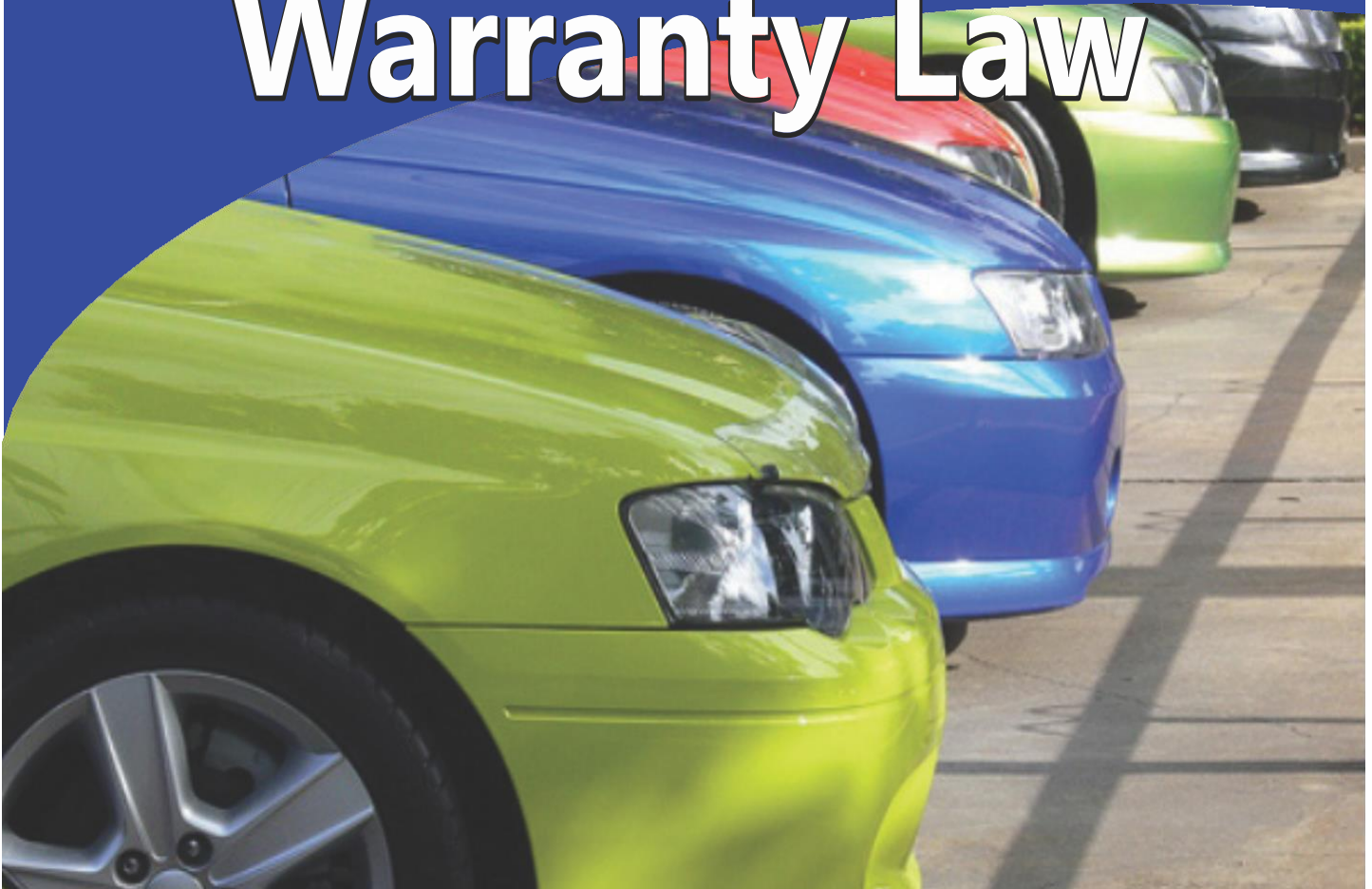


A Dealers' Guide To

The Massachusetts Used Vehicle Warranty Law



Charlie D. Baker, Governor



John C. Chapman, Undersecretary

A DEALER'S GUIDE TO THE MASSACHUSETTS USED VEHICLE WARRANTY LAW

The Massachusetts Used Vehicle Warranty Law, G.L. c. 90, § 7N ¼, (General Laws chapter 90, section 7 N ¼) has been in effect since July 1, 1988, but consumers and dealers still often have questions about particular provisions of the law. This guide is written to provide information for dealers, to ensure that new dealers coming into the marketplace are aware of their obligations under the law. For individual legal advice, dealers should contact private counsel. Additional information about the law and about other consumer laws related to motor vehicles is available on the Consumer Affairs web site: www.mass.gov/consumer

Focus of the Law

The Used Vehicle Warranty Law is intended to provide certain warranty rights to consumers who purchase a vehicle costing \$700 or more, from a dealer. A “dealer” is specifically defined under the law—you qualify as a dealer if you have sold more than three vehicles in the preceding 12 months.

Under the law, you must provide a Massachusetts-specific written warranty to consumer purchasers. The law also requires dealers to buy back vehicles under certain conditions, if the vehicle has a defect that impairs use or safety and cannot be repaired by the dealer within *three repair attempts for the same defect, or the vehicle is out of service for more than 10 business days*.

Vehicles Covered by the Law

- A used car, van or truck that is sold by a Massachusetts new or used car dealer, for \$700 or more, that has fewer than 125,000 miles on the odometer when it is sold.
- To qualify for the \$700 exemption, these costs must total less than \$700: the purchase price of the vehicle, including any trade-in and/or over-allowance; the cost of any options purchased from or through the dealer; the cost of preparing the vehicle for its sale and delivery to the consumer; and any other costs related to the sale that the consumer paid to the dealer.
- **Not** included in the \$700: sales or excise tax, finance charges*, registration fees, the cost of any extended warranty or service contract, and the cost of motor vehicle insurance.

***Note: Any motor vehicle dealer who finances the sale of a vehicle under a retail installment contract and holds the contract, must obtain a sales finance company license from the Division of Banks pursuant to G.L. c. 255B. This applies regardless of whether you are charging interest on the sale.**

- **Demonstrator/fleet/executive vehicles are covered by the Used Vehicle Warranty Law** but consumers who qualify for both new and used car arbitration must seek relief from the manufacturer under the new car Lemon Law before seeking relief from you under the Used Vehicle Warranty Law.

When a consumer buys a demonstrator/fleet/executive vehicle, the new car Lemon Law, G.L. c. 90, §7N ½ covers the vehicle for the remainder of the first year from the date the dealer or manufacturer first puts the vehicle into regular use (the “in-service” date), or 15,000 miles, whichever comes first.

To qualify for arbitration under the new car Lemon Law, a consumer must have his car repaired by the manufacturer three or more times for the same substantial defect, *or* the vehicle must be out of service for repair of a substantial defect or combination of defects

for fifteen (15) or more business days. Repairs must be made within one year of the original “in-service” date or within 15,000 miles, whichever comes first.

The consumer’s request for new car arbitration must be received by the new car Lemon Law arbitration program at the Office of Consumer Affairs and Business Regulation within eighteen (18) months of the date the consumer takes delivery of the vehicle.

A consumer who owns a demonstrator/fleet/executive vehicle may use the Used Vehicle Warranty Law only if he does not qualify to be accepted for the New Car Lemon Law program.

- **Antique/classic cars are covered by this law**, if they are sold for \$700 or more, with fewer than 125,000 miles on them at the time of sale. There is no specific exemption provided for them under the law.
- **Salvage title vehicles are also covered by this law** if they are sold for \$700 or more, with fewer than 125,000 miles on them at the time of sale. They are also covered by the “Lemon Aid” law, G.L. c. 90, § 7N. There is no specific exemption provided for salvage title vehicles under either of these laws.

Vehicles NOT Covered by the Law

- Motorcycles, mopeds, dirtbikes;
- Vehicles sold for less than \$700;
- Vehicles sold with more than 125,000 miles on the odometer (Note: it is a violation of state and federal law to alter odometer readings or to tamper with an odometer);
- Leased vehicles (unlike the new car Lemon Law, which covers leased vehicles);
- Previously leased vehicles that are subsequently sold are specifically exempted from the used vehicle warranty law, **but only if** the vehicle is sold to the lessee, a family member of the lessee, or an employee of the lessee;
- Any vehicle used primarily for business purposes, or purchased by, owned by or registered to a business; and
- Auto homes, and vehicles built primarily for off-road use (ATVs and “dune buggies”)

DISCLAIMER/DISCLOSURE

You **cannot** disclaim your obligations under this required state warranty, and telling the consumer about known defects does not excuse you from your responsibility to repair problems under the warranty. You **cannot** ask a consumer to give up his or her rights under the Used Vehicle Warranty law. A statement or notice that the consumer has given up his rights under this law **does not** excuse you from your obligation to give the consumer a warranty, or your obligation to repair covered defects. This is true **even if** the consumer signs such a statement.

Private party sales

A “private party sale” is a sale between two non-dealers. The Used Vehicle Warranty law provides that for such transactions, a private party seller must disclose known defects to purchasers. If the purchaser can prove that a seller knew about a defect which impairs the used vehicle’s safety or substantially impairs its use, the purchaser can notify the seller he is cancelling the sale within thirty (30) days after the sale. The purchaser is entitled to the return of all monies paid to the seller, less a deduction for use of fifteen (15) cents a mile. If the purchaser ends up suing the seller, and the court finds that an offer of settlement made by the seller in response to a refund request from the purchaser was not

reasonable, the **purchaser** can also recover attorney’s fees and costs from the seller, but if the court finds that the lawsuit was frivolous or not in good faith, the **seller** can recover attorney’s fees and costs from the purchaser. Private party sellers are *not* required to repair vehicles. Private party sellers must also comply with the Lemon Aid law (sales cancellation), but not with the Implied Warranty of Merchantability or the Implied Warranty of Fitness for a Particular Purpose, as consumers are not “merchants,” nor generally with the Consumer Protection Act, since consumers are not customarily engaged in trade or commerce simply by selling their own vehicles.

The Warranty

What is covered by the Used Vehicle Warranty

You as the dealer are responsible under this law for all parts and labor necessary to repair any defects or malfunctions, or combination of defects or malfunctions, which impair a vehicle’s use or safety. In deciding whether a defect or malfunction impairs safety, determine whether the defect or malfunction creates or has the potential to create danger to the consumer, the passengers, to others, or to property. You can charge a consumer a fee of up to \$100 for repair of *all* defects during the warranty period. That is, the *most you can charge for any one vehicle is \$100, and in order to do this, you must have stated on the consumer’s copy of the warranty the amount (up to \$100) that may be charged. If you do not state an amount on the warranty, you cannot charge the consumer anything at all for repair of qualified defects during the warranty period.*

Length of Warranty

The length of the dealer warranty depends on how many miles are on the vehicle when you sell it.

<u>Mileage at time of Purchase</u>	<u>Warranty (whichever comes first)</u>
Fewer than 40,000 miles	90 days or 3,750 miles
40,000 to 79,999 miles	60 days or 2,500 miles
80,000 to 124,999 miles	30 days or 1,250 miles
125,000 miles or over	Implied Warranty only

If the **true mileage** cannot be determined at the time of the sale, the length of warranty will depend on the age of the vehicle. To determine the vehicle’s age, subtract the model year from the year in which you sell the vehicle. For example, if you sell a 2006 vehicle in 2010, the vehicle is 4 years old, and according to the law (shown in the table below), the vehicle would have a 60 day/2,500 mile warranty.

