

STATE OF NEW YORK

4427--A

2019-2020 Regular Sessions

IN SENATE

March 11, 2019

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to warranties and protections for purchasers of new and used motor vehicles

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

1 Section 1. Paragraphs 1 and 5 of subdivision (a) of section 198-a of
2 the general business law, paragraph 1 as amended by chapter 530 of the
3 laws of 1990, paragraph 5 as added by chapter 799 of the laws of 1986,
4 are amended to read as follows:

5 (1) [~~"Consumer"~~] "Purchaser" means the purchaser, lessee or transfer-
6 ee, other than for purposes of resale, of a motor vehicle which is used
7 primarily for personal, family or household, or commercial or business
8 purposes and any other person entitled by the terms of the manufactur-
9 er's warranty to enforce the obligations of such warranty;

10 (5) "Lessee" means any [~~consumer~~] purchaser who leases a motor vehicle
11 pursuant to a written lease agreement which provides that the lessee is
12 responsible for repairs to such motor vehicle.

13 § 2. Subdivision (b) of section 198-a of the general business law, as
14 amended by chapter 279 of the laws of 1989, paragraph 1 as amended by
15 chapter 217 of the laws of 1990, is amended to read as follows:

16 (b) (1) If a new motor vehicle which is sold and registered in this
17 state does not conform to all express warranties during the first eigh-
18 teen thousand miles of operation or during the period of two years
19 following the date of original delivery of the motor vehicle to such
20 [~~consumer~~] purchaser, whichever is the earlier date, the [~~consumer~~]
21 purchaser shall during such period report the nonconformity, defect or
22 condition to the manufacturer, its agent or its authorized dealer. If
23 the notification is received by the manufacturer's agent or authorized

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

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1 dealer, the agent or dealer shall within seven days forward written
2 notice thereof to the manufacturer by certified mail, return receipt
3 requested, and shall include in such notice a statement indicating
4 whether or not such repairs have been undertaken. The manufacturer, its
5 agent or its authorized dealer shall correct said nonconformity, defect
6 or condition at no charge to the ~~[consumer]~~ purchaser, notwithstanding
7 the fact that such repairs are made after the expiration of such period
8 of operation or such two year period.

9 (2) If a manufacturer's agent or authorized dealer refuses to under-
10 take repairs within seven days of receipt of the notice by a ~~[consumer]~~
11 purchaser of a nonconformity, defect or condition pursuant to paragraph
12 one of this subdivision, the ~~[consumer]~~ purchaser may immediately
13 forward written notice of such refusal to the manufacturer by certified
14 mail, return receipt requested. The manufacturer or its authorized
15 agent shall have twenty days from receipt of such notice of refusal to
16 commence such repairs. If within such twenty day period, the manufactur-
17 er or its authorized agent fails to commence such repairs, the manufac-
18 turer, at the option of the ~~[consumer]~~ purchaser, shall replace the
19 motor vehicle with a comparable motor vehicle, or accept return of the
20 vehicle from the ~~[consumer]~~ purchaser and refund to the ~~[consumer]~~
21 purchaser the full purchase price or, if applicable, the lease price and
22 any trade-in allowance plus fees and charges. Such fees and charges
23 shall include but not be limited to all license fees, registration fees
24 and any similar governmental charges, less an allowance for the ~~[consum-~~
25 ~~er's]~~ purchaser's use of the vehicle in excess of the first twelve thou-
26 sand miles of operation pursuant to the mileage deduction formula
27 defined in paragraph four of subdivision (a) of this section, and a
28 reasonable allowance for any damage not attributable to normal wear or
29 improvements.

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

34 (1) If, within the period specified in subdivision (b) of this
35 section, the manufacturer or its agents or authorized dealers are unable
36 to repair or correct any defect or condition which substantially impairs
37 the value of the motor vehicle to the ~~[consumer]~~ purchaser after a
38 reasonable number of attempts, the manufacturer, at the option of the
39 ~~[consumer]~~ purchaser, shall replace the motor vehicle with a comparable
40 motor vehicle, or accept return of the vehicle from the ~~[consumer]~~
41 purchaser and refund to the ~~[consumer]~~ purchaser the full purchase price
42 or, if applicable, the lease price and any trade-in allowance plus fees
43 and charges. Any return of a motor vehicle may, at the option of the
44 ~~[consumer]~~ purchaser, be made to the dealer or other authorized agent of
45 the manufacturer who sold such vehicle to the ~~[consumer]~~ purchaser or to
46 the dealer or other authorized agent who attempted to repair or correct
47 the defect or condition which necessitated the return and shall not be
48 subject to any further shipping charges. Such fees and charges shall
49 include but not be limited to all license fees, registration fees and
50 any similar governmental charges, less an allowance for the ~~[consumer's]~~
51 purchaser's use of the vehicle in excess of the first twelve thousand
52 miles of operation pursuant to the mileage deduction formula defined in
53 paragraph four of subdivision (a) of this section, and a reasonable
54 allowance for any damage not attributable to normal wear or improve-
55 ments.

