



National
Consumer Law
Center

*Fighting Together
for Economic Justice*

COMPENDIUM OF STATE LEMON AND WARRANTY LAWS FOR USED CARS

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National Consumer Law Center®

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ARIZONA

Ariz. Rev. Stat. Ann. § 44-1267. Used motor vehicles; title; implied warranty of merchantability disclaimer; waiver; burden of proof; remedies

A. Before the seller attempts to sell a used motor vehicle the seller shall possess the title to the used motor vehicle and the title shall be in the seller's name.

B. Except as provided in subsection I of this section and in addition to the requirements of § 28-4412, a used motor vehicle dealer shall not exclude, modify or disclaim the implied warranty of merchantability prescribed in [§ 47-2314](#) or limit the remedies for a breach of that warranty, except as otherwise provided in this section, before midnight of the fifteenth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven five hundred miles after delivery, whichever is earlier. In calculating time under this subsection, a day on which the warranty is breached is excluded and all subsequent days in which the motor vehicle fails to conform with the implied warranty of merchantability are also excluded. In calculating distance under this subsection, the miles driven to obtain or in connection with the repair, servicing or testing of the motor vehicle that fails to conform with the implied warranty of merchantability are excluded. An attempt to exclude, modify or disclaim the implied warranty of merchantability or to limit the remedies for a breach of that warranty, except as otherwise provided in this section, in violation of this subsection renders a purchase agreement voidable at the option of the purchaser.

C. For the purposes of this section, the implied warranty of merchantability is met if the motor vehicle functions in a safe condition as provided in title 28, chapter 3, article 16 and is substantially free of any defect that significantly limits the use of the motor vehicle for the ordinary purpose of transportation on any public highway. The implied warranty of merchantability expires at midnight of the fifteenth calendar day after delivery of a used motor vehicle or when a used motor vehicle has been driven five hundred miles after delivery, whichever is earlier. In calculating time under this subsection, a day on which the warranty is breached is excluded and all subsequent days in which the motor vehicle fails to conform with the implied warranty of merchantability are also excluded. In calculating distance under this subsection, the miles driven to obtain or in connection with the repair, servicing or testing of the motor vehicle that fails to conform with the implied warranty of merchantability are excluded.

D. The implied warranty of merchantability described in this section does not extend to damage that occurs after the sale of the motor vehicle and that is the result of any abuse, misuse, neglect, failure to perform regular maintenance or to maintain adequate oil, coolant or other required fluid or lubricant or off road use, racing or towing.

E. If the implied warranty of merchantability described in this section is breached, the purchaser shall give reasonable notice to the seller. Before the purchaser exercises any other remedies under title 47, chapter 2, the seller shall have a reasonable opportunity to repair the vehicle. The purchaser shall pay one-half of the cost of the first two repairs necessary to bring the vehicle in compliance with the warranty. The purchaser's payments are limited to a maximum payment of twenty-five dollars for each repair.

F. The maximum liability of the seller under this section is limited to the purchase price paid for the used motor vehicle.

G. An agreement for the sale of a used motor vehicle by a used motor vehicle dealer is voidable at the option of the purchaser unless it contains on its face the following conspicuous statement printed in bold-faced ten point or larger type set off from the body of the agreement:

The seller hereby warrants that this vehicle will be fit for the ordinary purposes for which the vehicle is used for 15 days or 500 miles after delivery, whichever is earlier, except with regard to particular defects disclosed on the first page of this agreement. You (the purchaser) will have to pay up to \$25.00 for each of the first two repairs if the warranty is violated.

H. The inclusion of the statement prescribed in subsection G of this section in the agreement does not create an express warranty.

I. A purchaser of a used motor vehicle may waive the implied warranty of merchantability described in this section only for a particular defect in the vehicle and only if all of the following conditions are satisfied:

1. The used motor vehicle dealer fully and accurately discloses to the purchaser that because of circumstances unusual to the used motor vehicle dealer's business, the used motor vehicle has a particular defect.
2. The purchaser agrees to buy the used motor vehicle after disclosure of the defect.
3. Before the sale, the purchaser indicates agreement to the waiver by signing and dating the following conspicuous statement that is printed on the first page of the sales agreement in bold-faced ten point or larger type and that is written in the language in which the presentation was made:

Attention purchaser: sign here only if the dealer told you that this vehicle has the following problem(s) and that you agree to buy the vehicle on those terms:

1. _____
2. _____
3. _____

J. The dealer has the burden to prove by a preponderance of the evidence that the dealer complied with subsection I of this section.

K. Any purchaser or seller who is aggrieved by a transaction pursuant to this section and who seeks a legal remedy shall pursue any appropriate remedy prescribed in title 47, chapter 2 and shall comply with the requirements prescribed in title 47, chapter 2.

CONNECTICUT

§ 42-220. Definitions

As used in sections 42-220 to 42-226, inclusive:

(1) "Dealer" means any person, firm or corporation licensed pursuant to section 14-52, as a new car dealer or a used car dealer, as defined in section 14-51, or any person, firm or corporation

licensed pursuant to section 14-15 which engages in the business of selling a used motor vehicle to a consumer;

(2) "Motor vehicle" means a motor vehicle, as defined in section 14-1;

(3) "Used motor vehicle" means a used or secondhand motor vehicle, as defined in section 14-1;

(4) "Cash purchase price" means all amounts charged for the purchase of a motor vehicle, including the value of a trade-in vehicle, except a finance charge; and

(5) "Consumer" means the purchaser, other than for purposes of resale, of a used motor vehicle normally used for personal, family or household purposes, and the spouse or child of the purchaser if such motor vehicle is transferred to the spouse or child during the duration of any warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty. "Consumer" does not mean the lessee of a motor vehicle or the spouse, child or other family member of the lessee who, pursuant to a lease contract option, purchases such vehicle at the end of the lease term.

§ 42-221. Implied warranties. Express warranties. Exemptions. Waiver

(a) A dealer selling a used motor vehicle which has a cash purchase price of three thousand dollars or more shall not exclude, modify, disclaim or limit implied warranties on the motor vehicle.

(b) Each contract entered into by a dealer for the sale to a consumer of a used motor vehicle which has a cash purchase price of three thousand dollars or more but less than five thousand dollars, shall include an express warranty, covering the full cost of both parts and labor, that the vehicle is mechanically operational and sound and will remain so for at least thirty days or one thousand five hundred miles of operation, whichever period ends first, in the absence of damage resulting from an automobile accident or from misuse of the vehicle by the consumer. Each contract entered into by a dealer for the sale of a used motor vehicle which has a cash purchase price of five thousand dollars or more shall include an express warranty, covering the full cost of both parts and labor, that the vehicle is mechanically operational and sound and will remain so for at least sixty days or three thousand miles of operation, whichever period ends first, in the absence of damage resulting from an automobile accident or from misuse of the vehicle by the consumer. A dealer may not limit a warranty covered by this section by the use of such phrases as "fifty-fifty", "labor only", "drive train only", or other words attempting to disclaim his responsibility.

(c) The provisions of this section shall not apply to: (1) The sale of a used motor vehicle having a cash purchase price of less than three thousand dollars; (2) the sale of such motor vehicles between dealers; or (3) the sale of a used motor vehicle which is seven years of age or older, which age shall be calculated from the first day in January of the designated model year of such vehicle.

(d) The consumer may waive a warranty required pursuant to this section only as to a particular defect in the vehicle which the dealer has disclosed to the consumer as being defective. No such waiver shall be effective unless such waiver: (1) Is in writing; (2) is conspicuous, as defined in section 42a-1-201, and is in plain language; (3) identifies the particular disclosed defect in the vehicle for which such warranty is to be waived; (4) states what warranty, if any, shall apply to such disclosed defect; and (5) is signed by both the customer and the dealer prior to sale.

§ 42-222. Effect of notification of breach of warranty during warranty period

A dealer shall honor any warranty required by sections 42-220 to 42-226, inclusive, notwithstanding the fact that the warranty period has expired, provided the consumer notifies the dealer of a claimed breach of the warranty within the warranty period specified in subsection (b) of section 42-221.

§ 42-223. Extensions of warranty period. Voidable agreements

(a) The term of any warranty required under the provisions of sections 42-220 to 42-226, inclusive, shall be extended by any time period during which the used motor vehicle is in the possession of the dealer or his duly authorized agent for the purpose of repairing the used motor vehicle under the terms and obligations of said warranty.

(b) The term of any such warranty shall be extended by any time during which repair services are not available to the consumer because of a war, invasion or strike, fire, flood or other natural disaster.

(c) Any agreement entered into by a consumer for the purchase of a used motor vehicle which waives, limits or disclaims the rights set forth in sections 42-220 to 42-226, inclusive, except as provided in subsection (d) of section 42-221, shall be voidable at the option of the consumer. If a dealer fails to provide a written warranty as required by said sections, the dealer shall be deemed to have given said warranty.

(d) Nothing in sections 42-220 to 42-226, inclusive, shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

§ 42-226a. Penalty

Any dealer who violates any of the provisions of sections 42-221 to 42-226, inclusive, shall be subject to the penalties provided in section 14-64.

HAWAII

§ 481J-1. Definitions

When used in this chapter unless the context otherwise requires:

“Consumer” means the purchaser, other than for purposes of resale, of a used motor vehicle primarily used for personal, family, or household purposes and subject to a warranty, and the spouse or child of the purchaser if the motor vehicle is transferred to the spouse or child during the duration of any warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

“Dealer” is defined in section 437-1.1.

“Used motor vehicle” means a motor vehicle as that term is defined in section 481I-2, which has been purchased or transferred either after one year from the date of original delivery, or after twelve thousand miles of operation, whichever occurs first.

“Warranty” means any undertaking in connection with the sale by a dealer of a used motor vehicle to refund, repair, replace, maintain, or take other action with respect to that used motor vehicle and provided at no extra charge beyond the price of the used motor vehicle.

§ 481J-2. Used motor vehicles: written warranty required, terms

(a) No used motor vehicle shall be sold in this State by a dealer to a consumer unless accompanied by a written warranty covering the full cost of both parts and labor necessary to repair any defect or malfunction in a part covered under subsection (c) that impairs the used motor vehicle's safety or use. Defects and malfunctions that affect only appearance shall not be deemed to impair safety or use for the purposes of this chapter.