<u>Age of Vehicle</u>	<u>Warranty (whichever comes first)</u>
3 or fewer years old	90 days or 3,750 miles
More than 3 but fewer than 6 years old	60 days or 2,500 miles
6 or more years old	30 days or 1,250 miles

When counting days, the day you give the consumer the warranty counts as the first day, so, for example, a warranty given on September 1 expires on September 30.

What is NOT covered by the Limited Used Vehicle Warranty

You are not responsible under the Used Vehicle Warranty law for the following defects:

- Defects that affect only appearance;
- Defects that do not impair use or safety;

- Defects covered by the manufacturer’s express warranty if it has been transferred to the consumer and you assure that the manufacturer makes the repairs;
- Defects caused by consumer negligence or abuse;
- Damage caused by accidents unrelated to the defect, or by vandalism or repair attempts made by someone other than you, your agent, or the manufacturer; and
- Defects caused by substantial changes the consumer made to the vehicle (such as installing a lift kit, sunroof, or parts like carburetors or exhaust systems that were not part of the vehicle when you sold it).
- You should be prepared to **prove** that negligence, vandalism, accident, unauthorized repair or modification caused the problem, if you allege that this is the case. Simply stating that one of the above reasons caused the problem will not be enough for arbitration or a court challenge.

Note: Under the law, the dealer may repair a vehicle either by performing the repair directly, or by arranging and paying for prompt repair by someone else. During the repair period, the dealer is also responsible for paying the reasonable costs of towing the vehicle from the point of breakdown up to thirty (30) miles, in order for the consumer to obtain required repairs or to return the vehicle to the dealer.

Time Periods: “Business Day,” “Tolling,” Extensions of the Warranty

Business Day: The Used Vehicle Warranty law defines Monday through Friday, inclusive, as “business days” but excepts state or federal holidays. This term is especially important in determining the length of time a consumer’s vehicle has been out of service. When counting the number of business days a vehicle has been out of service, any part of a business day will count as a whole day. In contrast, “day,” when used in the statute to describe warranty periods, means calendar days, Sunday through Saturday.

Tolling: Tolling refers to the stopping of time-counting during the warranty period, or to adding extra days to the warranty or return period because of a particular event. While under other laws, one day of the warranty may be used up for every day the consumer owns the vehicle, under the Used Vehicle Warranty law, each day a car is in your shop does *not* use up a day of the warranty. There are at least nine situations where:

- Days are added to the warranty period, or
- Days are added to the return period, or
- Days waiting for a repair appointment do not count toward meeting the 3 repair/more than 10 business days required by the law, or
- Days in the shop for repairs do not count toward meeting the three repair/more than 10 business day requirement of the law, or
- Days out of service when the vehicle is not in the dealer’s shop count toward meeting the 3 repairs/more than 10 business days required by the law.

Examples of Tolling

Repair/Warranty Facts	Number of Days Added to Consumer’s Warranty	Days that count as Business Days out of Service
1) Car in dealer’s shop	Number of days in shop	Number of business days in for dealer warranty repairs.
2) Days in dealer’s shop while waiting for parts to be delivered.	Number of days in shop	Only business days before a part is ordered, and on or after a part is received, or

while other defects are being fixed when a part is on order.

But Note: Only a maximum of 21 calendar days for parts orders during the warranty period do not count toward the more than 10 business day requirement.

3) Car leaves dealer's shop with fewer than 30 days left in warranty	30 days from date repair completed for <i>that defect</i> only;	Number of business days in shop.
4) Return of vehicle to shop within 5 business days after warranty expired	30 days from date repair completed for <i>that defect</i> only	Number of business days in shop.
5) Dealer refuses to accept vehicle for repair when presented	Number of days waiting for repair	Number of business days during the waiting period.
6) Repair covered by manufacturer's warranty	Number of days in shop	None
7) Dealer fails to give consumer correct written warranty	Number of days from delivery until consumer receives the warranty	None
8) Dealer fails to take vehicle within 3 business days of a telephoned or written request for repair	Number of days waiting for repair	Business days only during the waiting period.
9. Vehicle cannot Reasonably be returned to shop by consumer during return period	Extend the return period by one day for each day until the vehicle can reasonably be returned.	None

But note: As previously stated, when the word "day" is used in above chart, rather than "business day," it means calendar day – Sunday through Saturday, inclusive.

Examples of tolling situations:

- 1) **FACTS:** The car you sold on September 1st has a 60 day warranty. On Friday, September 24, through Monday, September 27th, the car is in the shop for repair of the brakes.

CALCULATION: Add four (4) days to the 60 day warranty for the four (4) calendar days the car was in the shop. The warranty would otherwise have expired on October 30, but now lasts until November 3. (Remember, October has 31 days; you need to consider the length of the month you are in when calculating.) But, in this situation, count only the two (2) "business days" in the shop, Friday and Monday, toward the more than 10 business day requirement of the law.

September						
S	M	T	W	T	F	S
		1	2	3	4	
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

October						
S	M	T	W	T	F	S
						1 2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

- 2) **FACTS:** The car you sold on September 1st has a 30 day warranty. The car goes into the shop for brake repairs on Tuesday, September 28 and the repair is finished on the 29th.

CALCULATION: Add two (2) days to the 30 day warranty for the two (2) calendar days the car was in the shop. The warranty on the car as a whole would have expired on September 30, but now lasts until October 2. Also, the warranty for *brake defects only* is extended 30 days from the date that the repair was completed, until October 28. Finally, count the two (2) business days the car was out of service (the 27th and 28th) toward the more than 10 “business day” limit for days out of service.

- 3) **FACTS:** The car you sold on September 1st has a **60** day warranty. On Friday, September 24, the car is brought in for brake repairs. On that day, you discover that several parts needed for repairs are out of stock, so you order them (keep copies of your order slips for the consumer). The parts arrive on Thursday the 30th and you finish the repair on Friday the 1st of October.

CALCULATION: Even though the car has been in the shop for six (6) business days (24, 27, 28, 29, 30, 1), only two (2) business days (Thursday the 30th and Friday the 1st—the “on or after a part is received” days, as you ordered the parts the day the car came in) count toward the more than 10 business day limit for days out of service.

NOTE: The dealer must order the part on the day he reasonably knew that the part was needed, and he must give the consumer a written receipt when the consumer picks up the car, listing the dates the part were ordered and received, and other written evidence of the parts order.

If you refuse to repair the vehicle

If a consumer asks you to repair a problem and you refuse, the vehicle is considered out of service beginning on the day you refuse repairs if the consumer can later show that a defect that impaired use or safety did exist. Business days out of service will count toward the 3 repairs/more than 10 business days required by the law and the consumer could eventually qualify for a buyback under the law.

Buyback

Dealer Option to Buy Back

If you would prefer to buy the car back from the consumer instead of making repairs you are permitted to do so under the Used Vehicle Warranty law. You will need to pay the full repurchase price less a reasonable allowance for use of fifteen (15) cents a mile for each mile the vehicle has been driven between the sale and your repurchase. The consumer is responsible for proving his or her reimbursement costs to you by giving you copies of receipts and other supporting documentation. The consumer has the option of continuing to use the car until such time as you make the full refund, but the miles put on before your buyback may also be subtracted from the repurchase price.

If you offer the consumer a full refund under the law, and the consumer refuses to allow the buyback, the consumer's rights under the Used Vehicle Warranty law will be limited. The consumer will not be entitled to further dealer warranty repairs, but may seek repairs under the implied warranty of merchantability. If the dealer is required to, or chooses to, repurchase a vehicle, the consumer and dealer are required by the law to cooperate with each other to execute all necessary documents in order to clear the title of any encumbrances on the repurchased vehicle.

In order to make a buyback offer, while you may initially make such an offer orally, you must follow up with an offer in writing. It is wise to send the written offer by certified mail, return receipt requested, or by registered mail, and save a copy of the letter and return receipts and other tracking information for your records. You must allow the consumer at least five (5) business days to respond to your offer. If the consumer does not respond to your offer in that time, you should write again to the consumer to confirm that you made an offer and that you have not received the consumer's response. This communication should also be sent by certified mail, return receipt requested, or by registered mail, keeping a copy of the letter, and the receipts, for your records.

If the consumer accepts your offer, you should give the consumer the full refund as soon as the consumer can give you clear title to the vehicle. If there is a lien on the vehicle, you and the consumer should work together to make any necessary arrangements to pay off the loan. You are not permitted to require the consumer to take out a loan in order to give you back the title. You may have to pay the lienholder all or a portion of the refund toward the loan balance to free up the title.

Refund Calculations

Whether you offer on your own to buy back a vehicle, or an arbitrator orders a refund, take the steps outlined below to estimate or calculate the amount you are required to refund under the Used Vehicle Warranty law.

Add:

- The purchase price (including the amount for the trade-in—in the case of an over-allowance--the repurchase amount will be reduced by the amount of any over-allowance on a trade-in vehicle *if* the amount of the over-allowance and the actual cash value of the trade-in are separately stated and so specifically identified on the copy of the motor vehicle purchase contract or bill of sale or other document given to the consumer prior to or at the time of sale)
- Finance charges;
- Registration fees;
- The pro-rata amount of payments toward motor vehicle damage, collision and comprehensive insurance;
- The non-refundable portion of payments made for credit life, and credit accident and health insurance on the vehicle loan;
- The non-refundable portion of payments made for any extended warranties and service contracts;
- Unreimbursed towing costs up to a distance of thirty (30) miles;
- Up to \$15 a day for rental cars, trains, taxis, buses, etc. when the car is out of service, starting when the vehicle is out of service, starting on the 3rd day of a repair attempt;
- Payments made toward the \$100 repair deductible; and
- Other costs related directly to the defect.

Subtract:

- A use allowance of 15 cents per mile for every mile driven from the time of delivery of the vehicle to the date the refund is given, but not including miles put on the vehicle by you during repair attempts (mileage at return, minus mileage at purchase, minus repair mileage, multiplied by .15 = use allowance); and
- The amount of an over-allowance, if any.

Additional expenses *not* required to be reimbursed:

You are *not* required to pay the consumer's lawyer's fees, lost wages, excise or sales tax, or other costs that are not directly related to the defect.

Returning trade-in:

If you still own the trade in vehicle, and it is in the same condition as when the consumer traded it in, you may return the trade-in vehicle itself, rather than paying the consumer the amount allowed for the trade-in. You still must pay the consumer the other repurchase amounts. If you return the trade-in, the amount of any over-allowance *will not* be deducted from the repurchase amount.

Getting Title

If you are repurchasing a vehicle and the title has not yet been processed, the consumer can ask the Registry of Motor Vehicles to *withdraw* his or her application for title. The consumer can then return the title to you in exchange for the refund—*but* the consumer can only withdraw an application for title if the Registry has not yet begun to process it.

If you are repurchasing the vehicle and the Registry has already processed the consumer's application for title, but it has not yet been issued to the consumer or his or her lender, the consumer can request that the Registry *expedite* the title. The consumer should contact the Registry of Motor Vehicles' Title Division. While usually it takes 30 days to process and issue a title, this process could shorten that time. Once the consumer gets the title, it can be signed over to you.

If the consumer has a loan on the vehicle, the title will be issued in the name of the lienholder (lender). The consumer will need to get a lien release from the lender so the Registry can issue the title in the consumer's name, so that the consumer can sign over the title to you. You may need to give the lender the portion of the refund that is owed on the consumer's loan before the lender will agree to release the title.

Damage to vehicle

If a vehicle is damaged beyond reasonable wear and tear through no fault of the dealer or manufacturer, and that damage is unrelated to the defect, the consumer must either repair the damage, pay you for the reasonable cost of repair, or allow you to deduct the reasonable cost of repair from the repurchase price.

