

iv. If the used motor vehicle's true mileage is not known, such warranty period shall be determined by the age of said used motor vehicle in the following manner: a used motor vehicle three years old or less shall have a warranty as provided in clause (i); a used motor vehicle more than three, but less than six years old, shall have a warranty as provided in clause (ii); and a used motor vehicle six years old or more shall have a warranty as provided in clause (iii). used motor vehicle's age shall be determined by subtracting its model year from the year in which the warranty holder purchased said used vehicle.

C. The warranty periods established by this section shall be tolled during any period in which the used motor vehicle is out of service as a result of any repair attempt pursuant to any warranty created by this section. The applicable warranty period shall be extended thirty days from the date of completion of any repair required by this section as to the defect repaired if the warranty would

c. the parts replaced in performing such work. For the dealer to toll the ten business day period as provided in clause (ii) of this paragraph said dealer shall attach to each such warranty repair receipt copies of such order forms, invoices, receipts or other evidence of a parts order and its receipt to evidence his compliance with this paragraph.

- ii. If the dealer fails to repair the same defect within three attempts, or if the used motor vehicle is out of service for more than a cumulative total of ten business days after the consumer has returned it to the dealer for repair of the same, then the dealer shall accept return of the vehicle from the consumer and refund the full repurchase price, less a reasonable allowance for use. A reasonable allowance for use shall be fifteen cents for each mile the used motor vehicle has been operated between its sale and the dealer's repurchase.

A consumer shall have the option of retaining the use of any vehicle returned under the provisions of this section until such time as said consumer has been tendered a full refund. The use of any vehicle retained by a consumer after its return to a manufacturer under the provisions of this section, shall, in instances in which a refund is tendered, be reflected in the above-mentioned reasonable allowance for use.

arbitration which shall promote their fairness and efficiency. Such rules and regulations shall include, but not be limited to, a requirement of the personal objectivity of each such arbitrator, and the protection of the right of each party to present its case and to be in attendance during any presentation made by the other party.

If a motor vehicle is found by state-certified, used car arbitration to have met the standards set forth by this section for vehicles required to be repurchased, and if the dealer who sold said motor vehicle is found to have failed to provide said refund as required, such dealer shall, within twenty-one days from the issuance of such finding, deliver such refund, including the incidental and other costs set forth in the definition of "repurchase price" or appeal the finding in a district or superior court. No such appeal by a dealer shall be heard unless the petition for such appeal is filed with the clerk of the district or superior court within twenty-one days of issuance of the finding of the state-certified arbitration and is accompanied by a bond in a principal amount equal to the money award made by the state-certified arbitrator plus five hundred dollars for anticipated attorneys' fees, secured by cash or its equivalent, payable to the consumer.

The liability of the surety of any bond filed pursuant to this section shall be limited to the indemnification of the consumer in the action. Such bond shall not limit or impair any right of recovery otherwise available pursuant to law, nor shall the amount of the bond be relevant in determining the amount of recovery to which the consumer shall be entitled.

Upon an appeal, the court shall vacate the award only if:

- a. the award was procured by corruption, fraud or other undue means;
- b. there was evident partiality by an arbitrator or corruption in any of the arbitrators, or misconduct prejudicing the rights of any party; or
- c. the arbitrators exceeded their powers.

In addition to any other rights and remedies, any consumer dissatisfied with any finding of state-certified, used car arbitration shall have the right to file a claim pursuant to chapter ninety-three A.

In addition to any other recovery, any prevailing consumer shall be awarded reasonable attorneys' fees and costs.

Whoever, within twenty-one days of any finding in favor of the consumer of the state-certified, used car arbitration, fails to appeal such finding and does not

such violation. The amount of said fine shall begin to accumulate on the twenty-second day following the arbitration decision. If eighty-one days has elapsed from the issuance of a finding in favor of the consumer of the state-certified, used car arbitration, and no appeal has been taken and no award delivered and