(b) The written warranty shall apply for the following durations:

(1) For a used motor vehicle which, at the time of sale, has been operated less than twenty-five thousand miles, the warranty shall be a minimum of ninety days or five thousand miles, whichever occurs first. This ninety days or five thousand mile warranty is in addition to any rights the consumer may have under chapter 481I;

(2) For a used motor vehicle which, at the time of sale, has been operated twenty-five thousand miles or more, but less than fifty thousand miles, the warranty shall be a minimum of sixty days or three thousand miles, whichever occurs first; and

(3) For a used motor vehicle which, at the time of sale, has fifty thousand miles or more but no more than seventy-five thousand miles, the warranty shall be a minimum of thirty days or one thousand miles, whichever occurs first.

(c) The written warranty shall require the dealer or its agent to repair or, at the election of the dealer, reimburse the consumer for the reasonable costs of repairing the failure of a covered part. Covered parts shall at least include the following items:

(1) Engine, including all lubricated parts, water pump, fuel pump, manifolds, engine block, cylinder head, rotary engine housings, flywheel, gaskets, and seals;

(2) Transmission, including the transmission case, internal parts, torque converter, gaskets, and seals, except four-wheel drive vehicles shall be excluded from coverage as provided for in this paragraph;

(3) Drive axle, including front and rear drive axle housings and internal parts, axle shafts, propeller shafts, and universal joints, except four-wheel drive vehicles shall be excluded from coverage as provided in this paragraph;

(4) Brakes, including master cylinder, vacuum assist booster, wheel cylinders, hydraulic lines and fittings, and disc brake calipers;

(5) Radiator;

(6) Steering, including the steering gear housing and all internal parts, power steering pump, valve body, piston, and rack; and

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

(d) The written warranty may contain additional language excluding coverage:

- (1) For a defect or malfunction in a part caused by a lack of customary maintenance after the vehicle is sold;
- (2) For a defect or malfunction in a part caused by collision, abuse, negligence, theft, vandalism, fire, or other casualty, and for damage from the environment, including but not limited to windstorms, hurricanes, and lightning;
- (3) If the odometer has been stopped or altered such that the vehicle's actual mileage cannot be readily determined or a part has been altered in a manner which caused it to fail;
- (4) For a motor tune-up;
- (5) For maintenance services and the parts used in connection with such services such as seals, gaskets, oil, or grease unless required in connection with the repair of a covered part;
- (6) For a defect or malfunction in a part resulting from racing or other competition;
- (7) For a defect or malfunction in a part caused by towing a trailer or another vehicle unless the used motor vehicle is equipped for this as recommended by the manufacturer;
- (8) If the used motor vehicle is used to carry passengers for hire;
- (9) If the used motor vehicle is rented to someone other than the consumer;
- (10) For repair of valves and rings to correct low compression and oil consumption which are considered normal wear;
- (11) To the extent otherwise permitted by law, for property damage arising or allegedly arising out of the defect or malfunction in a part; and
- (12) To the extent otherwise permitted by law, for loss of the use of the used motor vehicle, loss of time, inconvenience, commercial loss, or consequential damages.

(e) Nothing in this chapter diminishes the obligations of a manufacturer under a warranty issued by the manufacturer. The express warranties created by this section do not require a dealer to repair or replace a covered part if the repair or replacement is covered by a manufacturer's warranty, or the manufacturer otherwise agrees to repair or replace the part.

The terms of the dealer'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.

(f) A consumer shall return a vehicle for repair under this section by presenting it to the dealer prior to the expiration of the applicable warranty period and providing written notice to the dealer of the defect. The dealer shall immediately accept return of a vehicle when it is so presented. The used motor vehicle shall be deemed out of service commencing the day it is presented, notwithstanding any dealer's failure to accept its return on that day.

During the applicable warranty period and the return period, the dealer shall pay the reasonable costs of towing from the point of breakdown up to fifteen miles to obtain the required repairs or to return the vehicle to the dealer.

(g) The term of any warranty established by this section shall be extended by any time period during which:

(1) The used motor vehicle is in the possession of the dealer or its duly authorized agent for the purpose of repairing the used motor vehicle under the terms and obligations of the warranty;

(2) Repair services are not available to the consumer because of war, invasion or strike, fire, flood or other natural disaster; or

(3) The consumer has notified the dealer that a used motor vehicle is inoperable, but cannot reasonably present the vehicle to the dealer and the dealer refuses to pay the charge to tow the vehicle.

(h) The applicable warranty period shall end 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 this period.

(i) The dealer shall provide to the consumer, each time the consumer's vehicle is returned from being diagnosed or repaired under the warranty, a fully itemized, legible warranty repair receipt indicating any diagnosis made and all work performed on the vehicle, including but not limited to:

(1) The defect or malfunction complained of;

(2) The work performed in an attempt to correct the defect or malfunction and the identity of the repairer if it is not the dealer;

(3) The parts replaced in performing such work;

(4) The date and odometer reading when the vehicle was submitted for repair; and

(5) The date when the vehicle was made available to the consumer.

The consumer shall sign a copy of the warranty repair receipt.

(j) A dealer may repair, within the meaning of this section, either by performing the repair itself or, if the dealer does not have a repair facility, by arranging and making payment for prompt repair by a motor vehicle repair dealer licensed under chapter 437B.

(k) The dealer shall provide repair or reimbursement notwithstanding the fact that the warranty period has expired, provided that the consumer provides notification to the dealer of the failure of a covered part within the specified warranty period.

§ 481J-3. Disclaimers void; authorized waivers; exemptions; “as is” sales

(a) Any agreement entered into by a consumer for the purchase of a used motor vehicle that waives, limits, or disclaims any of the rights set forth in [section 481J-2](#) shall be void as contrary to public policy. If a dealer fails to give the written warranty required by this chapter, the dealer nevertheless shall be deemed to have given the warranty as a matter of law.

(b) Notwithstanding subsection (a), the consumer may waive a warranty required pursuant to this chapter only as to a particular defect or malfunction which the dealer has disclosed to the consumer. No such waiver shall be effective unless such waiver:

- (1) Is in writing;
- (2) Is conspicuous and is in plain language;
- (3) Identifies the particular disclosed defect or malfunction in the used motor vehicle for which the warranty is to be waived;
- (4) States what warranty, if any, shall apply to the disclosed defect or malfunction; and
- (5) Is signed by both the consumer and the dealer prior to sale.

(c) This chapter shall not apply to:

- (1) Used motor vehicles sold for less than \$1,500;
- (2) Used motor vehicles with over seventy-five thousand miles at the time of sale if the mileage is indicated in writing at the time of sale;
- (3) Used motor vehicles that are five years of age or older, calculated from the first day in January of the designated model year of the vehicle;
- (4) Vehicles that have been custom-built or modified for show purposes or racing; or
- (5) Vehicles which are inoperable and a total loss. For the purpose of this paragraph, a vehicle is a "total loss" only if there is material damage to the vehicle's frame, unitized structure, or suspension system, and the projected cost of repairing the damage exceeds the market value of the vehicle at the time of the incident causing it to be declared a total loss.

(d) A used motor vehicle may be sold "as is" by a dealer only if it falls within the exemptions set out in this section. No "as is" disclaimer by a dealer shall be enforceable unless all of the following conditions are met:

- (1) A disclaimer shall appear on the front page of the contract of sale, which shall read as follows:

"AS IS"

THIS VEHICLE IS SOLD "AS IS". YOU WILL HAVE TO PAY FOR ANY REPAIRS NEEDED AFTER SALE. IF WE HAVE MADE ANY PROMISES TO YOU, THE LAW SAYS WE MUST KEEP OUR PROMISES, EVEN IF WE SELL "AS IS". TO PROTECT YOURSELF, ASK US TO PUT ALL PROMISES IN WRITING.

- (2) The text of the disclaimer shall be printed in twelve-point boldface type, except the heading, which shall be in sixteen-point extra boldface type. The entire notice shall be boxed.
- (3) The consumer shall sign the consumer's name and the date within the box containing the disclaimer prior to sale. A copy of the signed disclaimer shall be kept by the dealer for a two-year period from the date of the consumer's signature.

(e) An "as is" sale of a used motor vehicle waives implied warranties but shall not waive any express warranties, either oral or written, upon which the consumer relied in entering into the transaction.

(f) In selling or offering to sell any used motor vehicle, and in providing the express warranty required by this chapter, a dealer shall comply in all respects with the Federal Trade Commission's "Used Motor Vehicle Trade Regulation Rule", 16 Code of Federal Regulations, part 455.

§ 481J-4. Disclosure of damages or defects in used motor vehicles

(a) No dealer may offer for sale any used motor vehicle without first providing:

(1) Written notice to the prospective consumer of any material mechanical defect in the motor vehicle and any damage sustained by the motor vehicle due to fire, water, collision, or other causes for which the cost of repairs exceeds \$1,000 for parts and labor, when the defect or damage is known to the dealer; and

(2) Written notice to the prospective consumer whether the dealer has conducted any inspection of the motor vehicle to determine known defects or damage.

(b) If a dealer promises that any repairs will be made or any conditions corrected in connection with the purchase of a used motor vehicle, such promises shall be provided in writing and either attached or incorporated into the sales contract.

(c) For purposes of this section:

"Known" means that a dealer or the dealer's agent or employee has obtained facts or information about the condition of a motor vehicle which would lead a reasonable person in similar circumstances to believe that the motor vehicle contained one or more material mechanical defects. The term "known" encompasses knowledge obtained through an inspection, from a previous owner, from the salesperson at an auction or another dealer, or through other means.

"Material mechanical defect" means any defect or malfunction which renders the motor vehicle mechanically unsound or inoperable.

§ 481J-5. Notices

(a) The written warranty provided for in section 481J-2 and the written notices provided for in sections 481J-3 and 481J-4 shall be delivered to the consumer at or before the time the consumer signs the sales contract for the used motor vehicle. The warranty and the notice may be set forth on one sheet or on separate sheets. They may be separate from, attached to, or a part of the sales contract. If they are part of the sales contract, they shall be separated from the other contract provisions and each headed by a conspicuous title. (b) The director of commerce and consumer affairs may adopt rules pursuant to chapter 91 necessary to implement the notice provisions of this chapter. The rules may include the establishment of wording, format, placement, and distribution requirement for all notices specified in this chapter.

(c) The failure of a dealer to provide the warranty or notices required by this chapter or the provision of false or misleading notices or warranties shall constitute prima facie evidence of an unfair or deceptive act under chapter 480.

§ 481J-6. Failure to honor warranty

(a) If the dealer or its agent fails to correct a defect or malfunction as required by the warranty specified in section 481J-2 after a reasonable period of time, the dealer shall accept return of

the used motor vehicle from the consumer and refund the full purchase price, including general excise tax, less a reasonable allowance for any damage not attributable to normal wear or usage, and with an adjustment for any modifications which either increase or decrease the market value of the vehicle. A reasonable allowance for use shall be fifteen cents for each mile the used motor vehicle has been operated between its sale and its return.

