STATE OF NEW YORK

192

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer 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:

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

(1) [~~"Consumer"~~] **"Purchaser"** means the purchaser, lessee or transferee, other than for purposes of resale, of a motor vehicle which is used primarily for personal, family or household**, or commercial or business** purposes and any other person entitled by the terms of the manufacturer's warranty to enforce the obligations of such warranty;

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

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

(b) (1) If a new motor vehicle which is sold and registered in this state does not conform to all express warranties during 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 [~~consumer~~] **purchaser** shall during such period report the nonconformity, defect or condition to the manufacturer, its agent or its authorized dealer. If the notification is received by the manufacturer's agent or authorized 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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notice thereof to the manufacturer by certified mail, return receipt requested, and shall include in such notice a statement indicating whether or not such repairs have been undertaken. The manufacturer, its agent or its authorized dealer shall correct said nonconformity, defect or condition at no charge to the [~~consumer~~] purchaser, notwithstanding the fact that such repairs are made after the expiration of such period of operation or such two year period.

(2) If a manufacturer's agent or authorized dealer refuses to undertake repairs within seven days of receipt of the notice by a [~~consumer~~] purchaser of a nonconformity, defect or condition pursuant to paragraph one of this subdivision, the [~~consumer~~] purchaser may immediately forward written notice of such refusal to the manufacturer by certified mail, return receipt requested. The manufacturer or its authorized agent shall have twenty days from receipt of such notice of refusal to commence such repairs. If within such twenty day period, the manufacturer or its authorized agent fails to commence such repairs, the manufacturer, at the option of the [~~consumer~~] purchaser, shall replace the motor vehicle with a comparable motor vehicle, or accept return of the vehicle 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. 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.

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

(1) If, within the period specified in subdivision (b) of this section, the manufacturer or its agents or authorized dealers are unable to repair or correct any defect or condition which substantially impairs the value of the motor vehicle to the [~~consumer~~] purchaser after a reasonable number of attempts, the manufacturer, at the option of the [~~consumer~~] purchaser, shall replace the motor vehicle with a comparable motor vehicle, or accept return of the vehicle 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. Any return of a motor vehicle may, at the option of the [~~consumer~~] purchaser, be made to the dealer or other authorized agent of the manufacturer who sold such vehicle to the [~~consumer~~] purchaser or to the dealer or other authorized agent who attempted to repair or correct the defect or condition which necessitated the return and shall not be subject to any further shipping charges. 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.

(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.

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

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

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

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

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

(k) Each [~~consumer~~] purchaser shall have the option of submitting any dispute arising under this section upon the payment of a prescribed filing fee to an alternate arbitration mechanism established pursuant to regulations promulgated hereunder by the New York state attorney general. Upon application of the [~~consumer~~] purchaser and payment of the filing fee, all manufacturers shall submit to such alternate arbitration.

Such alternate arbitration shall be conducted by a professional arbitrator or arbitration firm appointed by and under regulations established by the New York state attorney general. Such mechanism shall [~~insure~~] ensure the personal objectivity of its arbitrators and the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut or refute such presentation. In all other respects, such alternate arbitration mechanism shall be governed by article seventy-five of the civil practice law and rules; provided, however, that notwithstanding paragraph (i) of subdivision (a) of section seventy-five hundred two of the civil practice law and rules, special proceedings brought before a court pursuant to such article seventy-five in relation to an arbitration hereunder shall be brought only in the county where the [~~consumer~~] purchaser resides or where the arbitration was held or is pending.

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

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

§ 9. Subparagraph (i) of paragraph 1 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:

(i) that the arbitrators participating in such mechanism are trained in arbitration and familiar with the provisions of this section, that the arbitrators and [~~consumers~~] purchasers who request arbitration are provided with a written copy of the provisions of this section, together with the notice set forth below entitled "NEW CAR LEMON LAW BILL OF RIGHTS", and that [~~consumers~~] purchasers, upon request, are given an 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, the same covered nonconformity, defect or condition in a motor home has been subject to repair two times or a motor home has been out of service by reason of repair for twenty-one days, whichever occurs first, the

[~~consumer~~] **purchaser** must have reported this to the motor home manufacturer or its authorized dealer by certified mail, return receipt requested, and may institute any proceeding or other action pursuant to this section if the motor home has been out of service by reason of three repair attempts or for at least thirty days. The special notification requirements of this paragraph shall only apply if the manufacturer or its authorized dealer provides a prior written copy of the requirements of this paragraph to the [~~consumer~~] **purchaser** and receipt of the notice is acknowledged by the [~~consumer~~] **purchaser** in writing. If the [~~consumer~~] **purchaser** who has received notice from the manufacturer fails to comply with the special notification requirements of this paragraph, additional repair attempts or days out of service by reason of repair shall not be taken into account in determining whether the [~~consumer~~] **purchaser** is entitled to a remedy provided in paragraph four of this subdivision. However, additional repair attempts or days out of service by reason of repair that occur after the [~~consumer~~] **purchaser** complies with such special notification requirements shall be taken into account in making that determination. It shall not count as a repair attempt if the repair facility is not authorized by the applicable motor home manufacturer to perform warranty work on the identified nonconformity. It shall count as only one repair attempt for a motor home if the same nonconformity is being addressed a second time due to the [~~consumer's~~] **purchaser's** decision to continue traveling and to seek the repair of the same nonconformity at another repair facility rather than wait for the initial repair to be completed.

