

AUTOMOBILES

Introduction

For many people, buying an automobile is the second largest purchase they will make in their lifetime. Contrary to popular opinion, there is no three day cooling off period applicable to automobile purchases and leases in New York State. Consumers should therefore become fully informed before making a decision to purchase a new or used automobile.

Purchase Contracts

• *General Business Law §§ 396-p, 396-q*

Any contract for a new motor vehicle signed by a consumer must also be signed by the dealer or the dealer's employee. If the dealer and consumer sign a contract stating the value of a trade-in allowance, that allowance may not be reduced upon delivery unless the car's value has been diminished by circumstances other than normal wear and tear.¹

Once a new car contract is signed by the consumer and dealer, the price stated in the contract may not be increased. However, the dealer may, instead of furnishing a contract when a deposit is accepted, give written disclosure that there is no guarantee of getting a car exactly as ordered, and that the deposit is fully refundable if the consumer decides not to purchase the car offered later.²

Any contract entered into between a retail dealer and a consumer which permits the price to be increased after the contract is executed is void and unenforceable.³ One New York court has held that a price increase due to the addition of options not selected at the time of purchase by the consumer was a bad faith modification under the **Uniform Commercial Code**.⁴ Consequently, the consumer only had to pay the original contract price.⁵

If a retail dealer accepts a deposit from a consumer under a written contract, the contract must contain the **estimated delivery date** of the automobile and the place of delivery. The contract must state that if the automobile has not been delivered within 30 days following the estimated delivery date, the consumer has the **right to cancel** the contract and receive a full refund, unless the delay is attributable to the consumer.⁶

If a new car is delivered to a consumer without the specific options or equipment ordered by the consumer in the purchase contract, it is likely that contract law would permit the consumer to refuse to accept delivery of the vehicle. Further, a state statute requires dealers to offer to reduce the contract price by the dollar amount of the equipment or options not provided. However, if the consumer indicates in writing a willingness to wait for a stated period for the requested option or equipment to become available or be installed, the dealer may collect payment for the yet-to-be received equipment or options.⁷

¹ N.Y. Gen. Bus. Law § 396-q.

² N.Y. Gen. Bus. Law § 396-p.

³ N.Y. Gen. Bus. Law § 396-p(1).

⁴ The Uniform Commercial Code is a set of New York statutes regulating contracts and commercial agreements.

⁵ N.Y. Uniform Commercial Code § 2-209; Palmer v. Safe Auto Sales, Inc., 452 N.Y.S.2d 995 (Civ. Ct. City of N.Y., Small Claims Part 1982).

⁶ N.Y. Gen. Bus. Law § 396-p.

⁷ N.Y. Gen. Bus. Law § 396-q, as amended by Chapter 177 of the Laws of 1990.

The interest rate offered at the time of deposit or customer order for a new car must be guaranteed until delivery by the dealer, manufacturer or finance company, depending on who is financing the automobile.

Dealers who violate §396-p are subject to civil penalties of \$50-\$250. Dealers in violation of §396-q may be fined and are subject to lawsuits by injured consumers, who may receive actual damages and reasonable attorney's fees.

Contract Cancellation: Failure to Post Refund Policies

Every "retail mercantile establishment" must "conspicuously" post its refund policy as to all "goods, wares or merchandise" offered to the public for sale on a sign (a) attached to the item; (b) attached to the cash register; (c) on a sign clearly visible to the buyer from the cash register; or (d) on a sign posted at each store entrance used by the public.⁸ State law also requires that the retail establishment state whether or not it has a refund policy, and if so, under what conditions. The buyer's remedy for violation of this provision is to receive a cash refund or a credit, at his or her option, for up to twenty days after the date of purchase, provided that the buyer did not "use" or "damage" the merchandise.

As an auto dealership may be a "retail mercantile establishment" under the statute, failure by auto dealers to comply with General Business Law §218-a may give consumers the right to cancel their auto contract within twenty days of "purchase" (i.e., the signing of the automobile contract).

Financing New Car Purchases

Retail Installment Sales Contracts

• *Motor Vehicle Retail Installment Sales Act (MVRISA)*

• *N.Y. Personal Prop. Law §§ 301 - 315*

Consumers who finance the purchase (or in some cases, the lease) of new or used motor vehicles through their dealer, a bank, a national company such as GMAC, or a third party are protected by the provisions of the New York Motor Vehicle Retail Installment Sales Act⁹, sometimes abbreviated as "MVRISA." The contract they sign, known as a "retail installment contract," is a lengthy document which gives the holder a security interest in the vehicle--it permits the holder to repossess the vehicle if the consumer defaults. (What actions are necessary for default are generally specified in the retail installment contract. Many contracts permit holders, sellers or the financial institutions the contract is assigned to, to repossess if a consumer is late on a single payment, although it generally doesn't.) MVRISA applies to any contract entered into in New York State, or if signed by a buyer in New York who is solicited in person.

All retail installment sales contracts must be in writing, contain all the agreements of the parties (including the financing terms) and be signed by the buyer and the seller. The seller must deliver or mail to the consumer a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the motor vehicle shall have an unconditional right to cancel the contract and to receive an immediate refund of all payments made and redelivery of all goods traded-in (i.e. a motor vehicle offered as a trade-in).¹⁰

Contract Cancellation: Failure to Secure Financing Terms

The provisions discussed in the paragraph above probably permit a consumer whose retail installment sales contract does not have all the essential financing terms (i.e. the interest rate) and

⁸ N.Y. Gen. Bus. Law § 218-a.

⁹ N.Y. Personal Prop. Law § 301 et seq.

¹⁰ N.Y. Personal Prop. Law § 302.

who has not received delivery of the motor vehicle to unconditionally cancel (see paragraph above). In addition, many auto contracts in New York State contain a provision in the front which contains words similar to these:

IF YOU AGREE TO ASSIST ME IN OBTAINING FINANCING FOR ANY PART OF THE PURCHASE PRICE, THIS ORDER SHALL NOT BE BINDING UPON YOU OR ME UNTIL ALL OF THE CREDIT TERMS ARE PRESENTED TO ME IN ACCORDANCE WITH REGULATION “Z” (TRUTH-IN-LENDING) ARE ACCEPTED BY ME. IF I DO NOT ACCEPT THE TERMS WHEN PRESENTED, I MAY CANCEL THIS ORDER AND MY DEPOSIT WILL BE RETURNED.

This or similar language would also permit the consumer to cancel his or her order until the filled in retail installment sales contract is finally presented.

Contract Disclosures

The contract’s printed portion must be in at least eight point type, but the following items must be placed in the contract in at least ten-point bold type¹¹:

- the words “RETAIL INSTALLMENT CONTRACT, both at the top of the contract and directly above the consumer’s signature;
- a statement that liability insurance coverage is not included, if that is the case;
- one of three different notices whose text is contained in the statute, which inform the consumer, among other things: (i) not to sign the contract without reading it or if it contains any blank space; (ii) that he or she is entitled to a completely filled in copy of this contract upon signing; (iii) that the consumer has the right to purchase the insurance on the motor vehicle from an agent or broker of his or her own selection; and (iv) to prepay the full amount due;
- The seller’s name and place of business, and the buyer’s residence or business address;
- A description of the motor vehicle including its make and model and identification number;
- All items required to be disclosed by the federal Truth-In-Lending Act (i.e. the annual percentage rate and finance charge); and
- Certain information about the consumer’s insurance coverage.

MVRISA prohibits these provisions in retail installment sales contracts:

- Any provision which permits the holder to arbitrarily accelerate the agreement in the absence of the buyer’s default;
- A confession of judgment clause;
- A clause which permits any assignment of wages;
- A provision giving any person the right to enter the consumer’s premises illegally or commit any “breach of the peace” (i.e. violence) while repossessing the motor vehicle;
- A provision which waives any legal right the consumer may have against the holder under the contract, including the trial by jury;
- A provision which prevents the buyer from “redeeming” the vehicle after repossession even if the buyer pays the required amount; and

¹¹ N.Y. Personal Prop. Law § 302.

- Permitting the holder to create a security interest in any property other than the consumer's motor vehicle.

If any of these provisions are in a retail installment sales contract, the provision is considered void (unenforceable), but the rest of the contract will still be valid.¹²

At the consumer's written request, the holder must give the buyer a written statement of the dates and amounts of payments made and the total amount unpaid under the contract. The buyer must be provided with a written receipt for any payment in cash.¹³

After the payment of all sums for which the consumer is obligated under the contract, he or she must be given upon written demand, a statement indicating payment in full and that the security interest in the vehicle has been released (i.e. the holder can no longer repossess the vehicle).¹⁴

Provided it is permitted by the contract, the holder may collect a delinquency and collection charge for any payment at least ten days past due, and charge, if the holder refers the account to an outside attorney, up to 15% of the amount due, plus court costs.¹⁵

Consumers have the right to pay the full amount due on the contract, despite any provision in the retail installment sales contract to the contrary. If they do, they are entitled to receive a refund credit of the unearned portion of the interest, minus a \$15.00 fee.¹⁶

Failure to comply with MVRISA generally does not render the contract unenforceable, but triggers certain statutory penalties.¹⁷ Any person who willfully violates MVRISA is guilty of a misdemeanor, and is subject to a \$500 fine upon conviction. Further, persons who willfully fail to make the disclosures required in retail installment sales contracts may not recover any credit service charge, delinquency or collection charge. However, holders may avoid any liability by correcting any error within ten days after written notification of the error by the buyer.¹⁸

Credit Checks

The Fair Credit Reporting Act¹⁹ (FCRA), which is enforced by the FTC and the New York State Attorney General, regulates the use of credit reports and other types of consumer reports. It does not allow an automobile dealer to obtain a credit report on a person who "comes to an automobile dealership and requests information" from the dealership. This means that credit reports may not be obtained until the consumer does more than window shop or take a car out for a test drive.

