

# STATE OF NEW YORK

391

2021-2022 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Consumer Affairs and Protection

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  
24 dealer, the agent or dealer shall within seven days forward written

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

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

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

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

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

55 (2) A manufacturer which accepts return of the motor vehicle because  
56 the motor vehicle does not conform to its warranty shall notify the

1 commissioner of the department of motor vehicles that the motor vehicle  
2 was returned to the manufacturer for nonconformity to its warranty and  
3 shall disclose, in accordance with the provisions of section four  
4 hundred seventeen-a of the vehicle and traffic law prior to resale  
5 either at wholesale or retail, that it was previously returned to the  
6 manufacturer for nonconformity to its warranty. Refunds shall be made to  
7 the [~~consumer~~] purchaser and lienholder, if any, as their interests may  
8 appear on the records of ownership kept by the department of motor vehi-  
9 cles. Refunds shall be accompanied by the proper application for credit  
10 or refund of state and local sales taxes as published by the department  
11 of taxation and finance and by a notice that the sales tax paid on the  
12 purchase price, lease price or portion thereof being refunded is refund-  
13 able by the commissioner of taxation and finance in accordance with the  
14 provisions of subdivision (f) of section eleven hundred thirty-nine of  
15 the tax law. If applicable, refunds shall be made to the lessor and  
16 lessee as their interests may appear on the records of ownership kept by  
17 the department of motor vehicles, as follows: the lessee shall receive  
18 the capitalized cost and the lessor shall receive the lease price less  
19 the aggregate deposit and rental payments previously paid to the lessor  
20 for the leased vehicle. The terms of the lease shall be deemed termi-  
21 nated contemporaneously with the date of the arbitrator's decision and  
22 award and no penalty for early termination shall be assessed as a result  
23 thereof. Refunds shall be accompanied by the proper application form for  
24 credit or refund of state and local sales tax as published by the  
25 department of taxation and finance and a notice that the sales tax paid  
26 on the lease price or portion thereof being refunded is refundable by  
27 the commissioner of taxation and finance in accordance with the  
28 provisions of subdivision (f) of section eleven hundred thirty-nine of  
29 the tax law.

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

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

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

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

55 Any provision of any agreement entered into by a [~~consumer~~] purchaser  
56 for the purchase of a new motor vehicle which includes as an additional

1 cost for such motor vehicle an expense identified as being for the  
2 purpose of affording such [~~consumer~~] purchaser his or her rights under  
3 this section, shall be void as contrary to public policy.

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

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

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

12 (k) Each [~~consumer~~] purchaser 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 [~~consumer~~] purchaser and payment of the  
17 filing fee, all manufacturers shall submit to such alternate arbi-  
18 tration.

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

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

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

44 § 9. Subparagraph (i) of paragraph 1 of subdivision (m) of section  
45 198-a of the general business law, as added by chapter 799 of the laws  
46 of 1986, is amended to read as follows:

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

54 § 10. Subparagraph (iv) of paragraph 3 of subdivision (m) of section  
55 198-a of the general business law, as added by chapter 799 of the laws  
56 of 1986, is amended to read as follows:

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

6 § 11. Paragraphs 4, 5, 6 and 7 of subdivision (n) of section 198-a of  
7 the general business law, paragraphs 4, 5 and 7 as amended by chapter  
8 635 of the laws of 2004, paragraph 6 as amended by chapter 26 of the  
9 laws of 2005, are amended to read as follows:

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

25 (5) If an agent or authorized dealer of a motor home manufacturer or a  
26 repair shop to which they refer a [~~consumer~~] purchaser refuses to under-  
27 take repairs within seven days of receipt of notice by a [~~consumer~~  
28 purchaser] of a nonconformity, defect or condition within the first eigh-  
29 teen thousand miles of operation or during the period of two years  
30 following the date of original delivery of the motor home to such  
31 [~~consumer~~] purchaser, whichever is the earlier date, the [~~consumer~~  
32 purchaser] may immediately forward written notice of such refusal to the  
33 motor home manufacturer by certified mail, return receipt requested. The  
34 motor home manufacturer or its authorized agent or a repair shop to  
35 which they refer a [~~consumer~~] purchaser shall have twenty days from  
36 receipt of such notice of refusal to commence such repairs. If within  
37 such twenty day period, the motor home manufacturer or its authorized  
38 agent or repair shop to which they refer a [~~consumer~~] purchaser, fails  
39 to commence such repairs, the motor home manufacturer, at the option of  
40 the [~~consumer~~] purchaser, shall replace the motor home with a comparable  
41 motor home, or accept return of the motor home from the [~~consumer~~  
42 purchaser] and refund to the [~~consumer~~] purchaser the full purchase price  
43 or, if applicable, the lease price, and any trade-in allowance or other  
44 charges, fees, or allowances. Such fees and charges shall include but  
45 not be limited to all license fees, registration fees, and any similar  
46 governmental charges, less an allowance for the [~~consumer's~~] purchaser's  
47 use of the vehicle in excess of the first twelve thousand miles of oper-  
48 ation pursuant to the mileage deduction formula defined in paragraph  
49 four of subdivision (a) of this section, and a reasonable allowance for  
50 any damage not attributable to normal wear or improvements.