(2) A manufacturer which accepts return of the motor vehicle because the motor vehicle does not conform to its warranty shall notify the commissioner of the department of motor vehicles that the motor vehicle was returned to the manufacturer for nonconformity to its warranty and shall disclose, in accordance with the provisions of section four hundred seventeen-a of the vehicle and traffic law prior to resale either at wholesale or retail, that it was previously returned to the manufacturer for nonconformity to its warranty. Refunds shall be made to the [consumer] purchaser and lienholder, if any, as their interests may appear on the records of ownership kept by the department of motor vehicles. Refunds shall be accompanied by the proper application for credit or refund of state and local sales taxes as published by the department of taxation and finance and by a notice that the sales tax paid on the purchase price, lease price or portion thereof being refunded is refundable by the commissioner of taxation and finance in accordance with the provisions of subdivision (f) of section eleven hundred thirty-nine of the tax law. If applicable, refunds shall be made to the lessor and lessee as their interests may appear on the records of ownership kept by the department of motor vehicles, as follows: the lessee shall receive the capitalized cost and the lessor shall receive the lease price less the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle. The terms of the lease shall be deemed terminated contemporaneously with the date of the arbitrator's decision and award and no penalty for early termination shall be assessed as a result thereof. Refunds shall be accompanied by the proper application form for credit or refund of state and local sales tax as published by the department of taxation and finance and a notice that the sales tax paid on the lease price or portion thereof being refunded is refundable by the commissioner of taxation and finance in accordance with the provisions of subdivision (f) of section eleven hundred thirty-nine of the tax law.

§ 4. Subdivision (h) of section 198-a of the general business law, as amended by chapter 799 of the laws of 1986, is amended to read as follows:

(h) A manufacturer shall have up to thirty days from the date the [consumer] purchaser notifies the manufacturer of his or her acceptance of the arbitrator's decision to comply with the terms of that decision. Failure to comply with the thirty day limitation shall also entitle the [consumer] purchaser to recover a fee of twenty-five dollars for each business day of noncompliance up to five hundred dollars. Provided, however, that nothing contained in this subdivision shall impose any liability on a manufacturer where a delay beyond the thirty day period is attributable to a [consumer] purchaser who has requested a replacement vehicle built to order or with options that are not comparable to the vehicle being replaced or otherwise made compliance impossible within said period. In no event shall a [consumer] purchaser who has resorted to an informal dispute settlement mechanism be precluded from seeking the rights or remedies available by law.

§ 5. Subdivision (i) of section 198-a of the general business law, as amended by chapter 415 of the laws of 1987, is amended to read as follows:

(i) Any agreement entered into by a [consumer] purchaser for the purchase of a new motor vehicle which waives, limits or disclaims the rights set forth in this section shall be void as contrary to public policy. Said rights shall inure to a subsequent transferee of such motor vehicle.

1 Any provision of any agreement entered into by a [~~consumer~~] purchaser
2 for the purchase of a new motor vehicle which includes as an additional
3 cost for such motor vehicle an expense identified as being for the
4 purpose of affording such [~~consumer~~] purchaser his or her rights under
5 this section, shall be void as contrary to public policy.

6 § 6. Subdivision (j) of section 198-a of the general business law, as
7 added by chapter 444 of the laws of 1983, is amended to read as follows:

8 (j) Any action brought pursuant to this section shall be commenced
9 within four years of the date of original delivery of the motor vehicle
10 to the [~~consumer~~] purchaser.

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

14 (k) Each [~~consumer~~] purchaser shall have the option of submitting any
15 dispute arising under this section upon the payment of a prescribed
16 filing fee to an alternate arbitration mechanism established pursuant to
17 regulations promulgated hereunder by the New York state attorney gener-
18 al. Upon application of the [~~consumer~~] purchaser and payment of the
19 filing fee, all manufacturers shall submit to such alternate arbi-
20 tration.