According to the FTC "an automobile dealer may obtain a report only in those circumstances in which the consumer clearly understands that he or she is initiating the purchase or lease of a vehicle and the seller has a legitimate business need for the consumer report to complete the transaction." The staff's letter emphasizes that, even when the consumer is purchasing or leasing a vehicle, the dealer has a right to obtain a credit report on the consumer only when it has a legitimate need for the information, such as if the consumer requests financing (to review creditworthiness and prior payment history), or a dealer may have a right to access a consumer report to see if the consumer has a history of passing bad checks after a check is presented but before the consumer takes possession of the vehicle.

Under the FCRA, automobile dealers or others who improperly obtain credit reports can be subject to civil penalties of up to \$2,500 per violation.

¹² N.Y. Pers. Prop. Law §§ 302, 314.

¹³ N.Y. Pers. Prop. Law § 302(12).

¹⁴ N.Y. Pers. Prop. Law § 304.

¹⁵ N.Y. Pers. Prop. Law § 302(7).

¹⁶ N.Y. Pers. Prop. Law § 305.

¹⁷ See, Sheffield Commercial Corp. v. Clemente, 792 F.2d 282 (2d Cir. 1986).

¹⁸ N.Y. Pers. Prop. Law § 307.

¹⁹ 15 USC §§ 1681 – 1681t.

The FTC has developed the following specific guidelines regarding the use of credit reports by automobile dealers:

- A request to “test drive” a vehicle does not indicate an intent to purchase a vehicle and, therefore, does not “initiate” a business transaction. A dealer must obtain written permission if the dealer wants to check a consumer’s credit report before or during a test drive.
- Obtaining credit reports solely for the purpose of negotiating with consumers is not permitted.
- The fact that a consumer asks questions about prices and financing does not necessarily indicate an intent to purchase or lease a vehicle from the dealer. The consumer may only be “window shopping” or comparison shopping. Thus, the dealer must obtain the consumer’s written permission before obtaining the credit report if the consumer has simply asked questions about prices and financing.
- If a dealer needs to see a consumer’s credit report before answering general questions, including inquiries about available financing when the consumer has not applied for credit, the dealer must obtain written permission from the consumer.

Insurance

- *Personal Property Law § 302(6)*

The amount charged for insurance must not exceed the amounts chargeable under rate filings made with the New York State Insurance Department. The consumer must be sent his or her insurance policy containing the amount of the premium, the kinds of insurance and the terms and conditions of the coverage within thirty days after signing the retail installment sales contract²⁰. State law allows the buyer to select and pay for his or her own insurance that may be required, but a failure to do so allows the holder to substitute necessary insurance, and to charge the buyer for it.²¹

Monroney Window Stickers

- *15 U.S.C. §§ 1231-1233*

Under the federal “Monroney Act,” every manufacturer of new cars is required to attach to the windshield or side window of the automobile a sticker prior to its delivery to the dealer known as the “Monroney” sticker. This sticker must contain, among other things, the vehicle’s make and model, the final assembly point, its destination, the manufacturer’s suggested retail price for the vehicle, and the manufacturer’s suggested retail price for each accessory or item of optional equipment.

Willful failure to attach or willful removal of the required label on a new automobile is prohibited by 15 U.S.C. §1233, and subjects the offender to fines and/or imprisonment. Complaints regarding this law should be sent to the following address:

Office of Consumer Litigation
United States Department of Justice
P.O. Box 386
Washington, D.C. 20044

Dealers are not bound to charge consumers the manufacturer’s suggested retail price, and no legal limit has been set for the pricing of motor vehicles.

²⁰ Personal Property Law § 302(6).

²¹ N.Y. Pers. Prop. Law § 302(6).

Bumper Quality Labels

• *General Business Law § 416-a*

Manufacturers are prohibited from selling, leasing or offering to sell or lease any 1993 and later model passenger motor vehicles in New York unless a “bumper quality label” is attached to the vehicle’s window near the federal Monroney sticker. (See the section entitled “Monroney Window Stickers” above.) The bumper quality label will be required to specify the impact speed for the front and rear bumper, defined as the maximum speed at which the vehicle sustains no damage to the body and safety systems and only minimal damage to the bumper. Manufacturers who violate the law “without just cause” are subject to a civil fine of up to fifty dollars per vehicle.

Airbags

Airbags are regulated by the federal government.²² Airbag problems and injuries can occur primarily when a person’s position is too close during inflation and they are not wearing a seatbelt (because the passenger is likely to move forward during a crash).

Passenger size, gender, and age do not determine risk of injury in an airbag inflation. Rather, it is the body’s position in relation to the airbag. Neither short women nor elderly drivers are especially vulnerable if they use safety belts and sit at least 10 inches from the steering wheel. Those drivers that cannot get 10 inches from the steering wheel and still comfortably reach the pedals may consider installing pedal extenders. For more information about pedal extenders, contact the National Mobility Equipment Dealers Association (NMEDA). NMEDA provides information about local dealerships able to install pedal extenders and other safety equipment:

NMEDA
909 East Skagway Avenue
Tampa, Florida, 33604
Telephone: 1-813-932-8566

Since January 1998, automotive repair shops and dealers have been permitted, under appropriate circumstances, to install “on-off” switches that allow air bags in passenger cars and light trucks to be turned on and off. Dealers and repair shops cannot perform this work without an authorization letter from the National Highway Traffic Safety Administration (NHTSA). Vehicle owners can get this authorization letter by filling out a request form developed by NHTSA and sending it to the agency. NHTSA’s contact information is listed in this Manual’s Appendix.

To qualify for an on-off switch, a vehicle owner (or users of the owner’s vehicle) must fall into one or more of the four specific risk groups.

- For both driver and passenger sides, individuals with medical conditions where the risks of a deploying air bag exceed the risk of impacting the steering wheel, dashboard, or windshield in the absence of an air bag.
- For the driver side, in addition to medical conditions, individuals who cannot position themselves to properly operate the vehicle with the center of their breastbone at least 10 inches back from the center of the driver air bag cover.
- For the passenger side, in addition to medical conditions, individuals with the need to transport an infant in a rear-facing child restraint in the front seat because the vehicle has no rear seat, the rear seat is too small to accommodate a rear-facing child restraint, or because it is necessary to constantly monitor the child’s medical condition.
- Individuals with the need to carry children between 1 and 12 years-old in the front seat because (1) the vehicle has no rear seat, (2) the consumer must carry more children than can be

²² See, 49 CFR Parts 571 and 595.

accommodated in the rear seat, or (3) because it is necessary to constantly monitor a child's medical condition.

These are the only four categories eligible for the installation of on-off switches.

Most people can take steps that will eliminate or at least significantly reduce any risk without turning off air bags and losing their protection. The main source of risk is proximity; an air bag needs space to inflate. Move your seat rearward, and tilt your seat back - as a driver, you should ride at least 10 inches (measured from the center of the steering wheel to your breastbone) from the air bag cover if you can do this while maintaining full control of your vehicle. Passengers also need to sit at least 10 inches back from the air bag. Wear your seat belt, and remove any excess slack in the belt. Insist that children 12-years-old and younger ride in the back seat. Never put a rear-facing child restraint in front of an air bag.

“Grey Market” Vehicles

• *Vehicle and Traffic Law § 471*

Dealers are prohibited from selling any new or used motor vehicles originally intended for distribution outside the United States without prominently displaying a label on the vehicle stating that “This vehicle was not sold by the manufacturer for distribution within the United States. It may not have the same standard features, emissions equipment, safety equipment, optional equipment, specifications and warranty, or otherwise be identical to the other motor vehicles which are sold by the manufacturer for distribution in the United States”. Any person violating this section or knowingly aiding and abetting violations of this section will be liable to any “person aggrieved,” including a consumer, to the extent of any “additional margin obtained or obtainable on such purchase and resale.”

Damage to a New Motor Vehicle at Purchase

• *General Business Law § 396-p*

Retail dealers and their employees must give consumers, prior to the sale and delivery of a new motor vehicle, written notice of any repairs of physical damage to the vehicle with a retail value of more than 5% of the lesser of the manufacturer's or distributor's suggested retail price which were performed after the vehicle's shipment from the manufacturer to the dealer, including damage while in transit. This notice requirement does not apply to identical replacement of stolen or damaged parts.

Upon receiving notice, the consumer is entitled to cancel their order and receive a full refund of their deposit. However, even if the dealer has failed to provide notice, the consumer has four months after the date of purchase to cancel. In this case, the consumer is entitled to a refund of his or her purchase price, any trade-in allowance, and all fees and charges. If the vehicle has been driven more than 1000 miles, a small deduction is made from the full refund, based on a formula specified in the statute.²³

New Car Lemon Law

• *General Business Law § 198-a*

In New York, a buyer or lessee of a “new” motor vehicle (including a van or truck) from a dealer used for personal, family or household purposes which turns out to be a “lemon” -- an unsafe, inefficient, or defect-ridden car -- may find relief through the “New Car Lemon Law.” The New

²³ N.Y. Gen. Bus. Law § 396-p(5).

