

[First Reprint]

ASSEMBLY, No. 3396

STATE OF NEW JERSEY
213th LEGISLATURE

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Sponsored by:

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District 24 (Sussex, Hunterdon and Morris)

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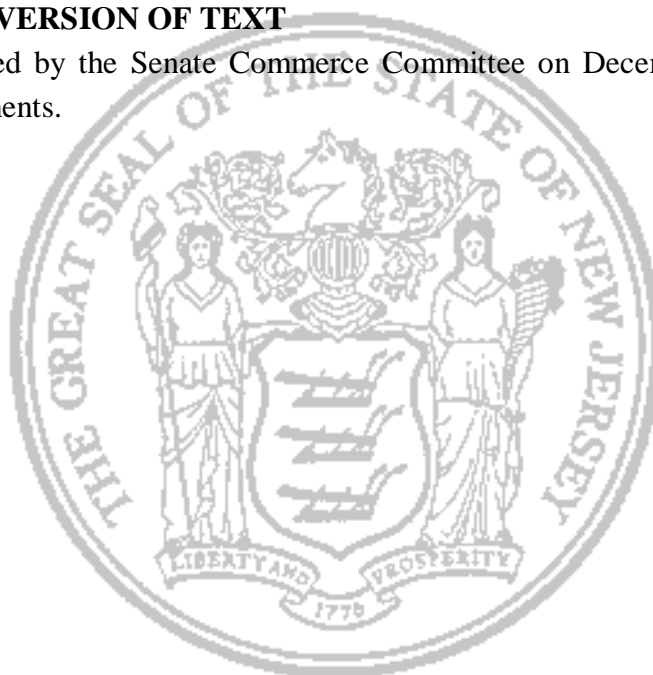
Assemblyman Connors, Senators Oroho and Buono

SYNOPSIS

Provides authorized emergency vehicles protection under lemon law.

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on December 14, 2009,
with amendments.



(Sponsorship Updated As Of: 1/8/2010)

1 AN ACT concerning certain new motor vehicle warranties and
2 amending P.L.1988, c.123.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 ¹1. Section 1 of P.L.1988, c.123 (C.56:12-29) is amended to
8 read as follows:

9 1. The Legislature finds that the purchase of a new motor
10 vehicle is a major, high cost consumer transaction and the inability
11 to correct defects in these vehicles creates a major hardship and an
12 unacceptable economic burden on the consumer. It is the intent of
13 this act to require the manufacturer of a new motor vehicle, or, in
14 the case of a new motor vehicle that is an authorized emergency
15 vehicle, the manufacturer, co-manufacturer, or post-manufacturing
16 modifier, to correct defects originally covered under **[**the
17 manufacturer's**]** warranty which are identified and reported within a
18 specified period. It is the further intent of this act to provide
19 procedures to expeditiously resolve disputes between a consumer
20 and a manufacturer, co-manufacturer, or post-manufacturing
21 modifier when defects in a new motor vehicle are not corrected
22 within a reasonable time, and to provide to award specific remedies
23 where the uncorrected defect substantially impairs the use, value, or
24 safety of the new motor vehicle.¹

25 (cf: P.L.1988, c.123, s.1)

26

27 **[1] 2.**¹ Section 2 of P.L.1988, c.123 (C.56:12-30) is
28 amended to read as follows:

29 2. As used in this act:

30 ¹“Co-manufacturer” means, solely with respect to an authorized
31 emergency vehicle as defined in R.S.39:1-1, any person that
32 fabricates the authorized emergency vehicle utilizing a component
33 or components of a new motor vehicle made by a manufacturer,
34 other than modifying an existing standard model of a vehicle
35 manufactured by a manufacturer, which component or components
36 are obtained by the co-manufacturer from the manufacturer to
37 fabricate the vehicle for use as an authorized emergency vehicle
38 prior to an initial retail sale or lease of the emergency vehicle.¹

39 "Consumer" means a buyer or lessee, other than for purposes of
40 resale or sublease, of a motor vehicle; a person to whom a motor
41 vehicle is transferred during the duration of a warranty applicable to
42 the motor vehicle; or any other person entitled by the terms of the
43 warranty to enforce the obligations of the warranty.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted December 14, 2009.

1 "Dealer" means a person who is actively engaged in the business
2 of buying, selling or exchanging motor vehicles at retail and who
3 has an established place of business.

4 "Director" means the Director of the Division of Consumer
5 Affairs in the Department of Law and Public Safety, or his
6 designee.

7 "Division" means the Division of Consumer Affairs in the
8 Department of Law and Public Safety.