21 Such alternate arbitration shall be conducted by a professional arbi-
22 trator or arbitration firm appointed by and under regulations estab-
23 lished by the New York state attorney general. Such mechanism shall
24 [~~insure~~] ensure the personal objectivity of its arbitrators and the
25 right of each party to present its case, to be in attendance during any
26 presentation made by the other party and to rebut or refute such presen-
27 tation. In all other respects, such alternate arbitration mechanism
28 shall be governed by article seventy-five of the civil practice law and
29 rules; provided, however, that notwithstanding paragraph (i) of subdivi-
30 sion (a) of section seventy-five hundred two of the civil practice law
31 and rules, special proceedings brought before a court pursuant to such
32 article seventy-five in relation to an arbitration hereunder shall be
33 brought only in the county where the [~~consumer~~] purchaser resides or
34 where the arbitration was held or is pending.

35 § 8. Subdivision (l) of section 198-a of the general business law, as
36 amended by chapter 487 of the laws of 1990, is amended to read as
37 follows:

38 (l) A court may award reasonable attorney's fees to a prevailing
39 plaintiff or to a [~~consumer~~] purchaser who prevails in any judicial
40 action or proceeding arising out of an arbitration proceeding held
41 pursuant to subdivision (k) of this section. In the event a prevailing
42 plaintiff is required to retain the services of an attorney to enforce
43 collection of an award granted pursuant to this section, the court may
44 assess against the manufacturer reasonable attorney's fees for services
45 rendered to enforce collection of said award.

46 § 9. Subparagraph (i) of paragraph 1 of subdivision (m) of section
47 198-a of the general business law, as added by chapter 799 of the laws
48 of 1986, is amended to read as follows:

49 (i) that the arbitrators participating in such mechanism are trained
50 in arbitration and familiar with the provisions of this section, that
51 the arbitrators and [~~consumers~~] purchasers who request arbitration are
52 provided with a written copy of the provisions of this section, together
53 with the notice set forth below entitled "NEW CAR LEMON LAW BILL OF
54 RIGHTS", and that [~~consumers~~] purchasers, upon request, are given an
55 opportunity to make an oral presentation to the arbitrator;

§ 10. Subparagraph (iv) of paragraph 3 of subdivision (m) of section 198-a of the general business law, as added by chapter 799 of the laws of 1986, is amended to read as follows:

(iv) the average number of days from the date of a ~~[consumer's]~~ purchaser's initial request to arbitrate until the date of the final arbitrator's decision and the average number of days from the date of the final arbitrator's decision to the date on which performance was satisfactorily carried out.

§ 11. Paragraphs 4, 5, 6 and 7 of subdivision (n) of section 198-a of the general business law, paragraphs 4, 5 and 7 as amended by chapter 635 of the laws of 2004, paragraph 6 as amended by chapter 26 of the laws of 2005, are amended to read as follows:

(4) If, within the first eighteen thousand miles of operation or during the period of two years following the date of original delivery of the motor vehicle to such ~~[consumer]~~ purchaser, whichever is the earlier date, the manufacturer of a motor home or its agents or its authorized dealers or repair shops to which they refer a ~~[consumer]~~ purchaser are unable to repair or correct any covered defect or condition which substantially impairs the value of the motor home to the ~~[consumer]~~ purchaser after a reasonable number of attempts, the motor home manufacturer, at the option of the ~~[consumer]~~ purchaser, shall replace the motor home with a comparable motor home, or accept return of the motor home from the ~~[consumer]~~ purchaser and refund to the ~~[consumer]~~ purchaser the full purchase price or, if applicable, the lease price and any trade-in allowance plus fees and charges as well as the other fees and charges set forth in paragraph one of subdivision (c) of this section.

(5) If an agent or authorized dealer of a motor home manufacturer or a repair shop to which they refer a ~~[consumer]~~ purchaser refuses to undertake repairs within seven days of receipt of notice by a ~~[consumer]~~ purchaser of a nonconformity, defect or condition within the first eighteen thousand miles of operation or during the period of two years following the date of original delivery of the motor home to such ~~[consumer]~~ purchaser, whichever is the earlier date, the ~~[consumer]~~ purchaser may immediately forward written notice of such refusal to the motor home manufacturer by certified mail, return receipt requested. The motor home manufacturer or its authorized agent or a repair shop to which they refer a ~~[consumer]~~ purchaser shall have twenty days from receipt of such notice of refusal to commence such repairs. If within such twenty day period, the motor home manufacturer or its authorized agent or repair shop to which they refer a ~~[consumer]~~ purchaser, fails to commence such repairs, the motor home manufacturer, at the option of the ~~[consumer]~~ purchaser, shall replace the motor home with a comparable motor home, or accept return of the motor home from the ~~[consumer]~~ purchaser and refund to the ~~[consumer]~~ purchaser the full purchase price or, if applicable, the lease price, and any trade-in allowance or other charges, fees, or allowances. 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]~~ purchaser'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) If within the first eighteen thousand miles of operation or during the period of two years following the date of original delivery of the motor home to such ~~[consumer]~~ purchaser, whichever is the earlier date,