Car Lemon Law gives consumers two major rights: the right to receive repairs²⁴ and the right to receive a refund or replacement vehicle.²⁵ In addition, the law provides a separate right to receive a refund or replacement vehicle when the dealer refuses to make repairs.²⁶

Consumer rights under the New York Lemon Law are in addition to and do not replace rights under other laws. A consumer whose car is not covered under the Lemon Law may still pursue other legal remedies. For example, under the New York Uniform Commercial Code, consumers may have a right to “reject” or “revoke acceptance” of a defective vehicle. Both of these remedies require consumers to act soon after purchase or when a defect is discovered. In addition, any written manufacturer’s warranty and/or extended service contract applicable to their car may give the consumer the right to have a defect repaired or a defective part replaced.

The Lemon Law covers only motor vehicles that are primarily used for personal as opposed to business use. Motorcycles and off-road vehicles (dirt bikes, scooters, etc.) are not covered by the Lemon Law. Only the non-residential portion of a motor home is covered (i.e. the engine and drive train); defects to the living quarters are not protected by the statute. Sales by automobile auctioneers are covered under the Lemon Law.

The New Car Lemon Law applies, if the motor vehicle:

- Was subject to a manufacturer’s express warranty at the time of original delivery (i.e. the first consumer who purchased or leased the car had a warranty); **and either**
- Was purchased, leased or transferred in New York within either the first 18,000 miles of operation or two years from the date of original delivery, whichever is earlier; **or**
- Is registered in New York.

As long as these statutory definitions are met, the New Car Lemon Law applies, whether or not the vehicle meets the “person on the street” definition of “new.” For example, a “demonstrator” purchased by the consumer from a dealer with 10,000 odometer miles at purchase or a motor vehicle previously owned by another consumer is covered by the New Car Lemon Law’s refund or replacement remedy.²⁷

Used Car Lemon Law

• *General Business Law § 198-b*

If the vehicle was purchased, leased or transferred after **18,000 miles** of operation or **two years** from the date of original delivery, whichever is earlier, the Used Car Lemon Law applies, so long as it was purchased and leased from a New York dealer. The amendment applies to sale or transfer occurring or leases entered into on or after January 1, 1987.²⁸

The Right to Receive Repairs

• *General Business Law § 198-a(b)*

Under the law, if a problem which is covered by the consumer’s new car warranty (provided by the manufacturer) develops, the consumer must report it to the manufacturer or its authorized dealer. (The consumer should first attempt to report the defect to the selling dealer.) If the consumer reports the defect before the car is two years old or has been driven 18,000 miles

²⁴ N.Y. Gen. Bus. Law § 198-a(b).

²⁵ N.Y. Gen. Bus. Law § 198-a(c).

²⁶ N.Y. Gen. Bus. Law § 198-a(b)(1).

²⁷ S. Mindell, Review of 1989 Consumer Legislation - Part I, N.Y.L.J., 8/20/90.

²⁸ Ch. 530, Laws of 1990; S. Mindell, Review of 1989 Consumer Legislation - Part I, N.Y.L.J., 8/20/90.

(whichever comes first), the repair must be made free of charge, even if the actual work is done after this period.²⁹

A motor vehicle must be sold and registered in New York to be entitled to receive the statutorily required warranty (i.e. the right to receive repairs) under the Lemon Law.³⁰

The Right to a Refund or Comparable Vehicle

• *General Business Law § 198-a(c)*

Consumers are entitled, at their option, to a comparable replacement vehicle or a refund of the purchase price plus all taxes and fees³¹ if:

- The dealer has not corrected the same defect after four attempts, or
- The vehicle has been out of service for repair of one or more defects or conditions for a total of at least 30 or more days.

In addition to these two requirements, for the consumer to be entitled to a replacement vehicle or a refund, the defect or defects must “substantially impair” the value of the motor vehicle to the consumer. Although substantial impairment is not defined in the law, examples of defects which might meet this requirement are transmission problems, engine trouble, excessive vibrations, or rattling in the chassis. If the consumer seeks a refund or replacement, the manufacturer may raise the defense either that (1) the defect(s) does not substantially impair the value of the motor vehicles or (2) the defect(s) were the result of the consumer’s abuse or unauthorized modifications or alterations of the motor vehicle.

A refund may be reduced for any use of the car in excess of 12,000 miles by a formula in the statute and for any damage not attributable to normal use. Consumers are entitled to a refund of any tax paid when they receive a refund of the full purchase price from the manufacturer. An application should be submitted to the Department of Taxation and Finance for a tax refund.

Consumers who lease lemons are entitled under the New Car Lemon Law to receive a refund of any down payment made, plus the total of any lease payments made minus any service fees charged. The lease contract in a Lemon Law proceeding is void as of the date of the arbitrator’s decision. No “early termination penalty” may be assessed as a result of this termination of the lease.³²

The manufacturer, not the dealer, is legally responsible for providing the Lemon Law refund or replacement remedy. However, a consumer may, at his or her option, return the motor vehicle to the selling dealer or any other authorized dealer who attempted to make the repair instead of the manufacturer’s facility when seeking a refund or replacement. Further, no further shipping charges may be charged to the consumer in this case.³³

Dealer’s Refusal to Make Repairs

• *General Business Law §198-a(b)(1)*

Consumers may receive a new car or refund (even if the four repair attempt/30 days out-of-service requirement above is not met) when the manufacturer’s agent or authorized dealer refuses to make

²⁹ N.Y. Gen. Bus. Law § 198-a(b).

³⁰ N.Y. Gen. Bus. Law § 198-a(b)(1), as amended by Ch. 217, Laws of 1990).

³¹ The statute states that consumers are entitled to “the full purchase 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....” N.Y. Gen. Bus. Law § 198-a(c)(1).

³² N.Y. Gen. Bus. Law § 198-a(c).

³³ N.Y. Gen. Bus. Law § 198-a(c)(1).

requested repairs. First, the consumer should inform the dealer of the defect. If the dealer refuses to make the requested repairs, the consumer must only wait seven days after informing the dealer of the defect. After seven days, the consumer can inform the manufacturer directly that the dealer refused to make the repairs. The consumer must give the manufacturer notice of the dealer's refusal by certified mail, return receipt requested. The manufacturer then has twenty days to begin the requested repairs. If by the end of the twenty day period the manufacturer does not begin the repairs, the consumer is entitled to replacement of the vehicle with a comparable motor vehicle or refund of the purchase price.³⁴

Miscellaneous Lemon Law Issues

Some New York State dealers have imposed fees known by such names as "Warranty Enhancement Charges," "Lemon Law Charges," or "New York State Warranty Protection Charges." While it does not appear to be illegal for dealers to impose this charge, it is not required by the State of New York, as some dealers have claimed. Consumers may wish to consider buying from another dealer who does not impose such charges.

The Lemon Law and Motor Homes

As stated above, the Lemon Law applies to the non-residential portions of a motor home (i.e. the parts devoted to propelling the vehicle). The motor home manufacturer rather than the manufacturer of any defective part, is responsible for providing a refund or comparable motor home (i.e. Winnebago rather than Ford is responsible for refunding the consumer's purchase price).³⁵

Motor homes are treated like motor vehicles in almost all respects (i.e. the 4 repair attempts/30 days out of service requirement discussed above applies to motor homes). However, state law requires the consumer to provide notice to the motor home manufacturer as a condition of receiving the Lemon Law's refund or replacement remedy. If a defect has been subject to 3 repair attempts or the home has been out of service for repairs a total of 21 days, whichever comes first, the consumer must report these facts to the motor home manufacturer or its authorized dealer by certified mail, return receipt requested prior to instituting any proceeding under the Lemon Law to receive a refund or replacement vehicle.

If the consumer fails to make this report, any repair attempts which occurred prior to the consumer's notice are not counted for purposes of determining whether the consumer has met the Lemon Law's 4 repair attempts/30 days out service requirement. However, the notice requirements discussed above only apply if the motor home manufacturer or its authorized dealer has previously informed the consumer in writing of their responsibility to provide notice to the motor home manufacturer, and the consumer has acknowledged receipt of this notice in writing.

State law also provides a remedy to consumers in the event of a refusal by an agent or authorized dealer of a motor home manufacturer to undertake repairs under the New Car Lemon Law. In this case, the consumer may, after waiting seven days after the agent or dealer receives notice of the defect, forward written notice of the refusal to the motor home manufacturer by certified mail, return receipt requested. If after twenty days, the motor home manufacturer, its authorized agent or any repair shop to which they refer the consumer fails to begin repairs, the consumer is entitled to the Lemon Law remedy.

For a further discussion of the rights and remedies of new car buyers, see the State Consumer Protection Board's Lemon Owner's Manual.

³⁴ N.Y. Gen. Bus. Law § 198-a(b)(1).

³⁵ N.Y. Gen. Bus. Law § 198-a(n).