(b) It shall be presumed that a dealer has had a reasonable opportunity to correct a defect or malfunction in a used motor vehicle if the dealer fails to repair the same defect or malfunction 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.

(c) A used motor vehicle shall not be considered out of service for purposes of the ten-business-day period described in subsection (b) for any day in which a part necessary to repair a defect or malfunction complained of is not in the dealer's possession; provided that the dealer has ordered the part by reasonable means on the same day on which the dealer 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.

(d) In determining the purchase price to be refunded, the purchase price shall be deemed equal to the sum of the actual cash difference paid for the used motor vehicle, plus return of any vehicles traded in at the time of purchase. If the dealer elects to not return any vehicles traded in by the consumer, or is unable to return such vehicles in substantially the same condition as received from the consumer, the dealer shall pay the consumer the wholesale value of any such traded-in vehicles as listed in the National Automobile Dealers' Association Used Car Guide, or such other guide as may be specified in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, as adjusted for mileage, improvements, and any major physical or mechanical defects in the vehicle at the time of trade-in.

(e) The dealer selling the used motor vehicle shall deliver to the consumer a written notice either attached to or within the contract of sale containing conspicuous language indicating that if the consumer should be entitled to a refund pursuant to this section, the value of any vehicle traded in by the consumer will be determined by the method described in subsection (d), rather than the value listed in the sales contract.

(f) Refunds shall be made to the consumer and lienholder, if any, as their interests may appear on the records of ownership kept by the county director of finance.

(g) Alternatively, the dealer may elect to offer to replace the used motor vehicle with a comparably priced vehicle, with such adjustment in price as the parties may agree to. The consumer shall not be obligated to accept a replacement vehicle, but may instead elect to receive the refund provided under this section.

§ 481J-7. Civil and administrative actions for violations

(a) A consumer of a used motor vehicle shall have a private right of action against a dealer to enforce this chapter and recover costs, including reasonable attorney's fees, incurred in the civil action.

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

(1) The alleged malfunction or defect does not substantially impair the use or safety of the used motor vehicle;

(2) The alleged malfunction or defect is the result of abuse, neglect, or unreasonable modifications or alterations of the used motor vehicle; or

(3) The alleged malfunction or defect was covered or warranted under an express warranty issued by the manufacturer of the used motor vehicle, and that such warranty issued by the manufacturer of the used motor vehicle was in effect during the warranty period established by this chapter.

(c) Any private civil action brought pursuant to this section shall be commenced within one year of the date of original delivery of the used motor vehicle to the consumer.

(d) Nothing in this chapter shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

(e) A dealer's failure to comply with any of the provisions of this chapter may result in disciplinary action pursuant to chapter 437, which may result in sanctions, including but not limited to suspension or revocation of license, and the imposition of fines or restitution.

MAINE

Me. Rev. Stat. tit. 10, § 1474(1) to (3). Warranty

1. **Warranty content.** A dealer warrants that the motor vehicle the dealer sells, negotiates the sale of, offers for sale or transfers to a person other than another dealer has been inspected in accordance with Title 29-A, section 1751, and with the rules promulgated under that section:

A. That the motor vehicle is in the condition and meets the standards required by that law and the rules; or

B. If the motor vehicle is a reconstructable motor vehicle, that the motor vehicle is in the condition specified in the disclosure statement affixed to the vehicle as required by subsection 4.

2. **Exclusion limitation, modification or waiver prohibited.** The warranty referred to in subsection 1 herein, and any person's remedies for breach thereof, may not be excluded, limited, modified or waived by words or conduct of either the dealer or any other person.

3. **Dealer to furnish certain written statements concerning warranty.** A dealer may not sell, offer for sale or transfer a used motor vehicle to a person unless the dealer furnishes to the person a written statement containing the warranty required by subsection 1. Any other warranty, in addition to that required by subsection 1, that may be extended or agreed to by the dealer must be set forth in this written statement in accordance with further requirements of this section.

A. Every written statement must contain, fully and conspicuously disclosed, the following information:

(1) The name and address of the dealer's place of business where repairs, replacement of parts and other service under the warranty are to be performed or, if such repairs, replacement of parts and other service under the warranty are not to be performed at that place of business, the name, address and other

identifying information of each facility within a radius of 50 miles of the dealer's place of business to which the vehicle may be brought for repairs, replacement of parts and other service under the warranty; and

(2) The following notice: "If a dealer fails to perform the dealer's obligation under the warranty, the purchaser shall give the dealer written notice of such failure before the purchaser initiates a civil action in accordance with section 1476." The notice must be sent by registered or certified mail to the dealer's last known business address.

B. In addition, the written statement required by this subsection must contain, fully and conspicuously disclosed, the following information concerning any additional warranty not required by subsection 1:

(1) The date on which the additional warranty begins as well as the date on which or the number of days or mileage at which the warranty will terminate, either handwritten or printed on the statement by the dealer;

(2) The parts or systems of the vehicle that are warranted against mechanical defects, or the parts or systems of the vehicle excluded from the warranty; and

(3) A statement of what the dealer will do in the event of a mechanical defect and at whose expense.

MASSACHUSETTS

Mass. Gen. Law Ch. 106, § 2-316A. Limitation on Exclusion or Modification of Warranties

(2) Any language, oral or written, used by a seller or manufacturer of consumer goods and services, which attempts to exclude or modify any implied warranties of merchantability and fitness for a particular purpose or to exclude or modify the consumer's remedies for breach of those warranties, shall be unenforceable.

(5) The provisions of this section may not be disclaimed or waived by agreement.

Mass. Gen. Law Ch. 90, § 7N 1-4 . 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 coverages 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 N ½.

(ii) For 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 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 ½, 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 N ½, 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 N ½ 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 N ½, 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.

MINNESOTA

325F.662. Sale of used motor vehicles

Subdivision 1. Definitions. For the purposes of this section, the following terms have the meanings given to them.

(a) “**Consumer**” means the purchaser, other than for purposes of resale, of a used motor vehicle used primarily for personal, family, or household purposes.

(b) “**Dealer**” means a motor vehicle dealer or lessor, as defined in section 168.276, subdivisions 2, 3, and 4, whether licensed or unlicensed, or the dealer's or lessor's agent, who is engaged in the business of selling or arranging the sale of used motor vehicles in this state; except that, the term does not include a bank or financial institution, a business selling a used motor vehicle to an employee of that business, a lessor selling, either directly or indirectly, a leased used motor vehicle to that vehicle's lessee or a family member or employee of the lessee, or a licensed auctioneer selling motor vehicles at an auction if, in the ordinary course of the auctioneer's business, the sale of motor vehicles is incidental to the sale of other real or personal property.

(c) “**Motor vehicle**” means a passenger automobile, as defined in section 168.002, subdivision 24, including pickup trucks and vans.

(d) **“Used motor vehicle”** means any motor vehicle which has been driven more than the limited use necessary in moving or road testing a new motor vehicle prior to delivery to a consumer. The term does not include a new motor vehicle sold by a dealer franchised to sell the vehicle if the vehicle was driven for demonstration purposes using dealer plates and if, when the vehicle was sold, it carried a manufacturer's express warranty which provides coverage at least as broad with respect to covered components and duration as that required by this section.

(e) **“Express warranty”** means a dealer's written statement, as defined in section 325G.17, subdivision 5, provided to a consumer in connection with the sale of a used motor vehicle.

(f) **“Buyer's Guide”** means the window form required by the Federal Trade Commission's “Used Motor Vehicle Trade Regulation Rule,” Code of Federal Regulations, title 156, section 455.2.

Subd. 2. Written warranty required. (a) Every used motor vehicle sold by a dealer is covered by an express warranty which the dealer shall provide to the consumer in writing. At a minimum, the express warranty applies for the following terms:

(1) if the used motor vehicle has less than 36,000 miles, the warranty must remain in effect for at least 60 days or 2,500 miles, whichever comes first;

(2) if the used motor vehicle has 36,000 miles or more, but less than 75,000 miles, the warranty must remain in effect for at least 30 days or 1,000 miles, whichever comes first; and

(3) unless the vehicle is sold by a new motor vehicle dealer, as defined in section 168.27, subdivision 2, if the used motor vehicle has 75,000 miles or more, but less than 200,000 miles, the warranty must remain in effect for at least 15 days or 500 miles, whichever comes first.

(b) The express warranty must require the dealer, in the event of a malfunction, defect, or failure in a covered part, to repair or replace the covered part, or at the dealer's election, to accept return of the used motor vehicle from the consumer and provide a refund to the consumer.

(c) For used motor vehicles with less than 36,000 miles, the dealer's express warranty shall cover, at minimum, the following parts:

(1) with respect to the engine, all lubricated parts, intake manifolds, engine block, cylinder head, rotary engine housings, and ring gear;

(2) with respect to the transmission, the automatic transmission case, internal parts, and the torque converter; or, the manual transmission case, and the internal parts;

(3) with respect to the drive axle, the axle housings and internal parts, axle shafts, drive shafts and output shafts, and universal joints; but excluding the secondary drive axle on vehicles, other than passenger vans, mounted on a truck chassis;

(4) with respect to the brakes, the master cylinder, vacuum assist booster, wheel cylinders, hydraulic lines and fittings, and disc brakes calipers;

(5) with respect to the steering, the steering gear housing and all internal parts, power steering pump, valve body, piston, and rack;

(6) the water pump;

(7) the externally mounted mechanical fuel pump;

(8) the radiator;

(9) the alternator, generator, and starter.

(d) For used motor vehicles with 36,000 miles or more, but less than 200,000 miles, the dealer's express warranty shall cover, at minimum, the following parts:

(1) with respect to the engine, all lubricated parts, intake manifolds, engine block, cylinder head, rotary engine housings, and ring gear;

(2) with respect to the transmission, the automatic transmission case, internal parts, and the torque converter; or, the manual transmission case, and internal parts;

(3) with respect to the drive axle, the axle housings and internal parts, axle shafts, drive shafts and output shafts, and universal joints; but excluding the secondary drive axle on vehicles, other than passenger vans, mounted on a truck chassis;

(4) with respect to the brakes, the master cylinder, vacuum assist booster, wheel cylinders, hydraulic lines and fittings, and disc brake calipers;

(5) with respect to the steering, the steering gear housing and all internal parts, power steering pump, valve body, and piston;

(6) the water pump;

(7) the externally mounted mechanical fuel pump.

