

---

By Mr. D'Amico, a petition (accompanied by bill, Senate, No. 107) of Gerard D'Amico, John W. Olver, Doris Bunte, Thomas M. Finneran and other members of the General Court for legislation to establish a bill of rights for used car buyers. Commerce and Labor.

---

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-four.

AN ACT ESTABLISHING A BILL OF RIGHTS FOR USED CAR BUYERS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 90 of the General Laws is hereby  
2 amended by inserting after section 7N the following sec-  
3 tion: —

4 *Section 7N ¼.* (1) (A) For the purposes of this section the  
5 following terms shall have the meanings specified in section  
6 7N ½ of Chapter 90: "Consumer," "Motor Vehicle" or "vehi-  
7 cle."

8 (B) For the purposes of this section the following terms shall  
9 have the following meanings: —

10 (i) "Business day" means Monday through Friday, except  
11 for any state or national holidays.

12 (ii) "Dealer" means any person who is engaged in the busi-  
13 ness of selling, offering for sale, or negotiating the retail sale  
14 of motor vehicles or selling motor vehicles as broker or agent  
15 for another and includes the officers, agents and employees of  
16 such person and any combination or association of dealers. A  
17 person shall be deemed to be "in the business of selling" motor  
18 vehicles if s/he sells more than three motor vehicles in any  
19 calendar year.

20 (iii) "Purchase price" means all amounts charged for the  
21 purchase of a vehicle, including the value of a trade-in, ex-  
22 cept a finance charge.

23 (iv) "Sales price" means any price, quoted, orally, in writ-  
24 ing, or in print, for the purchase of a motor vehicle, including  
25 but not limited to the price at which a vehicle is sold, offered  
26 to be sold, or advertised for sale, or which a consumer might

27 reasonably interpret as an advertised or offered price.

28 (v) "Total estimated price of repair" means the total of  
29 the dealer's good faith estimates of the retail prices for the  
30 repair of the specific defects or parts to be exempted from the  
31 warranty requirements of this section.

32 (vi) "Used motor vehicle" or "used vehicle" means any  
33 vehicle driven more than the limited use necessary in moving  
34 or road testing a new vehicle prior to delivery to a consumer,  
35 including a demonstrator vehicle.

36 (2) (A) Except as provided in subsection (3), no used motor  
37 vehicle shall be sold in the commonwealth by a dealer to a  
38 consumer unless accompanied by a written warranty covering  
39 the full cost of both parts and labor necessary to repair or re-  
40 place any specific or generic defect or malfunction, or any  
41 concurrent combination of such defects or malfunctions, that  
42 impairs the safety, operation, or soundness of the vehicle. De-  
43 fects or malfunctions that affect only appearance or comfort  
44 shall not be deemed to impair its safety, operation, or sound-  
45 ness for the purposes of this section.

46 (B) The warranties required by this section shall be of the  
47 following durations: —

48 (i) For a used motor vehicle having a purchase price of  
49 under \$1,000, thirty days or 1500 miles from the date of pur-  
50 chase, whichever comes first;

51 (ii) For a used motor vehicle having a purchase price of  
52 \$1000 or more and less than \$5000, ninety days or 4500 miles  
53 from the date of purchase, whichever comes first;

54 (iii) For a used motor vehicle having a purchase price of  
55 \$5000 or more, 180 days or 9000 miles from the date of pur-  
56 chase, whichever comes first;

57 (C) The warranty periods established by this section shall  
58 be tolled during any period in which the vehicle is out of serv-  
59 ice by reason of repair of any defect or malfunction covered  
60 by the warranty created by this section. The warranty pe-  
61 riods shall be extended thirty days from the date of comple-  
62 tion of any repair required by this section as to the defect or  
63 malfunction repaired if the warranty would otherwise have  
64 expired during that period.

65 (D) The requirements of this section and the rights there-  
66 under may not be limited by the dealer or waived by the con-

67 sumer, whether by such phrases as "fifty-fifty," "labor only,"  
68 "drive train only," or by any other language, except as pro-  
69 vided in subsection (3).

70 (3) A dealer may exempt from the coverage of the war-  
71 ranty created by this section particular identified defects or  
72 parts if all of the following requirements are met, and in no  
73 other manner: —

74 (A) A dealer shall provide notice of the specific defect or  
75 part to be exempted in clear and conspicuous language in the  
76 contract of sale and in a form affixed to a window of any used  
77 motor vehicle offered for sale. Such notice shall contain the  
78 dealer's good faith estimate of the retail price for the repair  
79 of the defect or part to be exempted. The total of the dealer's  
80 good faith estimates of the retail prices for the repair of all  
81 specific defects or parts to be exempted shall be clearly indi-  
82 cated in the contract of sale, in the form affixed to the win-  
83 dow, in any other place in which a sales price for the motor  
84 vehicle appears, and at any other time a sales price for the  
85 motor vehicle is quoted. The total estimated price of repair  
86 shall be written or printed adjacent to any written or printed  
87 sales price for the motor vehicle in the same size, style, and  
88 color as the sales price, and shall be immediately preceded by  
89 the words "ESTIMATED REPAIRS NEEDED:" in the same  
90 size, style, and color as the sales price. The dealer shall re-  
91 tain for three years and make available for inspection by the  
92 consumer a true and correct copy of the notice of specific de-  
93 fects required by this paragraph.