ADDITIONAL LAWS—LEMON AID LAW, AND THE IMPLIED WARRANTY LAWS

The Used Vehicle Warranty Law does not limit a consumer's rights under the Lemon Aid law (7 day inspection law—voiding contracts of sale), or under the Implied Warranty of Merchantability. Both of these laws will apply to your used car sales in addition to the Used Vehicle Warranty Law.

- **Lemon Aid law, G.L. c. 90, § 7N:** Under this law, if the vehicle you sold to the consumer fails Massachusetts motor vehicle inspection within seven days of the sale, and the defects in the vehicle were not caused by abusive or negligent operation of the vehicle by the consumer or by

damage resulting from an accident after the date of sale, and if the cost of repairs necessary to pass inspection exceeds ten percent (10%) of the purchase price of the vehicle, the consumer may void the sale, and you must refund the purchase price of the vehicle, unless you and the consumer agree in writing that you will make the necessary repairs at your own cost within a reasonable period of time.

- **Implied Warranty of Merchantability: G.L. c. 106, § 2-314:** Under this law, the goods sold by a merchant must be fit for ordinary purposes for which such goods are used. You must also conform to any promises or affirmations of fact you make, either by word or by label or other representation.
- **Implied Warranty of Fitness for a Particular Purpose: G.L. c. 106, § 2-315:** Under this law, if the seller-dealer has reason to know of any particular purpose for which the vehicle is required and that the buyer is relying on the seller-dealer's skill or judgment to select or furnish the vehicle, there is an implied warranty that the vehicle will be fit for that purpose.

Note: You cannot disclaim any of these laws in sales made to a consumer.

NOTICES and DOCUMENTS FOR CONSUMERS

The Used Vehicle Warranty Law and other laws applicable to motor vehicle sales require you to post notices, and to provide certain written information to consumers.

When you offer a vehicle for sale on your lot, you must place on the window or dashboard of the car:

- A yellow sticker outlining the Used Vehicle Warranty Law;
- The federal Buyer's Guide (required on window).

The yellow sticker:

The yellow sticker, which must be placed on the window or dashboard, must say, in at least ten point type:

ATTENTION CONSUMERS

The Massachusetts Used Car Warranty Law, General Laws Chapter 90, Section 7N ¼, protects consumers who have problems with their used vehicle.

UNDER THE LAW, YOU HAVE A RIGHT TO A REFUND IF:

- (a) a defect that impairs safety or use arose during the warranty period, AND
- (b) the defect continued to exist or has recurred during the warranty period after either:
 1. three or more repair attempts for the same defect, or
 2. being out of service after being returned for repair for any defect for a cumulative total of more than 10 business days

IF THE DEALER DOES NOT ISSUE A REFUND, YOU HAVE A RIGHT TO HAVE YOUR CASE ARBITRATED BY THE STATE IF YOU APPLY WITHIN SIX MONTHS AFTER DELIVERY OF THE VEHICLE.

FOR MORE INFORMATION, REFER TO THE USED CAR WARRANTY LAW INFORMATION PROVIDED WITH YOUR OWNERSHIP MATERIALS, OR CONTACT:

**Used Car Warranty Law Arbitration Program
Office of Consumer Affairs and Business Regulation
10 Park Plaza, Room 5170
Boston, MA 02116
Used Car Warranty Law Information: 617- 283-8787
Or
Office of the Attorney General: 617-727-8400**

The Federal Buyer's Guide

The federal Buyers Guide is a requirement of the Federal Trade Commission's Used Car Rule, 16 CFR part 455. You must post a Buyers Guide on the vehicle before you "offer" a used vehicle for sale. A vehicle is offered for sale when you display it for sale or let a customer inspect it for the purpose of buying it, even if the car is not fully prepared for delivery. This requirement also applies to used vehicles for sale on your lot through consignment, power of attorney, or other agreement. At public auctions, dealers and the auction company must comply. The Rule does not apply at auctions that are closed to consumers. Below is the text of the Buyer's Guide required in Massachusetts. You **cannot** use the version of the Buyer's Guide which states "as-is, no warranty," as all vehicles in Massachusetts sold by a dealer are subject to, at a minimum, the implied warranty of merchantability.

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE MODEL YEAR VIN NUMBER _____

DEALER STOCK NUMBER (Optional) _____

WARRANTIES FOR THIS VEHICLE:

IMPLIED WARRANTIES ONLY

This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, state law "implied warranties" may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

WARRANTY

FULL LIMITED WARRANTY. The dealer will pay ____% of the labor and ____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

SYSTEMS COVERED: DURATION:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT. SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

Frame & Body

Frame-cracks, corrective welds, or rusted through
Dog tracks—bent or twisted frame

Engine

Oil leakage, excluding normal seepage
Cracked block or head
Belts missing or inoperable
Knocks or misses related to camshaft lifters and push rods
Abnormal exhaust discharge

Transmission & Drive Shaft

Improper fluid level or leakage, excluding normal seepage
Cracked or damaged case which is visible
Abnormal noise or vibration caused by faulty transmission or drive shaft
Improper shifting or functioning in any gear
Manual clutch slips or chatters

Differential

Improper fluid level or leakage excluding normal seepage
Cracked or damaged housing which is visible
Abnormal noise or vibration caused by faulty differential

Cooling System

Leakage including radiator
Improperly functioning water pump

Electrical System

Battery leakage
Improperly functioning alternator, generator, battery, or starter

Fuel System

Visible leakage

Wheels

Visible cracks, damage or repairs
Mounting bolts loose or missing

Exhaust System

Air conditioner
Sizes mismatched

Leakage

Brake System

Failure warning light broken
Pedal not firm under pressure (DOT spec.)
Not enough pedal reserve (DOT spec.)
Does not stop vehicle in straight line (DOT spec.)
Hoses damaged
Drum or rotor too thin (Mfr. Specs)
Lining or pad thickness less than 1/32 inch
Power unit not operating or leaking
Structural or mechanical parts damaged

Steering System

Too much free play at steering wheel (DOT specs.)
Free play in linkage more than 1/4 inch
Steering gear binds or jams
Front wheels aligned improperly (DOT specs.)
Power unit belts cracked or slipping
Power unit fluid level improper

Suspension System

Ball joint seals damaged
Structural parts bent or damaged
Stabilizer bar disconnected
Spring broken
Shock absorber mounting loose
Rubber bushings damaged or missing
Radius rod damaged or missing
Shock absorber leaking or functioning improperly

Tires

Inoperable Accessories

Tread depth less than 2/32 inch
Gauges or warning devices

Exhaust System

Heater & Defroster
Visible damage

DEALER _____

ADDRESS _____

SEE FOR COMPLAINTS

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

Under Massachusetts law, G.L. c. 90, § 7 N ¼, you must also provide to the consumer, at the time of sale, the following warranty information—this is the Used Vehicle Warranty:

LIMITED USED VEHICLE WARRANTY

[name of dealer] (the "Dealer") warrants this [make, year and model of vehicle and VIN number] against any defect, malfunction, or combination of defects or malfunctions, that impairs its safety or use for a period of

- (a) 90 days or 3,750 miles, whichever comes first (for vehicles with fewer than 40,000 miles on the odometer at the time of sale, or if the true mileage is not known and the vehicle is three years old or less)
- (b) 60 days or 2,500 miles, whichever comes first (for vehicles with 40,000 to 79,999 miles on the odometer at the time of sale, or if the true mileage is not known and the vehicle is more than three but less than six years old)
- (c) 30 days or 1,250 miles, whichever comes first (for vehicles with 80,000 to 124,999 miles on the odometer at the time of sale, or if the true mileage is not known and the vehicle is six years old or more) from the date of delivery of the vehicle to you. (Dealer to check 201 CMR 11.23(3)(a), (b), or (c).)

The Dealer will provide the full cost of parts and labor necessary to repair all covered defects. However, the Dealer may charge you up to a total of \$ (Dealer to fill in an amount from \$0 to \$100) per vehicle for the repair of all covered defects during the warranty period.

The warranty period is extended one day for every day the vehicle is in the shop for repairs, and one mile for every mile the vehicle is driven between the dealer's acceptance of the vehicle for repair and its return to the consumer. The warranty is extended for 30 days from the completion of any repair attempt for every defect that was the subject of the repair attempt.

The Dealer will give you a refund if a defect that impairs the safety or use of the vehicle continued to exist or recurred within the warranty period after either three repair attempts for the same defect or being out of service after being returned for repair of any defect or defects for a cumulative total of more than ten business days.

Defects that are covered by the manufacturer's warranty are not covered by this warranty if the Dealer gives you a copy of the manufacturer's warranty, that warranty has been assigned to you, and the Dealer assures that those defects are repaired.

This warranty is provided pursuant to M.G.L. c. 90, § 7N¼, the used vehicle warranty law. For further information about that law contact the Office of Consumer Affairs and Business Regulation at 727-7780.

Please sign and date this warranty below. Keep one copy for your records and give the other copy to the dealer.

You must also provide the consumer at the time of sale the following notice, either printed on the reverse side of the warranty printed above, or on a separate sheet of paper—this is the required Notice concerning the Used Vehicle Warranty Law, the Lemon Aid Law and the Implied Warranty Law:

CONSUMER RIGHTS FOR USED CAR BUYERS

I. USED CAR WARRANTY LAW

The Massachusetts Used Car Warranty Law, M.G.L. c. 90, s. 7N ¼ protects consumers who have problems with their used vehicle.

UNDER THE LAW, YOU HAVE A RIGHT TO A REFUND IF:

- (a) A defect that impairs the safety or use of the vehicle arose during the warranty period, AND
- (b) A defect continued to exist or recurred during the warranty period after either:
 1. three or more repair attempts for the same defect, or
 2. being out of service after being returned for repair of any defect for a cumulative total of more than ten business days.

The defect must arise during the 30, 60, or 90 day warranty period stated on your warranty. The warranty period is extended one day for every day that your car is in the shop for repairs. The warranty is extended for 30 days from the completion of any repair attempt for the defect that was the subject of the repair attempt.

IF THE DEALER DOES NOT ISSUE A REFUND AFTER THESE STANDARDS HAVE BEEN MET, YOU HAVE A RIGHT TO HAVE YOUR CASE DECIDED BY A STATE-CERTIFIED ARBITRATOR. YOU MUST REQUEST STATE CERTIFIED ARBITRATION WITHIN 6 MONTHS OF ORIGINAL DELIVERY OF THE VEHICLE TO YOU.

II. LEMON AID LAW

If this vehicle fails inspection within seven days, and it would cost more than 10% of the purchase price to repair, you are entitled to a full refund if the vehicle is returned to the dealer within 14 days. See the separate Lemon Aid Law notice.

III. IMPLIED WARRANTY LAW

The implied warranty of merchantability is a guarantee provided by law in the sale of all consumer products, including automobiles (even if they cost less than \$700 or have 125,000 miles or more on the odometer). This law says that your vehicle should function properly for a reasonable period of time. If the vehicle does not, the dealer must fix it at no charge to you. (Note: The statute does not define reasonable period of time.)

It is illegal to sell a car "AS IS", "WITH ALL FAULTS", or with a "50/50 WARRANTY".

THIS SHEET PROVIDES ONLY A SUMMARY OF YOUR RIGHTS.
To request arbitration, or to get further information, contact:

Office of Consumer Affairs and Business Regulation
Ten Park Plaza, Room 5170
Boston, Massachusetts 02116
Used Car Warranty Law information: 617-283-8787, 888-283-3757
Office of the Attorney General: (617) 727-8400

Copy of Warranty to Consumer

At the time of sale, you **must** give the consumer a copy of the Limited Used Vehicle Warranty. Have the consumer sign and date your copy of the warranty, and his copy. You must keep a copy on file for at least 12 months. If you do not give the consumer a copy of the warranty at the time of sale, or give the consumer a copy that is incomplete or inaccurate, the warranty period will be unlimited, until you give the consumer a complete, accurate copy. Then the 30, 60 or 90 day warranty period begins. The consumer has rights to warranty repairs and to arbitration even when you do not give the consumer a written copy of the warranty. Note that although the warranty is “limited,” in the sense that it is limited to use and safety, and for a limited amount of time, it is **not** limited to certain parts of the vehicle, such as drive train, and any warranty with such limits is **not** the correct and accurate warranty provided by the Used Vehicle Warranty Law.