4. Clear and conspicuous notice of the warranties created by this section, of the rights pertaining thereto, and of the implied warranty of merchantability shall be given to the consumer in writing at the time the consumer purchases a used motor vehicle from the dealer. Failure to provide such notice shall toll the warranty periods under this section until such notice is given.
5. The secretary of consumer affairs and business regulation shall promulgate rules and regulations to implement the provisions of this section. Said rules and regulations shall include the establishment of wording, format, placement, and distribution of all notices specified in this section. In her discretion, and in order to facilitate ease of understanding by consumers, said secretary may consolidate the notices required by this section and any other notices pertaining to the purchase of motor vehicles; provided, however, that such consolidation does not render the notices inconsistent with any of the provisions of this section or any other law. Each notice required by this section shall describe the procedures available to redress violations of this section and shall contain the telephone number of the attorney general's consumer protection division complaint section and the executive office of consumer affairs and business regulation.
6. A dealer's failure to comply with any of the provisions of this section shall constitute an unfair or deceptive act under the provisions of chapter ninety-three A.
7. Notwithstanding any provisions of law to the contrary, this section shall not apply to any used motor vehicle sold by a dealer to a consumer for less than seven hundred dollars.
8. A private seller shall clearly disclose to any prospective buyer, before the sale is completed, all defects the seller knows which impair the used motor vehicle's safety or substantially impair its use. Failure to so disclose known defects shall entitle the buyer, within thirty days after the sale, to rescind the sale and be entitled to return of all monies paid to the seller less a reasonable amount for use as defined in clause (iv) of paragraph (A) subsection (3).

In any subsequent action by a buyer under this section, if the court finds that the settlement offer was unreasonable in light of the circumstances or that the private seller has otherwise failed to comply with the requirements of this subsection, in addition to damages, it shall award the buyer reasonable attorneys' fees and costs; if the court finds that the buyer's action was frivolous or not in good faith, it shall award the seller reasonable attorneys' fees and costs. It shall be an affirmative defense in any such action that an alleged defect does not impair the vehicle's safety, or substantially impair its use, or that it is the result of the buyer's negligence, abuse, damage caused by accident, vandalism or attempt to modify the vehicle.

9. Nothing in this section shall be construed in any way to limit the enforceability of any implied warranties created by law, or rights created by section seven N or seven N?, or chapter ninetythree A or any rules and regulations promulgated pursuant thereto, or express warranties given by a dealer in connection with the sale of a used motor vehicle, or any other rights or remedies available to consumers under applicable law.

10. If a consumer is eligible for relief under the provisions of section seven N½, to have repairs effected or other relief provided under the provisions of an express warranty covering such used motor vehicle issued by the manufacturer of such used motor vehicle, said consumer shall make reasonable effort in accordance with the terms and conditions thereof to obtain such relief or repairs before seeking enforcement of rights under this section. If the consumer, notwithstanding his eligibility to do so, is unable to enforce rights under said section seven N½ or under such express warranty and the dealer provides such relief or, in accordance with the provisions of this section, repurchases such used motor vehicle, the dealer shall be subjected to the rights of such consumer against such manufacturer under the provisions of said section seven N½, such express warranty and otherwise in accordance with applicable law, and may enforce the same in his name in the supreme court or district court department. Such manufacturer shall hold the dealer harmless from and against all damages, liabilities, losses and reasonable expenses, including reasonable attorneys' fees arising out of or incurred by the dealer by its compliance with the provisions

"Business day", any day during which the service departments of authorized dealers of the manufacturer of the motor vehicle are normally open for business.

"Consumer", a buyer or lessee, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of any express or implied warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce its obligations.

"Dealer", any class one seller of motor vehicles as defined in section fifty-eight of chapter one hundred and forty.

"Lessee", any person who acquires the right possession of and use of a motor vehicle under a lease agreement for a term of not less than one year.

"Manufacturer", any person who is engaged in the business of manufacturing motor vehicles, or, in the case of motor vehicles not manufactured in the United States, any person who is engaged in the business of importing motor vehicles.

"Motor vehicle" or "vehicle", any motor vehicle as defined in section one sold, leased or replaced by a dealer or manufacturer after the effective date of this section, except that it shall not include vehicles built primarily for off-road use or any vehicle used primarily for business purposes.

"Nonconformity", any specific or generic defect or malfunction, or any concurrent combination of such defects or malfunctions that substantially impairs the use, market value or safety of a motor vehicle.

