7 municipal consumer, whichever is the earlier date, or if a new ambulance
8 which is sold and registered in this state does not conform to all
9 express warranties during the first eighteen thousand miles of operation
10 or during the period of two years following the date of original deliv-
11 ery of the ambulance to the municipal consumer, whichever is the earlier
12 date, the municipal consumer shall during such period report the noncon-
13 formity, defect or condition to the manufacturer, its agent or its
14 authorized dealer. If the notification is received by the manufacturer's
15 agent or authorized dealer, the agent or dealer shall within seven days
16 forward written notice thereof to the manufacturer by certified mail,
17 return receipt requested, and shall include in such notice a statement
18 indicating whether or not such repairs have been undertaken. The
19 manufacturer, its agent or its authorized dealer shall correct said
20 nonconformity, defect or condition at no charge to the municipal consum-
21 er, notwithstanding the fact that such repairs are made after the expi-
22 ration of such period of operation or such two year period.

23 (ii) If a manufacturer's agent or authorized dealer refuses to under-
24 take repairs within seven days of receipt of the notice by a municipal
25 consumer of a nonconformity, defect or condition pursuant to subpara-
26 graph (i) of this paragraph, the municipal consumer may immediately
27 forward written notice of such refusal to the manufacturer by certified
28 mail, return receipt requested. The manufacturer or its authorized agent
29 shall have twenty days from receipt of such notice of refusal to
30 commence such repairs. If within such twenty day period, the manufactur-
31 er or its authorized agent fails to commence such repairs, the manufac-
32 turer, at the option of the municipal consumer, shall replace the fire
33 vehicle or ambulance with a comparable vehicle, or accept return of the
34 fire vehicle or ambulance from the municipal consumer and refund to the
35 municipal consumer the full purchase price plus fees and charges. Such
36 fees and charges shall include but not be limited to all license fees,
37 registration fees and any similar governmental charges, less a reason-
38 able allowance for any damage not attributable to normal wear or
39 improvements.

40 b. (i) If, within the period specified in paragraph a of this subdivi-
41 sion, the manufacturer or its agents or authorized dealers are unable to
42 repair or correct any defect or condition which substantially impairs
43 the value of the fire vehicle or ambulance to the municipal consumer
44 after a reasonable number of attempts, the manufacturer, at the option
45 of the municipal consumer, shall replace the fire vehicle or ambulance
46 with a comparable vehicle, or accept return of the fire vehicle or ambu-
47 lance from the municipal consumer and refund to the municipal consumer
48 the full purchase price plus fees and charges. Any return of a fire
49 vehicle or ambulance may, at the option of the municipal consumer, be
50 made to the dealer or other authorized agent of the manufacturer who
51 sold such fire vehicle or ambulance to the municipal consumer or to the
52 dealer or other authorized agent who attempted to repair or correct the
53 defect or condition which necessitated the return and shall not be
54 subject to any further shipping charges. Such fees and charges shall
55 include but not be limited to all license fees, registration fees and

1 any similar governmental charges, less a reasonable allowance for any
2 damage not attributable to normal wear or improvements.

3 (ii) A manufacturer which accepts return of a fire vehicle or ambu-
4 lance because such vehicle does not conform to its warranty shall notify
5 the commissioner of motor vehicles that the fire vehicle or ambulance
6 was returned to the manufacturer for nonconformity to its warranty and
7 shall disclose, in accordance with the provisions of section four
8 hundred seventeen-c of the vehicle and traffic law prior to resale
9 either at wholesale or retail, that it was previously returned to the
10 manufacturer for nonconformity to its warranty. Refunds shall be made to
11 the municipal consumer and lienholder, if any, as their interests may
12 appear on the records of ownership kept by the department of motor vehi-
13 cles.

14 (iii) It shall be an affirmative defense to any claim under this
15 section that:

16 (A) the nonconformity, defect or condition does not substantially
17 impair the value of the fire vehicle or ambulance; or

18 (B) the nonconformity, defect or condition is the result of abuse,
19 neglect, or unauthorized modifications or alterations of the fire vehi-
20 cle or ambulance.