94 (B) If, during the warranty period applicable to the vehi-  
95 cle, the costs incurred by the consumer in repairing any de-  
96 fect or part to be exempted exceed the dealer's good faith  
97 estimate of the retail price for the repair of the defect or part  
98 to be exempted, the dealer shall pay the difference to the  
99 consumer.

100 (4) (A) A dealer may repair, within the meaning of this  
101 section, by either performing the repair itself or by arranging  
102 and making payment for the prompt repair by another. This  
103 paragraph does not restrict in any way the rights of a con-  
104 sumer pursuant to Section 7N of Chapter 90.

105 (B) (i) If the dealer does not repair any malfunction or  
106 defect covered by this section within three attempts, taking a

107 total of no more than seven business days, the dealer shall  
108 accept return of the vehicle from the consumer and refund  
109 the full purchase price, plus any incidental damages including  
110 but not limited to finance charges, and sales tax and registra-  
111 tion fees if not refundable by the applicable offices of the Com-  
112 monwealth.

113 (ii) The consumer shall have the option of retaining the  
114 use of any vehicle sought to be returned under this provision  
115 until said consumer has been tendered the full refund.

116 (iii) No motor vehicle that is returned to the dealer under  
117 this provision shall be resold in the commonwealth without  
118 clear and conspicuous written disclosure, prior to the resale  
119 of the vehicle, of the fact that it was so returned. The depart-  
120 ment of the attorney general shall, within six months of the  
121 effective date of this act, prescribe the form and content of  
122 such disclosure statements.

123 (C) It shall be an affirmative defense to any claim for re-  
124 fusal to repair that a defect or malfunction covered by this  
125 section is the result of owner negligence, damage caused by  
126 accident, or vandalism, unless such accident or vandalism oc-  
127 curred while the vehicle was in the custody of the dealer.

128 (5) Clear and conspicuous notice of the warranties created  
129 by this section, of the rights pertaining thereto, and of the  
130 implied warranty of merchantability shall be given to the con-  
131 sumer in the contract of sale and in a form affixed to a win-  
132 dow of any used motor vehicle offered for sale by a dealer.  
133 Additional notice shall be given to the consumer in written  
134 form at such time as the consumer enters the premises of the  
135 dealership for the purpose of initiating or pursuing any com-  
136 plaint with regard to the motor vehicle or requesting any re-  
137 pair of the vehicle. Failure to provide such notice shall toll  
138 the warranty periods under this section until such notice is  
139 given.

140 (6) The department of the attorney general shall, within  
141 six months from the effective date of this act, specify the  
142 wording, format, placement, and distribution of all notices  
143 specified in this section. At its discretion, the department of  
144 the attorney general may consolidate the notices required by  
145 this section and any other notices pertaining to the purchase  
146 of motor vehicles so long as such consolidation does not ren-

147 der the notices inconsistent with any of the provisions of this  
148 of any other act. Each notice required by this section shall  
149 describe the procedures available to redress violations of this  
150 section and contain the telephone number of the Attorney  
151 General's consumer protection division complaint section.

152 (7) (A) Failure to comply with any provisions of this act  
153 shall constitute an unfair or deceptive act under the provisions  
154 of chapter ninety-three A.

155 (B) Consequential damages available to the consumer in  
156 an action arising under this section shall include but not be  
157 limited to (i) the costs of repairs obtained by the consumer  
158 as a result of the dealer's failure to perform obligations created  
159 by this section, (ii) the costs of towing reasonably incurred  
160 to obtain repairs required under this section and (iii) the  
161 costs of obtaining alternative transportation during periods  
162 in which the dealer was in violation of obligations created by  
163 this section.

164 (8) Nothing in this section shall be construed in any way  
165 to limit the enforceability of any implied warranties created  
166 by law or any additional express warranties given by a dealer  
167 in connection with the sale of a used motor vehicle, or any  
168 other rights or remedies available to consumers under appli-  
169 cable law.

170 (9) The department of the attorney general shall have the  
171 authority to promulgate regulations to carry out the purposes  
172 of this act.

173 (10) The licensing authorities responsible pursuant to Sec-  
174 tion 57 of Chapter 140 for licensing of used motor vehicle  
175 dealers shall distribute copies of this act to each dealer licensed  
176 at any time a license is granted or renewed. The department  
177 of the attorney general shall distribute copies of this act to  
178 each licensing authority.

1 SECTION 2. This act shall take effect 90 days after its en-  
2 actment.