You **must** also give the consumer at the time of sale the Notice with the summaries of the Used Vehicle Warranty Law, the Lemon Aid Law, and the Implied Warranty Law.

You must also post on the left front window of each used motor vehicle you deliver to a purchaser the following notice, required by Attorney General Regulation 940 CMR 5.04(6):

"REFUND RIGHTS

ATTENTION PURCHASER: For your own protection, if you have purchased this vehicle for personal or family use, you should have the vehicle inspected within 7 days after purchase, even if it already has an inspection sticker on it. If the vehicle fails a Massachusetts safety inspection, you may return it to the dealer and receive a full refund of the purchase price, pursuant to M.G.L. c. 90, § 7N, if:

- (1) The car is inspected within seven days after purchase at an authorized Massachusetts inspection station;
- (2) The estimated cost of repairs necessary for the car to pass inspection is more than 10% of the purchase price of the car;
- (3) The defects which cause the vehicle to fail inspection were not caused by the abusive or negligent operation of the vehicle or by damage resulting from an accident occurring after the date of the sale;
- (4) You obtain from the inspection station a signed, written statement of the reasons why the car failed inspection and an estimate of the cost of repairs necessary for it to pass inspection; and
- (5) You return the car to the dealer *within ten days* from the date of purchase and give him a copy of the statement and estimate prepared by the inspection station."

Retaining Records

In addition to keeping a copy of the Limited Used Vehicle Warranty with the consumer's signature and date written on it, the Attorney General's Motor Vehicle Regulations, 940 CMR 5.00, require you to provide consumers with copies of your sales contract, and of repair receipts and itemized bills. You should keep copies of these documents for your files.

ARBITRATION

Vehicle buybacks are required, once the consumer meets or exceeds the Used Vehicle Warranty Law's repair requirements, and you should be able to handle most repurchases yourself, without the consumer filing for arbitration. However, the option remains for consumers to file for arbitration if they believe you have not honored the requirements of the Used Vehicle Warranty Law.

Arbitration is a way to settle disputes without going to court. You and the consumer both have an opportunity to tell your side of the story at a hearing before an impartial party, the arbitrator. At this time, there is no fee for a consumer filing for arbitration. The arbitrations are conducted by arbitrators trained and selected by the Office of Consumer Affairs and Business Regulation (“OCABR”).

A consumer can file an application for arbitration after:

- the vehicle has been in the repair shop 3 times for the same defect, and that defect continued to exist or recurred within the warranty period; or
- the vehicle was out of service for more than ten (10) business days, not necessarily all at one time, for one or more defects during the warranty period; or
- the consumer alleges the defect impairs the use or safety of the vehicle.

The consumer has six (6) months after delivery of the vehicle to file for arbitration. The consumer must request a hearing on the official form provided by OCABR, which is available on our web site, www.mass.gov/consumer. Once the consumer sends the application for arbitration to OCABR, it is reviewed to be sure that it meets all the requirements of the law. If it does, the case will be scheduled for arbitration. **Note:** If the consumer misses the filing deadline of six months, he may still file a court claim against you under the Used Vehicle Warranty law or other laws. Generally, there will only be one state-run used car arbitration per vehicle, but a consumer may still qualify for the state-run used car arbitration program even if his case has been mediated or arbitrated by another organization.

You will receive a copy of the consumer’s request for arbitration and other materials within seven (7) days of the acceptance of the case. It should take about forty-five (45) days from when the request for arbitration form is complete and accepted to conduct a hearing and to receive a written decision.

The arbitration process

The date of the hearing will be within forty four (44) days of the date of the acceptance of the request for arbitration. Notice of the date, time and location of the hearing and the name of the arbitrator selected by OCABR will be mailed to you and the consumer no later than ten (10) days prior to the hearing. The arbitrator will be impartial and will not have a personal interest in the outcome of the hearing.

While you may hire an attorney to represent you at the arbitration, one is not required. Used car arbitration is designed to be conducted without attorneys. The hearing will, when possible, be scheduled in a place convenient for both the consumer and the dealer.

At the hearing, the consumer will be required to present the facts of his case, and to prove that he meets the requirements of the law. You will present your side of the case, too. An impartial arbitrator will listen to both sides, and ask questions. Hearings vary in length depending on the facts in each individual case, but the average hearing length is between 1 ½ and 2 hours.

The consumer is required to bring the vehicle to the hearing, unless it cannot be driven or is unsafe to drive. The arbitrator has the option of examining, driving, or riding in the vehicle, but neither you nor the consumer can require the arbitrator to do so.

If you have a good reason and cannot be at the hearing in person, you may present your case by telephone, provided that enough advance notice is given to the arbitrator and to the consumer. You will be responsible for any and all costs associated with a telephone hearing.

If you are unable to attend the hearing on the date scheduled, you can ask to reschedule the hearing by calling OCABR well in advance of the hearing date. Re-scheduled hearings are an exception, and you must have an extraordinary reason for your request. If you do not go to the hearing, you have defaulted. This means that the arbitrator will decide against you automatically. However, you will have three (3) business days after the hearing to show that you had an extraordinary reason for not attending the hearing (claiming that you did not receive notice of the hearing is **not** always an acceptable excuse). If the arbitrator or OCABR accepts your reason for not attending, a new hearing will be scheduled.

Repairs after Hearing, RMV Inspection sticker

Evidence that the defect(s) can be repaired given an additional attempt after the hearing will **not** be taken into consideration by the arbitrator in determining whether the vehicle is impaired. Similarly, evidence that the vehicle

passed the Registry of Motor Vehicle's inspection for a sticker does not necessarily mean that the vehicle is not impaired in safety or use for the purpose of the Used Vehicle Warranty law.

After the Hearing—Next Steps

You will generally receive the Arbitrator's written decision in the mail within 14 days after the hearing. Arbitration is an *all or nothing* decision. If the arbitrator rules that the consumer has not met the requirements of the law, he will not be awarded anything. If the arbitrator rules that the consumer has met the requirements of the law, you will be ordered to give the consumer a refund.

If the arbitrator decides in your favor, you will not be required to refund the consumer's money. The consumer may still sue you in court pursuant to the Consumer Protection Act, G.L. c. 93A. However, in that action, you can present the arbitrator's decision in your favor as evidence that the consumer has not met the requirements of the Used Vehicle Warranty Law. Even if the court decides in your favor on this issue, however, that does not mean that the court cannot analyze the consumer's claims under another theory of law, including the Implied Warranty of Merchantability.

If the arbitrator finds in the consumer's favor, you have twenty one (21) days from the mailing date of the decision to either appeal the case to court, or to pay the refund. You may only appeal if it was evident that the arbitrator was biased, if the arbitrator exceeded his power, or if the decision was based on fraud.

If you do not appeal, or pay the refund within twenty one days, you are subject to a fine of \$50 a day until you pay the refund.

Four times a year, you must give OCABR a list of the VIN numbers of vehicles returned under used car arbitration and resold in Massachusetts. The list must also include the names of previous owners, the purchaser's name and address, and registration numbers. You also have a legal obligation under the Attorney General's regulations to disclose to any buyer any material fact that would affect a decision to purchase a vehicle.

For every year that a used car dealer has arbitration cases accepted by OCABR, the dealer must give OCABR a sales report, due January 31st of the following year. The report must include the total number of used vehicles sold by the dealer. OCABR will release periodic reports on the Used Vehicle Arbitration Program, and will include such information.

ADVERTISING, SALES AND REPAIRS

Advertising

The Attorney General's Motor Vehicle Regulations have specific requirements, both for what must be included in advertising of motor vehicles, and what is prohibited in motor vehicle advertising, found at 940 CMR 5.02 (940 Code of Massachusetts Regulation 5.02). You must include in any advertisement offering motor vehicles for sale the business name and address of the dealer. If you are advertising a sale or promotion in connection with the sale of motor vehicles, you must also include the conditions of sale, including whether the supply of vehicles or other sale goods is limited, and you must also clearly and conspicuously disclose the expiration date of the sale. If you offer a range of prices for trade-in vehicles, you must disclose the criteria for a consumer to obtain the offered trade-in price for his vehicle. Particularly if you are offering used motor vehicles for sale, you must disclose, clearly and conspicuously:

- the stock number of the vehicle;
- that the vehicle is used; and
- a designation of the vehicle as a demonstrator, taxicab, police car, or as a leased or daily rental vehicle, if you know, or in the exercise of reasonable care, should know, that the vehicle was previously so used.

If you advertise that you will perform a particular repair on a motor vehicle, you must include in the price the total charge to the consumer for all parts and labor necessary to perform such repairs.

Motor Vehicle Sales Contract

While there is to date no specific sales contract required in Massachusetts, the Attorney General's regulations require certain information to be included in such contracts, which must be titled Motor Vehicle Purchase Contract, including:

- (a) The name and address of the dealer and the purchaser;

(b) The make, model, year and identification or serial numbers of both the vehicle purchased and any trade in vehicle;

(c) A designation of the purchased vehicle as either "new" or "used"; and a further designation as a "police car", taxicab", "demonstrator", "former leased car", "former daily rental" or a rebuilt vehicle which was previously declared a total loss by an insurance company, if the dealer knows or, in the exercise of reasonable care, should know of the applicability of any such designation;

(d) The total contract price, including an itemized list of any charges for vehicle repair or preparation, optional accessories and documentary preparation which are not already included in the purchase price;

(e) If there are any conditions precedent to the dealer's acceptance of the contract (for example, if the contract must be counter signed by an authorized dealer representative or if a trade in vehicle must be inspected and meet certain standards, etc.), the following statement, set forth in a clear and conspicuous manner, with the conditions inserted in the blank spaces:

"This contract is not binding upon either the dealer or the purchaser until the following conditions are met:

PURCHASER MAY CANCEL THIS CONTRACT AND RECEIVE A FULL REFUND AT ANY TIME UNTIL S/HE RECEIVES A COPY OF THIS CONTRACT SIGNED BY AN AUTHORIZED DEALER REPRESENTATIVE. PURCHASER MUST GIVE WRITTEN NOTICE OF CANCELLATION TO THE DEALER."

For purposes of 940 CMR 5.00, if a controversy arises concerning the date or time of receipt of any notice or document, the time and date of the postmark will be determinative unless the notice or document was hand delivered, in which case the actual time of delivery will govern;

(f) If the vehicle carries an express warranty, the following statement: "This vehicle carries an express warranty. You may obtain a written copy of such warranty from the dealer upon request."

(g) The following statement, in either form appearing herein, set forth in a clear and conspicuous manner:

"ATTENTION PURCHASER: All vehicles are WARRANTED as a matter of state law. They must be fit to be driven safely on the roads and must remain in good running condition for a reasonable period of time. If you have significant problems with this vehicle or if it will not pass a Massachusetts inspection, you should notify the dealer immediately. He may be required to fix the car or refund your money. THIS WARRANTY IS IN ADDITION TO ANY OTHER WARRANTY GIVEN BY THE DEALER." or

"ATTENTION PURCHASER: If you have mechanical or operating problems or if this vehicle does not pass a Massachusetts safety inspection within seven days of purchase, you should notify the dealer immediately. He may be required to fix the vehicle or refund your money. This vehicle is covered by the implied warranties of merchantability and fitness for a particular purpose. THESE IMPLIED WARRANTIES ARE IN ADDITION TO ANY OTHER WARRANTIES GIVEN BY THE DEALER."