Dispute Resolution

In case of a dispute, should the manufacturer have an informal dispute resolution program (i.e., an arbitration program) which complies with the requirements of the federal Magnuson-Moss Warranty Act and the Lemon Law, consumers must by law participate in that program. If they do not do so, the law states the manufacturer may refuse to provide the Lemon Law's refund or replacement remedy.³⁶ At arbitration proceedings, consumers and arbitrators must be given a notice entitled the "New Car Lemon Law Bill of Rights" which explains the provisions of the law in non-legalese.

Manufacturers' informal dispute resolution programs are binding on the manufacturer, not the consumer.³⁷ This means that a consumer who is unsuccessful in a manufacturer's program may sue in court. In addition, the Attorney General's arbitration program (see below) admits consumers who have lost in a manufacturer-sponsored arbitration.

Consumers should ask manufacturers prior to going to court or filing with the Attorney General's arbitration program whether the manufacturer has established such a program. Given the non-binding nature of manufacturer's dispute resolution programs, and the Lemon Law's requirement that consumers resort to these programs, it generally makes sense for consumers to use these programs first. However, consumers should carefully prepare for these proceedings. A judge or an arbitrator under the Attorney General's program, while not bound by the decision made in the manufacturer's dispute resolution program, may be persuaded by the earlier decision.

Attorney General's Lemon Law Arbitration Program

In addition to the manufacturer's arbitration program, consumers may submit their disputes under the New and Used Car Lemon Laws to an alternative arbitration mechanism administered by the New York State Attorney General. A consumer seeking to participate in this program must file a "Request for Arbitration" form with the Attorney General which will be reviewed for eligibility and completeness. Upon acceptance, the consumer will be asked to pay a \$250 filing fee, refundable to the consumer if he or she is awarded Lemon Law relief.

The arbitration will be conducted as an oral hearing unless the consumer requests a hearing on documents only. Consumers may also be represented by counsel or be assisted by a third party. Consumers can expect a decision to be rendered within ten days of the hearing and the manufacturer must comply with the decision within thirty days. In all cases, a decision must be rendered within 40 days of the filing date.³⁸

The Attorney General's program is different from manufacturer's programs in several ways. First, participation by the consumer in the Attorney General's program is optional (i.e. consumers can go to court without filing with the Attorney General). However, it is compulsory for the manufacturer.³⁹ Secondly, unlike manufacturers' programs, the decision by an arbitrator under the Attorney General's program is generally binding on the consumer. It is, of course, binding on the manufacturer as well.⁴⁰ Consumers may only appeal the Attorney General's arbitration decision for the limited reasons provided in Article 75 of the N.Y. Civil Practice Law and Rules. These reasons include corruption or fraud in the process; bias of the arbitrator; clear errors of law and miscalculation of figures in the award. A disagreement over a finding of fact by the arbitrator is not a basis for appeal.

³⁶ N.Y. Gen. Bus. Law §§ 198-a(g) and 198-a(m).

³⁷ N.Y. Gen. Bus. Law § 198-a(h); Mountcastle v. Volvoville, U.S.A. Inc., 494 N.Y.S.2d 792, 794 (Sup. Ct. Nassau Cty. 1985).

³⁸ 13 NYCRR Part 300.

³⁹ See, Motor Vehicle Manufacturer's Association v. State, 540 N.Y.S.2d 888 (3d Dept. 1989).

⁴⁰ N.Y. Gen. Bus. Law § 198-a(k).

AUTOCAP

The Automotive Consumer Action Program (AUTOCAP) is a voluntary arbitration program sponsored by state or local franchised automobile dealer associations. AUTOCAP resolves car complaints between customers and dealers in two steps. Initially, AUTOCAP will attempt to settle the dispute through informal mediation between the consumer and the dealer. If that is not successful, an impartial panel, consisting of dealers and consumer professionals, will recommend a solution. Participating dealers agree to honor panel recommendations, which are not binding on consumers. Therefore, consumers who remain dissatisfied with the decision can pursue legal remedies.

Some AUTOCAP panels handle disputes under the Used Car Lemon Law. AUTOCAP may be contacted at these locations:

Capital District AUTOCAP
(Serves Albany, Columbia,
Rensselaer, Saratoga,
Schenectady and Warren
Counties)
125 Wolf Road, Suite 501
Albany, NY 12205
1-518-438-0584

Greater New York AUTOCAP
18-10 Whitestone Expressway
Whitestone, NY 11357
1-800-522-3881

Niagara Frontier AUTOCAP
Auto Dealers Association
1144 Wehrle Drive
Williamsville, NY 14221

Rochester AUTOCAP
(Serves Monroe, Wayne,
Ontario, Seneca, Livingston,
part of Steuben, Orleans,
Genesee, and Wyoming)
Auto Dealers Association
2024 W. Henrietta Road,
Building 4
Rochester, NY 14623
1-716-272-7232

New York State AUTOCAP
P.O. Box 7347
Albany, NY 12224
1-800-342-9208
1-518-463-1148

Used Car Sales

The rights of consumers who purchase motor vehicles in New York depend primarily on whether the purchase was from a dealer. If the consumer purchased his or her used car from a dealer -- someone in the business of selling used motor vehicles or who sells or offers for sale more than five motor vehicles in any calendar year -- state law protects him or her from defective motor vehicles.⁴¹ However, under the Used Car Lemon Law, discussed further below, a dealer is a person or business who sells, offers for sale, leases or offers for lease at least three vehicles in the prior year⁴². If the sale was from a private party, the consumer is in a much weaker position if the deal goes sour.

The Certificate of Prior Use

• *Vehicle and Traffic Law § 417-a*

At the time of sale, used car dealers must disclose in writing if the car has been used as taxicab, police vehicle, rental vehicle or driver education car. Dealers must also provide the buyer with written notice if the car was previously returned to the manufacturer or dealer because it was repurchased under the New or Used Car Lemon Laws or a similar statute of another state. This notice reads:

“IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER OR DEALER BECAUSE IT DID NOT CONFORM TO ITS WARRANTY AND THE DEFECT OR CONDITION WAS NOT FIXED WITHIN A REASONABLE TIME AS PROVIDED BY NEW YORK LAW.”⁴³

Notice of a repurchase must also be placed on the motor vehicle’s certificate of title.

If these disclosures are not made, an injured consumer may sue to recover up to three times their actual damages, with a minimum recovery of \$100. The court may also award attorney’s fees to the consumer. The Attorney General may also enforce this section and obtain injunctive relief, restitution for consumers and civil penalties.

Used Car Lemon Law

• *General Business Law § 198-b*

A buyer or lessee of a used car, van or truck if used for personal or household reasons which turns out to be a lemon -- an unsafe, inefficient, or defect-ridden car -- may find relief through the “Used Car Lemon Law.” The Used Car Lemon Law applies to leased vehicles leased on or after November 1, 1989.⁴⁴

⁴¹ Vehicle and Traffic Law § 415.

⁴² Even if this requirement is met, financial institutions, businesses selling used motor vehicles to their employees, regulated public utilities selling vehicles at public auction vehicles used in its operations disclosing the “AS IS” nature of the sale, lessors selling leased vehicles to the lessee or his or her family member or employee and New York State are not “dealers” under the Used Car Lemon Law. N.Y. Gen. Bus. Law § 198-b.

⁴³ N.Y. Vehicle and Traffic Law § 417(a)(1).

⁴⁴ See, Chapter 444 of the Laws of 1989.

The law covers only cars which are normally used for personal and not business purposes. Motorcycles, motor homes and off-road vehicles (dirt bikes, scooters, etc.) are not covered.

The Used Car Lemon Law's definition of "used car" is different than the "person on the street" definition. See the section above entitled the "New Car Lemon Law" for an explanation of which motor vehicles are covered by the Used Car Lemon Law.

Used Car Warranties

Under the statute, any dealer in New York State selling or leasing a used motor vehicle must give the consumer a warranty depending on the mileage of the vehicle at the time of purchase or the inception of the lease. (Purchases of vehicles through automobile auctioneers are covered by the Used Car Lemon Law. See the section entitled Automobile Auctioneers below for more information.) The written warranty must require the dealer or his or her agent to repair, or at the dealer's election, reimburse the consumer for the "reasonable" cost of repairing a covered part (see below):

- Used cars that have been driven 36,000 miles or less must be given a warranty of 90 days or 4,000 miles, whichever comes first.
- Vehicles with more than 36,000 miles but less than 80,000 miles must be provided with a warranty of 60 days or 3,000 miles, whichever comes first.
- Finally, vehicles with at least 80,000 but no more than 100,000 miles must be provided with a warranty of 30 days or 1,000 miles, whichever comes first.

Vehicles sold for under \$1,500 (or in the case of a lease, where the agreed value is less than \$1,500) or which have odometer readings of more than 100,000 miles are exempt from the law if the mileage is indicated in writing at the time of sale or lease.

Warranty Coverage

The warranty must include, at a minimum, the following parts: engine; transmission; drive axle; brakes; radiator; steering; alternator; generator; starter; and ignition system (excluding the battery). Any waiver of the warranty is void.

If a problem which is covered by the consumer's warranty develops, the consumer should report it immediately to the dealer who then must repair it free of charge. As long as the consumer reports the defect before the warranty expires, the repair must be made at no charge to the consumer, even if the actual work is done after the warranty period is up.

