



Massachusetts Lemon Law Statute

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Chapter 90: Section 7N – Voiding contracts of sale.

Notwithstanding any disclaimer of warranty, a motor vehicle contract of sale may be voided by the buyer if the motor vehicle fails to pass, within seven days from the date of such sale, the periodic staggered inspection at an inspection station licensed pursuant to section seven W; provided, that the defects which are the reasons for the failure to issue a certificate of inspection were not caused by the abusive or negligent operation of the motor vehicle or by damage resulting from an accident or collision occurring after the date of the sale; and provided, further, that the cost of repairs necessary to permit the issuance of a certificate of inspection exceeds ten per cent of the purchase price of the motor vehicle.

In order to void a motor vehicle sale under this section the buyer shall, within fourteen days from the date of sale, notify the seller of his intention to do so, deliver the motor vehicle to the seller, provide the seller with a written statement signed by an authorized agent of such inspection station stating the reasons why the motor vehicle failed to pass the safety or combined safety and emissions inspection and an estimate of the cost of necessary repairs. The buyer shall be entitled to a refund of his purchase price unless the buyer and seller agree in writing that the seller may make the necessary repairs at his own cost and expense within a reasonable period of time thereafter. This section shall apply only to motor vehicles purchased for the immediate personal or family use of the buyer.

Chapter 90: Section 7N.¼ – Express warranty by dealer of used motor vehicle; issuance; consumer's rights and remedies.

1. For the purposes of this section the following words shall have the following meanings:--

"**Business day**", Monday to Friday, inclusive, except for state or federal holidays.

"**Consumer**", a buyer, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the period of

any express or statutory warranty under this section applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce its obligations.

"Dealer", any person engaged in the business of selling, offering for sale, or negotiating the retail sale of used motor vehicles or selling motor vehicles as broker or agent for another, including the officers, agents and employees of such person and any combination or association of dealers, but not including a bank or other financial institution, or the commonwealth, its agencies, bureaus, boards, commissions, authorities, nor any of its political subdivisions. A person shall be deemed to be engaged in the business of selling used motor vehicles if such person has sold more than three used motor vehicles in the preceding twelve months.

"Motor vehicle" or **"vehicle"**, any motor vehicle as defined in section one, sold or replaced by a dealer or manufacturer, except that it shall not include auto homes, vehicles built primarily for off-road use or any vehicle used primarily for business purposes.

"Private seller", any person who is not a dealer and who offers to sell or sells a used motor vehicle to a consumer.

"Purchase price", the total of all payments made for the purchase of a vehicle, including but not limited to any finance charges, registration fees, payments made for credit life, accident, health, and damage insurance, and collision and related comprehensive insurance coverage's and service contracts and the value of a trade-in.

"Repurchase price", the purchase price, as defined above, less any cash award that was made by the dealer in an attempt to resolve the dispute and was accepted by the consumer, and less any refunds or rebates to which the consumer is entitled, plus any incidental damages not previously reimbursed, including but not limited to the reasonable costs of towing from point of breakdown up to thirty miles to obtain required repairs or to return the vehicle under this section, and the reasonable costs of obtaining alternative transportation during the applicable warranty period after the second day following each such breakdown not to exceed fifteen dollars vehicle rental charges for each day in which the cost of such alternative transportation is reimbursable.

"Used motor vehicle" or **"used vehicle"**, any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer, including a demonstrator vehicle, except that it shall

not include auto homes, vehicles built primarily for off road use, motorcycles, or any vehicle used primarily for business purposes.

2. A. i. No used motor vehicle shall be sold in the commonwealth by a dealer to a consumer unless accompanied by an express written warranty covering the full cost of both parts and labor necessary to repair any defect that impairs the said used motor vehicle's safety or use; provided, however, that the consumer may be required to pay no more than one hundred dollars total toward the repair of any covered defect, series of defects or combination of defects during the warranty period. Defects that affect only appearance shall not be deemed to impair safety or use for the purposes of this section. For the purposes of this section, defect shall include defect, malfunction or any combination or defects or malfunctions.

- ii. Defects or malfunctions which involve parts or components that are covered or are warranted under an express warranty issued by the dealer of the used motor vehicle shall be excluded from this section if the following conditions have been met: the manufacturer's warranty has been duly assigned or transferred to the buyer; is enforceable according to its terms; is not inconsistent with this section; and, the seller has assured that the repair authorized by such manufacturer's express warranty was made.

The terms of the seller's warranty shall be tolled for any period of time the used motor vehicle is out of service by reason of repair under the manufacturer's warranty.