9 "Informal dispute settlement procedure" means an arbitration
10 process or procedure by which the manufacturer, or, in the case of
11 an authorized emergency vehicle, the manufacturer, co-
12 manufacturer, or post-manufacturing modifier, attempts to resolve
13 disputes with consumers regarding motor vehicle nonconformities
14 and repairs that arise during the vehicle's warranty period.¹

15 "Lease agreement" means a contract or other written agreement
16 in the form of a lease for the use of a motor vehicle by a person for
17 a period of time exceeding 60 days, whether or not the lessee has
18 the option to purchase or otherwise become the owner of the motor
19 vehicle at the expiration of the lease.

20 "Lessee" means a person who leases a motor vehicle pursuant to
21 a lease agreement.

22 "Lessor" means a person who holds title to a motor vehicle
23 leased to a lessee under a lease agreement or who holds the lessor's
24 rights under such an agreement.

25 "Lien" means a security interest in a motor vehicle.

26 "Lienholder" means a person with a security interest in a motor
27 vehicle pursuant to a lien.

28 "Manufacturer" means a person engaged in the business of
29 manufacturing, assembling or distributing motor vehicles, who will,
30 under normal business conditions during the year, manufacture,
31 assemble or distribute to dealers at least 10 new motor vehicles.

32 **["Manufacturer's informal dispute settlement procedure" means**
33 **an arbitration process or procedure by which the manufacturer**
34 **attempts to resolve disputes with consumers regarding motor**
35 **vehicle nonconformities and repairs that arise during the vehicle's**
36 **warranty period.**

37 "Manufacturer's warranty" or "warranty" means any warranty,
38 whether express or implied of the manufacturer of a new motor
39 vehicle of its condition and fitness for use, including any terms or
40 conditions precedent to the enforcement of obligations under the
41 warranty.]¹

42 "Motor vehicle" means a passenger automobile , authorized
43 emergency vehicle ^{1,1} or motorcycle as defined in R.S.39:1-1 which
44 is purchased or leased in the State of New Jersey or which is
45 registered by the **[Division of Motor Vehicles in the Department of**
46 **Law and Public Safety]** New Jersey Motor Vehicle Commission,
47 except the living facilities of motor homes.

1 "Nonconformity" means a defect or condition which
2 substantially impairs the use, value or safety of a motor vehicle.

3 ¹"Post-manufacturing modifier" means, solely with respect to an
4 authorized emergency vehicle as defined in R.S.39:1-1, any person
5 who modifies the configuration of an existing standard model of a
6 motor vehicle purchased from a manufacturer to adapt the vehicle
7 for use as an authorized emergency vehicle prior to an initial retail
8 sale or lease of the vehicle.¹

9 "Reasonable allowance for vehicle use" means the mileage at the
10 time the consumer first presents the motor vehicle to the dealer
11 ¹["or] , distributor, ¹ manufacturer , ¹ co-manufacturer, or post-
12 manufacturing modifier¹ for correction of a nonconformity times
13 the purchase price, or the lease price if applicable, of the vehicle,
14 divided by one hundred thousand miles.

15 ¹"Warranty" means any warranty, whether express or implied of
16 the manufacturer of a new motor vehicle, or, in the case of a new
17 motor vehicle that is an authorized emergency vehicle, of the
18 manufacturer, co-manufacturer or post-manufacturing modifier, of
19 the vehicle's condition and fitness for use, including any terms or
20 conditions precedent to the enforcement of obligations under the
21 warranty.¹

22 (cf: P.L.1993, c.21, s.3)

23

24 ¹3. Section 3 of P.L.1988, c.123 (C.56:12-31) is amended to
25 read as follows:

26 3. If a consumer reports a nonconformity in a motor vehicle to
27 the manufacturer , or, in the case of a motor vehicle that is an
28 authorized emergency vehicle, the manufacturer, co-manufacturer
29 or post-manufacturing modifier, or its dealer or distributor, during
30 the first 24,000 miles of operation or during the period of two years
31 following the date of original delivery to the consumer, whichever
32 is earlier, the manufacturer , co-manufacturer, or post-
33 manufacturing modifier shall make, or arrange with its dealer or
34 distributor to make, within a reasonable time, all repairs necessary
35 to correct the nonconformity. Such repairs if made after the first
36 12,000 miles of operation or after the period of one year following
37 the date of original delivery to the consumer, whichever is earlier,
38 shall be paid for by the consumer, unless otherwise covered by a
39 ["manufacturer's"] warranty of the manufacturer, co-manufacturer or
40 post-manufacturing modifier, and shall be recoverable as a cost
41 under section 14 of this act.¹

42 (cf: P.L.2009, c.128, s.1)

43

44 ¹4. Section 4 of P.L.1988, c.123 (C.56:12-32) is amended to
45 read as follows:

46 4. a. If, during the period specified in section 3 of this act, the
47 manufacturer , or, in the case of an authorized emergency vehicle,

1 the manufacturer, co-manufacturer, or post-manufacturing modifier,
2 of that part of the motor vehicle containing the nonconformity, or
3 its dealer or distributor, is unable to repair or correct **[a]** the
4 nonconformity within a reasonable time, the manufacturer, co-
5 manufacturer, or post-manufacturing modifier shall accept return of
6 the motor vehicle from the consumer.