21 c. It shall be presumed that a reasonable number of attempts have been
22 undertaken to conform a fire vehicle or ambulance to the applicable
23 express warranties, if:

24 (i) the same nonconformity, defect or condition has been subject to
25 repair four or more times by the manufacturer or its agents or author-
26 ized dealers within the first two thousand hours of service or during
27 the period of two years following the date of original delivery of the
28 fire vehicle to a municipal consumer, whichever is the earlier date, or,
29 within the first eighteen thousand miles of operation or during the
30 period of two years following the date of original delivery of the ambu-
31 lance to a municipal consumer, whichever is the earlier date, but such
32 nonconformity, defect or condition continues to exist; or

33 (ii) the fire vehicle or ambulance is out of service by reason of
34 repair of one or more nonconformities, defects or conditions for a cumu-
35 lative total of thirty or more calendar days during either period,
36 whichever is the earlier date.

37 d. The term of an express warranty, the two year warranty period and
38 the thirty day out of service period shall be extended by any time
39 during which repair services are not available to the municipal consumer
40 because of a war, invasion or strike, fire, flood or other natural
41 disaster.

42 3. Informal dispute settlement. a. (i) If a manufacturer has estab-
43 lished an informal dispute settlement mechanism, such mechanism shall
44 comply in all respects with the provisions of this section; provided,
45 however, that the provisions of subdivision two of this section concern-
46 ing refunds or replacement shall not apply to any municipal consumer who
47 has not first resorted to such mechanism. In the event that an arbitra-
48 tor in such an informal dispute mechanism awards a refund or replacement
49 fire vehicle or ambulance, he or she shall not reduce the award to an
50 amount less than the full purchase price or a fire vehicle or ambulance
51 of equal value, plus all fees and charges except to the extent such
52 reductions are specifically permitted under subdivision two of this
53 section.

54 (ii) A manufacturer shall have up to thirty days from the date the
55 municipal consumer notifies the manufacturer of their acceptance of the
56 arbitrator's decision to comply with the terms of that decision. Failure

1 to comply with the thirty day limitation shall also entitle the municip-
2 pal consumer to recover a fee of twenty-five dollars for each business
3 day of noncompliance up to five hundred dollars. Provided, however, that
4 nothing contained in this paragraph shall impose any liability on a
5 manufacturer where a delay beyond the thirty day period is attributable
6 to a municipal consumer who has requested a replacement fire vehicle or
7 ambulance built to order or with options that are not comparable to the
8 vehicle being replaced or otherwise made compliance impossible within
9 said period. In no event shall a municipal consumer who has resorted to
10 an informal dispute settlement mechanism be precluded from seeking the
11 rights or remedies available by law.

12 b. (i) Each municipal consumer shall have the option of submitting any
13 dispute arising under this section upon the payment of a prescribed
14 filing fee to an alternate arbitration mechanism established pursuant to
15 regulations promulgated hereunder by the New York state attorney gener-
16 al. Upon application of the municipal consumer and payment of the filing
17 fee, all manufacturers shall submit to such alternate arbitration. Such
18 alternate arbitration shall be conducted by a professional arbitrator or
19 arbitration firm appointed by and under regulations established by the
20 New York state attorney general. Such mechanism shall insure the
21 personal objectivity of its arbitrators and the right of each party to
22 present its case, to be in attendance during any presentation made by
23 the other party and to rebut or refute such presentation. In all other
24 respects, such alternate arbitration mechanism shall be governed by
25 article seventy-five of the civil practice law and rules; provided,
26 however, that notwithstanding paragraph (i) of subdivision (a) of
27 section seventy-five hundred two of the civil practice law and rules,
28 special proceedings brought before a court pursuant to such article
29 seventy-five in relation to an arbitration hereunder shall be brought
30 only in the county where the municipal consumer is located or where the
31 arbitration was held or is pending.

32 (ii) A court may award reasonable attorney's fees to a municipal
33 consumer who prevails in any judicial action or proceeding arising out
34 of an arbitration proceeding held pursuant to subparagraph (i) of this
35 paragraph. In the event a municipal consumer is required to retain the
36 services of an attorney to enforce collection of an award granted pursu-
37 ant to this section, the court may assess against the manufacturer
38 reasonable attorney's fees for services rendered to enforce collection
39 of said award.