Repairs and Services

The Attorney General's Motor Vehicle Regulations, at 940 CMR 5.05, require that you give consumers copies of repair receipts and itemized bills containing the following information:

- the name and address of the customer and the repair shop;
- the date the customer's vehicle was delivered to the repair shop;
- the year, make and registration number of the customer's vehicle and the odometer reading of the vehicle on the date it was delivered to the repair shop;
- an itemized list of the repairs performed on the customer's vehicle;
- a list of parts supplied to the customer by name and number, the price charged to the customer for each part, and the total amount charged to the customer for parts;
- if any part supplied was not new, a statement as to whether it was used, reconditioned or rebuilt;
- the number of hours charged for the repair work, a designation of such hours as actual hours worked or flat-rate hours, the price charged to the customer for each such hour and the total amount charged to the customer for labor; and
- the total amount charged to the customer for parts and labor.

Under the Used Vehicle Warranty Law, you must give the consumer receipts for parts ordered for repair of the vehicle. The receipt must include the following, in addition to what is required by 940 CMR 5.05:

- **the date the vehicle was returned to the consumer;**
- **the number of days the consumer's warranty has been extended as a result of the repairs;**
- **the mileage on the date the vehicle was returned to the consumer;**
- **the defect(s) and symptom(s) complained of;**

- **the work performed in an attempt to correct the defect(s) or symptom(s);**
- **the identity of the person or organization that performed the work if it was not performed by you;**
- **any parts replaced in performing the work;**
- **any amount charged to the consumer for the repair;**
- **the dates parts were ordered and received; and**
- **receipts for parts ordered must be attached.**

Arbitration Regulations: 201 CMR 11.00

201 CMR 11.00: New and Used Motor Vehicle Arbitration Section

- 11.01: Purpose and Definitions
- 11.02: Arbitration Requests
- 11.03: Processing of Arbitration Forms
- 11.04: Notification and Scheduling of Arbitration Hearings
- 11.05: Rescheduling Arbitration Hearings
- 11.06: Defaults
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- 11.09: The Arbitrator
- 11.10: The Hearing
- 11.11: The Decision
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- 11.13: The Award for "Used Cars"
- 11.14: Damaged Vehicles
- 11.15: Used Vehicle Dealer Warranty
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- 11.23: Notices to Consumers (New Vehicles)
- 11.24: Sales Reports

11.25: Miscellaneous Provisions

11.01: Purpose and Definitions

(1) Purpose. 201 CMR 11.00 is promulgated pursuant to the M.G.L. c. 90, § 7N¼ (Used Car Warranty Law) and 7N½ (New Car Lemon Law). It sets forth the procedures for operation of state-certified new and used car arbitration and is designed to promote the speedy, efficient, and fair disposition of disputes arising out of defective new and used motor vehicles.

(2) Definitions. Unless otherwise stated, terms used in 201 CMR 11.00 are as defined or used in M.G.L. c. 90, § 7N¼ and 7N½.

Arbitrator or arbitration firm means the individual or entity appointed by the Director of Consumer Affairs and Business Regulation to conduct state-certified new and used car arbitrations.

Award/appeal period means the period for compliance with or appeal of a finding in favor of the consumer as set forth in M.G.L. c. 90, § 7N¼ and 7N½ (3)(A)(iii).

Continuing costs: means all incidental costs accrued during that period after the hearing and before the consumer has been tendered a full refund or replacement vehicle as ordered while the consumer is still in possession of the defective vehicle.

New motor vehicle or new car means a motor vehicle covered by or subject to M.G.L. c. 90, § 7N½.

OCABR means the Office of Consumer Affairs and Business Regulation.

Used motor vehicle or used car means a motor vehicle covered by or subject to M.G.L. c.90, § 7N¼.

11.02: Arbitration Requests

(1) To apply for state certified arbitration a consumer must submit a "request for arbitration" form, which will be supplied on request by the Office of Consumer Affairs and Business Regulation (OCABR).

(2) To be accepted for new car arbitration, the request for arbitration must:

(a) be submitted on the designated form and received by the arbitration firm or OCABR within 18 months of the date the owner took possession of the motor vehicle (for new cars);

(b) state that the consumer believes the motor vehicle's use, market value, or safety is substantially impaired by the nonconformity(s) complained of;

(c) state that the nonconformity(s) complained of is not the result of owner negligence, damage caused by accident (except as a result of the nonconformity(s)), vandalism, attempts to repair the vehicle by a person other than the manufacturer, its agent or authorized dealer, or any attempt to substantially modify the vehicle without the manufacturer's authorization;

(d) state that the consumer either gave the manufacturer, the agent or authorized dealer at least three attempts to correct the same substantial defect, or that the vehicle was out of service by reason of repair for at least 15 business days within the term of protection;

(e) state that the consumer gave the manufacturer its seven business day final opportunity to cure the non-conformity(s) after the limits set forth in 201 CMR 11.02(2)(d) were met or exceeded;

(f) include a narrative description of the claimed nonconformity(s) and a chronology of the repair attempts;

(g) be in compliance with all other rules, regulations, procedures and provisions of law.

(3) To be accepted for used car arbitration, requests for arbitration must:

(a) be submitted within six months of the date the consumer took possession of the motor vehicle (for used cars).

(b) state that the vehicle was purchased from a used car dealer located in Massachusetts;

(c) state that the consumer owns the vehicle;

(d) state that the vehicle is not used primarily for business purposes, that it was not purchased by and is not owned by or registered to a business;

(e) state that the motor vehicle's safety or use has been impaired by a defect that arose during the duration of the dealer's warranty;

(f) state that the defect(s) complained of is not the result of:

1. owner negligence;
2. abuse;
3. damage caused by accident (except as a result of the defect(s));
4. vandalism;
5. an attempt to repair the vehicle by a person other than the dealer, the dealer's designee, or the manufacturer's representative;
or
6. an attempt by the consumer to modify the vehicle:

(g) state that the consumer either gave the dealer at least three attempts to repair the same defect, or that the vehicle was out of service for a cumulative total of more than ten business days after the consumer returned it to the dealer for repair of any defect and that a defect recurred during the warranty period or continued to exist after the three attempts or ten business days;

(h) include a narrative description of the defect(s) and a chronology of the repair attempts;

(i) be in compliance with all other applicable rules, regulations, and provisions of law:

(j) include payment of the required fee, if any; and

(k) include copies of the following:

1. the motor vehicle purchase contract;
2. the bill of sale;
3. the motor vehicle registration;
4. the financing agreement, if any;
5. any applicable credit insurance policy and verification of payments therefor;
6. any applicable motor vehicle insurance policy and verification of charges and payments made for each coverage provided under that policy;
7. all motor vehicle service contracts and verification of payments therefor;
8. all receipts for payment to the dealer for warranty repairs;
9. all warranty repair receipts; and
10. all receipts for towing charges and alternative transportation charges related to the defect.

(4) Any consumer who is eligible to be accepted for both used car arbitration and new car arbitration pursuant to M.G.L. c. 90, § 7N½, must proceed first through new car arbitration. If the new car arbitration does not result in an award in favor of the consumer, the consumer may then proceed through used car arbitration.

11.03: Processing of Arbitration Forms

(1) Submitted arbitration forms will be date-stamped and assigned a case number upon receipt. A request for arbitration form shall be deemed to be timely filed if it is date-stamped or post marked within the respective time periods provided for in M.G.L. c. 90, §§ 7N¼ and 7N½.

(2) New and used car arbitration request forms shall be reviewed for completeness and compliance with 201 CMR 11.02(2) and (3), respectively.

(a) Incomplete forms shall be returned to the consumer promptly for completion. Such forms when completed must be received by the OCABR or arbitration firm within 30 days or the consumers period of eligibility for filing the request, whichever is later. The arbitration firm may reject a request that is not timely returned.

(b) Forms found not in compliance with 201 CMR 11.02 will be rejected, with the reason for rejection sent to the consumer.

(3) Complying, complete, reviewed forms shall be date-stamped to indicate their acceptance for arbitration. This acceptance date shall trigger the 45 day period in which the arbitrator must render a decision in the case, and shall be deemed to be the date "received" for purposes of M.G.L. c. 90, §§ 7N¼ and 7N½, as the case may be.

(4) The OCABR or arbitration firm may rescind any acceptance granted in error or because of incomplete or erroneous information.

(5) Any fees charged to the applicant by the arbitration firm including, but not limited to, filing and hearing fees, shall be determined by the OCABR in accordance with M.G.L. c. 7, § 3B.

11.04: Notification and Scheduling of Arbitration Hearings

(1) When scheduling hearings, the arbitration firm shall attempt to accommodate the geographic and time-of-day needs of the parties.

(2) The arbitrator shall mail a notice to the consumer and to the respondent-dealer or respondent-manufacturer (or its designee), as the case may be, within seven days of acceptance of a request for arbitration. The notice shall indicate that the consumer's request for arbitration has been accepted and shall also include general information about the arbitration process, a copy of the consumer's request for arbitration and accompanying narrative.

(3) The foregoing notice shall constitute sufficient notice to the manufacturer that it must cure the nonconformity(s) within seven business days, if the consumer had not previously given such opportunity to the manufacturer as required by M.G.L. c. 90, § 7N½.

(4) The hearing shall be held within 44 days of the date that the request for arbitration was accepted. The hearing shall be held no earlier than 21 days after the date of the notice of acceptance unless agreed to by both parties. Notice of the date, time, location of the hearing, and name of the arbitrator shall be mailed by the arbitrator to both parties no later than ten days prior to the hearing.

(5) No later than seven days prior to the hearing, the arbitrator may call both parties to confirm the hearing date. This call shall constitute sufficient notice should either party claim non-receipt of the notice provided for in 201 CMR 11.04(4).

(6) Within ten days of the date of the notice of acceptance of the consumer's request for arbitration, the respondent-manufacturer or respondent-dealer, as the case may be, shall mail to the consumer, the arbitrator and the arbitration firm a specific response to the facts and issues raised in the consumer's request for arbitration form. General denials will not satisfy the requirements of 201 CMR 11.04(6).

(7) The arbitrator shall notify all parties and the arbitration firm of all procedural rulings and shall seek from OCABR if necessary.

11.05: Rescheduling Arbitration Hearings

(1) Either party may request that the arbitrator reschedule the arbitration hearing. The arbitrator shall grant such a request only if received prior to the day of the hearing and only for good cause shown.

(2) Requests to reschedule hearings on the day of the hearing shall be treated according to 201 CMR 11.06.

(3) If a request for rescheduling is granted, the arbitrator shall record the date it was received, and assign a new hearing date and location falling within the original 44 day period provided for in 201 CMR 11.04(4) if one is available. Notice of such new date shall be made to both parties by any means appropriate for the time then remaining before the hearing.

(4) The arbitrator, OCABR, or the arbitration firm may reschedule any hearing for good cause. In such case, the procedures outlined in 201 CMR 11.04 will be used.

11.06: Defaults

(1) If a party fails to appear at the hearing or requests a rescheduling on the day of the hearing, the arbitrator shall enter judgment by default against that party.

(2) If the defaulting party, within three business days after the hearing, demonstrates good cause to the arbitrator for defaulting, the arbitrator will set aside the default. A new hearing will then be scheduled pursuant to 201 CMR 11.05.

11.07: Withdrawal

(1) A consumer may withdraw his request for arbitration at any time prior to the mailing of a written decision by the arbitration firm.