7 **[The]** (1) In the case of a motor vehicle, other than an
8 authorized emergency vehicle as set forth in paragraph (2) of this
9 subsection, the manufacturer shall provide the consumer with a full
10 refund of the purchase price of the original motor vehicle including
11 any stated credit or allowance for the consumer's used motor
12 vehicle, the cost of any options or other modifications arranged,
13 installed, or made by the manufacturer or its dealer within 30 days
14 after the date of original delivery, and any other charges or fees
15 including, but not limited to, sales tax, license and registration fees,
16 finance charges, reimbursement for towing and reimbursement for
17 actual expenses incurred by the consumer for the rental of a motor
18 vehicle equivalent to the consumer's motor vehicle and limited to
19 the period during which the consumer's motor vehicle was out of
20 service due to **[a]** the nonconformity, less a reasonable allowance
21 for vehicle use.

22 (2) In the case of an authorized emergency vehicle, the
23 manufacturer, co-manufacturer, or post-manufacturing modifier
24 shall provide the consumer with a full refund of the purchase price
25 of the original emergency vehicle, depending on the source of the
26 nonconformity, including any stated credit or allowance for the
27 consumer's used emergency vehicle, as well as any other charges or
28 fees, including, but not limited to, sales tax, license and registration
29 fees, reimbursement for towing and reimbursement for actual
30 expenses incurred by the consumer for the rental of a substitute
31 emergency vehicle, if applicable, for the period during which the
32 consumer's emergency vehicle was out of service due to the
33 nonconformity.

34 (3) Nothing [herein] in this subsection shall be construed to
35 preclude a manufacturer, co-manufacturer, or post-manufacturing
36 modifier from making an offer to replace the vehicle in lieu of a
37 refund; except that the consumer may, in any case, reject **[a**
38 **manufacturer's]** an offer of replacement and demand a refund.
39 Refunds shall be made to the consumer and lienholder, if any, as
40 their interests appear on the records of ownership maintained by the
41 **[Director]** Chief Administrator of the **[Division of]** New Jersey
42 Motor [Vehicles] Vehicle Commission. In the event that the
43 consumer accepts an offer to replace the motor vehicle in lieu of a
44 refund, it shall be the manufacturer's, co-manufacturer's, or post-
45 manufacturing modifier's responsibility to insure that any lien on
46 the returned motor vehicle is transferred to the replacement vehicle.

1 b. A consumer who leases a new motor vehicle shall have the
2 same remedies against a manufacturer, co-manufacturer, or post-
3 manufacturing modifier under this section as a consumer who
4 purchases a new motor vehicle. If it is determined that the lessee is
5 entitled to a refund pursuant to subsection a. of this section, the
6 consumer shall return the leased vehicle to the lessor or
7 manufacturer, co-manufacturer, or post-manufacturing modifier,
8 and the consumer's lease agreement with the motor vehicle lessor
9 shall be terminated and no penalty for early termination shall be
10 assessed. The manufacturer, co-manufacturer, or post-
11 manufacturing modifier shall provide the consumer with a full
12 refund of the amount actually paid by the consumer under the lease
13 agreement, including any additional charges as set forth in
14 subsection a. of this section if actually paid by the consumer, less a
15 reasonable allowance for vehicle use. The manufacturer, co-
16 manufacturer, or post-manufacturing modifier shall provide the
17 motor vehicle lessor with a full refund of the vehicle's original
18 purchase price plus any unrecovered interest expense, less the
19 amount actually paid by the consumer under the agreement.
20 Refunds shall be made to the lessor and lienholder, if any, as their
21 interests appear on the records of ownership maintained by the
22 **【Director】** Chief Administrator of the **【Division of】** Motor
23 **【Vehicles】** Vehicle Commission.¹

24 (cf: P.L.1988, c.123, s.4)

25

26 ¹5. Section 5 of P.L.1988, c.123 (C.56:12-33) is amended to
27 read as follows:

28 5. a. It is presumed that a manufacturer, or, in the case of an
29 authorized emergency vehicle, the manufacturer, co-manufacturer,
30 or post-manufacturing modifier, or its dealer or distributor, is
31 unable to repair or correct a nonconformity within a reasonable time
32 if, within the first 24,000 miles of operation or during the period of
33 two years following the date of original delivery of the motor
34 vehicle to the consumer, whichever is the earlier date:

35 (1) Substantially the same nonconformity has been subject to
36 repair three or more times by the manufacturer, co-manufacturer, or
37 post-manufacturing modifier, or its dealer or distributor, other than
38 a nonconformity subject to examination or repair pursuant to
39 paragraph (3) of this subsection because it is likely to cause death
40 or serious bodily injury if the vehicle is driven, and the
41 nonconformity continues to exist;

42 (2) The motor vehicle is out of service by reason of repair for
43 one or more nonconformities for a cumulative total of 20 or more
44 calendar days, or in the case of a motorhome, 45 or more calendar
45 days, since the original delivery of the motor vehicle and a
46 nonconformity continues to exist; or

47 (3) A nonconformity which is likely to cause death or serious
48 bodily injury if the vehicle is driven has been subject to

1 examination or repair at least once by the manufacturer, co-
2 manufacturer, or post-manufacturing modifier, or its dealer or
3 distributor, and the nonconformity continues to exist.

4 b. The presumption contained in subsection a. of this section
5 shall apply against a manufacturer only if the manufacturer has
6 received written notification, or, in the case of an authorized
7 emergency vehicle, the manufacturer, and co-manufacturer or post-
8 manufacturing modifier, if known, or the dealer or distributor, has
9 received written notification, by or on behalf of the consumer, by
10 certified mail return receipt requested, of a potential claim pursuant
11 to the provisions of this act and has had one opportunity to repair or
12 correct the defect or condition within 10 calendar days following
13 receipt of the notification. Notification by the consumer shall take
14 place any time after the motor vehicle has had substantially the
15 same nonconformity subject to repair two or more times, or has
16 been out of service by reason of repair for a cumulative total of 20
17 or more calendar days, or in the case of a motorhome, 45 or more
18 calendar days, or with respect to a nonconformity which is likely to
19 cause death or serious bodily injury if the vehicle is driven, the
20 nonconformity has been subject to examination or repair at least
21 once by the manufacturer, co-manufacturer, or post-manufacturing
22 modifier, or its dealer or distributor, and the nonconformity
23 continues to exist.

24 c. The two-year term and the 20-day period, or 45-day period
25 for motorhomes, specified in this section shall be extended by any
26 period of time during which repair services are not available to the
27 consumer because of a war, invasion or strike, or a fire, flood, or
28 other natural disaster.

29 d. (1) In the case of a motorhome where two or more
30 manufacturers contributed to the construction of the motorhome, or
31 in the case of an authorized emergency vehicle, it shall not be
32 considered as any examination or repair attempt if the repair facility
33 at which the consumer presented the vehicle is not authorized by the
34 manufacturer, co-manufacturer, or post-manufacturing modifier to
35 provide service on that vehicle.

36 (2) It shall be considered as one examination or repair attempt
37 for a motorhome if the same nonconformity is addressed more than
38 once due to the consumer's decision to continue traveling and to
39 seek the repair of that same nonconformity at another authorized
40 repair facility, rather than wait for the repair to be completed at the
41 initial authorized repair facility.

42 (3) Days out of service for reason of repair for a motorhome
43 shall be a cumulative total of 45 or more calendar days.¹

44 (cf: P.L.2009, c.128, s.2)

45

46 ¹6. Section 6 of P.L.1988, c.123 (C.56:12-34) is amended to
47 read as follows:

1 6. a. At the time of purchase in the State of New Jersey, the
2 manufacturer, or, in the case of an authorized emergency vehicle,
3 the manufacturer, co-manufacturer, or post-manufacturing modifier,
4 through its dealer or distributor, or at the time of lease in the State
5 of New Jersey, the lessor, shall provide directly to the consumer a
6 written statement prescribed by the director, presented in a
7 conspicuous and understandable manner on a separate piece of
8 paper and printed in both the English and Spanish languages, which
9 provides information concerning a consumer's rights and remedies
10 under P.L.1988, c.123 (C.56:12-29 et seq.), and shall include, but
11 not be limited to, a summary of the provisions of:

12 (1) section 3 of P.L.1988, c.123 (C.56:12-31), concerning the
13 miles of operation of a motor vehicle and time period within which
14 the consumer may report a nonconformity and seek remedies;

15 (2) sections 4 and 5 of P.L.1988, c.123 (C.56:12-32 and 56:12-
16 33), concerning a manufacturer's, co-manufacturer's, or post-
17 manufacturing modifier's obligations to a consumer based upon the
18 manufacturer's, co-manufacturer's, or post-manufacturing
19 modifier's, or its dealer's or distributor's, inability to repair or
20 correct a nonconformity; and

21 (3) any other provisions of P.L.1988, c.123 (C.56:12-29 et seq.)
22 the director deems appropriate.