The written warranty provided by the dealer may contain language excluding coverage in the following cases:

- A failure of a covered part caused by lack of customary maintenance, collision, abuse, negligence, theft, vandalism, fire or other casualty and damage from the environment (e.g. lightning);
- The odometer has been stopped so that the actual mileage cannot be determined;
- A covered part was altered causing it to fail;
- For maintenance services and the parts used in connection with such services such as seals, gaskets, oil or grease (unless required in connection with a covered part);

- For motor tune-ups;
- For failures from racing or other competition;
- For failures caused by towing a trailer or another vehicle (unless this use is recommended by the manufacturer);
- The vehicle is used to carry passengers for hire;
- The vehicle is rented to someone other than a “consumer” as defined below; and
- For repair of valves and/or rings to correct low compression and/or oil consumption (these are considered normal wear).

The law also states the warranty may exclude coverage for property damage arising from a failure of a covered part, loss of the use of the car, loss of time, inconvenience, commercial loss or consequential damages.

Lemon Law Refunds and Replacements

Consumers are entitled to a replacement vehicle or refund under the Used Car Lemon Law if, within the required statutory warranty period (see above):

- The dealer has not corrected the same defect after three attempts; or
- The vehicle has been out of service for repairs or defects for a total of 15 or more days.

The 15 day period does not include days when the dealer cannot complete the repair because of the unavailability of necessary repair parts. The statutory warranty period is extended by any days when vehicle is in the dealer’s (or his or her agent’s) possession for the purpose of repairing the vehicle for covered repairs. The dealer is required by law to diligently attempt to obtain these parts. However, if a vehicle has been out of service for a cumulative period of 45 days, even if a portion of that time is due to the unavailability of replacement parts, the consumer is entitled to the replacement or refund remedies under the law.

In addition to the above, the defect must “substantially impair the value of the car” (see the section entitled “New Car Lemon Law below). In a Used Car Lemon Law proceeding, the dealer may also raise the defense that the defect was the result of unreasonable modifications, abuse or neglect.

If a consumer buys a “lemon”, the remedy under the Used Car Lemon Law is a replacement vehicle or refund of the purchase price plus taxes and fees. If the lemon is leased, the consumer is entitled to the refund of all lease payments already made and the cancellation of all future payments due under the lease contract. A “reasonable allowance for any damage not attributable to normal wear or usage” may be subtracted from the consumer’s refund. An adjustment (up or down) may be made to the refund for any modifications which either increase or decrease the market value of the vehicle or of the lease contract.

If the dealer offers the consumer a comparably priced replacement vehicle, the parties may agree to an adjustment in price for the new vehicle. The dealer must provide the consumer with a refund of his or her purchase price if the consumer elects this remedy.

The remedies in the Used Car Lemon Law may be invoked by “consumers”, defined as the purchaser or lessee, of motor vehicles normally used for personal, family or household purposes, or the purchaser or lessee’s spouse or child if the used motor vehicle is transferred to them during the statutory warranty period (see below) and “any other person entitled by the terms of the car’s warranty to enforce the obligations of the warranty.”

Used Lemon Arbitration

In case of a dispute, should the dealer establish or participate in a non-binding arbitration program whose procedures satisfy the requirements of the Magnuson-Moss Warranty Act, the consumer must first use that program. If he or she doesn’t, the dealer is not required to provide a refund or replacement of the defective motor vehicle. The dealer’s dispute resolution (i.e. arbitration) procedure must also insure that arbitrators are familiar with the Lemon Law. Finally, dealers are required to provide to arbitrators and consumers who seek arbitration a copy of the Used Car Lemon Law and a notice entitled the “Used Car Lemon Law Bill of Rights” which explains consumer rights in non-legalese; the wording of this summary of the law is in the statute.

Arbitration Appeals

Decisions of dealers’ dispute resolution programs are not binding on the consumer. Consumers may file court actions seeking a remedy under the Used Car Lemon Law after losing through a dealer’s dispute resolution program. Alternatively, consumers may submit their Used Car Lemon Law dispute to an arbitration program administered by the Attorney General. As in the case of the New Car Lemon Law, the Attorney General will accept consumers who lose through a dealer’s program in its arbitration program. Participation in the Attorney General’s program is voluntary by the consumer (i.e. he or she can file in court without going to the Attorney General). However, decisions of the Attorney General’s program are generally binding on the consumer (see discussion under New Car Lemon Law).

Consumers and arbitrators under the Attorney General’s program must be furnished with the “Used Car Lemon Law Bill of Rights.” The Attorney General’s program must by law ensure the objectivity of the arbitrators, the right of each party to present its case and to be in attendance during any presentation made by the other party, and to rebut the other side’s presentation.

In both dealer and Attorney General sponsored arbitration, the dealer must comply with the arbitrator’s decision within 30 days. Failure to comply with the 30 day period entitles the consumer to recover \$25 for each business day beyond 30 days up to \$500.

The Used Car Lemon Law also requires dealers to provide a separate written notice stating that it will refund the adjusted wholesale price of the vehicle traded in rather than the value listed in the sales contract when accepting a vehicle for refund. This notice must be delivered to the consumer by the dealer before or at the time the consumer signs the sales contract for the used car.

Consumers’ rights under the Used Car Lemon Law are in addition to and do not replace their rights under other laws. In other words, even if the motor vehicle would be covered under the Used Car Lemon Law the consumer can still pursue legal other strategies. For example, under the Uniform Commercial Code, consumers may have a right to “reject” or “revoke acceptance” of a defective vehicle. Both of these remedies require a consumer to act soon after purchase or when a defect is discovered. Consumers may also allege violations of the warranty of serviceability (see below).

Warranty of Serviceability

Another important protection given by state law is called the warranty of serviceability.⁴⁵ Any used car sold by a dealer in New York State must contain a Certificate of Adequacy which states that the car is in condition to give satisfactory service on the highway at the time of delivery. Violations of the State Department of Motor Vehicles' (DMV) inspection requirements constitute violations of state law, however, defects to other parts may as well.

The DMV has enforcement authority over the warranty, and complaints over defective cars should be referred to that office. DMV will send mechanics to investigate complaints that used cars sold by dealers do not meet the warranty of serviceability. If the investigator determines that the warranty has been violated, they will recommend to the dealer that the car be repaired at no cost. If the car is beyond repair, they will recommend that the dealer refund the purchase price. The threat of a DMV hearing on suspension or revocation of the dealer's registration is often enough to convince dealers to resolve the complaint.

Private lawsuits are also available to enforce the warranty of serviceability. One New York court has stated that a seller who breached the warranty of serviceability had to refund the consumer the full purchase price of the automobile plus repair expenses.⁴⁶ Presumably, consumers who purchase used motor vehicles from automobile auctioneers may also sue dealers who violate the warranty of serviceability in court. See the section entitled "Automobile Auctioneers" for more information.

The warranty cannot be waived. It applies to all used cars bought from dealers -- even if the contract says the sale is "AS IS." Although the warranty of serviceability specifically concerns the car's condition at the time of delivery, a consumer may be protected even if it takes a while for the car to break down. The key point to be proven will be that the car broke down because of a defect that existed at the time of delivery.

Application to "Junk" Vehicles

The warranty of serviceability does not apply to a car sold by the dealer as "junk". In this case, the consumer will be asked to sign a Customer's Declaration which states that the car will not be operated on public roads at the time of purchase and that the consumer knows the car is unsuitable for operation, probably needs extensive repairs and must pass inspection before it can be registered. In this case, the consumer will not receive a Certificate of Adequacy or any guarantee that the car has been inspected.

Deceptive Practices by Used Car Dealers: The Used Car "Buyer's Guide"

• 16 CFR Part 455

Federal law requires used car dealers to post a "Buyer's Guide" on the window of each used vehicle offered for sale, and to attach this window sticker to the purchase contract.⁴⁷ This guide becomes part of the sales contract and overrides any contrary provisions of the contract of sale. The Buyer's Guide includes: a statement that spoken promises are

⁴⁵ N.Y. Vehicle and Traffic Law §§ 301, 375, 417; 5 NYCRR Part 78.

⁴⁶ Natale v. Martin Volkswagen, Inc., 402 N.Y.S. 2d 156 (1978).

⁴⁷ 16 CFR Part 455.

difficult to enforce and that consumers should get promises in writing; any warranties provided by the dealer; the availability and terms of any service contract; a suggestion that consumers ask if the car may be inspected by an independent mechanic; and a statement identifying the major mechanical and safety systems and some major defects that occur in used cars.

The U.S. Federal Trade Commission and the New York State Attorney General are responsible for enforcing this law.

It is a violation of the Federal Trade Commission Act, for a used vehicle dealer to sell or offer for sale a used vehicle and:

- Misrepresent the mechanical condition of a used vehicle;
- Misrepresent the terms of any warranty offered in connection with the sale of a used vehicle;
- Represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty;
- Fail to disclose, prior to sale, that a used vehicle is sold without any warranty; and
- Fail to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle.

For a further discussion of the rights and remedies of used car buyers, see the State Consumer Protection Board's [Used Lemon Owner's Manual](#).

Financing Used Cars

Consumers who finance the purchase of used cars are covered by the Motor Vehicle Retail Installment Sales Act (MVRISA). See the section entitled "Retail Installment Sales Contracts" for details.