(e)(1) A dealer's obligations under the express warranty remain in effect notwithstanding the fact that the warranty period has expired, if the consumer promptly notified the dealer of the malfunction, defect, or failure in the covered part within the specified warranty period and, within a reasonable time after notification, brings the vehicle or arranges with the dealer to have the vehicle brought to the dealer for inspection and repair.

(2) If a dealer does not have a repair facility, the dealer shall designate where the vehicle must be taken for inspection and repair.

(3) In the event the malfunction, defect, or failure in the covered part occurs at a location which makes it impossible or unreasonable to return the vehicle to the selling dealer, the consumer may have the repairs completed elsewhere with the consent of the selling dealer, which consent may not be unreasonably withheld.

(4) Notwithstanding the provisions of this paragraph, a consumer may have nonwarranty maintenance and nonwarranty repairs performed other than by the selling dealer and without the selling dealer's consent.

(f) Nothing in this section diminishes the obligations of a manufacturer under an express warranty issued by the manufacturer. The express warranties created by this section do not

require a dealer to repair or replace a covered part if the repair or replacement is covered by a manufacturer's new car warranty, or the manufacturer otherwise agrees to repair or replace the part.

(g) The express warranties created by this section do not cover defects or repair problems which result from collision, abuse, negligence, or lack of adequate maintenance following sale to the consumer.

(h) The terms of the express warranty, including the duration of the warranty and the parts covered, must be fully, accurately, and conspicuously disclosed by the dealer on the front of the Buyers Guide.

Subd. 3. Exclusions. Notwithstanding the provisions of subdivision 2, a dealer is not required to provide an express warranty for a used motor vehicle:

(1) except for a used motor vehicle described in subdivision 2, paragraph (a), clause (3), sold for a total cash sale price of less than \$3,000, including the trade-in value of any vehicle traded in by the consumer, but excluding tax, license fees, registration fees, and finance charges;

(2) with an engine designed to use diesel fuel;

(3) with a gross weight, as defined in section 168.002, subdivision 13, in excess of 9,000 pounds;

(4) that has been custom-built or modified for show or for racing;

(5) except for a used motor vehicle described in subdivision 2, paragraph (a), clause (3), that is eight years of age or older, as calculated from the first day in January of the designated model year of the vehicle;

(6) that has been produced by a manufacturer which has never manufactured more than 10,000 motor vehicles in any one year;

(7) that has 200,000 miles or more at time of sale;

(8) that has not been manufactured in compliance with applicable federal emission standards in force at the time of manufacture as provided by the Clean Air Act, United States Code, title 42, sections 7401 through 7642, and regulations adopted pursuant thereto, and safety standards as provided by the National Traffic and Motor Safety Act, United States Code, title 15, sections 1381 through 1431, and regulations adopted pursuant thereto; or

(9) that has been issued a certificate of title that bears a "salvage" brand or stamp under section 168A.151.

Subd. 4. Waiver. When purchasing a used motor vehicle, a consumer may waive the express warranty for a covered part if:

(1) the dealer discloses in a clear and conspicuous typed or printed statement on the front of the Buyers Guide that the waived part contains a malfunction, defect, or repair problem; and

(2) the consumer circles this typed or printed statement and signs the Buyers Guide next to the circled statement.

Subd. 5. Warranty automatic. If a dealer fails to give the express warranty required by this section, the dealer nevertheless is considered to have given the express warranty as a matter of law.

Subd. 6. Buyer's guide requirements. In selling or offering to sell any used motor vehicle, and in providing the express warranty required by this section, a dealer shall comply in all respects with the Federal Trade Commission's "Used Motor Vehicle Trade Regulation Rule," Code of Federal Regulations, title 16, part 455.

Subd. 7. Honoring of express warranties. (a) In accordance with section 325G.19, subdivision 2, every express warranty in connection with the sale of a used motor vehicle must be honored by the dealer according to the terms of the express warranty.

(b) Following repair or replacement of a covered part, the dealer remains responsible under the express warranty for that covered part for one additional warranty period.

(c) By honoring the terms of the express warranty by repairing or replacing a covered part, the dealer does not create an additional implied warranty on any portion of the used motor vehicle.

(d) A dealer may limit the duration of implied warranties to the duration of the express warranty.

Subd. 8. Refunds. (a) A refund, as provided under subdivision 2, must consist of the full purchase price of the used motor vehicle and all other charges, including but not limited to excise tax, registration tax, license fees, and reimbursement for towing expenses incurred by the consumer as a result of the vehicle being out of service for warranty repair, less a reasonable allowance for the consumer's use of the vehicle not exceeding ten cents per mile driven or ten percent of the purchase price, whichever is less. Refunds must include the amount stated by the dealer as the trade-in value of any vehicle traded in and applied to the purchase price of the used motor vehicle. Refunds must be made to the consumer and lienholder, if any, as their interests appear on the records of the registrar of motor vehicles.

(b) The amount of the excise tax to be paid by the dealer to the consumer under paragraph (a) is the tax paid by the consumer when the vehicle was purchased less an amount equal to the tax paid multiplied by a fraction, the denominator of which is the purchase price of the vehicle and the numerator of which is the allowance deducted from the refund for the consumer's use of the vehicle.

(c) A dealer must give the consumer an itemized statement listing each of the amounts refunded under this subdivision. If the amount of excise tax refunded is not separately stated, or if the dealer does not apply for a refund of the tax within one year of the return of the motor vehicle, the Department of Public Safety may refund the excise tax, as determined under paragraph (b), directly to the consumer and lienholder, if any, as their interests appear on the records of the registrar of motor vehicles.

Subd. 8a. Certified motor vehicle. (a) It is unlawful for a dealer to advertise for sale or sell a used motor vehicle as "certified" or use any similar descriptive term in the advertisement or the sale of a used motor vehicle that implies the vehicle has been certified to meet the terms of a used motor vehicle certification program if any of the following apply:

- (1) the dealer knows or should know that the odometer on the vehicle does not indicate actual mileage, has been rolled back or otherwise altered to show fewer miles, or has been replaced with an odometer showing fewer miles than actually driven;
- (2) the dealer knows or should know that the vehicle was reacquired by the vehicle's manufacturer or a dealer pursuant to state or federal warranty laws;
- (3) the dealer knows or should know that the title to the vehicle has been inscribed with the notation "damaged," "flood," "junk," "lemon law buyback," "manufacturer repurchase," "nonrepairable," "rebuilt," "reconditioned," "salvage," or similar title designation required by this state or another state;
- (4) the dealer knows or should know that the vehicle has sustained damage in an impact, fire, or flood, that substantially impairs the use or safety of the vehicle;
- (5) the dealer knows or should know that the vehicle has sustained frame damage;
- (6) prior to sale, the dealer fails to provide the buyer with a completed inspection report indicating all the components inspected;
- (7) the dealer disclaims any warranties of merchantability on the vehicle; or
- (8) the vehicle is sold "AS IS."

(b) This section does not abrogate or limit any disclosure obligation imposed by any other law.

Subd. 9. Civil remedies. Any dealer who is found to have violated this section is subject to the penalties and remedies, including a private right of action, as provided in section 8.31. In addition, a violation of subdivision 7 is also a violation of section 325F.69.

Subd. 10. Limitation on actions. A private civil action brought by a consumer under this section with respect to a warranty claim must be commenced within one year of the expiration of the express warranty.

Subd. 11. Remedy nonexclusive. Nothing in this section limits the rights or remedies which are otherwise available to a consumer under any other law.

MISSISSIPPI

Miss. Code Ann. § 11-7-18

§ 11-7-18. Sales of consumer goods; implied warranties, limitations and disclaimers; waiver or variation by agreement

Except as otherwise provided in Sections 75-2-314, 75-2-315, and 75-2-719, there shall be no limitation of remedies or disclaimer of liability as to any implied warranty of merchantability or fitness for a particular purpose in a sale to a consumer, as defined in Section 75-1-201(b)(11), of consumer goods, as defined in Section 75-9-102(a)(23). The provisions of this section may not be waived or varied by agreement.

§ 75-2-316. Exclusion or modification to warranties

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to Section 75-2-202, negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) To exclude or modify the implied warranty of merchantability or any part of it in a contract between merchants the language must mention merchantability and, in case of a record, must be conspicuous. To exclude or modify the implied warranty of fitness in a contract between merchants, the exclusion must be in a record and be conspicuous and the language is sufficient if it states, for example, that "There are no warranties that extend beyond the description on the face hereof."

(3) Notwithstanding subsection (1) and (2), any oral or written language used by a seller of consumer goods and services, which attempts to exclude or modify any implied warranties of merchantability and fitness for a particular purpose or to exclude or modify the consumer's remedies for breach of those warranties, is unenforceable. However, the seller may recover from the manufacturer any damages resulting from breach of the implied warranty of merchantability or fitness for a particular purpose.

(4) Any oral or written language used by a manufacturer of consumer goods, which attempts to limit or modify a consumer's remedies for breach of the manufacturer's express warranties, is unenforceable.

(5)(a) The provisions of subsections (3) and (4) do not apply to a motor vehicle:

(i) Required to be titled under the state law;

(ii) That is over six (6) model years old or that has been driven more than seventy-five thousand (75,000) miles; and

(iii) If, at the time of the sale of the motor vehicle, the seller gives the purchaser notice of the inapplicability of this section on the form prescribed by the State Attorney General.

(b) With respect to this subsection (5) only:

(i) An exclusion or modification of an implied warranty of merchantability, or any part of a warranty shall be in writing, mention merchantability, and be conspicuous.

(ii) An exclusion or modification of the implied warranty of fitness shall be in writing and conspicuous.

(iii) Any exclusion or modification of either warranty shall be separately acknowledged by the signature of the buyer.

(6) Notwithstanding subsection (2):

(a) Unless the circumstances indicate otherwise, in contracts between merchants all implied warranties are excluded by expressions like "as is," "with all faults" or other language that in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) For sales between merchants, an implied warranty may also be excluded or modified by course of dealing or course of performance or usage of trade.

(7) Remedies for breach of warranty may be limited in accordance with [Sections 75-2-718](#) and [75-2-719](#).