B. The express warranties required by this section shall be of the following durations:

- i. For a used motor vehicle, which, at the time of sale, has been operated less than forty thousand miles, ninety days or three thousand seven hundred and fifty miles, whichever occurs first. Said ninety days or three thousand seven hundred and fifty mile warranty is in addition to any right the consumer may have under section seven N½.

- ii. or a used motor vehicle, which, at the time of sale, has been operated forty thousand miles or more, but less than eighty thousand miles, sixty days or two thousand five hundred miles, whichever first occur.

- iii. For a used motor vehicle, which, at the time of sale, has been operated eighty thousand miles or more, but less than one hundred and twenty-five thousand miles, thirty days or one thousand two hundred and fifty miles, whichever first occur.

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). A 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 otherwise have expired during such period.

3. A. A dealer may repair, within the meaning of this section, either by performing the repair himself or by arranging and making payment for prompt repair by another.
 - i. A consumer shall return a vehicle for repair under this section by presenting it to the dealer no later than five business days after the expiration of the applicable warranty period and informing him of the defect. Said return period shall be tolled during any time period in which the consumer has notified the dealer of the defect but cannot reasonably present the vehicle to the dealer; including, but not limited to, the reason that a used motor vehicle is inoperable and the dealer refuses to pay the charge to tow said vehicle. The dealer shall immediately accept return of a vehicle when it is so presented. Said used motor vehicle shall be deemed out of service commencing the day it is so presented, notwithstanding any dealer's failure to accept its return on said day. During the applicable warranty period and the aforesaid return period, the dealer shall pay the reasonable costs of towing from point of breakdown up to thirty miles to obtain required repairs or to return the vehicle to the dealer. Upon return of the used motor vehicle to the consumer after repair, the dealer shall provide the consumer with a warranty repair receipt describing
 - a. the defect complained of
 - b. the work performed in an attempt to correct such defect and the identity of the repairer if it is not the dealer, and

- 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.

A used motor vehicle shall not be considered out of service for purposes of the ten business-day period described hereinabove for any day in which a part necessary to repair a defect complained of is not in the dealer's possession; provided, however, that the dealer has ordered the part by reasonable means on the same day on which he knew or should have known that the part was necessary, except that in no event shall a part's unavailability operate to toll the ten business-day period for more than twenty-one days. The applicable warranty period shall be extended by the number of days a part is unavailable.

- iii. All dealers shall submit to state-certified, used car arbitration, if such arbitration is requested by the consumer, asserting his or her right to a repurchase under this section, within six months from the date of original delivery to such consumer of a used motor vehicle. State-certified, used car arbitration shall be performed by a professional arbitrator or arbitration firm appointed by the secretary of consumer affairs and business regulation and operating in accordance with the regulations promulgated pursuant to this section, and shall result in a written finding of whether the motor vehicle in dispute meets the standards set forth by this section for vehicles that are required to be repurchased. Said finding shall be issued within forty-five days of receipt by said secretary of a request by a consumer for state-certified arbitration under this section. Said secretary shall promulgate rules and regulations governing the proceedings of state-certified, used car

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 sum 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 deliver a refund shall be punished by a fine of fifty dollars per day until the delivery of such refund. Said fine shall not exceed five hundred dollars for each

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 no fine paid, the attorney general shall initiate proceedings against dealer 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 hereinbefore 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.

- iv. At any time within the applicable warranty period and after a consumer has complained of a defect, notwithstanding any objection from the consumer, the dealer shall have the option of repurchasing a used vehicle and refunding 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 had been operated between its sale and the dealer's repurchase.
- v. If the dealer is required to or elects to repurchase a vehicle under the terms of this section, the consumer and dealer shall cooperate with each other to execute all necessary documents in order to clear the title of any encumbrances on the repurchased vehicle.

B. It shall be an affirmative defense to any claim under this section that an alleged defect

- i. does not impair the vehicle's use or safety,
- ii. is the result of owner negligence, abuse, damage caused by accident, vandalism, or, an attempt to repair the vehicle by a person other than the dealer, the dealer's designee, or the manufacturer's representative under clause (ii) of paragraph (A) of subsection (2),
- iii. is the result of any attempt by the consumer to modify the vehicle,
- iv. was covered or warranted under an express warranty issued by the manufacturer of such used motor vehicle, that such warranty issued by the manufacturer of such used motor vehicle was in effect during the warranty period established by this section, so long as the conditions in said clause (ii) of said paragraph (A) of said subsection (2) are met.