Consumers who purchase used cars are probably also covered by the cancellation provisions of General Business Law section 218-a, which requires the posting of refund policies. See the chapter in this Manual entitled "Retail Practices" for more details.

Car Repairs

Choose a reliable repair shop recommended to you by family or friends or an independent consumer rating organization. Check out the repair shop's complaint record with Governor Pataki's New York State Consumer Protection Board, the New York State Attorney General's Office, your local consumer protection office, or the Better Business Bureau. Some consumer car repair tips:

- When you take the car to the shop, describe the symptoms. Don't diagnose the problem.
- Get more than one estimate, and get each one in writing.

- Make it clear that work cannot begin until you have authorized it. Don't authorize work without a written estimate, or if the problem cannot be diagnosed on the spot, insist that the shop contact you for your authorization once the trouble has been found.
- Don't sign a blank repair order. Make sure the repair order reflects what you want done before you sign it.
- Is the repair covered under warranty? Follow the warranty instructions.
- Ask the shop to return the old parts to you for inspection.
- Get all warranties in writing.
- Some car manufacturers may be willing to repair certain problems without charge even though the warranty has expired. Contact the manufacturer's zone representative or the dealer's service department for assistance.
- Keep copies of all paperwork.

Automobile Parts Warranty

• *General Business Law §§ 616 - 619*

An express written warranty must be provided on automobile parts. The warranty applies to parts that are new, used, modified, rebuilt, remanufactured, improved, or reconditioned. However, used parts that are removed from a motor vehicle without any attempt to improve the part's condition and clearly marked "AS-IS" are exempt from the statute. The warranty must be provided by the "initial seller," defined as the entity who "manufactured, modified, rebuilt, remanufactured, improved, reconditioned or recycled ... or ... first sold the part."

The initial seller must warrant its parts to be "fit for the ordinary purposes for which such parts are used" for the first 3,000 miles of operation of the motor vehicle after the part's installation, or 90 days following the part's original delivery to the consumer, whichever comes first. If the part is defective, and the consumer reports the defect to the initial seller, its agents or authorized dealers during the term of the warranty, the seller must repair the defect. If the seller is unable to repair the part, it must replace the part, or refund the consumer's purchase price.

Consumers must retain the part concerned which is the subject of the warranty claim until the claim is resolved or until the initial seller requests return of the part, whichever comes first. The consumer's failure to return the part to the initial seller upon request is grounds for denying warranty coverage. Similarly, the initial seller may deny coverage if the defect is the result of the consumer's abuse, neglect, unauthorized modifications or the failure of another part.

The parts warranty extends to any person to whom the motor vehicle in which the part was installed was transferred during the period of the warranty and to anyone else entitled by the written provisions of the parts warranty itself to enforce its obligations.

FTC Used Auto Parts Guides

The FTC Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry (Used Auto Parts Guides or Guides)⁴⁸, effective since December 1962, advise that industry members not misrepresent that their products are new, not misrepresent the condition of the product or the extent of rebuilding, not misrepresent that the rebuilder was the original manufacturer, and that they conspicuously disclose in advertising and packaging, that the products include used parts.

The Used Auto Parts Guides define industry products broadly to include all self-propelled vehicle used parts and assemblies containing used parts. For example, automobile parts, and truck, tractor, and motorcycle parts, if used, come under the Guides, as do the large diesel engines, clutches and transmissions used in heavy equipment.

Automobile Repair Shops

• *Motor Vehicle Repair Shop Registration Act*

• *Vehicle and Traffic Law Article 12-A, §§ 398 - 398j*

All motor vehicle repair shops must be licensed by the Department of Motor Vehicles.⁴⁹ Shops must give a written estimate of the cost of repair service upon request of the customer, and may not charge more than the estimate without the consumer's permission. The shop is permitted to charge a reasonable fee for the estimate.

No work may be done by a repair shop which has not been authorized by the consumer, either in writing or orally. If the shop prepares a written work order, a copy of the order must be given to the consumer.

All work done by a repair shop must be recorded on an invoice. The invoice must describe all parts supplied and state whether used parts have been supplied, including whether an installed component system is composed of new or used parts. If any body parts are supplied, the invoice must state whether the parts were manufactured as original equipment parts for the vehicle or are non-original replacement parts. A copy of the invoice must be given to the customer and a copy kept on file in the shop.

A repair shop must return all replaced parts, other than those which are subject to a warranty or normally sold on an exchange basis, if the customer has made a written request for those parts before work is begun or has authorized a repair by telephone.

Consumers have 90 days or 3,000 miles after completion of a repair to file a complaint with the Department of Motor Vehicles (DMV). If, after investigation, the DMV determines that there has been gross negligence or gross overcharging, a DMV hearing can be held whereby a civil penalty may be imposed or a repair shop's registration may be suspended. Restitution to the complainant may be substituted in lieu of any civil penalty or suspension or portion thereof. Restitution is limited to automobile repair-related damages, and/or any amount of overcharge. Neither punitive nor incidental damages may be included.

⁴⁸ 16 CFR Part 20.

⁴⁹ 15 NYCRR Part 82.

Odometers

• 15 USC §§ 1988, 1989, 580

• N.Y. Vehicle and Traffic Law §§ 375, 417-b

Consumers have the right to know how many miles the car they are buying has been driven.⁵⁰ Every seller (both dealer and private seller) must tell the buyer the cumulative mileage of the odometer (including whether the car has exceeded 99,999 miles) and whether the seller knows the mileage to be accurate.

Any suspected odometer tampering should be reported to the DMV's Office of Field Investigations, which can be reached as follows:

New York State Department of Motor Vehicles
Division of Field Investigations
Room 432B
Empire State Plaza, Swan Street Building
Albany, NY 12228
1-518-473-1079

If the seller violates this obligation with the intent of defrauding a buyer, the buyer can recover \$1,500 or three times the actual damages suffered, whichever is greater.

Odometer readings must be placed on automobile inspection stickers.

It is unlawful for any person, firm or corporation to sell or offer for sale in New York a 1992 or later model year new car without a tamper-resistant odometer or speedometer. This requirement does not apply to motorcycles. In addition, upon the sale of any second-hand (i.e. used) 1992 or later model year motor vehicle manufactured or assembled on or after July 1st, 1991, the dealer must deliver a written notice in a form prescribed by the Department of Motor Vehicles stating in ten point capital type: "IMPORTANT: THIS VEHICLE IS NOT EQUIPPED WITH A TAMPER-RESISTANT ODOMETER."

Violations of the law (i.e. either failure to give the notice or providing a notice which is false or misleading) are enforceable by the Attorney General, who may seek civil penalties, injunctive relief and restitution for consumers. Injured consumers may also sue and receive damages and in the court's discretion, receive three times their actual damages or \$100, (whichever greater) and attorney's fees.⁵¹

Automobile Advertising

Numerous deceptive sales practices by automobile dealers may violate state and federal consumer protection statutes. See this Manual's chapter on False Advertising and Deceptive Trade Practices for more information.

Rustproofing

• General Business Law §§ 730 - 735

⁵⁰ 15 USC §§ 1988 and 1989.

⁵¹ N.Y. Vehicle and Traffic Law §§ 375, 417-b.

After-market rustproofing must be sold with a 5 year written warranty to repair the vehicle or indemnify the buyer for the cost of repairing rust damage covered by the warranty. The individual or corporation providing this warranty cannot refuse to honor it on the grounds that the rustproofing was improperly applied, if the application was done by a person they authorized. This section is enforced by the Attorney General, who may seek injunctive relief and restitution for consumers. Insured consumers may also sue and receive damages and at the court's discretion, attorney's fees.

Repossession

- *Uniform Commercial Code §§ 9-503; 9-504*

- *Personal Property Law § 316*

- *General Obligations Law § 7-401(2)*

Unless otherwise agreed, upon a consumer's default, the "secured party" (usually a finance company such as Ford Motor Credit) may repossess the vehicle without prior notice to the consumer, even without going to court to get permission. However, any repossession must be done without a "breach of the peace" (i.e. violence or unlawful entry of the consumer's property, etc.)

If a consumer's automobile is repossessed or the consumer voluntarily surrenders possession of his or her car, the holder of the motor vehicle installment contract must notify the buyer within 72 hours of the repossession of his or her right to redeem the motor vehicle, the dollar amount necessary to redeem, and the name, address and telephone number of the holder of the vehicle. Only the amount required to bring the loan current can be called due -- the balance of the loan is not necessary to regain possession of the vehicle. However, reasonable repossession fees may be charged.

A secured party may, and generally does, sell the car after the consumer's default. The sale may be public or private, but every aspect of the sale, including the method, manner, time, place and terms must be commercially reasonable. Consumers must be given notice of any sale.

Please Note: Given the complex legal rights of the parties, legal representation is recommended for repossession cases.

Water in Gasoline

Complaints about water in gasoline should be referred to your local Department of Weights and Measures.

Rental Cars

Rental Car Discrimination

• *General Business Law §§ 391-g, 391-i, 398-b*

There is no specific state law on the quality of rental cars. Car rental agencies may not refuse to rent to a person at least 18 years of age provided that insurance coverage of persons of that age is available. Any extra cost for insurance related to the age of the person renting the motor vehicle may be passed on to such person. Knowing violations of this provision carry a penalty of up to \$500.⁵² It is unlawful for rental agencies to refuse to rent a car because of a person's race, color, ethnic origin, or sex⁵³ or because a person does not possess a credit card.⁵⁴

Rental Vehicle Damage, Insurance and Charges

• *Insurance Law § 3440*

• *General Business Law § 396-z*

In response to abuses in the industry, legislation was enacted in 1988, 1989 and 1990 to protect consumers renting cars for periods not to exceed thirty days.