23 b. Each time a consumer's motor vehicle is returned from being
24 examined or repaired during the period specified in section 3 of
25 P.L.1988, c.123 (C.56:12-31), the manufacturer, or, in the case of
26 an authorized emergency vehicle, the manufacturer, co-
27 manufacturer, or post-manufacturing modifier, through its dealer or
28 distributor, shall provide to the consumer an itemized, legible
29 statement of repair which indicates any diagnosis made and all work
30 performed on the vehicle and provides information including, but
31 not limited to, the following: a general description of the problem
32 reported by the consumer or an identification of the problem
33 reported by the consumer or an identification of the defect or
34 condition and the source of the defect; the amount charged for parts
35 and the amount charged for labor, if paid for by the consumer; the
36 date and the odometer reading when the vehicle was submitted for
37 repair; and the date and odometer reading when the vehicle was
38 made available to the consumer.

39 c. Failure to comply with the provisions of this section
40 constitutes an unlawful practice pursuant to section 2 of P.L.1960,
41 c.39 (C.56:8-2).¹

42 (cf: P.L.2009, c.128, s.3)

43

44 ¹7. Section 7 of P.L.1988, c.123 (C.56:12-35) is amended to
45 read as follows:

46 7. a. If a motor vehicle is returned to the manufacturer, or, in
47 the case of an authorized emergency vehicle, to the manufacturer,
48 co-manufacturer, or post-manufacturing modifier, under the

1 provisions of this act or a similar statute of another state or as the
2 result of a legal action or an informal dispute settlement procedure,
3 it shall not be resold or re-leased in New Jersey unless:

4 (1) The manufacturer, co-manufacturer, or post-manufacturing
5 modifier provides to the dealer, distributor, or lessor , and the dealer
6 , distributor or lessor provides to the consumer , the following
7 written statement on a separate piece of paper, in 10-point bold-face
8 type: "IMPORTANT: THIS VEHICLE WAS RETURNED TO
9 THE MANUFACTURER OR OTHER RESPONSIBLE PARTY
10 BECAUSE IT DID NOT CONFORM TO THE
11 MANUFACTURER'S OR OTHER PARTY'S WARRANTY FOR
12 THE VEHICLE AND THE NONCONFORMITY WAS NOT
13 CORRECTED WITHIN A REASONABLE TIME AS PROVIDED
14 BY LAW;"

15 (2) The dealer, distributor, or lessor obtains from the consumer a
16 signed receipt certifying, in a conspicuous and understandable
17 manner, that the written statement required under this subsection
18 has been provided. The director shall prescribe the form of the
19 receipt. The dealer, distributor, or lessor may fulfill his obligation
20 to obtain a signed receipt under this paragraph by making such a
21 notation, in a conspicuous and understandable manner, on the
22 vehicle buyer order form accompanying the sale or lease of that
23 vehicle; and

24 (3) The dealer, distributor, or lessor, in accordance with the
25 provisions of section 1 of P.L.1993, c.21 (C.39:10-9.3), notifies the
26 **【Director】** Chief Administrator of the **【Division of】** Motor
27 **【Vehicles in the Department of Law and Public Safety】** Vehicle
28 Commission of the sale or transfer of ownership of the motor
29 vehicle.

30 b. Nothing in this section shall be construed as imposing an
31 obligation on a dealer, distributor, or lessor to determine whether a
32 manufacturer, co-manufacturer, or post-manufacturing modifier is
33 in compliance with the terms of this section , nor shall it be
34 construed as imposing liability on a dealer, distributor, or lessor for
35 the failure of a manufacturer, co-manufacturer, or post-
36 manufacturing modifier to comply with the terms of this section.

37 c. Failure to comply with the provisions of this section
38 constitutes an unlawful practice pursuant to section 2 of P.L.1960,
39 c.39 (C.56:8-2).¹

40 (cf: P.L.1993, c.21, s.2)

41

42 ¹8. Section 8 of P.L.1988, c.123 (C.56:12-36) is amended to
43 read as follows:

44 8. a. If a manufacturer, or, in the case of an authorized
45 emergency vehicle, a manufacturer, co-manufacturer, or post-
46 manufacturing modifier, has established, or participates in, an
47 informal dispute settlement procedure pursuant to section 110 of
48 Pub.L.93-637 (15 U.S.C. s.2310) and the rules promulgated

1 thereunder, or the requirements of this section, a consumer may
2 submit a dispute regarding motor vehicle nonconformities,
3 including a dispute between a manufacturer, co-manufacturer, or
4 post-manufacturing modifier regarding the source of
5 nonconformities and resulting liability to the consumer, to the
6 dispute settlement body provided by that procedure, but a
7 consumer shall not be required to first participate in the informal
8 dispute settlement procedure before participating in the division's
9 summary hearing procedure under this act.