NEW JERSEY

56:8-69. Written warranty on a used motor vehicle; minimum durations

It shall be an unlawful practice for a dealer to sell a used motor vehicle to a consumer without giving the consumer a written warranty which shall at least have the following minimum durations:

- a. If the used motor vehicle has 24,000 miles or less, the warranty shall be, at a minimum, 90 days or 3,000 miles, whichever comes first;
- b. If the used motor vehicle has more than 24,000 miles but less than 60,000 miles, the warranty shall be, at a minimum, 60 days or 2,000 miles, whichever comes first; or
- c. If the used motor vehicle has 60,000 miles or more, the warranty shall be, at a minimum, 30 days or 1,000 miles, whichever comes first, except that a consumer may waive his right to a warranty as provided under section 7 of this act.

56:8-70. Dealer required to correct failure or malfunction of covered items; excluded repairs

The written warranty shall require the dealer, upon failure or malfunction of a covered item during the term of the warranty, to correct the malfunction or defect, provided the used motor vehicle is delivered to the dealer, at his regular place of business, and subject to a deductible amount of \$50 to be paid by the consumer for each repair of a covered item. This written warranty shall exclude repairs covered by any manufacturer's warranty, or recall program, as well as repairs of a covered item required because of collision, abuse, or the consumer's failure to properly maintain such used motor vehicle in accordance with the manufacturer's recommended maintenance schedule, or from damage of a covered item caused as a result of any commercial use of the used motor vehicle, or operation of such vehicle without proper lubrication or coolant, or as a result of any misuse, negligence or alteration of such vehicle by someone other than the dealer.

56:8-71. Failure to correct material defect; refund of purchase price; affirmative defenses

- a. If, within the periods specified in section 3 of this act, the dealer or his agent fails to correct a material defect of the used motor vehicle, after a reasonable opportunity to repair the used motor vehicle, the dealer shall repurchase the used motor vehicle and refund to the consumer the full purchase price, excluding all sales taxes, title and registration fees, or any similar governmental charges, and less a reasonable allowance for excessive wear and tear and less a deduction for personal use of such vehicle. Refunds shall be made to the consumer and lienholder, if any, as their interests appear on the records of ownership kept by the Director of the Division of Motor Vehicles.

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

- (1) The alleged material defect does not substantially impair the use, value or safety of the used motor vehicle; or
- (2) The material defect is the result of abuse, neglect or unauthorized modification or alteration of the used motor vehicle by anyone other than the dealer or his agent.

c. It shall be presumed that a dealer has a reasonable opportunity to correct or repair a material defect in a used motor vehicle, if:

- (1) The same material defect has been subject to repair three or more times by the dealer or his agent within the warranty period, but the material defect continues to exist; or
- (2) The used motor vehicle is out of service by reason of waiting for the dealer to begin or complete repair of the material defect for a cumulative total of 20 or more days during the warranty period.

56:8-72. Term of written warranty extended by time spent waiting for dealer to begin or complete repairs

The term of any written warranty offered by a dealer in connection with the sale of a used motor vehicle shall be extended by any time period during which the used motor vehicle is waiting for the dealer or his agent to begin or complete repairs of a material defect of the used motor vehicle.

56:8-73. Election to waive warranty on used vehicle with over 60,000 miles; form and content of waiver

Notwithstanding any provision of this act to the contrary, a consumer, as a result of a price negotiation for the purchase of a used motor vehicle with over 60,000 miles, may elect to waive the dealer's obligation to provide a warranty on the used motor vehicle. The waiver shall be in writing and separately stated in the agreement of retail sale or in an attachment thereto and separately signed by the consumer. The waiver shall state the dealer's obligation to provide a warranty on used motor vehicles offered for sale, as set forth in sections 3 and 4 of this act. The waiver shall indicate that the consumer, having negotiated the purchase price of the used motor vehicle and obtained a price adjustment, is electing to waive the dealer's obligation to provide a warranty on the used motor vehicle and is buying the used motor vehicle "as is."

56:8-74. Dealer deemed to have given warranty in absence of written waiver

If a dealer fails to give a written warranty required by this act, the dealer nevertheless shall be deemed to have given the warranty as a matter of law, unless a waiver has been signed by the consumer in accordance with section 7 of this act.

56:8-75. Consumer rights and remedies not affected

Nothing in this act shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

56:8-76. Vehicles not covered by warranty

The provisions of sections 3, 4, and 5 shall not apply to: any used motor vehicle sold for less than \$3,000; any used motor vehicle over seven or more model years old; any used motor

vehicle which has been declared a total loss by an insurance company and with respect to which the consumer, at or prior to the time of sale, has been advised in writing that the used motor vehicle has been declared a total loss by an insurance company; or, any used motor vehicle with more than 100,000 miles.

56:8-77. Bond requirements

To assure compliance with the requirements of this act, a dealer shall provide a bond in favor of the State of New Jersey in the amount of \$10,000, executed by a surety company authorized to transact business in the State of New Jersey by the Department of Insurance and to be conditioned on the faithful performance of the provisions of this act. This bond shall be for the term of 12 months and shall be renewed at each expiration for a similar period. The Director of the Division of Motor Vehicles shall not issue a dealer's license and shall not renew a license of any dealer who has not furnished proof of the existence of the bond required by this act.

56:8-78. Rules and regulations

The Director shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et. seq.) to effectuate the purposes of this act.

56:8-79. Consumer awareness program

The director shall implement a consumer awareness program which shall advise consumers of the requirements, protections and benefits provided by this act, within 120 days following enactment of this act.

56:8-80. Administrative fee

The director may establish an administrative fee, to be paid by the consumer, in order to implement the provisions of this act, which fee shall be fixed at a level not to exceed the cost for the administration and enforcement of this act.

NEW MEXICO

§ 57-16A-3.1. Used motor vehicles

A. Unless a seller is a used motor vehicle dealer, before the seller attempts to sell a used motor vehicle, the seller shall possess the title to the used motor vehicle and the title shall be in the seller's name.

B. Except as otherwise provided in the Motor Vehicle Quality Assurance Act, a used motor vehicle dealer shall not exclude, modify or disclaim the implied warranty of merchantability prescribed in Section 55-2-314 NMSA 1978 or limit the remedies for a breach of the warranty before midnight of the fifteenth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven five hundred miles after delivery, whichever is earlier. In calculating time under this subsection, a day on which the warranty is breached and all subsequent days in which the used motor vehicle fails to conform with the implied warranty of merchantability are excluded. In calculating distance under this subsection, the miles driven to obtain or in connection with the repair, servicing or testing of the used motor vehicle that fails to conform with the implied warranty of merchantability are excluded. An attempt to exclude, modify or disclaim the implied warranty of merchantability or to limit the remedies for a breach of the

warranty in violation of this subsection renders a purchase agreement voidable at the option of the purchaser.

C. An implied warranty of merchantability is met if a used motor vehicle functions substantially free of a defect that significantly limits the use of the used motor vehicle for the ordinary purpose of transportation on any public highway. The implied warranty of merchantability expires at midnight of the fifteenth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven five hundred miles after delivery, whichever is earlier. In calculating time, a day on which the implied warranty of merchantability is breached is excluded and all subsequent days in which the used motor vehicle fails to conform with the warranty are also excluded. In calculating distance, the miles driven to obtain or in connection with the repair, servicing or testing of the used motor vehicle that fails to conform with the implied warranty of merchantability are excluded.

D. An implied warranty of merchantability does not extend to damage that occurs after the sale of the used motor vehicle that results from:

- (1) off-road use;
- (2) racing;
- (3) towing;
- (4) abuse;
- (5) misuse;
- (6) neglect;
- (7) failure to perform regular maintenance; and
- (8) failure to maintain adequate oil, coolant and other required fluids or lubricants.

E. If the implied warranty of merchantability described in this section is breached, the consumer shall give reasonable notice to the seller within thirty days of the date of the breach. Before the consumer exercises another remedy pursuant to Chapter 55, Article 2 NMSA 1978, the seller shall have a reasonable opportunity to repair the used motor vehicle. The consumer shall pay one-half of the cost of the first two repairs necessary to bring the used motor vehicle into compliance with the warranty. The payments by the consumer are limited to a maximum payment of twenty-five dollars (\$25.00) for each repair.

F. The maximum liability of a seller pursuant to this section is limited to the purchase price paid for the used motor vehicle, to be refunded to the consumer or lender, as applicable, in exchange for return of the vehicle, unless the seller knew or should have known of the defect given the circumstances in which the vehicle was acquired or sold and the seller did not disclose that defect.

G. An agreement for the sale of a used motor vehicle by a used motor vehicle dealer is voidable at the option of the consumer unless it contains on its face the following conspicuous statement printed in boldface, ten-point or larger type set off from the body of the agreement:

“New Mexico law requires that this vehicle will be fit for the ordinary purposes for which the vehicle is used for fifteen days or five hundred miles after delivery, whichever is earlier, except with regard to particular defects disclosed on the first page of this agreement. You (the

consumer) will have to pay up to twenty-five dollars (\$25.00) for each of the first two repairs if the warranty is violated.”.

H. The inclusion in the agreement of the statement prescribed in Subsection G of this section does not create an express warranty.

I. A consumer of a used motor vehicle may waive the implied warranty of merchantability only for a particular defect in the vehicle and only if all of the following conditions are satisfied:

(1) the used motor vehicle dealer fully and accurately discloses to the consumer that because of circumstances unusual to the business of the used motor vehicle dealer, the used motor vehicle has a particular defect;

(2) the consumer agrees to buy the used motor vehicle after disclosure of the defect; and

(3) before the sale, the consumer indicates agreement to the waiver by signing and dating the following conspicuous statement that is printed on the first page of the sales agreement in boldface ten-point or larger type and that is written in the language in which the presentation was made:

“Attention consumer: sign here only if the dealer has told you that this vehicle has the following problem(s) and you agree to buy the vehicle on those terms:

1. _____
2. _____
3. _____.”.

J. A used motor vehicle dealer has the burden to prove by a preponderance of the evidence that the dealer complied with Subsection I of this section.

K. A consumer or seller that is aggrieved by a transaction pursuant to this section and that seeks a legal remedy shall pursue an appropriate remedy prescribed in Chapter 55, Article 2 NMSA 1978 and shall comply with the requirements prescribed in that article.