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 notice 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 of 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, any rights created by section seven N or seven N?, or chapter ninety-three 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 subrogated 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 superior court or district court department. Such manufacturer shall hold the dealer harmless from and against all damages, liabilities, losses and reasonable expenses of suit, including reasonable attorneys' fees arising out of or incurred by the dealer by its compliance with the provisions of this section if such manufacturer, having been notified in writing by the dealer that such rights have been asserted by a consumer, fails to resolve the same at its own expense in or within seven business days.
11. The licensing authorities responsible pursuant to section fifty-nine of chapter one hundred and forty for licensing used motor vehicle dealers shall distribute copies of this section to each dealer licensed at any time a license is granted or renewed.
12. The provisions of this section shall not apply to the sale of a leased vehicle by a lessor to the lessee of said vehicle, a family member or employee of said lessee or to the sale of a used motor vehicle by an employer to his employee.
13. Any action brought pursuant to this section shall be commenced within two years of the date of original delivery of the used motor vehicle to the consumer.
(Added by 1987, 289, Sec. 1.)

Chapter 90: Section 7N.½ – Defective or malfunctioning new motor vehicles; sale and repair or replacement.

1. For purposes of this section the following terms shall have the following meanings:

"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 to 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 auto homes, 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, if any, 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 numerator 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
- iii. that a nonconformity is the result of any attempt substantially to modify the vehicle which was not authorized by the manufacturer.

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 or a replacement that is acceptable to the consumer. 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.

4. A reasonable number of attempts shall be deemed to have been undertaken to conform a motor vehicle to any applicable express or implied warranties if
 - a. the same nonconformity has been subject to repair three or more times by the manufacturer or its agents or authorized dealers within the term of protection, but such nonconformity continues to exist or such nonconformity has recurred within the term of protection, or
 - b. the vehicle is out of service by reason of repair of any nonconformity for a cumulative total of fifteen or more business days during the term of protection; provided, however, that the manufacturer shall be afforded one additional opportunity, not to exceed seven business days, to cure any nonconformity arising during the term of protection, notwithstanding the fact that such additional opportunity to cure commences after the term of protection.
 - c. Such additional opportunity to cure shall commence on the day the manufacturer first knows or should have known that the limits specified in clause (a) or (b) have been met or exceeded. The term of protection, said fifteen business day period and said additional opportunity to cure shall be extended by any period of time during which repair services are not available to the consumer as a direct result of a war, invasion, fire, flood or other

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 provisions 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 a 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.

The attorney general shall prescribe the exact form and content of any such disclosure statement.

6. All manufacturers shall submit to state-certified, new car arbitration, if such arbitration is requested by the consumer within eighteen months from the date of original delivery to such consumer of a new motor vehicle. State-certified, new car arbitration shall be performed by a professional arbitrator or arbitration firm appointed by the secretary of consumer affairs and business regulation and operating in accordance with the regulations promulgated pursuant to this section, and shall result in a written finding of whether the motor vehicle in dispute meets the standards set forth by this section for vehicles that are required to be replaced or refunded. Said finding shall be issued within forty-five days of receipt by said secretary of a request by a consumer for state-certified arbitration under this section. Said secretary shall promulgate rules and regulations governing the proceedings of state-certified, new car 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 arbitrator in the results of the dispute he will hear, 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. All findings of fact issuing from a state-certified, new car arbitration shall be taken as prima facie evidence of whether the standards set forth in this section for vehicles required to be refunded or replaced have been met in any subsequent action brought by either party ensuing from the matter considered in said arbitration.

If a motor vehicle is found by state-certified, new car arbitration to have met the standards set forth by this section for vehicles required to be replaced or refunded, and if the manufacturer of said motor vehicle is found to have failed to provide said refund or replacement as required, such manufacturer shall, within twenty-one days from the issuance of such finding, deliver such refund or replacement, including the incidental and other costs set forth in subsection (3), or appeal the finding in superior court. No appeal by a manufacturer shall be heard unless the petition for such appeal is filed with the clerk of the 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 sum equal to the money award made by the state-certified arbitrator plus two thousand 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. In the event that any state-certified

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 delivery 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.

The secretary of consumer affairs and business regulation shall inform the office of the attorney general of any method, act or practice of which she is aware that is deemed by her to be a violation of any provision of this section.

8. Whoever, within twenty-one days of any finding in favor of the consumer of the state-certified, new car arbitration, fails to appeal such finding and does not deliver a refund or replacement vehicle or notify the consumer of the estimated delivery date of the replacement vehicle, shall be punished by a fine of five thousand dollars per day until the delivery of such refund or replacement. The estimated delivery date shall not exceed sixty days from the date the manufacturer notifies the consumer that a delivery will be made. Said fine shall

not exceed fifty thousand dollars for each 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, new car 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 hereinbefore 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.

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