10 b. If a consumer chooses to use a manufacturer's, co-
11 manufacturer's, or post-manufacturing modifier's informal dispute
12 settlement procedure established pursuant to this section, the
13 findings and decisions of the dispute settlement body shall state in
14 writing whether the consumer is entitled to a refund under the
15 presumptions and criteria set out in this act and the findings and
16 decisions shall be admissible against the consumer and the
17 manufacturer, co-manufacturer, or post-manufacturing modifier in
18 any legal action.

19 c. If the dispute settlement body determines that a consumer is
20 entitled to relief under this act, the consumer shall be entitled to a
21 refund as authorized by section 4 of this act.

22 d. In any informal dispute settlement procedure established
23 pursuant to this section:

24 (1) Participating arbitrators shall be trained in arbitration and
25 familiar with the provisions of this act.

26 (2) Documents shall not be submitted to any dispute settlement
27 body unless the documents have been provided to each of the
28 parties in the dispute at least seven days prior to commencement of
29 the dispute settlement hearing. The parties shall be given the
30 opportunity to comment on the documents in writing or with oral
31 presentation.

32 (3) No party shall participate in the informal dispute settlement
33 procedure unless all other parties are also present and given an
34 opportunity to be heard, or unless the other parties consent to
35 proceeding without their presence and participation.

36 (4) A consumer shall be given an adequate opportunity to
37 contest a manufacturer's, co-manufacturer's, or post-manufacturing
38 modifier's assertion that a nonconformity falls within intended
39 specifications for the vehicle by having the basis of **[the**
40 **manufacturer's]** this claim appraised by a technical expert selected
41 and paid for by the consumer prior to the **[manufacturer's]** informal
42 dispute settlement procedure. If the dispute settlement body rules
43 in favor of the consumer, his costs and reasonable attorney's fees
44 shall also be awarded.

45 (5) A dispute shall not be heard if there has been a recent
46 attempt by the manufacturer, co-manufacturer, or post-
47 manufacturing modifier to repair a consumer's vehicle, but no
48 response has yet been received by the dispute settlement body from

1 the consumer as to whether the repairs were successfully completed.
2 This provision shall not prejudice a consumer's right under this
3 section.

4 (6) The manufacturer, co-manufacturer, or post-manufacturing
5 modifier shall provide, and the dispute settlement body shall
6 consider, any relevant technical service bulletins which have been
7 issued by the manufacturer, co-manufacturer, or post-manufacturing
8 modifier regarding motor vehicles of the same make and model as
9 the vehicle that is the subject of the dispute.

10 e. Any manufacturer, co-manufacturer, or post-manufacturing
11 modifier who establishes, or participates in, an informal dispute
12 settlement procedure, whether it meets the requirements of this
13 section or not, shall maintain, and forward to the director at six
14 month intervals, the following records:

15 (1) The number of purchase price and lease price refunds
16 requested, the number awarded by the dispute settlement body, the
17 amount of each award and the number of awards satisfied in a
18 timely manner;

19 (2) The number of awards in which additional repairs or a
20 warranty extension was the most prominent remedy, the amount or
21 value of each award, and the number of awards satisfied in a timely
22 manner;

23 (3) The number and total dollar amount of awards in which
24 some form of reimbursement for expenses or compensation for
25 losses was the most prominent remedy, the amount or value of each
26 award and the number of awards satisfied in a timely manner; and

27 (4) The average number of days from the date of a consumer's
28 initial request to use the manufacturer's, co-manufacturer's, or post-
29 manufacturing modifier's informal dispute settlement procedure
30 until the date of the decision and the average number of days from
31 the date of the decision to the date on which performance of the
32 award was satisfied.¹

33 (cf: P.L.1988, c.123, s.8)

34

35 ¹9. Section 9 of P.L.1988, c.123 (C.56:12-37) is amended to
36 read as follows:

37 9. a. A consumer shall have the option of submitting any
38 dispute arising under section 4 of this act to the division for
39 resolution, including, in the case of an authorized emergency
40 vehicle, a dispute between a manufacturer, co-manufacturer, or
41 post-manufacturing modifier regarding the source of
42 nonconformities and resulting liability to the consumer. The
43 director may establish a filing fee, to be paid by the consumer, fixed
44 at a level not to exceed the cost for the proper administration and
45 enforcement of this act. This fee shall be recoverable as a cost
46 under section 14 of this act. Upon application by the consumer and
47 payment of any filing fee, the manufacturer, co-manufacturer, or
48 post-manufacturing modifier shall submit to the State hearing

1 procedure. The filing of the notice in subsection b. of section 5 of
2 P.L.1988, c.123 (C.56:12-33) shall be a prerequisite to the filing of
3 an application under this section.