NEW YORK

N.Y. Gen. Bus. Law § 198-b. Sale or lease of used motor vehicles

a. Definitions. As used in this section, the following words shall have the following meanings:

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

2. “**Used motor vehicle**” means a motor vehicle, excluding motor homes and off-road vehicles, which has been purchased, leased, or transferred either after eighteen thousand miles of operation or two years from the date of original delivery, whichever is earlier;

3. “**Dealer**” means any person or business which sells, offers for sale, leases or offers for lease a used vehicle after selling, offering for sale, leasing or offering for lease three or more used vehicles in the previous twelve month period, but does not include:

(a) a bank or financial institution except in the case of a lease of a used motor vehicle,

(b) a business selling a used vehicle to an employee of that business,

(c) a regulated public utility which sells at public auction vehicles used in the ordinary course of its operations, provided that any advertisements of such sales conspicuously disclose the “as is” nature of the sale,

(d) the sale of a leased vehicle to that vehicle's lessee, a family member of the lessee, or an employee of the lessee, or

(e) the state, its agencies, bureaus, boards, commissions and authorities, and all of the political subdivisions of the state, including the agencies and authorities of such subdivisions;

4. “**Warranty**” means any undertaking in connection with the sale or lease by a dealer of a used motor vehicle to refund, repair, replace, maintain or take other action with respect to such used motor vehicle and provided at no extra charge beyond the price of the used motor vehicle;

5. “**Service contract**” means a contract in writing for any period of time or any specific mileage to refund, repair, replace, maintain or take other action with respect to a used motor vehicle and provided at an extra charge beyond the price of the used motor vehicle or of the lease contract for the used motor vehicle;

6. “**Repair insurance**” means a contract in writing for any period of time or any specific mileage to refund, repair, replace, maintain or take other action with respect to a used motor vehicle and which is regulated by the department of financial services.

b. Written warranty required; terms.

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

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

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

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

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

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

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

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

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

(e) Radiator.

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

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

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

4. The written warranty may contain additional language excluding coverage:

(a) for a failure of a covered part caused by a lack of customary maintenance;

(b) for a failure of a covered part caused by collision, abuse, negligence, theft, vandalism, fire or other casualty and damage from the environment (windstorm, lightning, road hazards, etc.);

(c) if the odometer has been stopped or altered such that the vehicle's actual mileage cannot be readily determined or if any covered part has been altered such that a covered part was thereby caused to fail;

(d) for maintenance services and the parts used in connection with such services such as seals, gaskets, oil or grease unless required in connection with the repair of a covered part;

(e) for a motor tuneup;

(f) for a failure resulting from racing or other competition;

(g) for a failure caused by towing a trailer or another vehicle unless the used motor vehicle is equipped for this as recommended by the manufacturer;

(h) if the used motor vehicle is used to carry passengers for hire;

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

(j) for repair of valves and/or rings to correct low compression and/or oil consumption which are considered normal wear;

(k) to the extent otherwise permitted by law, for property damage arising or allegedly arising out of the failure of a covered part; and

(l) to the extent otherwise permitted by law, for loss of the use of the used motor vehicle, loss of time, inconvenience, commercial loss or consequential damages.

5. Redesignated 4.

c. Failure to honor warranty.

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

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

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

2. It shall be presumed that a dealer has had a reasonable opportunity to correct a malfunction or defect in a used motor vehicle, if:

(a) The same malfunction or defect has been subject to repair three or more times by the selling or leasing dealer or his agent within the warranty period, but such malfunction or defect continues to exist; or

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

3. The term of any warranty, service contract or repair insurance shall be extended by any time period during which the used motor vehicle is in the possession of the dealer or his duly authorized agent for the purpose of repairing the used motor vehicle under the terms and obligations of said warranty, service contract or repair insurance.

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

d. Waiver void.

1. Any agreement entered into by a consumer for the purchase or lease of a used motor vehicle which waives, limits or disclaims the rights set forth in this article shall be void as contrary to public policy. Further, if a dealer fails to give the written warranty required by this article, the dealer nevertheless shall be deemed to have given said warranty as a matter of law.

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

3. Notwithstanding paragraph one of this subdivision, this article shall not apply to used motor vehicles sold for, or in the case of a lease where the value of the used motor vehicle as agreed to by the consumer and the dealer which vehicle is the subject of the contract is, less than one thousand five hundred dollars, or to used motor vehicles with over one hundred thousand miles at the time of sale or lease if said mileage is indicated in writing at the time of sale or lease. Further, this article shall not apply to the sale or lease of historical motor vehicles as defined in section four hundred one of the vehicle and traffic law.

e. Time of delivery, location of warranty and notice. The written warranty provided for in subdivision b of this section and the written notice provided for in subdivision c of this section shall be delivered to the consumer at or before the time the consumer signs the sales or lease contract for the used motor vehicle. The warranty and the notice may be set forth on one sheet or on separate sheets. They may be separate from, attached to, or a part of the sales or lease contract. If they are part of the sales or lease contract, they shall be separated from the other contract provisions and each headed by a conspicuous title.

f. Arbitration and enforcement.

1. If a dealer has established or participates in an informal dispute settlement procedure which complies in all respects with the provisions of part seven hundred three of title sixteen of the code of federal regulations the provisions of this article concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure. Dealers utilizing informal dispute settlement procedures pursuant to this subdivision shall insure that arbitrators participating in such informal dispute settlement procedures are familiar with the provisions of this section and shall provide to arbitrators and consumers who seek arbitration a copy of the provisions of this section together with the following notice in conspicuous ten point bold face type:

USED CAR LEMON LAW BILL OF RIGHTS

1. If you purchase a used car for more than one thousand five hundred dollars, or lease a used car where you and the dealer have agreed that the car's value is more than one thousand five hundred dollars, from anyone selling or leasing three or more used cars a year, you must be given a written warranty.
2. If your used car has 18,000 miles or less, you may be protected by the new car lemon law.
3. (a) If your used car has more than 18,000 miles and up to and including 36,000 miles, a warranty must be provided for at least 90 days or 4,000 miles, whichever comes first.

(b) If your used car has more than 36,000 miles but less than 80,000 miles, a warranty must be provided for at least 60 days or 3,000 miles, whichever comes first.

(c) If your used car has 80,000 miles or more but no more than 100,000 miles, a warranty must be provided for at least 30 days or 1,000 miles, whichever comes first. Cars with over 100,000 miles are not covered.
4. If your engine, transmission, drive axle, brakes, radiator, steering, alternator, generator, starter, or ignition system (excluding the battery) are defective, the dealer or his agent must repair or, if he so chooses, reimburse you for the reasonable cost of repair.
5. If the same problem cannot be repaired after three or more attempts, you are entitled to return the car and receive a refund of your purchase price or of all payments made under your lease contract, and of sales tax and fees, minus a reasonable allowance for any damage not attributable to normal usage or wear, and, in the case of a lease contract, a cancellation of all further payments you are otherwise required to make under the lease contract.
6. If your car is out of service to repair a problem for a total of fifteen days or more during the warranty period you are entitled to return the car and receive a refund of your purchase price or of all payments made under your lease contract, and of sales tax and fees, minus a reasonable allowance for any damage not attributable to normal usage or wear, and, in the case of a lease contract, a cancellation of all further payments you are otherwise required to make under the lease contract.

7. A dealer may put into the written warranty certain provisions which will prohibit your recovery under certain conditions; however, the dealer may not cause you to waive any rights under this law.

8. A dealer may refuse to refund your purchase price, or the payments made under your lease contract, if the problem does not substantially impair the value of your car, or if the problem is caused by abuse, neglect, or unreasonable modification.

9. If a dealer has established an arbitration procedure, the dealer may refuse to refund your purchase price until you first resort to the procedure. If the dealer does not have an arbitration procedure, you may resort to any remedy provided by law and may be entitled to your attorney's fees if you prevail.

10. As an alternative to the arbitration procedure made available through the dealer you may instead choose to submit your claim to an independent arbitrator, approved by the attorney general. You may have to pay a fee for such an arbitration. Contact your local consumer office or attorney general's office to find out how to arrange for independent arbitration.

11. If any dealer refuses to honor your rights or you are not satisfied by the informal dispute settlement procedure, complain to the New York State Attorney General, Executive Office, Capitol, Albany, N.Y. 12224.

2. A dealer shall have up to thirty days from the date of notice by the consumer that the arbitrator's decision has been accepted to comply with the terms of such decision. Provided, however, that nothing contained in this subdivision shall impose any liability on a dealer where a delay beyond the thirty day period is attributable to a consumer who has requested a particular replacement vehicle or otherwise made compliance impossible within said period.

3. Upon the payment of a prescribed filing fee, a consumer shall have the option of submitting any dispute arising under this section to an alternate arbitration mechanism established pursuant to regulations promulgated hereunder by the attorney general. Upon application of the consumer and payment of the filing fee, the dealer shall submit to such alternate arbitration.

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

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

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

who has requested a particular replacement vehicle or otherwise made compliance impossible within said period.

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

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

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

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

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

RHODE ISLAND

§ 31-5.4-1. Sale of used motor vehicles—Definitions

As used in this chapter, the following words have the following meanings:

(1) "Consumer" means the purchaser, other than for purposes of resale, of a used motor vehicle normally used for personal, family, or household purposes and subject to a warranty, and the spouse or child of the purchaser if the motor vehicle is transferred to the spouse or child during the duration of any warranty applicable to the motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty;

(2) "Dealer" means any person or business which sells or offers for sale a used vehicle after selling or offering for sale three (3) or more used vehicles in the previous twelve (12) month period, but does not include a bank or financial institution, a business selling a used vehicle to an employee of that business, a lessor selling a leased vehicle to that vehicle's lessee, a family member of the lessee, or an employee of the lessee, or the state, its agencies,

bureaus, boards, commissions, and authorities, and all of the political subdivisions of the state, including the agencies and authorities of any subdivision;

(3) "Repair insurance" means a contract in writing for any period of time or any specific mileage to refund, repair, replace, maintain, or take other action with respect to a used motor vehicle and which is regulated by the department of business regulation;

(4) "Service contract" means a contract in writing for any period of time or any specific mileage to refund, repair, replace, maintain, or take other action with respect to a used motor vehicle and provided at an extra charge beyond the price of the used motor vehicle;

(5) "Used motor vehicle" means a passenger motor vehicle, excluding motorcycles, motor homes, and off-road vehicles, which has been driven more than the limited use necessary in moving or road-testing a new vehicle prior to delivery;

(6) "Warranty" means any undertaking in connection with the sale by a dealer of a used motor vehicle to refund, repair, replace, maintain, or take other action with respect to the used motor vehicle and provided at no extra charge beyond the price of the used motor vehicle.

§ 31-5.4-2. Written warranty required—Terms

(a) No dealer shall sell a used motor vehicle to a consumer without giving the consumer a written warranty which shall at minimum apply for the following terms:

(1) If the used motor vehicle has thirty-six thousand (36,000) miles or less, the warranty shall be at a minimum of sixty (60) days or three thousand (3,000) miles, whichever comes first.