"Term of protection", one year or fifteen thousand miles of use from the date of original delivery of a new motor vehicle, whichever comes first; or, in the case of a replacement vehicle provided by a manufacturer to a consumer under this section, one year or fifteen thousand miles from the date of delivery to the consumer of said replacement vehicle, whichever comes first.

2. If a motor vehicle does not conform to any applicable express or implied warranty, and the consumer reports the nonconformity to the manufacturer of the vehicle, its agent or its authorized dealer during the term of protection, the manufacturer, its agent or its authorized dealer shall effect such repairs as are necessary to conform the vehicle to such warranty.
3. If the manufacturer, its agent or authorized dealer does not conform the motor vehicle to any such applicable express or implied warranty by curing any nonconformity after a reasonable number of attempts, the manufacturer shall

accept return of the vehicle from the consumer. In instances in which a vehicle is sold and subsequently returned, the manufacturer shall refund the full contract price of the vehicle including all credits and allowances for any trade-in vehicle, less any cash award that was made by the manufacturer in an attempt to resolve the dispute and was accepted by the consumer, and a reasonable allowance for use, or shall offer to replace the vehicle. In instances in which a vehicle is leased and subsequently returned, the manufacturer shall refund all payments made by the consumer to the manufacturer under the terms of the lease agreement less any cash award that was made by the manufacturer in an attempt to resolve the dispute and was accepted by the consumer, and a reasonable allowance for use, or shall offer to replace the vehicle. The consumer shall have an unqualified right to reject a manufacturer's offer of replacement and demand a refund. In instances in which a vehicle is replaced by a manufacturer under the provisions of this section, said manufacturer shall reimburse the consumer for any fees for the transfer of registration or any sales tax incurred by the consumer as a result of such replacement. In instances in which a leased vehicle is replaced by a manufacturer under the terms of this section, an identical model vehicle shall be provided to the consumer for the remaining term of the original lease agreement. In instances in which a vehicle which was financed by the manufacturer or its subsidiary or agent is replaced under the provisions of this section, said manufacturer, subsidiary or agent shall not require the consumer to enter into any refinancing agreement which would create any financial obligations upon such consumer beyond those implied by the original financing agreement. In instances in which a vehicle which was leased from a dealer or manufacturer is replaced under the provisions of this section, said dealer or manufacturer shall not require the consumer to enter into any lease agreement which would create any financial obligations upon such consumer beyond those implied by the original lease agreement. In instances in which a refund is tendered under the provisions of this section, the manufacturer shall also reimburse the consumer for incidental costs including sales tax, registration fee, finance charges and any cost of options added by an authorized dealer. Whenever a vehicle is replaced a refund is given under the provisions of this section, in instances in which towing services and rental vehicles were not made available at no cost to the consumer, the manufacturer shall also reimburse the consumer for towing and reasonable rental costs that were a direct result of vehicle nonconformity. Refunds shall be made to the consumer and lien holder jointly, as their interests may appear. A reasonable allowance for use for all motor vehicles other than motorcycles shall be obtained by multiplying the total contract price of the vehicle, or in the case of a leased vehicle the total amount of payments made by the consumer to the manufacturer under the terms of the lease agreement, by a fraction having as its denominator one hundred thousand and having as its numerator the number of miles that vehicle traveled prior to the manufacturer's acceptance of its return. A reasonable allowance for use for motorcycles shall be obtained by multiplying the total contract price of the motorcycle by a fraction having as its denominator

twenty-five thousand and having as its denominator the number of miles that the vehicle traveled prior to the manufacturer's acceptance of its return.

It shall be an affirmative defense to any claim under this section:

- i. that an alleged nonconformity does not substantially impair the use, market value or safety of the vehicle;
- ii. that a nonconformity is the result of owner negligence, damage caused by accident, vandalism, or attempt to repair the vehicle by a person other than the manufacturer, its agent or authorized dealer; or

natural disaster. The term of protection, said fifteen business day period and said additional opportunity to cure shall also be extended by that period of time during which repair services are not available as a direct result of a strike; provided, however, that the manufacturer, its agent, or authorized dealer provides or makes provision for the free use of a vehicle to any consumer whose vehicle is out of service by reason of repair during a strike. The burden shall be on the manufacturer to show that any event claimed as a reason for an extension under the provision of this paragraph was the direct cause for the failure of the manufacturer, its agent or authorized dealer to cure any nonconformity during the time of said event. Extensions for concurrent events shall not be cumulative.