4 b. The director shall review a consumer's application for
5 dispute resolution and accept eligible disputes for referral to the
6 Office of Administrative Law for a summary hearing to be
7 conducted in accordance with special rules adopted pursuant to the
8 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
9 seq.), by the Office of Administrative Law in consultation with the
10 director. Immediately upon acceptance of a consumer's application
11 for dispute resolution, the director shall contact the parties and
12 arrange for a hearing date with the Clerk of the Office of
13 Administrative Law. The hearing date shall, to the greatest extent
14 possible, be convenient to all parties, but shall be no later than 20
15 days from the date the consumer's application is accepted, unless a
16 later date is agreed upon by the consumer. The Office of
17 Administrative Law shall render a decision, in writing, to the
18 director within 20 days of the conclusion of the summary hearing.
19 The decision shall provide a brief summary of the findings of fact,
20 appropriate remedies pursuant to this act, and a specific date for
21 completion of all awarded remedies. The director, upon a review of
22 the proposed decision submitted by the administrative law judge,
23 shall adopt, reject, or modify the decision no later than 15 days after
24 receipt of the decision. Unless the director modifies or rejects the
25 decision within the 15-day period, the decision of the administrative
26 law judge shall be deemed adopted as the final decision of the
27 director. If the manufacturer, co-manufacturer, or post-
28 manufacturing modifier unreasonably fails to comply with the
29 decision within the specified time period, **【the manufacturer】** that
30 party shall be liable for penalties in the amount of \$5,000.00 for
31 each day **【the manufacturer】** it unreasonably fails to comply,
32 commencing on the day after the specified date for completion of
33 all awarded remedies.

34 c. The Office of Administrative Law is authorized to issue
35 subpoenas to compel the attendance of witnesses and the production
36 of documents, papers and records relevant to the dispute.

37 d. A manufacturer, co-manufacturer, or post-manufacturing
38 modifier, or a consumer may appeal a final decision to the
39 Appellate Division of the Superior Court. An appeal by a
40 manufacturer, co-manufacturer, or post-manufacturing modifier
41 shall not be heard unless the petition for the appeal is accompanied
42 by a bond in a principal sum equal to the money award made by the
43 administrative law judge plus \$2,500.00 for anticipated attorney's
44 fees and other costs, secured by cash or its equivalent, payable to
45 the consumer. The liability of the surety of any bond filed pursuant
46 to this section shall be limited to the indemnification of the
47 consumer in the action. The bond shall not limit or impair any right
48 of recovery otherwise available pursuant to law, nor shall the

1 amount of the bond be relevant in determining the amount of
2 recovery to which the consumer shall be entitled. If a final decision
3 resulting in a refund to the consumer is upheld by the court,
4 recovery by the consumer shall include reimbursement for actual
5 expenses incurred by the consumer for the rental of a motor vehicle
6 equivalent to the consumer's motor vehicle and limited to the period
7 of time after which the consumer's motor vehicle was offered to the
8 manufacturer, co-manufacturer, or post-manufacturing modifier for
9 return under this act, except in those cases in which [the
10 manufacturer] that party made a comparable vehicle available to
11 the consumer free of charge during that period. If the court finds
12 that the manufacturer, co-manufacturer, or post-manufacturing
13 modifier had no reasonable basis for its appeal or that the appeal
14 was frivolous, the court shall award treble damages to the
15 consumer. Failure of the Office of Administrative Law to render a
16 written decision within 20 days of the conclusion of the summary
17 hearing as required by subsection b. of this section shall not be a
18 basis for appeal.

19 e. The Attorney General shall monitor the implementation and
20 effectiveness of this act and report to the Legislature after three
21 years of operation, at which time a recommendation shall be made
22 either to continue under the procedures set forth in this act or to
23 make such modifications as may be necessary to effectuate the
24 purposes of this act.¹

25 (cf: P.L.1993, c.21, s.4)

26

27 ¹10. Section 10 of P.L.1988, c.123 (C.56:12-38) is amended to
28 read as follows:

29 10. a. The Division of Consumer Affairs shall maintain an
30 index of all motor vehicle disputes by make and model. The
31 division shall, at six-month intervals, compile and maintain
32 statistics indicating the record of manufacturer compliance, or, in
33 the case of an authorized emergency vehicle, manufacturer, co-
34 manufacturer, or post-manufacturing modifier compliance, with any
35 settlement procedure decisions. The statistics shall be public
36 record.