Section 3440 of the Insurance Law requires that every motor vehicle liability insurance policy registered in New York which insures less than 5 private passenger motor vehicles provide coverage for the obligations of the insured for damage to, or loss of, any vehicle rented by him or her in the United States and Canada. This protection applies regardless of where the vehicle is registered, rented or operated. If a separate charge based on rental vehicle coverage experience is included in the rate or policy premium, the insurer must advise each new insured and those renewing of the insured's opportunity to reject such coverage within 10 days following the notice.

Section 396-z of the General Business Law prohibits, with several limited exceptions (see below), rental companies from holding any authorized driver liable for more than a \$100 deductible, for actual damages to, or loss of a rental vehicle caused by the authorized driver.

The statute defines authorized driver as: (a) the person to whom the vehicle is rented if a licensed driver; (b) such person's spouse if licensed and at least 18 years of age; (c) anyone who operates the vehicle in an emergency to a medical facility; and (d) any licensed driver listed in the rental agreement as an authorized driver. Any claims made by the insurance company (i.e. for up to \$100) must be based on a physical survey made upon the return of the rental vehicle (unless the return is done by automation or after hours, in which case the claim must be made within 10 days of the vehicle's return). Further, any repair charge is limited to the actual costs incurred by the rental company and must be billed separately from rental charges.

A rental company may charge more than \$100 for actual damages or loss when the damage or loss is caused by:

⁵² N.Y. Gen. Bus. Law § 391-g.

⁵³ N.Y. Gen. Bus. Law § 398-b. Section 398-b has no penalty provision.

⁵⁴ N.Y. Gen. Bus. Law § 391-i. Knowing violations of section 391-i may be subject to penalties of up to \$500.

- An intentional act by the authorized driver or due to his or her “wanton and willful” misconduct;
- The authorized driver’s operation of the motor vehicle while intoxicated by alcohol or impaired by drugs;
- The authorized driver’s participation in any organized speed racing competition;
- The use of the vehicle when carrying persons or property for hire; and
- The use of the vehicle while an authorized driver is committing a felony or otherwise engaged in a criminal act.

Further, the \$100 limit does not apply if the authorized driver declines or fails to complete an accident report after being given notice adequate under the law of his or her obligation to complete it.

Even in the above cases where the \$100 limit does not apply, the rental car company can only charge the actual cost incurred in repairing the vehicle.

The law prohibits rental companies from holding authorized drivers liable for any damage or loss of a rental vehicle (even those otherwise permitted) unless the company prominently discloses on the rental agreement in at least ten point bold face type, the nature and extent of such liability and the driver’s rights and responsibilities under the law.

Section 396-z prohibits rental companies from:

- Requiring any deposit, security or charge for damage in any form, by credit card or otherwise, during the term of the rental agreement or pending resolution of any dispute;
- Advertising, quoting or charging a rental rate that does not include all charges, except taxes and any mileage charge, which an authorized driver must pay to obtain a rental vehicle;
- Charging in addition to the rental rate, taxes and mileage charge any other fee which must be paid as a condition of renting the vehicle, such as fuel or airport surcharges (companies may charge for items or service only if it was optional: the consumer could have rejected the service or item and still rented the car);
- Charging for additional authorized drivers more than \$2.50 per person for the first rental day and \$1.00 per day thereafter; the statute provides for an absolute limit of \$5.00 per additional driver;
- Charging for “collision damage waivers”: a provision waiving any claims against an authorized driver for any damage to or loss of the rental vehicle (including loss of use) during the term of any rental agreement not exceeding 30 days.

Prior to purchasing rental insurance, consumers should check the terms of their credit card agreement to determine whether the rental may be insured through the use of the credit card.

Child Car Seats

Rental car companies are required to make child car seats available to consumers.

Authorized drivers are required under the law to provide notice to the rental company within 48 hours of learning of the theft of the rental vehicle.

One provision of § 396-z deals with motor vehicle leases of more than 30 days. The law requires any lease of that length to provide notice on a separate sheet of paper from the lease agreement if it requires the lessee to pay the remaining lease payments upon the total loss of the vehicle (i.e. its destruction in an accident). If the leasing company fails to do this, any provision of lease requiring additional installment payments is invalid.

Agreements inconsistent with General Business Law § 396-z are void: they may not be enforced by the rental company. Companies which violate the law are subject to a penalty of \$500-\$1000 for each violation. The Attorney General is charged with enforcing the law; it may seek injunctive relief, penalties and restitution for consumers.

Limited License for Rental Vehicle Companies

• *Insurance Law § 2131*

The Insurance Department issues “limited licenses” for rental vehicle companies to act as agents for authorized insurers to provide certain types of insurance in connection with the rental of motor vehicles for a period not to exceed 30 consecutive days. The rental company may issue the following types of insurance: excess liability insurance that provides coverage to the rental car company, renters and other authorized drivers in excess of the standard liability limits provided in the rental agreement; accident and health insurance covering renters and other vehicle occupants in excess of no-fault benefits; personal effects insurance; or any other coverage approved by the Insurance Department for rental vehicles.

At rental vehicle facilities, brochures or other written materials must be made available to enable consumers to make an informed choice concerning their purchase of insurance. Specifically, the brochure or materials must: summarize the material terms of insurance coverage provided; disclose that the policies offered by the company might duplicate the coverage already provided by the renter’s personal automobile insurance, homeowner’s insurance or personal liability insurance; state that consumers do not have to purchase insurance from the rental car company in order to rent the vehicle, and describe the process for filing a claim. The limited license may be revoked or suspended for incompetence, untrustworthiness, fraudulent or dishonest practices or other violations of law.⁵⁵

Child Safety Seat Disclosure

• *Vehicle and Traffic Law § 1229*

Rental vehicle companies are required to post in their places of business a sign of at least 72-point boldface type informing consumers that state law requires all children under the age of four to be restrained in a federally approved child safety seat.

Rules for New York City Residents

New York City regulations require that in cases where a reservation has been made for a rental car, a suitable one must be made available, at the same price, within one-half hour

⁵⁵ See, Chapter 408 of the Laws of 1990.

of the reserved time. Contact the New York City Department of Consumer Affairs for additional information.

Leased Vehicles

Both the New and Used Car Lemon Laws (§§ 198-a and 198-b of the General Business Law) apply to leased vehicles. (See sections above entitled “New Car Lemon Law” and “Used Car Lemon Law.”) Consumers may also have the right to have their repair costs covered under the auto manufacturer’s warranty or an extended service contract they purchase from the leasing company or a third party.

Consumer Leasing Act

• *15 USC §§ 1667 - 1667e*

Under the federal Consumer Leasing Act, consumers who lease personal property, including motor vehicles, for more than four months and in which the total contractual obligation is no more than \$25,000 are entitled to various protections.

Lessors must give consumers, at the beginning of the lease period, a dated written statement on which both parties are identified and in which the following items, among other things, are clearly and conspicuously disclosed, as applicable:

- A brief description or identification of the vehicle;
- The amount of any payment such as a down payment required at the beginning of the lease;
- The amount payable for official fees, registration, the certificate of title, license fees or taxes;
- The amount of other charges payable by the consumer not included in the periodic payment (i.e. disposition or “pick-up” charges, “processing” fees);
- That the consumer shall be liable for the difference between the anticipated fair market value of the vehicle and its appraised actual value at the end of the lease, if such is the case;
- The amount or method of determining the amount of any liabilities the lease imposes upon the consumer at the end of the lease and whether or not the he or she has the option to purchase the vehicle and at what price and time;
- All express warranties concerning the vehicle, the party responsible for maintenance and service (usually the consumer) with a brief statement of that responsibility;
- A description of the insurance either provided by the lessor or required of the consumer;
- A description of any security interest held by the lessor (i.e. the right to repossess the vehicle);
- The number, amounts or due dates of the lease payments and the total amount the consumer will have to pay over the lease term;

- A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term and the amount or method of determining any penalty or other charge for delinquency, default, late payments, or early termination.

Where the consumer's liability on expiration of the lease is based on the estimated value of the property, the residual value must be a reasonable approximation of the anticipated fair market value at the end of the lease. In such a case, the consumer may obtain at his or her own expense a professional appraisal of the vehicle's resale value by an independent third party agreed to by both parties; the independent appraisal is binding on both the consumer and the company. Penalties or other charges for delinquency, default or early termination must be reasonable.

The Consumer Leasing Act also requires that most lease advertisements disclose certain essential terms, such as the number, amounts, due dates or periods of scheduled payments and the total of payments required to be made.

Consumers may bring civil actions in court for damages (usually \$1,000 in auto lease cases), attorneys' fees and costs, due to violations of the Act.

The above information only briefly summarizes the Consumer Leasing Act. Due to the complexity of the Act and the frequency of violations, consumers should be advised to contact experienced attorneys when CLA issues are presented in their case.