(2) If the arbitrator receives a request for withdrawal prior to the day of the hearing will constitute a withdrawal without prejudice from the arbitration system. In such case the timeliness of a consumer's request for arbitration will be preserved for two months after the consumer's voluntary withdrawal or the respective time period provided for new and used car leasing as specified in 201 CMR 11.03, whichever is later.

(3) If the arbitrator receives a request for withdrawal on or after the day of the hearing it will be deemed a withdrawal with prejudice. After a withdrawal with prejudice, a consumer will be permitted to participate in state-certified arbitration only if the manufacturer or dealer, as the case may be, voluntarily consents to such proceedings.

11.08: Requests for Information

- (1) Any party may request information from another provided that it is in writing, will reasonably assist the requesting party in presenting its case, and allows for a reasonable period of time for the gathering of information. The response must be delivered to the requesting party (with a copy to the arbitrator) no later than three business days before the hearing.
- (2) Within seven days of any request, any dealer or repair shop which services the consumer's motor vehicle shall provide a copy of all requested work orders, diagnoses, bills, or other relevant documents or information.
- (3) The parties involved are encouraged to provide the foregoing documents at no charge. However, if the number of individual pages requested exceeds 50, the party providing the copies may charge the requesting party the actual cost of all photocopying, not to exceed ten cents per page.
- (4) Upon reasonable request received no later than seven days before the scheduled date of the hearing, the consumer shall permit the manufacturer or used car dealer to examine and test drive the vehicle. The consumer shall have the right to be present during any examination or test drive. The manufacturer or used car dealer shall use no tools other than diagnostic tools, and shall not make any repairs or adjustments. The examination shall not be used as a repair attempt.
- (5) The parties shall comply with any requests for additional information made by the arbitrator within seven days, or within such period as the arbitrator designates.
- (6) The arbitrator may make procedural rulings, in an equitable and efficient manner to resolve any disputes which arise from the foregoing requests for information.

11.09: The Arbitrator

- (1) A single arbitrator will conduct each hearing. The choice of the arbitrator is not subject to the approval of either party.
- (2) The arbitrator shall not have a personal interest in the outcome of any hearing, nor be acquainted with any of the participants, nor hold any prejudice or bias toward any party or class of parties which might be involved in the proceedings. The arbitrator must disclose such fact to the parties prior to the hearing.
- (3) If either party has a reasonable basis to believe that an arbitrator has violated 201 CMR 11.09(2), the party may request that the arbitrator be disqualified by submitting the request in writing to the OCABR and the arbitration firm and before the hearing if based on information known at that time.
- (4) The arbitrator shall be guided by the standards of ethical conduct established in "The Code of Ethics for Arbitrators in Commercial Disputes" prepared by a Joint Committee consisting of a Special Committee of the American Arbitration Association and a Special Committee of the American Bar Association.

11.10: The Hearing

- (1) The conduct of the hearing will encourage a full and complete disclosure of the facts.
- (2) The arbitrator shall tape record the hearing. Either party may tape record or transcribe the hearing at its own expense. Such party shall provide a copy of the recording or transcription to the other party upon request. The requesting party shall pay the copying costs.
- (3) The arbitrator shall administer an oath or affirmation to each individual who testifies.
- (4) The formal rules of evidence will not apply. The parties may introduce any relevant evidence that will assist the arbitrator in making a decision. The arbitrator may exclude unduly repetitious or clearly irrelevant evidence.
- (5) The consumer or his representative will present his evidence first, then the respondent-dealer or manufacturer or its representative will present its evidence.
- (6) Each party may question the other after his or her presentation and may question each witness after his or her testimony. The arbitrator may question any party or witness at any time.
- (7) Each party is responsible for presenting all his evidence in a concise manner on the day of the hearing.
- (8) All written testimony shall include a statement signed by the witness under oath that his testimony is true.
- (9) The consumer shall bring the vehicle to the hearing unless the consumer provides a reasonable basis to believe that it is inoperable or unsafe to operate. The arbitrator may, in his discretion, examine, drive, or ride in or on the vehicle.
- (10) After a warning, the arbitrator may terminate any hearing that becomes unmanageable due to the behavior of either party and enter judgment by default against the party whose behavior made the hearing unmanageable.
- (11) Upon a showing of good cause and with the consent of the other party, a party may present its case by telephone, provided that no less than seven days advance notice is given to the arbitrator and to the other party. In such cases, the party requesting the

telephonic hearing shall pay all costs associated therewith, including but not limited to costs for long distance calls, conference calls, and telephone amplification equipment.

(12) Unless the arbitrator receives a consumer's written consent to a delayed decision, the arbitrator may keep the record open only for additional evidence that the arbitrator requests if that will not interfere with the timely rendering of a decision. Such additional evidence shall be provided to both parties.

11.11: The Decision

(1) All decisions shall be in writing, dated and signed by the arbitrator, and mailed to both parties and the arbitration firm.

(2) The arbitrator may make an oral decision at the hearing but it shall not be binding until a written decision is mailed, and shall not be used to determine compliance with any time-sensitive deadlines. The arbitrator's decision is final.

(3) The full written decision shall contain a summary of the evidence presented, a finding of facts, a conclusion of whether the motor vehicle meets the standards for refund or replacement (new cars only), a clear calculation of the monetary award if the vehicle meets such standards, and an order if appropriate.

(4) The arbitrator shall mail a decision in each case within 45 days of the acceptance date stamped on the request for arbitration form. Failure to mail the decision within such time period, or to hold the hearing within 44 days of acceptance of the request for arbitration, shall not invalidate the decision.

(5) The date of mailing of the decision, shall determine compliance with the 45 day requirement and be the date used to calculate appeal deadlines.

(6) The arbitrator's decision shall only determine whether the motor vehicle does or does not meet the standards for refund or replacement (new cars only).

(7) Any monetary award for new vehicle arbitration shall be calculated in accordance with M.G.L. c. 90, § 7N½, but may be affected by any previous awards or settlements made to the consumer.

(8) The consumer shall be reimbursed for all continuing costs upon return of the defective vehicle if the consumer has previously submitted documentation to the manufacturer and the arbitration firm that such costs have been accrued.

(9) The arbitrator shall make the following findings with respect to new motor vehicles:

(a) As long as the arbitrator determines that:

1. The nonconformity(s) complained of substantially impairs the use, market value, or safety of the vehicle; and
2. The consumer gave the manufacturer or dealer a reasonable number of attempts to repair the vehicle as defined in M.G.L. c. 90, § 7N½(4), and
3. That all other requirements of M.G.L. c. 90, § 7N½ have been met, the arbitrator must find for the consumer, and order the manufacturer to make a refund or replacement at the consumer's option within 21 days of the finding in favor of the consumer.

(b) In determining compliance with 201 CMR 11.11(9)(a) the arbitrator shall consider the entirety of the circumstances in each case, including but not limited to one or more of the following:

1. whether the motor vehicle's market value is at least 10% lower than it would have been but for the nonconformity(s);
2. How seriously the nonconformity(s) interferes with the consumer's use of the motor vehicle; and
3. Whether the nonconformity(s) creates or has the potential to create a substantial danger to occupants, others, or to property; provided however, that evidence that the nonconformity(s) can be repaired given an additional attempt(s) subsequent to the hearing shall not be taken into consideration by the arbitrator in determining whether the vehicle is substantially impaired.

(10) The arbitrator shall make the following findings with respect to used motor vehicles:

(a) As long as the arbitrator determines that:

1. The defect(s) complained of impairs the safety or use of the vehicle;
2. A defect continued to exist or recurred during the warranty period after three repair attempts for the same defect or a cumulative total of more than ten business days out of service after being returned for repair; and
3. That all other requirements of M.G.L. c. 90, § 7N¼ and 201 CMR 11.00 have been met, the arbitrator must find for the consumer, and order the dealer to refund the full repurchase amount within 21 days. The arbitrator may not, under any circumstances, order a partial refund or any relief other than a full refund.

(b) In determining compliance with 201 CMR 11.11(10)(a)(1) the arbitrator shall consider the entirety of the circumstances in each case, including but not limited to one or more of the following:

1. Whether the defect(s) interferes with the consumer's use of the motor vehicle; and
2. Whether the defect(s) creates or has the potential to create a danger to occupants, others, or to property.

(11) The calculation for the Repurchase Amount for used motor vehicles is as follows:

(a) If a dealer is required to or elects to repurchase a vehicle pursuant to M.G.L. c. 90, § 7N¼, he shall pay to the consumer the full repurchase amount, less a reasonable allowance for use.

(b) The repurchase amount shall be calculated by adding the following:

1. the full purchase price of the vehicle, including amounts allowed for any trade-in vehicle;
2. finance charges;
3. registration fees;
4. the payments made for credit life and credit accident and health insurance;
5. the pro rata cost of motor vehicle damage, collision and comprehensive insurance;
6. the payments made for any service contract;
7. incidental damages including, but not limited to, the following:
 - a. the reasonable costs of towing from the point of breakdown up to 30 miles to obtain required repairs or to return the vehicle to the dealer;
 - b. the reasonable costs of obtaining alternative transportation during the warranty period after the second day following each breakdown not to exceed \$15.00 per day;
 - c. the cost of all options added by the dealer;
 - d. the cost of all options not added by the dealer that cannot be removed without damage to either the vehicle or the option;
 - e. amounts paid to the dealer or his designee for repair of the vehicle;
 - f. the amount of any arbitration application fee paid by the consumer.
8. Incidental damages do not include the following:
 - a. attorneys' fees;
 - b. excise tax;
 - c. lost wages; and
 - d. other consequential damages;
 - e. sales tax.

9. The consumer shall be reimbursed for all continuing costs upon return of the defective vehicle if the consumer has previously submitted documentation to the dealer and the arbitration firm that such costs have been accrued.

(12) The repurchase amount for used vehicles shall be further calculated by subtracting the following:

- (a) any cash award that was made by the dealer in an attempt to resolve the dispute and accepted by the consumer;
- (b) any refunds or rebates to which the consumer is entitled;
- (c) 15¢ for each mile the vehicle was operated between its sale and the dealer's repurchase, other than miles the vehicle was operated during repair attempts;
- (d) the amount of any over allowance on a trade-in vehicle if the amount of the over allowance and the actual cash value of the trade-in vehicle are separately stated and identified as such on the copy of the motor vehicle purchase contract or bill of sale or other document given to the consumer prior to or at the time of sale; provided, however, that the arbitrator may decrease the

amount of the over allowance if the evidence shows that the amount stated as the "actual cash value" on the document(s) given the consumer is lower than the true cash value of the trade-in vehicle.

(13) Rather than paying to the consumer the amount allowed for the trade-in vehicle, the dealer may return the trade-in vehicle itself, if the dealer still owns the trade in vehicle, and if it has not suffered any damage and has not been driven more than an incidental number of miles since the consumer traded it in. If the dealer returns the trade-in vehicle, the amount of any over allowance shall not be deducted from the repurchase amount.

11.12: Disputing the Arbitrator's Decision

(1) The arbitrator, OCABR, or the arbitration firm may make " technical corrections" to an arbitrator's decision. "Technical corrections" shall generally be defined as computational corrections, typographical corrections, or other minor corrections.

(2) Either party may request a technical correction in writing, setting forth the requested correction and reason therefor, and must be received by the OCABR and the arbitration firm within 14 days of the mailing of the arbitrator's full written decision. A request for technical corrections will not toll the 21 day award/appeal period.

(3) All claims concerning procedural irregularities, or complaints concerning an arbitrator's conduct or legal errors should be made by parties in writing to the OCABR. This information is requested to assist the OCABR in its oversight of the arbitration process and will not constitute an appeal of any kind.