37 b. A manufacturer, co-manufacturer, or post-manufacturing
38 modifier shall provide to the division all information on private
39 arbitration or private buy-back programs maintained or instituted by
40 the manufacturer, co-manufacturer, or post-manufacturing modifier.
41 The information shall include the type and number of vehicles to
42 which these programs apply and the reasons for establishing and
43 maintaining the programs. The manufacturer, co-manufacturer, or
44 post-manufacturing modifier shall provide the division with updated
45 information at six month intervals.¹

46 (cf: P.L.1993, c.21, s.5)

1 ¹11. Section 11 of P.L.1988, c.123 (C.56:12-39) is amended to
2 read as follows:

3 11. A consumer shall not be required to participate in a
4 manufacturer's, or, in the case of an authorized emergency vehicle,
5 a manufacturer's, co-manufacturer's, or post-manufacturing
6 modifier's, informal dispute settlement procedure or the division's
7 summary hearing procedure before filing an action in the Superior
8 Court. However, a decision rendered in a proceeding brought
9 pursuant to the division's summary hearing procedure shall be
10 binding on the consumer and the manufacturer, co-manufacturer, or
11 post-manufacturing modifier, subject to the right of appeal as set
12 forth in subsection d. of section 9 of this act, and shall preclude the
13 institution of any other action in the Superior Court under this act.¹
14 (cf: P.L.1988, c.123, s.11)

15
16 ¹12. Section 12 of P.L.1988, c.123 (C.56:12-40) is amended to
17 read as follows:

18 12. It shall be an affirmative defense to a claim under this act
19 that the alleged nonconformity does not substantially impair the
20 use, value, or safety of the new motor vehicle or that the
21 nonconformity is the result of abuse, neglect, or unauthorized
22 modifications or alterations of the motor vehicle by anyone other
23 than the manufacturer, or, in the case of an authorized emergency
24 vehicle, the manufacturer, co-manufacturer, or post-manufacturing
25 modifier, or its dealer or distributor.¹
26 (cf: P.L.1988, c.123, s.12)

27
28 ¹13. Section 14 of P.L.1988, c.123 (C.56:12-42) is amended to
29 read as follows:

30 14. In any action by a consumer against a manufacturer, or, in
31 the case of an authorized emergency vehicle, a manufacturer, co-
32 manufacturer, or post-manufacturing modifier, brought in Superior
33 Court or in the division pursuant to the provisions of this act, a
34 prevailing consumer shall be awarded reasonable attorney's fees,
35 fees for expert witnesses and costs.¹
36 (cf: P.L.1993, c.21, s.6)

37
38 ¹14. Section 16 of P.L.1988, c.123 (C.56:12-44) is amended to
39 read as follows:

40 16. A manufacturer, or, in the case of an authorized emergency
41 vehicle, a manufacturer, co-manufacturer, or post-manufacturing
42 modifier, shall certify to the division, within one year of discovery,
43 the existence of any inherent design defect common to all motor
44 vehicles of a particular model or make. Failure to comply with this
45 constitutes an unlawful practice pursuant to section 2 of P.L.1960,
46 c.39 (C. 56:8-2).¹
47 (cf: P.L.1988, c.123, s.16)

1 ¹15. Section 17 of P.L.1988, c.123 (C.56:12-45) is amended to
2 read as follows:

3 17. The director may institute proceedings against any
4 manufacturer, or, in the case of an authorized emergency vehicle,
5 any manufacturer, co-manufacturer, or post-manufacturing
6 modifier, who fails to comply with any of the provisions of this
7 act.¹

8 (cf: P.L.1988, c.123, s.17)

9

10 ¹16. Section 18 of P.L.1988, c.123 (C.56:12-46) is amended to
11 read as follows:

12 18. a. Nothing in this act shall be construed as imposing any
13 liability on a dealer or distributor, or creating a cause of action by a
14 manufacturer, or, in the case of an authorized emergency vehicle, a
15 manufacturer, co-manufacturer, or post-manufacturing modifier,
16 against a dealer or distributor, and nothing shall be construed as
17 imposing any liability on a dealer or distributor, or creating a cause
18 of action by a consumer against a dealer or distributor under section
19 4 of this act.

20 b. Nothing in this act, in the case of an authorized emergency
21 vehicle and notwithstanding any other law to the contrary, shall be
22 construed as creating, establishing or otherwise imposing joint and
23 several liability for any action under P.L.1988, c.123 (C.56:12-29 et
24 seq.), and a manufacturer, co-manufacturer, or post-manufacturing
25 modifier shall only be liable for that percentage of negligence or
26 fault in that action directly attributable to its respective degree of
27 liability.¹

28 (cf: P.L.1988, c.123, s.18)

29

30 ¹[2.] 17.¹ This act shall take effect immediately.