(2) If the used motor vehicle has more than thirty-six thousand (36,000) miles, but not more than one hundred thousand (100,000) miles, the warranty shall be at a minimum of thirty (30) days or one thousand (1,000) miles, whichever comes first.

(b) The written warranty shall require the dealer or his or her agent to repair or, at the election of the dealer, reimburse the consumer for the reasonable cost of repairing the failure of a covered part. Covered parts shall at least include the following items:

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

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

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

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

(5) Radiator.

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

(7) The alternator, generator, starter, and ignition system, excluding the battery.

(c) Any required repair or reimbursement shall be made by the dealer notwithstanding the fact that the warranty period has expired, provided the consumer notifies the dealer of the failure of a covered part within the specified warranty period.

(d) If a new car warranty is in effect at the time of the sale of the used motor vehicle, then the warranty specified in this section shall be required only for the period of time, if any, between the expiration of the new car warranty and the period specified in subsection (a) of this section.

(e) The written warranty may contain additional language excluding coverage:

(1) For a failure of a covered part caused by a lack of customary maintenance;

(2) For a failure of a covered part caused by collision, abuse, negligence, theft, vandalism, fire, or other casualty and damage from the environment (windstorm, lightning, road hazards, etc.);

(3) If the odometer has been stopped or altered so that the vehicle's actual mileage cannot be readily determined or if any covered part has been altered so that a covered part was thereby caused to fail;

(4) For maintenance services and the parts used in connection with those services such as seals, gaskets, oil, or grease unless required in connection with the repair of a covered part;

(5) For a motor tune-up;

(6) For a failure resulting from racing or other competition;

(7) For a failure caused by towing a trailer or another vehicle unless the used motor vehicle is equipped for this as recommended by the manufacturer;

(8) If the used motor vehicle is used to carry passengers for hire;

(9) If the used motor vehicle is rented to someone else;

(10) For repair of valves and/or rings to correct low compression and/or oil consumption which are considered normal wear;

(11) To the extent otherwise permitted by law, for property damage arising or allegedly arising out of the failure of a covered part; and

(12) To the extent otherwise permitted by law, for loss of the use of the used motor vehicle, loss of time, inconvenience, commercial loss, or consequential damages.

§ 31-5.4-3. Failure to honor warranty

(a) If the dealer or his or her agent fails to correct a malfunction or defect as required by the warranty specified in this section which substantially impairs the value of the used motor vehicle to the consumer after a reasonable period of time, the dealer shall accept the return of the used motor vehicle from the consumer and refund to the consumer the full purchase price including sales or compensating use tax, less a reasonable allowance for any damage not attributable to normal wear or usage, and an adjustment for any modifications which either increase or decrease the market value of the vehicle. In determining the purchase price to be refunded, the purchase price shall be deemed equal to the sum of the actual cash difference paid for the used motor vehicle plus, if the dealer elects to not return any vehicles traded-in by the consumer, the

wholesale value of those traded-in vehicles as listed in the National Auto Dealers' Association Used Car Guide, or any other guide that may be specified in regulations promulgated by the administrator of the division of motor vehicles, as adjusted for mileage, improvements, and any major physical or mechanical defects in the traded-in vehicle at the time of trade-in. The contract of sale for the used motor vehicle shall include conspicuous language indicating that if the consumer should be entitled to a refund pursuant to this section, the value of any vehicle traded-in by the consumer, if the dealer elects to not return it to the consumer, for purposes of determining the amount of the refund will be determined by reference to the National Auto Dealers' Association Used Car Guide wholesale value, or any other guide that may be approved by the administrator of the division of motor vehicles, as adjusted for mileage, improvements, and any major physical or mechanical defects, rather than the value listed in the sales contract. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear on the records of ownership kept by the division of motor vehicles. If the amount to be refunded to the lienholder will be insufficient to discharge the lien, the dealer shall notify the consumer in writing by registered or certified mail that the consumer has thirty (30) days to pay the lienholder the amount which, together with the amount to be refunded by the dealer, will be sufficient to discharge the lien. The notice to the consumer shall contain conspicuous language warning the consumer that failure to pay those funds to the lienholder within thirty (30) days will terminate the dealer's obligation to provide a refund. If the consumer fails to make the payment within thirty (30) days, the dealer shall have no further responsibility to provide a refund under this section. Alternatively, the dealer may elect to offer to replace the used motor vehicle with a comparably priced vehicle, with any adjustment in price that the parties may agree to. The consumer shall not be obligated to accept a replacement vehicle, but may instead elect to receive the refund provided under this section. It shall be an affirmative defense to any claim under this section that:

- (1) The malfunction or defect does not substantially impair the used motor vehicle's value; or
- (2) The malfunction or defect is the result of abuse, neglect, or unreasonable modifications or alterations of the used motor vehicle.

(b) It shall be presumed that a dealer has had a reasonable opportunity to correct a malfunction or defect in a used motor vehicle, if:

- (1) The same malfunction or defect has been subject to repair three (3) or more times by the selling dealer or his or her agent within the warranty period, but the same malfunction or defect continues to exist; or
- (2) The vehicle is out of service by reason of repair or malfunction or defect for a cumulative total of fifteen (15) or more days during the warranty period. That period shall not include days when the dealer is unable to complete the repair because of the unavailability of necessary repair parts. The dealer shall be required to exercise due diligence in attempting to obtain necessary repair parts. If, however, a vehicle has been out of service for a cumulative total of forty-five (45) days, even if a portion of that time is attributable to the unavailability of replacement parts, the consumer shall be entitled to the replacement or refund remedies provided in this section.

(c) The term of any warranty, service contract, or repair insurance shall be extended by any time period during which the used motor vehicle is in the possession of the dealer or his or her duly authorized agent for the purpose of repairing the used motor vehicle under the terms and obligations of the warranty, service contract, or repair insurance.

(d) The term of any warranty, service contract, or repair insurance, and the fifteen (15) days out-of-service period, shall be extended by any time during which repair services are not available to the consumer because of a war, invasion or strike, fire, flood, or other natural disaster.

§ 31-5.4-4. Waiver notice

(a) Whenever any agreement is entered into by a consumer with a dealer for the purchase of a used motor vehicle, which waives or disclaims the rights set forth in this chapter, the dealer shall post a notice unobstructed and conspicuously on the windshield of the vehicle to be sold. The notice shall be at least eight and one-half inches (8 ½ ") by eleven inches (11") in size, in bold print one inch in height, and shall state, "NO WARRANTY AS TO CONDITION -- SOLD AS IS".

(b) Whenever any dealer enters into an agreement with a consumer for a purchase of a motor vehicle, any waiver or disclaimer of the rights set forth in this chapter shall be printed on the bill of sale in a type size larger and of a different color than any other type on the bill of sale. The waiver shall be separately initialed by the purchaser and the dealer.

(c) Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

(d) Notwithstanding subsection (a) of this section, this chapter shall not apply to used motor vehicles sold for less than one thousand five hundred dollars (\$1,500). Further, this chapter shall not apply to the sale of classic cars registered pursuant to this title.

§ 31-5.4-5. Arbitration and enforcement

(a) If a dealer has established or participates in an informal dispute settlement procedure which complies in all respects with the provisions of 16 CFR Part 703 the provisions of this chapter concerning refunds or replacement shall not apply to any consumer who has not first resorted to that procedure.

(b) In no event shall a consumer who has resorted to an informal dispute settlement procedure be precluded from seeking the rights or remedies available by law.

(c) In an action brought to enforce the provisions of this chapter, the court may award reasonable attorneys' fees to a prevailing plaintiff.

(d) Any action brought pursuant to this chapter shall be commenced within four (4) years of the date of original delivery of the used motor vehicle to the consumer.

§ 31-5.4-6. Disclosure of rights

(a) The director of the department of revenue shall promulgate rules, regulations and forms to implement the notice provision in subsection (b) of this section. The forms promulgated by the director shall be used by every dealer in the sale of every automobile protected by this chapter.

(b) Clear and conspicuous notice of the warranties created by this chapter of the rights pertaining to them 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. 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 department of revenue.

(c) A seller's failure to provide the buyer with the documents and forms promulgated by the director of the department of revenue pursuant to this section shall constitute prima facie evidence of bad faith and unfair and deceptive trade practice under § 6-13.1-1. Violations of this section shall be actionable by the buyer under §§ 31-5.4-5 and 6-13.1-5.2.

VIRGIN ISLANDS

§ 182 Sale of used motor vehicles; warranty

(a) This section does not apply to sales by private individuals or financial institutions pursuant to security agreement. In all cases of sales by a used car dealer, the consumer shall be provided a written statement indicating whether or not the manufacturer's express warranty applies to the used motor vehicle being purchased.

(b) No used car dealer shall sell a used motor vehicle to a consumer without giving the consumer a written warranty which shall, at a minimum, conform to the following terms:

(1) If the used motor vehicle has less than 24,000 miles, the warranty must be, at a minimum, four months or 3,000 miles, whichever comes first;

(2) If the used motor vehicle has more than 24,000 miles, but less than 50,000 miles, the warranty must be, at a minimum, 60 days or 1,500 miles, whichever comes first.

(3) If the motor vehicle has more than 50,000 miles, no warranty shall apply to the sale of the vehicle.

(c) Nothing contained in this section shall prevent or prohibit a used car dealer from granting a warranty, if no warranty is provided for, or from granting a warranty greater than the warranty provided for in this section.

(d) The written warranty shall require the used car dealer, or the dealer's agent, to repair or, at the election of the consumer, reimburse the consumer for the reasonable cost of repairing the failure of a covered part. Covered parts shall, at a minimum, include the following items:

(1) Engine: all lubricated parts, manifold, engine block, cylinder head, rotary engine housings, and flywheel;

(2) Transmission: the transmission case, internal parts, and the torque converter;

(3) Drive axle: shafts, propeller shafts;

(4) Brakes: master cylinder, vacuum assist booster, wheel cylinder, hydraulic lines and fittings and disc brake calipers;

(5) Radiator;

(6) Steering: the steering gear housing and all internal parts, valve body, piston and rack;

(7) Electrical: alternator, starter, and ignition system, excluding the battery.

(e) The repair or reimbursement shall be made by the used car dealer, notwithstanding the fact that the warranty period has expired, provided, however, the consumer notifies the used car dealer of the failure of a covered part within the specified warranty period.

(f) If the express warranty period provided for in section 181 of this chapter is in effect at the time of the sale of the used motor vehicle, then the warranty specified in this section shall be required only for the remaining period of time, if any, between the expiration of the section 181 express warranty and the period specified in this section.