40 c. (i) Each manufacturer shall require that each informal dispute
41 settlement mechanism used by it provide, at a minimum, the following:

42 (A) that the arbitrators participating in such mechanism are trained
43 in arbitration and familiar with the provisions of this section, that
44 the arbitrators and municipal consumers who request arbitration are
45 provided with a written copy of the provisions of this section, together
46 with the notice set forth below entitled "NEW EMERGENCY VEHICLE LEMON
47 LAW BILL OF RIGHTS", and that municipal consumers, upon request, are
48 given an opportunity to make an oral presentation to the arbitrator;

49 (B) that the rights and procedures used in the mechanism comply with
50 federal regulations promulgated by the federal trade commission relating
51 to informal dispute settlement mechanisms; and

52 (C) that the remedies set forth under paragraph c of subdivision two
53 of this section are awarded if, after a reasonable number of attempts
54 have been undertaken under paragraph d of subdivision two of this
55 section to conform the vehicle to the express warranties, the defect or
56 nonconformity still exists.

(ii) The following notice shall be provided to municipal consumers and arbitrators and shall be printed in conspicuous ten point bold face type:

NEW EMERGENCY VEHICLE LEMON LAW BILL OF RIGHTS

(1) IN ADDITION TO ANY WARRANTIES OFFERED BY THE MANUFACTURER, YOUR NEW FIRE VEHICLE, IF PURCHASED AND REGISTERED IN NEW YORK STATE, IS WARRANTED AGAINST ALL MATERIAL DEFECTS FOR THE FIRST TWO THOUSAND HOURS OF OPERATION OR TWO YEARS, WHICHEVER COMES FIRST AND YOUR NEW AMBULANCE, IF PURCHASED AND REGISTERED IN NEW YORK STATE, IS WARRANTED AGAINST ALL MATERIAL DEFECTS FOR THE FIRST EIGHTEEN THOUSAND MILES OR TWO YEARS, WHICHEVER COMES FIRST.

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

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

(4) IF THE SAME PROBLEM CANNOT BE REPAIRED AFTER FOUR OR MORE ATTEMPTS; OR IF YOUR FIRE VEHICLE OR AMBULANCE IS OUT OF SERVICE TO REPAIR A PROBLEM FOR A TOTAL OF THIRTY DAYS DURING THE WARRANTY PERIOD; OR IF THE MANUFACTURER OR ITS AGENT REFUSES TO REPAIR A SUBSTANTIAL DEFECT OR CONDITION WITHIN TWENTY DAYS OF RECEIPT OF NOTICE SENT BY YOU TO THE MANUFACTURER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED; THEN YOU MAY BE ENTITLED TO EITHER A COMPARABLE FIRE VEHICLE OR AMBULANCE, OR, A REFUND OF YOUR PURCHASE PRICE PLUS LICENSE AND REGISTRATION FEES.

(5) A MANUFACTURER MAY DENY LIABILITY IF THE PROBLEM IS CAUSED BY ABUSE, NEGLIGENCE, OR UNAUTHORIZED MODIFICATIONS OF THE FIRE VEHICLE OR AMBULANCE.

(6) A MANUFACTURER MAY REFUSE TO EXCHANGE A COMPARABLE FIRE VEHICLE OR AMBULANCE, OR, REFUND YOUR PURCHASE PRICE IF THE PROBLEM DOES NOT SUBSTANTIALLY IMPAIR THE VALUE OF YOUR FIRE VEHICLE OR AMBULANCE.

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

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

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

(10) AS AN ALTERNATIVE TO THE ARBITRATION PROCEDURE MADE AVAILABLE THROUGH THE MANUFACTURER, YOU MAY INSTEAD CHOOSE TO SUBMIT YOUR CLAIM TO AN INDEPENDENT ARBITRATOR, APPROVED BY THE ATTORNEY GENERAL. YOU MAY HAVE TO PAY A FEE FOR SUCH AN ARBITRATION. CONTACT THE ATTORNEY GENERAL'S OFFICE TO FIND OUT HOW TO ARRANGE FOR INDEPENDENT ARBITRATION.

(iii) All informal dispute settlement mechanisms shall maintain the following records:

(A) the number of purchase price refunds and fire vehicle and ambulance replacements requested, the number of each awarded in arbitration, the amount of each award and the number of awards that were complied with in a timely manner;

(B) the number of awards where additional repairs or a warranty extension was the most prominent remedy, the amount or value of each award, and the number of such awards that were complied with in a timely manner;

(C) the number and total dollar amount of awards where some form of reimbursement for expenses or compensation for losses was the most prominent remedy, the amount or value of each award and the number of such awards that were complied with in a timely manner; and

1 (D) the average number of days from the date of a municipal consumer's
2 initial request to arbitrate until the date of the final arbitrator's
3 decision and the average number of days from the date of the final
4 arbitrator's decision to the date on which performance was satisfactori-
5 ly carried out.