Damage to the Leased Vehicle at its Return

There is no New York statute governing the responsibility of the parties in the event the vehicle is returned to the lessor with defects. However, a small claims court has ruled on the rights of each party under a common lease provision requiring the consumer to return the vehicle in good condition. For items which do not ordinarily break without some party being negligent (i.e. a broken radio volume knob; broken glove compartment latch), the company may not collect from the consumer without proving the damage was due to the customer's negligence. Similarly, any consumer who performs the required maintenance may not be charged for parts or maintenance items required at the end of the lease term (i.e. transmission fluid and oil changes, front end alignment; transmission tune up). Finally, the consumer is not responsible for paying the cost to the lessor to restore items which tend to wear out during ordinary use (i.e. worn tire tread, worn brake pads, rusted tailpipe) in order to make the auto road worthy for the next consumer.⁵⁶

Deposits for Leased Vehicles

- *General Obligations Law § 7-101*

Any money deposited by a consumer as security for the lease or rental of personal property, including motor vehicles, shall continue to be the money of the person making such deposit and must be deposited in a bank and must not be commingled with other funds.

Automobile Auctioneers

- *General Business Law § 23*

⁵⁶ See, Bouck v. Ross Leasing Corporation, 559 N.Y.S.2d 428 (Cty. Ct. of Auburn, Small Claims Part 1990).

Section 23 of the General Business Law regulates automobile auctioneers, defined as any person, not claiming title of the vehicle he or she sells, who sells or offers for retail sale more than five motor vehicles, motorcycles or trailers in any calendar year, or who displays or permits the display of three or more motor vehicles, motorcycles or trailers in any one calendar month upon his or her premises. Auctions at which (i) only vehicles are being sold after repossession or foreclosure of a lien, estate sales or under a court order, (ii) conducted by federal, state and local government, or (iii) auctions at which the only vehicles sold are owned by a business or regulated public utility or a company which maintains a fleet of 25 or more vehicles used for their business are not covered by the statute. Auctioneers are also required to be registered as motor vehicle dealers under Article 16 of the Vehicle and Traffic Law.

Section 23 provides a number of consumer protections in order to ensure that consumers are not defrauded, have warranty protections, and receive good title to any motor vehicle purchased. Auctioneers:

- May not sell a motor vehicle unless he or she has in his possession the currently valid certificate of title, or if a certificate of title is not required, the appropriate proof of ownership of the motor vehicle;
- May not sell a motor vehicle unless they disclose, in both the (i) front of the sales contract or other document used in connection with the sale and (ii) on a sign affixed to the windshield, the seller's true legal name, street address, and dealer facility identification number;
- Must include in the front of the sales contract or other document used in connection with the sale the "New Car Bill of Rights" and the "Used Car Lemon Law Bill of Rights," set out in " 198-a and 198-b of the General Business Law, providing the vehicle is covered by these laws;
- May not sell a used motor vehicle unless a certification is made on the front of the sales contract or other document used in connection with the sale and posted on a conspicuous sign clearly visible to bidders that "THE VEHICLE, AT THE TIME OF DELIVERY, IS IN CONDITION AND REPAIR TO RENDER, UNDER NORMAL USE, SATISFACTORY AND ADEQUATE SERVICE" (the "warranty of serviceability");
- Must warrant that the title is good and its transfer is rightful and the motor vehicle is free of security interests or other liens which the buyer does not know of (this warranty may not be waived by the buyer);
- Must provide itemized receipts at sale containing their legal and trade name, address and telephone number; the name of the buyer; the make, year and vehicle identification number of the car; the amount paid and the delivery date; and
- Must, upon the sale of any second-hand (used) passenger motor vehicle, inform the buyer in writing if the auctioneer knows or has reason to know that the principal prior use of the vehicle was as a taxicab, rental vehicle, police vehicle, or driver education vehicle or was repurchased under the New or Used Car Lemon Law, its equivalent in another state, or an alternative dispute procedure (the "Certificate of Prior Use").

In addition to the above requirements, any waiver of a consumer's warranty rights under the warranty of merchantability, warranty of serviceability⁵⁷ or warranty of fitness for a particular purpose by such words as "as is" or "with all faults" is prohibited. Further, the

⁵⁷ N.Y. Vehicle and Traffic Law § 417-a.

statute prohibits misleading representations” or “any act or practice or course of business which operates or would operate as a fraud or deception on any person” by auctioneers, their salespersons or agents.

The statute is enforced by the Attorney General, who may seek injunctive relief, restitution, or civil penalties. In addition, injured buyers may seek in court injunctive relief and/or the greater of actual damages or \$500. The court has discretion to award up to three times the actual damages and attorneys fees to a prevailing plaintiff.

In addition to Attorney General enforcement and the individual court remedy described in the above paragraph against the auctioneer, consumers may make complaints against dealers who violate the “warranty of serviceability” described above at the Division of Motor Vehicle Safety of the Department of Motor Vehicles. Presumably, they may also sue in court dealers who violate the warranty of serviceability provided in 417-a of the Vehicle and Traffic Law and receive the remedies provided in that section (see the section entitled “Warranty of Serviceability”).

The New and Used Car Lemon Laws apply to sales by automobile auctioneers, providing the other requirements of these laws are met. Apparently, for sales at auction, manufacturers are liable for violations of the New Car Lemon Law, and dealers are liable for violations of the Used Car Lemon Law. (See the sections entitled “New Car Lemon Law” and “Used Car Lemon Law.”)

Automobile Broker Businesses

• *General Business Law §§ 736 - 744*

Automobile brokers are businesses who, for a fee, commission or other payment paid by a consumer, provide a service of purchasing, arranging or affecting the purchase of an automobile as agent, broker or intermediary for the consumer. Those who act as an intermediary for three or less automobiles in a single calendar year, or are registered automobile dealers are not included in the statute.

Every contract between a consumer and an automobile broker business must meet several requirements. The major requirements are:

- The contract must be in writing, signed by both parties, be dated and contain the street address of the automobile broker business;
- A complete description must be provided of the automobile and each option ordered;
- A statement must be provided of whether the automobile is or will be manufactured in accordance with U.S. safety and environmental specifications;
- The price of the automobile must be specified including any options ordered (if the price is estimated, the consumer has the right to cancel the contract for a full refund if the final price exceeds the estimate price by more than 5%);
- The estimated delivery date of the automobile and the place of delivery must be specified and a statement included that if the automobile has not been delivered in accordance with the contract within thirty days following such estimated delivery date, that the consumer has the right to cancel the contract for a full refund (unless the delay is the consumer’s fault);

- A statement of whether or not the manufacturer's warranty accompanying the automobile is the same warranty as that furnished to purchase that make automobile from an authorized dealer in the United States; and
- A description of any other services and an itemization of the charges for each.

Any contract not complying with the statute is void and unenforceable; the provisions of the statute may not be waived by the consumer.

Any automobile broker contract may be cancelled within three days from the date that a copy of the executed contract is received by the consumer. Brokers must include with the executed contract a cancellation notice whose wording is contained in the statute.

If the consumer elects to cancel because the final price exceeds the estimate more than 5%, or because the delivery is late, the consumer must give notice to the business at the address in the contract. The business must then make a refund to the consumer within ten business days following receipt of the refund request.

Automobile brokers may not collect any fee or commission in advance of performing the services in the contract from consumers. All monies paid to the business must be deposited in escrow in an account in a New York bank. The monies may only be drawn on by the business upon delivery of the car (unless earlier refunded to the consumer).

The Attorney General has enforcement authority over the statute, and may seek civil penalties, injunctive relief and restitution for consumers. Injured consumers also may sue, and receive the amount they paid to the broker business. At the court's discretion, consumers may be awarded attorney's fees and up to three times their actual damages.

Complaints

All dealers, whether selling new or used cars, must be licensed by the New York State Department of Motor Vehicles (DMV). The DMV can investigate complaints of dealer fraud, misrepresentation, improper repairs or deceptive trade practices and can hold hearings to suspend or revoke a dealer's license. DMV complaints can be submitted by mail or phone:

NYS Department of Motor Vehicles
Consumer Services Section
P.O. Box 2700
Empire State Plaza
Albany, NY 12220-0700
1-518-474-8943

For information or complaints regarding motor vehicle and child safety or recalls contact the:

National Highway Traffic Safety Administration
Department of Transportation
400 7th Street, SW
Washington, D.C. 20590
1-800-424-9393

Center for Auto Safety
1223 DuPont Circle Bldg.
Washington, D.C. 20009
1-202-328-7700

Customer Assistance Lines for Major Automobile Manufacturers:

Buick 1-800-521-7300
Mazda 1-800-222-5500
Cadillac 1-800-458-8006
Mercury 1-800-392-3763
Chevrolet 1-800-222-1020
Nissan 1-800-647-7261
Chrysler 1-800-992-1997
Oldsmobile 1-800-442-6537
Dodge 1-800-992-1997
Plymouth 1-800-992-1997
Ford 1-800-392-3763
Saturn 1-800-828-2112
Geo 1-800-222-1020
Subaru 1-800-782-2783
Honda 1-203-623-3310
Suzuki 1-800-934-0934
Hyundai 1-800-243-7766
Toyota 1-800-331-4331
Jeep/Eagle 1-800-992-1997
Volkswagen 1-800-444-8987
Lincoln 1-800-392-3763
Volvo 1-800-526-4785