1 the same covered nonconformity, defect or condition in a motor home has
2 been subject to repair two times or a motor home has been out of service
3 by reason of repair for twenty-one days, whichever occurs first, the
4 ~~[consumer]~~ purchaser must have reported this to the motor home manufac-
5 turer or its authorized dealer by certified mail, return receipt
6 requested, and may institute any proceeding or other action pursuant to
7 this section if the motor home has been out of service by reason of
8 three repair attempts or for at least thirty days. The special notifica-
9 tion requirements of this paragraph shall only apply if the manufacturer
10 or its authorized dealer provides a prior written copy of the require-
11 ments of this paragraph to the ~~[consumer]~~ purchaser and receipt of the
12 notice is acknowledged by the ~~[consumer]~~ purchaser in writing. If the
13 ~~[consumer]~~ purchaser who has received notice from the manufacturer fails
14 to comply with the special notification requirements of this paragraph,
15 additional repair attempts or days out of service by reason of repair
16 shall not be taken into account in determining whether the ~~[consumer]~~
17 purchaser is entitled to a remedy provided in paragraph four of this
18 subdivision. However, additional repair attempts or days out of service
19 by reason of repair that occur after the ~~[consumer]~~ purchaser complies
20 with such special notification requirements shall be taken into account
21 in making that determination. It shall not count as a repair attempt if
22 the repair facility is not authorized by the applicable motor home
23 manufacturer to perform warranty work on the identified nonconformity.
24 It shall count as only one repair attempt for a motor home if the same
25 nonconformity is being addressed a second time due to the ~~[consumer's]~~
26 purchaser's decision to continue traveling and to seek the repair of the
27 same nonconformity at another repair facility rather than wait for the
28 initial repair to be completed.

29 (7) Nothing in this section shall in any way limit any rights, reme-
30 dies or causes of action that a ~~[consumer]~~ purchaser or motor home
31 manufacturer may otherwise have against the manufacturer of the motor
32 home's chassis, or its propulsion and other components.

33 § 12. Clause (i) of subparagraph (A) and the second undesignated para-
34 graph of subparagraph (B) of paragraph 8 of subdivision (n) of section
35 198-a of the general business law, as added by chapter 635 of the laws
36 of 2004, are amended to read as follows:

37 (i) that the arbitrators participating in such mechanism are trained
38 in arbitration and familiar with the provisions of this section, that
39 the arbitrators and ~~[consumers]~~ purchasers who request arbitration are
40 provided with a written copy of the provisions of this section, together
41 with the notice set forth below entitled "NEW MOTOR HOME LEMON LAW BILL
42 OF RIGHTS", and that ~~[consumers]~~ purchasers, upon request, are given an
43 opportunity to make an oral presentation to the arbitrator;

44 The following notice shall be provided to ~~[consumers]~~ purchasers and
45 arbitrators and shall be printed in conspicuous ten point bold face
46 type:

47 § 13. Clause 4 of subparagraph (B) of paragraph 8 of subdivision (n)
48 of section 198-a of the general business law, as added by chapter 635 of
49 the laws of 2004, is amended to read as follows:

50 (4) IF, WITHIN THE FIRST EIGHTEEN THOUSAND MILES OF OPERATION OR
51 DURING THE PERIOD OF TWO YEARS FOLLOWING THE DATE OF ORIGINAL DELIVERY
52 OF THE MOTOR VEHICLE TO SUCH ~~[CONSUMER]~~ PURCHASER, WHICHEVER IS THE
53 EARLIER DATE THE MANUFACTURER OF A MOTOR HOME OR ITS AGENTS OR ITS
54 AUTHORIZED DEALERS OR REPAIR SHOPS TO WHICH THEY REFER A ~~[CONSUMER]~~
55 PURCHASER ARE UNABLE TO REPAIR OR CORRECT ANY COVERED DEFECT OR CONDI-
56 TION WHICH SUBSTANTIALLY IMPAIRS THE VALUE OF THE MOTOR HOME TO THE