(g) The written warranty may contain additional language excluding coverage for the following:

(1) A failure of a covered part caused by a lack of customary maintenance;

(2) A failure of a covered part caused by collision, abuse, negligence, theft, vandalism, fire or other casualty;

(3) If the odometer has been stopped or altered such that the vehicle's actual mileage cannot be readily determined or if any covered part has been altered such that a covered part was thereby caused to fail;

(4) Maintenance services and the parts used in connection with such services such as seals, gaskets, oil or grease, unless required in connection with the repair of a covered part;

(5) A motor tune-up;

(6) A failure resulting from racing or other competition;

(7) A failure caused by towing a trailer or another vehicle, unless the used motor vehicle is equipped for this as recommended by the manufacturer;

(8) If the used motor vehicle is used to carry passengers for hire;

(9) If the used motor vehicle is rented to someone else;

(10) The repair of valves and/or rings to correct low compression and/or oil consumption which are considered normal wear, unless failure of valves or low compression occurs within 15 days of purchase;

(11) To the extent otherwise permitted by law, property damage arising out of the failure of a covered part;

(12) To the extent otherwise permitted by law, loss of use of the used motor vehicle, loss of time, inconvenience, commercial loss or consequential damages.

(h) If the used car dealer, or his agent, after receiving written notice of the nonconformity or defect fails to correct a malfunction or defect as required by the warranty specified in this section after a period of time, but not more than 30 days, and such malfunction or defect substantially impairs the value of the used motor vehicle to the consumer, the used car dealer shall accept return of the used motor vehicle from the consumer and refund to the consumer the full purchase price, including taxes, less a reasonable allowance for any modification which either increases or decreases the market value of the motor vehicle. In determining the purchase price to be refunded, the purchase price shall be deemed equal to the sum of the actual cash difference paid for the used motor vehicle plus, if the used car dealer elects not to return any motor vehicle trade-in by the consumer, the wholesale value of any such traded-in

motor vehicle as listed in the National Automobile Dealers Association Used Car Guide, or such other guide as may be specified in regulations promulgated by the Commissioner, as adjusted for mileage, improvements, and any other physical or mechanical defects, rather than the value listed in the sales contract.

(i)

(1) The contract of sale for the used motor vehicle shall include conspicuous language indicating how the value of any vehicle traded in by the consumer is to be determined if the consumer should become entitled to a refund pursuant to this section, because the dealer elected not to return the trade-in to the consumer. The amount of such refund shall be determined by reference to the National Automobile Dealers Association Used Car Guide wholesale value or such other guide as may be approved by the Commissioner, as adjusted for mileage, improvements and any physical or mechanical defects, rather than the value listed in the sales contract.

(2) Refunds shall be made jointly to the consumer and lienholder, if any, as their interests may appear in the records of the lien held at the office of the Lieutenant Governor. The consumer shall provide the manufacturer/dealer with evidence of clear title or with copies of any security instruments or agreements. In the event of clear title, a refund shall be made to the consumer. In the event of a lien, the refund shall be made jointly to the consumer and lienholder.

(3) In the alternative, the dealer may elect to replace the motor vehicle with a comparably priced motor vehicle, with such adjustments in price as the parties may agree to. An adjustment for reasonable use as defined in section 180, subsection (n), of this chapter, shall be allowed. In the event the vehicle to be replaced is subject to a lien, the consumer shall present evidence to the dealer of free and clear title prior to receipt of a replacement or refund. The dealer shall provide the consumer with all documents necessary to facilitate production of free and clear title for the replacement vehicle.

(j) It shall be an affirmative defense to any claim under this section that the malfunction or defect is the result of abuse, neglect, or unreasonable modifications or alterations of the used motor vehicle.

(k) It shall be presumed that a dealer has had a reasonable opportunity to correct a malfunction or defect in the used motor vehicle if:

(1) The same malfunction or defect has been subject to repair three or more times by the selling dealer or his agent, within the warranty period, but the malfunction or defect continues to exist; or

(2) The motor vehicle is out of service by reason of repair or malfunction or defect for a cumulative total of 30 or more business days during the warranty period.

(l) In the event the used car dealer repairs a nonconformity, the repair must be guaranteed for a period of 30 days or the remainder of the warranty, whichever is greater.

(m) The term of any warranty, the term of the service contract, and the 30 business day out-of-service period, shall be extended by any time during which repair services are not available to the consumer because of war, invasion, earthquake, hurricane, strike, fire, flood or other disaster, or any event which delays repair services.

(n) Any agreement, except when selling through a dealer, entered in by consumers for purchase of a used motor vehicle which waives, limits, or disclaims the rights set forth in this section shall be void as contrary to public policy. If a used car dealer fails to give the written warranty required by this section, the used car dealer shall nevertheless be deemed to have given the warranty as a matter of law.

(o) Nothing in this section shall in any way limit the rights or remedies which are otherwise available under any other law.

(p) This section shall not apply to used motor vehicles with 50,000 miles or more or motor vehicles which are sold for less than \$2,300. Such vehicles may be sold 'AS-IS'. For vehicles sold under this subsection, the dealer shall post a notice, unobstructed and conspicuously on the vehicle to be sold such as the 'Buyer's Guide Form' set out in Federal Trade Commission (FTC) Rules 16 CFR 455. This form must be signed by the consumer.

(q) In an action brought to enforce the provisions of this section, the court may award reasonable attorney's fees and costs to a prevailing plaintiff.

(r) Any legal action brought pursuant to this section shall be commenced within two years following the expiration of any express warranty term.

WEST VIRGINIA

W. Va. Code, § 46A-6-107

§ 46A-6-107. Disclaimer of warranties and remedies prohibited

(a) Except as otherwise provided in subsection (b) of this section, with respect to goods which are the subject of or are intended to become the subject of a consumer transaction, no merchant may:

- (1) Exclude, modify, or otherwise attempt to limit any warranty, express, or implied, including the warranties of merchantability and fitness for a particular purpose; or
- (2) Exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express, or implied.

(b) A consumer who purchases a used manufactured home may waive the warranties of merchantability and fitness for a particular purpose, or waive a warranty as to a particular defect or malfunction which the merchant has identified and disclosed in writing to the consumer, if the used manufactured home is not being sold for human habitation: Provided, That notice be posted on the front door of the used manufactured home that it is not being sold for human habitation: Provided, however, That the waiver is not effective unless the waiver:

- (1) Is in writing;
- (2) Is conspicuous and is in plain language;
- (3) Identifies with particularity the disclosed defect or malfunction, if any, in the used manufactured home for which the warranty is to be waived;

- (4) Describes any additional defects or malfunctions, if any, disclosed to the merchant by a previous owner of the used manufactured home or discoverable by the merchant after an inspection of the used manufactured home;
- (5) States that the warranty being waived applies only to the disclosed defect or malfunction, if any, to the extent the merchant intends to waive a warranty as to a specific defect;
- (6) Acknowledges that the used manufactured home will not be used for human habitation: Provided, That the consumer shall sign or initial such provision in order to evidence the consumer's acknowledgment thereof; and
- (7) Is signed by both the consumer and the merchant before the sales contract is executed.

For purposes of this subsection, "used manufactured home" means a manufactured home, as defined in § 21-9-2 of this code, that is more than four years old from its date of production and has previously been occupied, used, or sold for purposes other than resale.

§ 46A-6-107a. Used motor vehicles sold "as is"

(a) Notwithstanding the provisions of § 46A-6-107 of this code, a used motor vehicle may be sold "as is" if:

- (1) The vehicle is inoperable and a total loss;
- (2) The vehicle has been custom built or modified for show purposes or racing; or
- (3) The vehicle is the following:
 - (A) Sold for less than \$4,000;
 - (B) Driven more than 100,000 miles at the time sold; or
 - (C) Seven years of age or older as calculated from January 1 of the designated model year of the vehicle.

(b) A buyer who purchases a vehicle "as is" that meets the criteria set out in the provisions of § 46A-6-107a(a)(3) of this code shall have the right to cancel the sale by the end of the dealer's third business day following the sale. To cancel the sale, the "as is" vehicle must have a significant mechanical issue or issues that can be reasonably expected to have existed at the time of the sale. Cancellation shall become effective when the buyer returns the "as is" vehicle to the point of sale by the end of the dealer's third business day following the sale.

(c) For the purposes of this section, a used motor vehicle is a "total loss" only if:

- (1) There is material damage to the vehicle's frame, unitized structure, or suspension system; and
- (2) The projected cost of repairing the damage exceeds the market value of the vehicle at the time of the incident causing it to be declared a total loss.

(d) If a used motor vehicle is sold "as is" pursuant to this section, a merchant shall satisfy the following disclaimer requirements:

- (1) A disclaimer must appear on the front page of the contract of sale;

(2) The disclaimer shall read as follows:

“AS IS”

THIS VEHICLE IS SOLD “AS IS”. THIS MEANS THAT YOU WILL LOSE YOUR IMPLIED WARRANTIES. YOU WILL HAVE TO PAY FOR ANY REPAIRS NEEDED AFTER THE SALE. IF WE HAVE MADE ANY PROMISES TO YOU, THE LAW SAYS WE MUST KEEP OUR PROMISES EVEN IF WE SELL “AS IS”. TO PROTECT YOURSELF, ASK US TO PUT ALL PROMISES IN WRITING. YOU MAY HAVE THE RIGHT TO CANCEL THIS SALE BY THE END OF THE DEALER'S THIRD BUSINESS DAY FOLLOWING THE SALE IF THE VEHICLE HAS SIGNIFICANT MECHANICAL ISSUE THAT CAN BE REASONABLY EXPECTED TO HAVE EXISTED AT THE TIME OF THE SALE.

(3) The text of the disclaimer must be printed in 12-point boldfaced type, except the heading, which must be in 16-point extra boldfaced type;

(4) The entire disclaimer must be boxed;

(5) The consumer shall sign and date within the box containing the disclaimer prior to the sale;

(6) The merchant shall describe in writing any defects or malfunctions, if any, disclosed to the merchant by a previous owner of the used motor vehicle or discoverable by the merchant after an inspection of the used motor vehicle; and

(7) The merchant shall provide the consumer a copy of a nationally recognized vehicle history report for the used motor vehicle.

(e) An “as is” sale of a used motor vehicle waives implied warranties, but does not waive any express warranties, either oral or written, upon which the consumer relied in entering into the transaction.

(f) The provisions of this section do not apply to motor vehicles sold as surplus by a state agency.

(g) The provisions of this section only apply to sales directly to consumers.