(4) A dissatisfied manufacturer or dealer may appeal a decision through a court of competent jurisdiction. A dissatisfied consumer may file suit against the dealer under M.G.L. c. 93A.

11.13: The Award for "Used Cars"

(1) After an arbitrator's finding in favor of a consumer, the dealer shall notify the consumer whether it intends to issue an award or appeal the decision. If the dealer indicates its intention to issue an award, the dealer and the consumer shall take all reasonable steps to ensure that the award is issued within the award/appeal period. Among other reasonable steps, the consumer and the dealer shall cooperate with each other to execute all necessary documents in order to clear the title of any encumbrances.

(2) The consumer shall have the option of rejecting the award and retaining possession of the vehicle. A consumer who rejects an award will not be entitled to further M.G.L. c. 90, § 7N¼ warranty repairs.

(3) In computing the award/appeal period, the last day of the period so computed shall be included unless it is not a business day, in which event the period runs until the end of the next business day.

(4) Within seven days after issuing a refund to a consumer pursuant to an award, the dealer shall notify the arbitration firm in writing of the consumer's name, the arbitration firm case number, the date and amount of the refund.

11.14: Damaged Vehicles

(1) If a vehicle that is the subject of arbitration is damaged beyond reasonable wear and tear through no fault of the dealer or manufacturer, and that damage is unrelated to the defect, the consumer must

(a) repair the damage; or

(b) pay to the dealer the reasonable costs of repair; or

(c) allow a deduction from the award for the reasonable costs of repair.

(2) The consumer must notify the dealer or manufacturer of the existence and nature of such damage before the hearing, or, if the damage occurs after the hearing, within three days of occurrence.

(3) If the issue of damage is raised at the hearing, the arbitrator may assess fault and the cost to repair the damage. If the arbitrator assesses fault, and if he determines that the damage is the fault of neither the dealer nor the manufacturer, the arbitrator shall deduct from the amount of the award the cost to repair the damage.

(4) If the issue of damage is not resolved by the arbitrator, the manufacturer or dealer may submit a request in writing to the arbitration firm for permission to delay issuing the award until the issue of damage is resolved. Unless such permission is granted, the dealer shall pay the full award, or appeal the arbitrator's ruling, within the award/appeal period.

11.15: Used Vehicle Dealer Warranty

(1) Every dealer that sells a used vehicle that is covered by the warranty established by M.G.L. c. 90, § 7N¼ shall complete and give to the consumer at the time of sale at no charge a copy of the warranty set forth in 201 CMR 11.22(3) on a separate piece of paper.

(2) The dealer shall ask the consumer to sign and date a copy of that warranty and shall retain that copy for 12 months after the delivery of the vehicle to the consumer. This signed copy will serve as evidence that a copy of the warranty was provided to the consumer as required by M.G.L. c. 90, § 7N¼.

(3) If the dealer gives the consumer a copy of the warranty at the time of sale, the warranty period will commence to run on the date the consumer accepts delivery of the vehicle. If the dealer fails to give the consumer a copy of the warranty at the time of sale, or gives the consumer a copy that is incomplete or inaccurate, the warranty period will not begin until the dealer gives the consumer a complete, accurate copy. However, a dealer's failure to give the consumer a complete, accurate copy of the warranty will not affect the consumer's rights to warranty repairs and to arbitration.

(4) No dealer shall seek a waiver by a consumer of his or her rights pursuant to M.G.L. c. 90, § 7N¼ and 201 CMR 11.00. Any such waiver will be unenforceable.

11.16: Used Vehicle Dealer Warranty Repair Period

(1) Subject to the tolling provisions and manufacturer warranty provisions of M.G.L. c. 90, § 7N¼ and 201 CMR 11.00, the dealer shall accept return of the vehicle from the consumer and refund the full repurchase amount, less a reasonable allowance for use, if either:

- (a) the same defect was subject to three repair attempts and continued to exist or recurred within the warranty period; or
 - (b) the vehicle was out of service for a cumulative total of more than ten business days for repair of any defect or defects and a defect continued to exist, recurred or arose during the warranty period; provided that such defect or defects impaired the use or safety of the vehicle.
- (2) For the purposes of the three repair attempt period, an attempt to diagnose a defect after a vehicle has been returned for repair will count as a repair attempt even if no repairs are made.

(3) For the purposes of the more than ten business day period, any portion of a business day will count as a business day.

(4) The more than ten business day period will be tolled if a part necessary to repair the defect is not in the dealer's possession and the requirements of M.G.L. c. 90, § 7N¼(3)(A)(ii) and 201 CMR 11.18 have been met. In no event will the more than ten business day period be tolled for more than a total of 21 days because a part or parts is not in the dealer's possession.

(5) The dealer shall immediately accept return of a vehicle for warranty repairs when the it is delivered. If the dealer refuses to accept return of the vehicle for repair, the vehicle shall be deemed out of service commencing on the day the vehicle is presented for repairs. If the consumer notifies the dealer of the need for warranty repairs via a telephone call or a letter to the dealer, the dealer shall not be deemed to have refused to accept return of the vehicle if he schedules a repair appointment and accepts return of the vehicle for repair within three business days after he receives the consumer's telephone call or letter.

11.17: Used Vehicle Dealer Warranty Repair Receipts

(1) When returning a used motor vehicle to a consumer after a warranty repair attempt, whether such repair attempt was made by the dealer or the manufacturer or another, the dealer shall provide the consumer with a warranty repair receipt. The dealer shall record on the warranty repair receipt, in addition to the information required by 940 CMR 5.00, the following:

- (a) the date the vehicle was presented to the dealer for repair;
- (b) the date the vehicle was returned to the consumer;
- (c) the number of days the consumer's warranty has been extended as a result of the repairs;
- (d) the mileage on the date the vehicle was presented for repair and on the date the vehicle was returned to the consumer;
- (e) the defect(s) and symptom(s) complained of;
- (f) the work performed in an attempt to correct the defect(s) or symptom(s);
- (g) the identity of the person or entity that performed the work if not the dealer;
- (h) any parts replaced in performing the work; and
- (i) any amount charged to the consumer for the repair.

(2) In order for a dealer to stop the more than ten business day repair period established by M.G.L. c. 90, § 7N¼(3)(A)(ii) for the unavailability of parts, the dealer must comply fully with 201 CMR 11.17(1) and must also record on the warranty repair receipt the following:

- (a) every part necessary to repair the defect that was not in the dealer's possession;
- (b) the date that the dealer became aware that the part was necessary to repair the defect;

- (c) the date and the means by which the dealer ordered the part;
- (d) the entity from which the dealer ordered the part; and
- (e) the date the dealer received the part.

(3) In order to stop the repair period for the unavailability of parts, the dealer must also attach to the warranty repair receipt copies of all order forms, invoices, receipts and other evidence of the order and receipt of parts.

11.18: Manufacturer Warranty Repairs

Defects that involve parts that are covered under an express warranty issued by the manufacturer of the used motor vehicle will be excluded from the warranty required by M.G.L. c. 90, § 7N¼, provided that the following conditions are met:

- (1) the dealer gives the consumer a copy of the manufacturer's warranty at the time of sale;
- (2) the manufacturer's warranty has been duly assigned or transferred to the consumer;
- (3) the manufacturer's warranty is enforceable by the consumer according to its terms;
- (4) the manufacturer's warranty is not inconsistent with M.G.L. c. 90, § 7N¼; and
- (5) the dealer assures that the defect(s) covered by the manufacturer's express warranty is repaired.

11.19: Used Vehicle Dealer Repurchases

(1) Any dealer that wishes to exercise its option to repurchase a vehicle pursuant to M.G.L. c. 90, § 7N¼(3)(A)(iv) must provide the consumer with an offer to do so in writing setting forth the total amount offered, which shall be the full repurchase amount as set forth in 201 CMR 11.11(11), and must itemize the offer.

(2) The consumer is free to reject the dealer's offer to repurchase the vehicle. If the consumer rejects an offer that is for the full repurchase amount and the offer otherwise complies with M.G.L. c. 90, § 7N¼ and 201 CMR 11.02, the consumer will not be entitled to further M.G.L. c. 90, § 7N¼ warranty repairs.

(3) If the consumer rejects an offer that is for less than the full repurchase amount, or that is otherwise not in compliance with 201 CMR 11.19, the consumer will remain entitled to warranty repairs.

(4) If an offer is open only for a limited period of time, the dealer shall state in the offer that the time limit is good for at least five business days after the consumer receives the offer, subject to the provisions of 201 CMR 11.19(6).

(5) If a consumer accepts a repurchase offer, the dealer shall pay the consumer the full amount of the offer immediately upon receipt of the title to the vehicle. The consumer and the dealer shall cooperate with each other to execute all necessary documents in order to clear the title of any encumbrances. If necessary to clear the title, the dealer shall pay some or all of the repurchase amount to the lien holder.

(6) If there is a dispute as to whether the offer is for the full repurchase amount, either party may request a determination by the OCABR as to the full repurchase amount. If either party requests such a determination, the offer shall remain open until one business day after the parties receive notice of the OCABR's determination. If the OCABR determines that the full repurchase amount is higher than that offered by the dealer, the dealer shall have the option of either offering the full repurchase amount as determined by the OCABR or withdrawing the offer. If the dealer withdraws the offer, the consumer shall remain entitled to M.G.L. c. 90, § 7N¼ warranty repairs and to arbitration if otherwise eligible.

11.20: Used Vehicles Purchased For Less Than \$700

Vehicles with a total sale price of less than \$700 are not covered by M.G.L. c. 90, § 7N¼ warranties. For the purposes of 201 CMR 11.20, the total sale price includes the amount paid for the vehicle, including the value of any trade-in vehicle including any over allowance, plus the cost of any options purchased from or through the dealer, the cost of preparing the car for purchase and delivery, and any other charges or service charges made by the dealer in connection with the vehicle's sale or delivery. Excluded from the total sale price are sales tax, excise tax, finance charges, registration fees, the cost of any extended warranty or service contract, and the cost of motor vehicle insurance.

11.21: Resale of Repurchased Vehicles

Dealers shall provide the OCABR on a quarterly basis a list of the VIN numbers, names of previous owners, the new purchaser's name and address, and registration numbers of vehicles returned under M.G.L. c. 90, § 7N¼ and resold in Massachusetts.

11.22: Notices to Consumers (Used Vehicles)

Every used car dealer shall, for every used motor vehicle covered by the warranties established by M.G.L. c. 90, § 7N¼ that he or she sells, offers for sale, or displays in Massachusetts, affix a yellow notice to the window or the dashboard, in not smaller than ten point type:

ATTENTION CONSUMERS OF USED CARS

The Massachusetts Used Car Warranty Law, M.G.L. c. 90, § 7N ¼ protects consumers who have problems with their used vehicle.

UNDER THE LAW, YOU HAVE A RIGHT TO A REFUND IF:

- (a) a defect that impairs safety or use arose during the warranty period, AND
- (b) the defect continued to exist or has recurred during the warranty period after either:
 1. three or more repair attempts for the same defect, or
 2. being out of service after being returned for repair for any defect for a cumulative total of more than ten business days.

IF THE DEALER DOES NOT ISSUE A REFUND, YOU HAVE A RIGHT TO HAVE YOUR CASE DECIDED BY A STATE-CERTIFIED ARBITRATOR IF YOU APPLY WITHIN SIX MONTHS AFTER DELIVERY OF THE VEHICLE. FOR MORE INFORMATION, REFER TO THE USED CAR WARRANTY LAW INFORMATION PROVIDED WITH YOUR OWNERSHIP MATERIALS, OR CONTACT:

Office of Consumer Affairs and Business Regulation
10 Park Plaza, Suite 5170
Boston, Massachusetts 02116
Used Car Warranty Law information: 617-283-8787, 888-283-3757
Office of the Attorney General: (617) 727-8400

Every dealer that sells a used vehicle that is covered by the warranties established by M.G.L. c. 90, § 7N ¼ shall also give to the consumer at the time of sale the following notice, either printed on the reverse side of the warranty set forth below, or on a separate sheet of paper:

CONSUMER RIGHTS FOR USED CAR BUYERS

I. USED CAR WARRANTY LAW

The Massachusetts Used Car Warranty Law, M.G.L. c. 90, s. 7N ¼ protects consumers who have problems with their used vehicle.