1 [CONSUMER] PURCHASER AFTER A REASONABLE NUMBER OF ATTEMPTS, THE MOTOR
2 HOME MANUFACTURER, AT THE OPTION OF THE [CONSUMER] PURCHASER, SHALL
3 REPLACE THE MOTOR HOME WITH A COMPARABLE MOTOR HOME, OR ACCEPT RETURN OF
4 THE MOTOR HOME FROM THE [CONSUMER] PURCHASER AND REFUND TO THE [CONSUM-
5 ER] PURCHASER THE FULL PURCHASE PRICE OR, IF APPLICABLE, THE LEASE PRICE
6 AND ANY TRADE-IN ALLOWANCE, PLUS FEES AND CHARGES, AS WELL AS THE OTHER
7 FEES AND CHARGES, INCLUDING BUT NOT LIMITED TO ALL LICENSE FEES, REGIS-
8 TRATION FEES, AND ANY SIMILAR GOVERNMENTAL CHARGES, LESS AN ALLOWANCE
9 FOR THE [CONSUMER'S] PURCHASER'S USE OF THE VEHICLE IN EXCESS OF TWELVE
10 THOUSAND MILES TIMES THE PURCHASE PRICE, OR THE LEASE PRICE IF APPLICA-
11 BLE, OF THE VEHICLE DIVIDED BY ONE HUNDRED THOUSAND MILES, AND A REASON-
12 ABLE ALLOWANCE FOR ANY DAMAGE NOT ATTRIBUTABLE TO NORMAL WEAR OR
13 IMPROVEMENTS.

14 § 14. Subdivision (o) of section 198-a of the general business law, as
15 added by chapter 147 of the laws of 1994, is amended to read as follows:

16 (o) At the time of purchase or lease of a motor vehicle from an
17 authorized dealer in this state, the manufacturer shall provide to the
18 dealer or leaseholder, and the dealer or leaseholder shall provide to
19 the [consumer] purchaser a notice, printed in not less than eight point
20 bold face type, entitled "New Car Lemon Law Bill of Rights". The text of
21 such notice shall be identical with the notice required by paragraph two
22 of subdivision (m) of this section.

23 § 15. Paragraph 1 of subdivision a of section 198-b of the general
24 business law, as amended by chapter 530 of the laws of 1990, is amended
25 to read as follows:

26 1. [Consumer] "Purchaser" means the purchaser, or lessee, other than
27 for purposes of resale, of a used motor vehicle primarily used for
28 personal, family[7] or household, or business or commercial purposes and
29 subject to a warranty, and the spouse or child of the purchaser or the
30 lessee if either such motor vehicle or the lease of such motor vehicle
31 is transferred to the spouse or child during the duration of any warran-
32 ty applicable to such motor vehicle, and any other person entitled by
33 the terms of such warranty to enforce the obligations of the warranty;

34 § 16. Paragraphs 1, 2 and 3 of subdivision b of section 198-b of the
35 general business law, paragraph 1 as amended by chapter 857 of the laws
36 of 1990, paragraphs 2 and 3 as amended by chapter 444 of the laws of
37 1989, are amended to read as follows:

38 1. No dealer shall sell or lease a used motor vehicle to a [consumer]
39 purchaser without giving the [consumer] purchaser a written warranty
40 which shall at minimum apply for the following terms:

41 (a) If the used motor vehicle has thirty-six thousand miles or less,
42 the warranty shall be at minimum ninety days or four thousand miles,
43 whichever comes first.

44 (b) If the used motor vehicle has more than thirty-six thousand miles,
45 but less than eighty thousand miles, the warranty shall be at minimum
46 sixty days or three thousand miles, whichever comes first.

47 (c) If the used motor vehicle has eighty thousand miles or more but no
48 more than one hundred thousand miles, the warranty shall be at a minimum
49 thirty days or one thousand miles, whichever comes first.

50 2. The written warranty shall require the dealer or his agent to
51 repair or, at the election of the dealer, reimburse the [consumer]
52 purchaser for the reasonable cost of repairing the failure of a covered
53 part. Covered parts shall at least include the following items:

54 (a) Engine. All lubricated parts, water pump, fuel pump, manifolds,
55 engine block, cylinder head, rotary engine housings and flywheel.

1 (b) Transmission. The transmission case, internal parts, and the
2 torque converter.