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

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

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

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

§ 13. Clause 4 of subparagraph (B) of paragraph 8 of subdivision (n) of section 198-a of the general business law, as added by chapter 635 of the laws of 2004, is 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, INCLUDING BUT NOT 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 TWELVE THOUSAND MILES TIMES THE PURCHASE PRICE, OR THE LEASE PRICE IF APPLICABLE, OF THE VEHICLE DIVIDED BY ONE HUNDRED THOUSAND MILES, AND A REASONABLE ALLOWANCE FOR ANY DAMAGE NOT ATTRIBUTABLE TO NORMAL WEAR OR IMPROVEMENTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Radiator.

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

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

3. Such repair or reimbursement shall be made by the dealer notwithstanding the fact that the warranty period has expired, provided the [~~consumer~~] **purchaser** notifies the dealer of the failure of a covered part within the specified warranty period.

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

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

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

1. If the dealer or his agent fails to correct a malfunction or defect as required by the warranty specified in this section which substantially impairs the value of the used motor vehicle to the [~~consumer~~] **purchaser** after a reasonable period of time, the dealer shall accept return of the used motor vehicle from the [~~consumer~~] **purchaser** and refund to the [~~consumer~~] **purchaser** the full purchase price, or in the case of a lease contract all payments made under the contract, including sales or compensating use tax, less a reasonable allowance for any damage not attributable to normal wear or usage, and adjustment for any modifications which either increase or decrease the market value of the vehicle or of the lease contract, and in the case of a lease contract, shall cancel all further payments due from the [~~consumer~~] **purchaser** under the lease contract. In determining the purchase price to be refunded or in determining all payments made under a lease contract to be refunded, the purchase price, or all payments made under a lease contract, shall be deemed equal to the sum of the actual cash difference paid for the used motor vehicle, or for the lease contract, plus, if the dealer elects to not return any vehicles traded-in by the [~~consumer~~] **purchaser**, the wholesale value of any such traded-in vehicles as listed in the National Auto Dealers Association Used Car Guide, or such other guide as may be specified in regulations promulgated by the commissioner of motor vehicles, as adjusted for mileage, improvements, and any major physical or mechanical defects in the traded-in vehicle at the time of trade-in. The dealer selling or leasing the used motor vehicle shall deliver to the [~~consumer~~] **purchaser** a written notice including conspicuous language indicating that if the [~~consumer~~] **purchaser** should be entitled to a refund pursuant to this section, the value of any vehicle traded-in by the [~~consumer~~] **purchaser**, if the dealer elects to not return it to the [~~consumer~~] **purchaser**, for purposes of determining the amount of such refund will be determined by reference to the National Auto Dealers Association Used Car Guide wholesale value, or such other guide as may be approved by the commissioner of motor vehicles, as adjusted for mileage, improvements, and any major physical or mechanical defects, rather than the value listed in the sales contract. 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. If the amount to be refunded to the lienholder will be insufficient to discharge the lien, the dealer shall notify the [~~consumer~~] **purchaser** in writing by registered or certified mail that the [~~consumer~~] **purchaser** has thirty days to pay the lienholder the amount which, together with the amount to be refunded by the dealer, will be sufficient to discharge the lien. The notice to the [~~consumer~~] **purchaser** shall contain conspicuous language warning the [~~consumer~~] **purchaser** that failure to pay such funds to the lienholder within thirty days will terminate the dealer's obligation to provide a refund. If the [~~consumer~~] **purchaser** fails to make such payment within thirty days, the dealer shall have no further responsibility to provide a refund under this section. Alternatively, the dealer may elect to offer to replace the used motor vehicle with a comparably priced vehicle, with such adjustment in price as the parties may agree to. The [~~consumer~~] **purchaser** shall not be obligated to accept a replacement vehicle, but may instead elect to receive the refund provided under this section. It shall be an affirmative defense to any claim under this section that:

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

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

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

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

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

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

d. Waiver void. 1. Any agreement entered into by a [~~consumer~~] **purchaser** for the purchase or lease of a used motor vehicle which waives, limits or disclaims the rights set forth in this article shall be void as contrary to public policy. Further, if a dealer fails to give the written warranty required by this article, the dealer nevertheless shall 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.

Such alternate arbitration shall be conducted by a professional arbitrator or arbitration firm appointed by and under regulations established by the attorney general. Such mechanism shall ensure the personal objectivity of its arbitrators and the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut or refute such presentation. In all other respects,

such alternate arbitration mechanism shall be governed by article seventy-five of the civil practice law and rules.

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

A dealer shall have thirty days from the date of mailing of a copy of the arbitrator's decision to such dealer to comply with the terms of such decision. Failure to comply within the thirty day period shall entitle the [~~consumer~~] **purchaser** to recover, in addition to any other recovery to which he may be entitled, a fee of twenty-five dollars for each business day beyond thirty days up to five hundred dollars; provided however, that nothing 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.

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

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

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

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

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

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

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

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

§ 25. This act shall take effect immediately.