5. Nothing in this section shall be construed as imposing any liability on an authorized dealer or creating any cause of action by a consumer against a dealer under the provisions of this section.

Nothing in this section shall be construed to limit the rights or remedies which are otherwise available to a consumer or manufacturer under any other applicable provision of law.

Nothing in this section shall be construed as imposing any liability on a dealer or creating a cause of action by a manufacturer against its authorized dealer under this section except with respect to

- i. failure by an authorized dealer to properly effect preparation, installation of options or repairs when such preparation, installation of options or repairs would have prevented the occurrence of or cured a nonconformity;
- ii. express warranties offered by an authorized dealer which exceed the provisions of the manufacturer's express warranties; and
- iii. that portion of the cost of reimbursing a consumer for dealer-added options which represents the dealer profit from the addition of such options. The manufacturer shall reimburse its authorized dealer for all incidental and consequential damages, including attorney's fees, incurred by such dealer as a direct result of any legal action brought by a consumer under this section.

No consumer shall be required by any manufacturer, its agent or its authorized dealer to give notice directly to manufacturer of the existence of any nonconformity before resorting to state-certified, new car arbitration.

No motor vehicle that is returned to the manufacturer under the provisions of this section shall be resold in the Commonwealth without clear and conspicuous written disclosure of the fact that it was so returned prior to resale of the vehicle.

arbitration, resulting in an award of a refund or replacement, is upheld by the court, recovery by the consumer shall include continuing damages in the amount of twenty-five dollars per day for each day, subsequent to the day the motor vehicle was returned to the manufacturer pursuant to subsection three, that said vehicle was out of use as a direct result of any nonconformity not issuing from owner negligence, accident, vandalism, or any attempt to repair or substantially modify the vehicle by a person other than the manufacturer, its agent or authorized dealer; provided, however, that the manufacturer did not make a comparable vehicle available to the consumer free of charge. In addition to any other recovery, any prevailing consumer shall be awarded reasonable attorneys' fees and costs. If the court finds that the manufacturer did not have any reasonable basis for its appeal or that the appeal was frivolous, the court shall double the amount of the total award made to the consumer. Any consumer dissatisfied with any finding of state-certified, new car arbitration shall have the right to file a claim pursuant to chapter ninety-three A.

- 6A. A clear and conspicuous listing of the rights of the consumer under this section shall be affixed by a sticker to a window of each new motor vehicle offered for sale or lease in the commonwealth. An enumeration of these rights shall also be provided along with ownership manual materials. The form and manner of these notices shall be prescribed by the secretary of consumer affairs and business regulations.
7. Failure to comply with any of the provisions of this section shall constitute an unfair or deceptive act under the provisions of chapter ninety-three A. The failure of a manufacturer either to abide by the decision of a state-certified arbitration or to file a timely appeal shall entitle any prevailing consumer to an award of no less than two times the actual damages, unless said manufacturer can prove that such failure was beyond his control. For the purposes of said chapter ninety-three A, the timely recovery by a manufacturer of a refund or acceptable replacement, pursuant to a finding by state-certified arbitration, shall constitute the granting of relief upon demand.

Tw The secretary of consumer affairs and business regulation shall inform the office of the attorney general of any method, practice of which she is aware that teria.with

not exceed fifty thousand dollars for each violation. The amount of said fine shall begin to accumulate on the twenty-second day following the arbitration decision. If eighty-one days has elapsed from the issuance of a finding in favor of the consumer of the state-certified, new arbitration and no appeal has been taken and no award delivered and no fine paid, the attorney general shall initiate proceedings against said manufacturer for failure to pay said fine. The proceedings initiated pursuant to the provisions of this section shall be commenced in superior court department of the trial court.

In addition to the remedies herein provided, the attorney general may bring an action on behalf of the commonwealth to restrain further violation of this section, to enforce any provision, and for such other relief as may be appropriate.