3 (c) Drive axle. Front and rear drive axle housings and internal parts,
4 axle shafts, propeller shafts and universal joints.

5 (d) Brakes. Master cylinder, vacuum assist booster, wheel cylinders,
6 hydraulic lines and fittings and disc brake calipers.

7 (e) Radiator.

8 (f) Steering. The steering gear housing and all internal parts, power
9 steering pump, valve body, piston and rack.

10 (g) Alternator, generator, starter, ignition system excluding the
11 battery.

12 3. Such repair or reimbursement shall be made by the dealer notwith-
13 standing the fact that the warranty period has expired, provided the
14 ~~[consumer]~~ purchaser notifies the dealer of the failure of a covered
15 part within the specified warranty period.

16 § 17. Subparagraph (i) of paragraph 4 of subdivision b of section
17 198-b of the general business law, as amended by chapter 444 of the laws
18 of 1989 and as renumbered by chapter 530 of the laws of 1990, is amended
19 to read as follows:

20 (i) if the used motor vehicle is rented to someone other than the
21 ~~[consumer]~~ purchaser as defined in paragraph one of subdivision a of
22 this section;

23 § 18. Paragraph 1 of subdivision c of section 198-b of the general
24 business law, as amended by chapter 444 of the laws of 1989, is amended
25 to read as follows:

26 1. If the dealer or his agent fails to correct a malfunction or defect
27 as required by the warranty specified in this section which substantial-
28 ly impairs the value of the used motor vehicle to the ~~[consumer]~~
29 purchaser after a reasonable period of time, the dealer shall accept
30 return of the used motor vehicle from the ~~[consumer]~~ purchaser and
31 refund to the ~~[consumer]~~ purchaser the full purchase price, or in the
32 case of a lease contract all payments made under the contract, including
33 sales or compensating use tax, less a reasonable allowance for any
34 damage not attributable to normal wear or usage, and adjustment for any
35 modifications which either increase or decrease the market value of the
36 vehicle or of the lease contract, and in the case of a lease contract,
37 shall cancel all further payments due from the ~~[consumer]~~ purchaser
38 under the lease contract. In determining the purchase price to be
39 refunded or in determining all payments made under a lease contract to
40 be refunded, the purchase price, or all payments made under a lease
41 contract, shall be deemed equal to the sum of the actual cash difference
42 paid for the used motor vehicle, or for the lease contract, plus, if the
43 dealer elects to not return any vehicles traded-in by the ~~[consumer]~~
44 purchaser, the wholesale value of any such traded-in vehicles as listed
45 in the National Auto Dealers Association Used Car Guide, or such other
46 guide as may be specified in regulations promulgated by the commissioner
47 of motor vehicles, as adjusted for mileage, improvements, and any major
48 physical or mechanical defects in the traded-in vehicle at the time of
49 trade-in. The dealer selling or leasing the used motor vehicle shall
50 deliver to the ~~[consumer]~~ purchaser a written notice including conspicu-
51 ous language indicating that if the ~~[consumer]~~ purchaser should be enti-
52 tled to a refund pursuant to this section, the value of any vehicle
53 traded-in by the ~~[consumer]~~ purchaser, if the dealer elects to not
54 return it to the ~~[consumer]~~ purchaser, for purposes of determining the
55 amount of such refund will be determined by reference to the National
56 Auto Dealers Association Used Car Guide wholesale value, or such other

1 guide as may be approved by the commissioner of motor vehicles, as
2 adjusted for mileage, improvements, and any major physical or mechanical
3 defects, rather than the value listed in the sales contract. Refunds
4 shall be made to the [~~consumer~~] purchaser and lienholder, if any, as
5 their interests may appear on the records of ownership kept by the
6 department of motor vehicles. If the amount to be refunded to the lien-
7 holder will be insufficient to discharge the lien, the dealer shall
8 notify the [~~consumer~~] purchaser in writing by registered or certified
9 mail that the [~~consumer~~] purchaser has thirty days to pay the lienholder
10 the amount which, together with the amount to be refunded by the dealer,
11 will be sufficient to discharge the lien. The notice to the [~~consumer~~]
12 purchaser shall contain conspicuous language warning the [~~consumer~~]
13 purchaser that failure to pay such funds to the lienholder within thirty
14 days will terminate the dealer's obligation to provide a refund. If the
15 [~~consumer~~] purchaser fails to make such payment within thirty days, the
16 dealer shall have no further responsibility to provide a refund under
17 this section. Alternatively, the dealer may elect to offer to replace
18 the used motor vehicle with a comparably priced vehicle, with such
19 adjustment in price as the parties may agree to. The [~~consumer~~] purchas-
20 er shall not be obligated to accept a replacement vehicle, but may
21 instead elect to receive the refund provided under this section. It
22 shall be an affirmative defense to any claim under this section that:

23 (a) The malfunction or defect does not substantially impair such
24 value; or

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

27 § 19. Subparagraph (b) of paragraph 2 and paragraph 4 of subdivision c
28 of section 198-b of the general business law, as amended by chapter 444
29 of the laws of 1989, are amended to read as follows:

30 (b) The vehicle is out of service by reason of repair or malfunction
31 or defect for a cumulative total of fifteen or more days during the
32 warranty period. Said period shall not include days when the dealer is
33 unable to complete the repair because of the unavailability of necessary
34 repair parts. The dealer shall be required to exercise due diligence in
35 attempting to obtain necessary repair parts. Provided, however, that if
36 a vehicle has been out of service for a cumulative total of forty-five
37 days, even if a portion of that time is attributable to the unavailabil-
38 ity of replacement parts, the [~~consumer~~] purchaser shall be entitled to
39 the replacement or refund remedies provided in this section.

40 4. The term of any warranty, service contract or repair insurance, and
41 the fifteen day out-of-service period, shall be extended by any time
42 during which repair services are not available to the [~~consumer~~]
43 purchaser because of a war, invasion or strike, fire, flood or other
44 natural disaster.

45 § 20. Subdivisions d and e of section 198-b of the general business
46 law, as amended by chapter 444 of the laws of 1989, paragraph 3 of
47 subdivision d as amended by chapter 692 of the laws of 1994, are amended
48 to read as follows:

49 d. Waiver void. 1. Any agreement entered into by a [~~consumer~~] purchas-
50 er for the purchase or lease of a used motor vehicle which waives,
51 limits or disclaims the rights set forth in this article shall be void
52 as contrary to public policy. Further, if a dealer fails to give the
53 written warranty required by this article, the dealer nevertheless shall
54 be deemed to have given said warranty as a matter of law.

2. Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a ~~[consumer]~~ purchaser under any other law.

3. Notwithstanding paragraph one of this subdivision, this article shall not apply to used motor vehicles sold for, or in the case of a lease where the value of the used motor vehicle as agreed to by the ~~[consumer]~~ purchaser and the dealer which vehicle is the subject of the contract is, less than one thousand five hundred dollars, or to used motor vehicles with over one hundred thousand miles at the time of sale or lease if said mileage is indicated in writing at the time of sale or lease. Further, this article shall not apply to the sale or lease of historical motor vehicles as defined in section four hundred one of the vehicle and traffic law.

e. Time of delivery, location of warranty and notice. The written warranty provided for in subdivision b of this section and the written notice provided for in subdivision c of this section shall be delivered to the ~~[consumer]~~ purchaser at or before the time the ~~[consumer]~~ purchaser signs the sales or lease contract for the used motor vehicle. The warranty and the notice may be set forth on one sheet or on separate sheets. They may be separate from, attached to, or a part of the sales or lease contract. If they are part of the sales or lease contract, they shall be separated from the other contract provisions and each headed by a conspicuous title.

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

If a dealer has established or participates in an informal dispute settlement procedure which complies in all respects with the provisions of part seven hundred three of title sixteen of the code of federal regulations the provisions of this article concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure. Dealers utilizing informal dispute settlement procedures pursuant to this subdivision shall ~~[insure]~~ ensure that arbitrators participating in such informal dispute settlement procedures are familiar with the provisions of this section and shall provide to arbitrators and ~~[consumers]~~ purchasers who seek arbitration a copy of the provisions of this section together with the following notice in conspicuous ten point bold face type:

§ 22. Paragraphs 2, 3, 4, 5 and 6 of subdivision f of section 198-b of the general business law, paragraphs 2, 4 and 6 as separately amended by chapters 444 and 609 of the laws of 1989, paragraph 3 as amended by chapter 323 of the laws of 1997, paragraph 5 as amended by chapter 487 of the laws of 1990, are amended to read as follows:

2. A dealer shall have up to thirty days from the date of notice by the ~~[consumer]~~ purchaser that the arbitrator's decision has been accepted to comply with the terms of such decision. Provided, however, that nothing contained in this subdivision shall impose any liability on a dealer where a delay beyond the thirty day period is attributable to a ~~[consumer]~~ purchaser who has requested a particular replacement vehicle or otherwise made compliance impossible within said period.