51 (6) If within the first eighteen thousand miles of operation or during  
52 the period of two years following the date of original delivery of the  
53 motor home to such [~~consumer~~] purchaser, whichever is the earlier date,  
54 the same covered nonconformity, defect or condition in a motor home has  
55 been subject to repair two times or a motor home has been out of service  
56 by reason of repair for twenty-one days, whichever occurs first, the

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

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

30 § 12. Clause (i) of subparagraph (A) and the second undesignated para-  
31 graph of subparagraph (B) of paragraph 8 of subdivision (n) of section  
32 198-a of the general business law, as added by chapter 635 of the laws  
33 of 2004, are amended to read as follows:

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

41 The following notice shall be provided to [~~consumers~~] purchasers and  
42 arbitrators and shall be printed in conspicuous ten point bold face  
43 type:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (b) Transmission. The transmission case, internal parts, and the  
54 torque converter.

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

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

3 (e) Radiator.

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

6 (g) Alternator, generator, starter, ignition system excluding the  
7 battery.

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

12 § 17. Subparagraph (i) of paragraph 4 of subdivision b of section  
13 198-b of the general business law, as amended by chapter 444 of the laws  
14 of 1989 and as renumbered by chapter 530 of the laws of 1990, is amended  
15 to read as follows:

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

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

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



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

19 (a) The malfunction or defect does not substantially impair such  
20 value; or

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

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

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

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

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

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

51 2. Nothing in this section shall in any way limit the rights or reme-  
52 dies which are otherwise available to a [~~consumer~~] purchaser under any  
53 other law.

54 3. Notwithstanding paragraph one of this subdivision, this article  
55 shall not apply to used motor vehicles sold for, or in the case of a  
56 lease where the value of the used motor vehicle as agreed to by the

1 [~~consumer~~] purchaser and the dealer which vehicle is the subject of the  
2 contract is, less than one thousand five hundred dollars, or to used  
3 motor vehicles with over one hundred thousand miles at the time of sale  
4 or lease if said mileage is indicated in writing at the time of sale or  
5 lease. Further, this article shall not apply to the sale or lease of  
6 historical motor vehicles as defined in section four hundred one of the  
7 vehicle and traffic law.

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

18 § 21. The opening paragraph of paragraph 1 of subdivision f of section  
19 198-b of the general business law, as separately amended by chapters 444  
20 and 609 of the laws of 1989, is amended to read as follows:

21 If a dealer has established or participates in an informal dispute  
22 settlement procedure which complies in all respects with the provisions  
23 of part seven hundred three of title sixteen of the code of federal  
24 regulations the provisions of this article concerning refunds or  
25 replacement shall not apply to any consumer who has not first resorted  
26 to such procedure. Dealers utilizing informal dispute settlement proce-  
27 dures pursuant to this subdivision shall [~~insure~~] ensure that arbitra-  
28 tors participating in such informal dispute settlement procedures are  
29 familiar with the provisions of this section and shall provide to arbi-  
30 trators and [~~consumers~~] purchasers who seek arbitration a copy of the  
31 provisions of this section together with the following notice in  
32 conspicuous ten point bold face type:

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

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

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

51 Such alternate arbitration shall be conducted by a professional arbi-  
52 trator or arbitration firm appointed by and under regulations estab-  
53 lished by the attorney general. Such mechanism shall ensure the personal  
54 objectivity of its arbitrators and the right of each party to present  
55 its case, to be in attendance during any presentation made by the other  
56 party and to rebut or refute such presentation. In all other respects,

1 such alternate arbitration mechanism shall be governed by article seven-  
2 ty-five of the civil practice law and rules.

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

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

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

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

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

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

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

47 g. Notice of [~~consumer~~] purchaser rights. At the time of purchase or  
48 lease of a used motor vehicle from a dealer in this state, the dealer  
49 shall provide to the [~~consumer~~] purchaser a notice, printed in not less  
50 than eight point bold face type, entitled "Used Car Lemon Law Bill of  
51 Rights". The text of such notice shall be identical with the notice  
52 required by paragraph one of subdivision f of this section.

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

1 (3) The time period specified in paragraph one or two of this subdivi-  
2 sion may be shortened if the dealer and [~~consumer~~ purchaser agree, in  
3 writing, to a shorter time period.  
4 § 25. This act shall take effect immediately.