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

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

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

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

d. "Warranty" means the written warranty, so labeled, of the manufacturer and any other warranties set forth in the manufacturer's or its agent's bid or offer submitted where competitive bidding is required by statute, rule, regulation or local law, including but not limited to, a bid or offer submitted pursuant to the competitive bidding requirements of section one hundred three of this article, and including any conditions precedent to the enforcement of obligations under such warranties.

2. Warranties. a. (i) If a new fire vehicle which is sold and registered in this state does not conform to all express warranties during the first two thousand hours of service or during the period of

two years following the date of original delivery of the fire vehicle to the municipal consumer, whichever is the earlier date, or if a new ambulance 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 ambulance to the municipal consumer, whichever is the earlier date, the municipal consumer 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 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 municipal consumer, notwithstanding the fact that such repairs are made after the expiration of such period of operation or such two year period.

(ii) If a manufacturer's agent or authorized dealer refuses to undertake repairs within seven days of receipt of the notice by a municipal consumer of a nonconformity, defect or condition pursuant to subparagraph (i) of this paragraph, the municipal consumer may immediately forward written notice of such refusal to the manufacturer by certified mail, return receipt requested. The manufacturer or its authorized agent shall have twenty days from receipt of such notice of refusal to commence such repairs. If within such twenty day period, the manufacturer or its authorized agent fails to commence such repairs, the manufacturer, at the option of the municipal consumer, shall replace the fire vehicle or ambulance with a comparable vehicle, or accept return of the fire vehicle or ambulance from the municipal consumer and refund to the municipal consumer the full purchase price 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 a reasonable allowance for any damage not attributable to normal wear or improvements.

b. (i) If, within the period specified in paragraph a of this

subdivision, 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 fire vehicle or ambulance to the municipal consumer after a reasonable number of attempts, the manufacturer, at the option of the municipal consumer, shall replace the fire vehicle or ambulance with a comparable vehicle, or accept return of the fire vehicle or ambulance from the municipal consumer and refund to the municipal consumer the full purchase price plus fees and charges. Any return of a fire vehicle or ambulance may, at the option of the municipal consumer, be made to the dealer or other authorized agent of the manufacturer who sold such fire vehicle or ambulance to the municipal consumer 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 a reasonable allowance for any damage not attributable to normal wear or improvements.

(ii) A manufacturer which accepts return of a fire vehicle or ambulance because such vehicle does not conform to its warranty shall notify the commissioner of motor vehicles that the fire vehicle or ambulance was returned to the manufacturer for nonconformity to its warranty and shall disclose, in accordance with the provisions of section four hundred seventeen-c 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 municipal consumer and lienholder, if any, as their interests may appear on the records of ownership kept by the department of motor vehicles.

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

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

(B) the nonconformity, defect or condition is the result of abuse, neglect, or unauthorized modifications or alterations of the fire vehicle or ambulance.

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

(i) the same nonconformity, defect or condition has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the first two thousand hours of service or during the period of two years following the date of original delivery of the fire vehicle to a municipal consumer, whichever is the earlier date, or, within the first eighteen thousand miles of operation or during the period of two years following the date of original delivery of the ambulance to a municipal consumer, whichever is the earlier date, but such nonconformity, defect or condition continues to exist; or

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

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

3. Informal dispute settlement. a. (i) If a manufacturer has established an informal dispute settlement mechanism, such mechanism shall comply in all respects with the provisions of this section; provided, however, that the provisions of subdivision two of this section concerning refunds or replacement shall not apply to any municipal consumer who has not first resorted to such mechanism. In the event that an arbitrator in such an informal dispute mechanism awards a refund or replacement fire vehicle or ambulance, he or she shall not reduce the award to an amount less than the full purchase price or a fire vehicle or ambulance of equal value, plus all fees and charges except to the extent such reductions are specifically permitted under subdivision two of this section.

(ii) A manufacturer shall have up to thirty days from the date the municipal consumer notifies the manufacturer of their 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 municipal consumer 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 paragraph shall impose any liability on a manufacturer where a delay beyond the thirty day period is attributable to a municipal consumer who has requested a replacement fire vehicle or ambulance 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 municipal consumer who has resorted to an informal dispute settlement mechanism be precluded from seeking the rights or remedies available by law.

b. (i) Each municipal consumer 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 municipal consumer 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 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 municipal consumer is located or where the arbitration was held or is pending.

(ii) A court may award reasonable attorney's fees to a municipal consumer who prevails in any judicial action or proceeding arising out of an arbitration proceeding held pursuant to subparagraph (i) of this

paragraph. In the event a municipal consumer 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.

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

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

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

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

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

NEW EMERGENCY VEHICLE LEMON LAW BILL OF RIGHTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) the average number of days from the date of a municipal consumer'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.

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

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

5. Void agreements. Any agreement entered into by a municipal consumer for the purchase of a new fire vehicle or ambulance 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 fire vehicle or ambulance. Any provision of any agreement entered into by a municipal consumer for the purchase of a new fire vehicle or ambulance which includes as an additional cost for such vehicle an expense identified as being for the purpose of affording such municipal consumer their rights under this section, shall be void as contrary to public policy.

6. Preservation of rights. Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a municipal consumer under any other law.