3. Upon the payment of a prescribed filing fee, a ~~[consumer]~~ purchaser shall have the option of submitting any dispute arising under this section to an alternate arbitration mechanism established pursuant to regulations promulgated hereunder by the attorney general. Upon application of the ~~[consumer]~~ purchaser and payment of the filing fee, the dealer shall submit to such alternate arbitration.

1 Such alternate arbitration shall be conducted by a professional arbi-
2 trator or arbitration firm appointed by and under regulations estab-
3 lished by the attorney general. Such mechanism shall ensure the personal
4 objectivity of its arbitrators and the right of each party to present
5 its case, to be in attendance during any presentation made by the other
6 party and to rebut or refute such presentation. In all other respects,
7 such alternate arbitration mechanism shall be governed by article seven-
8 ty-five of the civil practice law and rules.

9 The notice required by paragraph one of this subdivision, entitled
10 Used Car Lemon Law Bill of Rights, shall be provided to arbitrators and
11 [~~consumers~~] purchasers who seek arbitration under this subdivision.

12 A dealer shall have thirty days from the date of mailing of a copy of
13 the arbitrator's decision to such dealer to comply with the terms of
14 such decision. Failure to comply within the thirty day period shall
15 entitle the [~~consumer~~] purchaser to recover, in addition to any other
16 recovery to which he may be entitled, a fee of twenty-five dollars for
17 each business day beyond thirty days up to five hundred dollars;
18 provided however, that nothing in this subdivision shall impose any
19 liability on a dealer where a delay beyond the thirty day period is
20 attributable to a [~~consumer~~] purchaser who has requested a particular
21 replacement vehicle or otherwise made compliance impossible within said
22 period.

23 The commissioner of motor vehicles or any person deputized by him may
24 deny the application of any person for registration under section four
25 hundred fifteen of the vehicle and traffic law and suspend or revoke a
26 registration under such section or refuse to issue a renewal thereof if
27 he or such deputy determines that such applicant or registrant or any
28 officer, director, stockholder, or partner, or any other person directly
29 or indirectly interested in the business has deliberately failed to pay
30 an arbitration award, which has not been stayed or appealed, rendered in
31 an arbitration proceeding pursuant to this paragraph for sixty days
32 after the date of mailing of a copy of the award to the registrant. Any
33 action taken by the commissioner of motor vehicles pursuant to this
34 paragraph shall be governed by the procedures set forth in subdivision
35 nine of section four hundred fifteen of the vehicle and traffic law.

36 4. In no event shall a [~~consumer~~] purchaser who has resorted to an
37 informal dispute settlement procedure be precluded from seeking the
38 rights or remedies available by law.

39 5. In an action brought to enforce the provisions of this article, the
40 court may award reasonable attorney's fees to a prevailing plaintiff or
41 to a [~~consumer~~] purchaser who prevails in any judicial action or
42 proceeding arising out of an arbitration proceeding held pursuant to
43 paragraph three of this subdivision. In the event a prevailing plaintiff
44 is required to retain the services of an attorney to enforce collection
45 of an award granted pursuant to this section, the court may assess
46 against the dealer reasonable attorney's fees for services rendered to
47 enforce collection of said award.

48 6. Any action brought pursuant to this article shall be commenced
49 within four years of the date of original delivery of the used motor
50 vehicle to the [~~consumer~~] purchaser.

51 § 23. Subdivision g of section 198-b of the general business law, as
52 added by chapter 147 of the laws of 1994, is amended to read as follows:

53 g. Notice of [~~consumer~~] purchaser rights. At the time of purchase or
54 lease of a used motor vehicle from a dealer in this state, the dealer
55 shall provide to the [~~consumer~~] purchaser a notice, printed in not less
56 than eight point bold face type, entitled "Used Car Lemon Law Bill of

1 Rights". The text of such notice shall be identical with the notice
2 required by paragraph one of subdivision f of this section.

3 § 24. Paragraph 3 of subdivision (b) of section 198-c of the general
4 business law, as added by chapter 254 of the laws of 2010, is amended to
5 read as follows:

6 (3) The time period specified in paragraph one or two of this subdivi-
7 sion may be shortened if the dealer and [~~consumer~~] purchaser agree, in
8 writing, to a shorter time period.

9 § 25. This act shall take effect immediately.