6 d. Any action brought pursuant to this section shall be commenced
7 within four years of the date of original delivery of the fire vehicle
8 or ambulance to the municipal consumer.

9 4. Notice of rights. At the time of purchase of a fire vehicle or
10 ambulance, the manufacturer, its agent or authorized dealer shall
11 provide to the municipal consumer a notice, printed in not less than
12 eight point bold face type, entitled "New Emergency Vehicle Lemon Law
13 Bill of Rights". The text of such notice shall be identical with the
14 notice required by paragraph c of subdivision three of this section.

15 5. Void agreements. Any agreement entered into by a municipal consumer
16 for the purchase of a new fire vehicle or ambulance which waives, limits
17 or disclaims the rights set forth in this section shall be void as
18 contrary to public policy. Said rights shall inure to a subsequent
19 transferee of such fire vehicle or ambulance. Any provision of any
20 agreement entered into by a municipal consumer for the purchase of a new
21 fire vehicle or ambulance which includes as an additional cost for such
22 vehicle an expense identified as being for the purpose of affording such
23 municipal consumer their rights under this section, shall be void as
24 contrary to public policy.

25 6. Preservation of rights. Nothing in this section shall in any way
26 limit the rights or remedies which are otherwise available to a munici-
27 pal consumer under any other law.

28 § 2. The vehicle and traffic law is amended by adding a new section
29 417-c to read as follows:

30 § 417-c. Mandatory disclosures by sellers prior to resale. 1. Certif-
31 icate of prior nonconformity by manufacturer or dealer. Upon the sale or
32 transfer of title by a manufacturer, its agent or any dealer of any
33 second-hand fire vehicle or ambulance, previously returned to a manufac-
34 turer or dealer for nonconformity to its warranty or after final deter-
35 mination, adjudication or settlement pursuant to section one hundred
36 nine-d of the general municipal law, the manufacturer or dealer shall
37 execute and deliver to the buyer an instrument in writing in a form
38 prescribed by the commissioner setting forth the following information
39 printed in conspicuous in ten point, all capital type: "IMPORTANT: THIS
40 VEHICLE WAS RETURNED TO THE MANUFACTURER OR DEALER BECAUSE IT DID NOT
41 CONFORM TO ITS WARRANTY AND THE DEFECT OR CONDITION WAS NOT FIXED WITHIN
42 A REASONABLE TIME AS PROVIDED BY NEW YORK LAW." Such notice that a vehi-
43 cle was returned to the manufacturer or dealer because it did not
44 conform to its warranty shall also be conspicuously printed on the motor
45 vehicle's certificate of title.

46 2. Violation. The failure of a manufacturer or dealer to deliver to
47 the buyer the instrument required by this section or the delivery of an
48 instrument containing false or misleading information shall constitute a
49 violation of this section.

50 3. Private remedy. A consumer injured by a violation of this section
51 may bring an action to recover damages. Judgment may be entered for
52 three times the actual damages suffered by a consumer or one hundred
53 dollars, whichever is greater. A court also may award reasonable attor-
54 neys' fees to a prevailing plaintiff buyer.

55 4. Action by the attorney general. a. Upon any violation of this
56 section, an application may be made by the attorney general in the name

1 of the people of the state of New York to a court or justice having
2 jurisdiction to issue an injunction, and upon notice to the defendant of
3 not less than five days, to enjoin and restrain the continuance of the
4 violation. If it shall appear to the satisfaction of the court or
5 justice that the defendant has violated this section, an injunction may
6 be issued by the court or justice, enjoining and restraining any further
7 violation, without requiring proof that any person has, in fact, been
8 injured or damaged thereby. In any such proceeding, the court may award
9 a sum not exceeding two thousand dollars against each defendant, whether
10 or not costs have been awarded, and direct restitution.

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

17 § 3. This act shall take effect on the first of January next succeed-
18 ing the date on which it shall have become a law. Effective immediately,
19 the attorney general is authorized and directed to promulgate any and
20 all rules and regulations necessary to implement the provisions of this
21 act on or before its effective date.