UNDER THE LAW, YOU HAVE A RIGHT TO A REFUND IF:

- (a) A defect that impairs the safety or use of the vehicle arose during the warranty period, AND
- (b) A defect continued to exist or recurred during the warranty period after either:
 1. three or more repair attempts for the same defect, or
 2. being out of service after being returned for repair of any defect for a cumulative total of more than ten business days.

The defect must arise during the 30, 60, or 90 day warranty period stated on your warranty. The warranty period is extended one day for every day that your car is in the shop for repairs. The warranty is extended for 30 days from the completion of any repair attempt for the defect that was the subject of the repair attempt.

IF THE DEALER DOES NOT ISSUE A REFUND AFTER THESE STANDARDS HAVE BEEN MET, YOU HAVE A RIGHT TO HAVE YOUR CASE DECIDED BY A STATE-CERTIFIED ARBITRATOR. YOU MUST REQUEST STATE CERTIFIED ARBITRATION WITHIN 6 MONTHS OF ORIGINAL DELIVERY OF THE VEHICLE TO YOU.

II. LEMON AID LAW

If this vehicle fails inspection within seven days, and it would cost more than 10% of the purchase price to repair, you are entitled to a full refund if the vehicle is returned to the dealer within 14 days. See the separate Lemon Aid Law notice.

III. IMPLIED WARRANTY LAW

The implied warranty of merchantability is a guarantee provided by law in the sale of all consumer products, including automobiles (even if they cost less than \$700 or have 125,000 miles or more on the odometer). This law says that your vehicle should function properly for a reasonable period of time. If the vehicle does not, the dealer must fix it at no charge to you. (Note: The statute does not define reasonable period of time.)

It is illegal to sell a car "AS IS", "WITH ALL FAULTS", or with a "50/50 WARRANTY".

THIS SHEET PROVIDES ONLY A SUMMARY OF YOUR RIGHTS.

To request arbitration, or to get further information, contact:

Office of Consumer Affairs and Business Regulation
10 Park Plaza, Suite 5170
Boston, Massachusetts 02116
Used Car Warranty Law information: 617-283-8787, 888-283-3757
Office of the Attorney General: (617) 727-8400

Every dealer that sells a used vehicle that is covered by the warranties established by M.G.L. c. 90, § 7N¼ shall complete and give to the consumer at the time of sale the following warranty:

LIMITED USED VEHICLE WARRANTY

[name of dealer] (the "Dealer") warrants this [make, year and model of vehicle and VIN number] against any defect, malfunction, or combination of defects or malfunctions, that impairs its safety or use for a period of

(a) 90 days or 3,750 miles, whichever comes first (for vehicles with fewer than 40,000 miles on the odometer at the time of sale, or if the true mileage is not known and the vehicle is three years old or less)

(b) 60 days or 2,500 miles, whichever comes first (for vehicles with 40,000 to 79,999 miles on the odometer at the time of sale, or if the true mileage is not known and the vehicle is more than three but less than six years old)

(c) 30 days or 1,250 miles, whichever comes first (for vehicles with 80,000 to 124,999 miles on the odometer at the time of sale, or if the true mileage is not known and the vehicle is six years old or more) from the date of delivery of the vehicle to you. (Dealer to check 201 CMR 11.23(3)(a), (b), or (c).)

The Dealer will provide the full cost of parts and labor necessary to repair all covered defects. However, the Dealer may charge you up to a total of \$ (Dealer to fill in an amount from \$0 to \$100) per vehicle for the repair of all covered defects during the warranty period.

The warranty period is extended one day for every day the vehicle is in the shop for repairs, and one mile for every mile the vehicle is driven between the dealer's acceptance of the vehicle for repair and its return to the consumer. The warranty is extended for 30 days from the completion of any repair attempt for every defect that was the subject of the repair attempt.

The Dealer will give you a refund if a defect that impairs the safety or use of the vehicle continued to exist or recurred within the warranty period after either three repair attempts for the same defect or being out of service after being returned for repair of any defect or defects for a cumulative total of more than ten business days.

Defects that are covered by the manufacturer's warranty are not covered by this warranty if the Dealer gives you a copy of the manufacturer's warranty, that warranty has been assigned to you, and the Dealer assures that those defects are repaired.

This warranty is provided pursuant to M.G.L. c. 90, § 7N¼, the used vehicle warranty law. For further information about that law contact the Office of Consumer Affairs and Business Regulation at 727-7780.

Please sign and date this warranty below. Keep one copy for your records and give the other copy to the dealer.

.23: Notices to Consumers (New Vehicles)

All new motor vehicles and those used motor vehicles still within the term of protection which are sold, offered for sale, or displayed in Massachusetts shall have affixed to the window (or in the case of motorcycles, conspicuously affixed to the body) by yellow sticker, in not smaller than ten point type:

ATTENTION CONSUMERS

The Massachusetts "Lemon Law", General Laws Chapter 90, Section 7N1/2 provides protection for consumers who have serious problems with their new vehicle.

UNDER THE LEMON LAW, YOU HAVE A RIGHT TO A REFUND OR REPLACEMENT OF THE VEHICLE IF:

- (a) there is a substantial defect(s), AND
- (b) the defect still exists or has recurred after either:
 - 1. three or more repair attempts for the same defect, or
 - 2. being out of service by reason of repair for any combination of defects for a cumulative total of 15 or more business days, within one year or 15,000 miles (whichever comes first) after original delivery, AND
- (c) the manufacturer has been notified of the defect and given one final repair attempt of no more than seven business days.

IF THE MANUFACTURER DOES NOT REFUND OR REPLACE THE VEHICLE, YOU HAVE A RIGHT TO HAVE YOUR CASE ARBITRATED BY A STATE CERTIFIED ARBITRATOR.

All new motor vehicles and those used motor vehicles still within the term of protection which are sold, offered for sale in Massachusetts shall include with the ownership manual materials a yellow information sheet, in not smaller than ten point type:

Lemon Law Information:

If you Have Serious Problems with this Vehicle

The Massachusetts "Lemon Law", M.G.L. c. 90, § 7N½ provides protection for consumers who have serious problems with their new vehicle.

UNDER THE LEMON LAW, YOU HAVE A RIGHT TO A REFUND OR REPLACEMENT OF THE VEHICLE IF:

- (a) there is a substantial defect(s), AND
- (b) the defect still exists or has recurred after either:
 - 1. three or more repair attempts for the same defect, or
 - 2. being out of service by reason of repair for any combination of defects for a cumulative total of 15 or more business days, within one year or 15,000 miles (whichever comes first) after original delivery, AND
- (c) the manufacturer has been notified of the defect and given one final repair attempt of no more than seven business days.

IF THE MANUFACTURER DOES NOT REFUND OR REPLACE THE VEHICLE, YOU HAVE A RIGHT TO HAVE YOUR CASE ARBITRATED BY A STATE CERTIFIED ARBITRATOR.

This state-certified arbitration is different from any manufacturer-sponsored program to which you may also be entitled. Under the state program, you will be sent a decision within 45 days of when your request for arbitration is accepted.

Under the law, you must request state-certified arbitration within 18 months of original delivery of the vehicle.

THIS SHEET PROVIDES ONLY A SUMMARY OF YOUR RIGHTS.

To request arbitration, or to get further information, contact:

Office of Consumer Affairs and Business Regulation

10 Park Plaza, Suite 5170

Boston, Massachusetts 02116

Lemon Law information: 617 973-8787, 888-283-3757

- (3) The manufacturer shall be responsible for supplying the foregoing notices to dealers. The dealer shall be responsible for placing the notices on the vehicle and with the ownership materials.

11.24: Sales Reports

- (1) By January 31st of every year, every dealer that has had any Used Vehicle Warranty Law cases accepted for arbitration against it in the previous calendar year shall submit to the OCABR a sales report indicating the number of used vehicles sold by the dealer in the previous year.

11.25: Miscellaneous Provisions

- (1) All correspondence by parties to the OCABR should be directed to the attention of the New and Used Vehicle Arbitration Director.
- (2) Situations not covered in 201 CMR 11.00 shall be handled by the OCABR or the arbitrator in an equitable and efficient manner.
- (3) The OCABR may issue advisory opinions regarding issues arising in the arbitration program.
- (4) Upon a finding of extraordinary circumstances, the OCABR may, in its sole discretion, waive any of 201 CMR 11.00, if such waiver would be in the public interest, and serve to carry out the purpose or intent of the New and Used Vehicle Arbitration Program.

Regulatory Authority

201 CMR 11.00: M.G.L. c. 90, §§ 7N¼ and 7N½.

940 CMR 5.00: Motor Vehicle Regulations

Section

- 5.01: Definitions
- 5.02: Advertising of Motor Vehicles
- 5.03: Manufacturers' Responsibilities
- 5.04: Sales Requirements
- 5.05: Repairs and Services
- 5.06: Severability

5.01: Definitions

Advertisement (including the terms **advertise** and **advertising**) means any oral, written or graphic statement made by a seller in any manner in connection with the solicitation of business and includes, without limitation because of enumeration, statements and representations made in a newspaper or other publication or on radio or television or contained in any notice, handbill, sign, billboard, poster, bill, circular, brochure, pamphlet, catalogue or letter, or printed on or contained in any tag or label which is attached to or accompanies any merchandise offered for sale.

Authorized Dealer Representative means a salesperson, sales manager or other agent or employee of a motor vehicle dealer who is authorized to represent or act for the dealer in connection with the acceptance, rejection or modification of motor vehicle purchase contracts.

Clear and Conspicuous means that the statement, representation or term being disclosed is of such size, sound or color contrast and is so placed as to be readily noticeable to the person to whom it is being disclosed. A statement contained in a printed contract, form or notice is not clear and conspicuous unless it is printed in at least ten point type or its equivalent.

Customer means any person who has repairs, service or maintenance performed or seeks to have repairs, service or maintenance performed by a repair shop on a motor vehicle.

Defect means any defect in the design, construction or performance of a motor vehicle produced by a manufacturer which the manufacturer has reason to believe may occur or exist in a substantial number of vehicles produced by the manufacturer and which (a) creates an unreasonable risk of accident, death or injury; (b) substantially impairs the operation or performance of the vehicle; or (c) substantially impairs the value of the vehicle.

Manufacturer includes the following:

- (a) Any person engaged in the business of manufacturing or assembling new and unused motor vehicles;
- (b) Any person engaged in the business of importing new and unused motor vehicles into the United States; and

(c) Any person engaged in the business of selling or distributing new and unused motor vehicles to motor vehicle dealers located in the Commonwealth.

Motor Vehicle Dealer or **Dealer** means any person who is engaged in the business of selling, offering for sale or negotiating the retail sale of motor vehicles and includes the officers, agents and employees of such person and any combination or association of dealers. A person shall be deemed to be "in the business of selling" motor vehicles if s/he sells more than three motor vehicles in any calendar year.

Motor Vehicle or **Vehicle** shall have the same meaning as that set forth in M.G.L. c 90, s. 1 except that it shall also include motor cycles.

Person or **Persons** means an association, a corporation, an institution, a natural person, an organization, a partnership, a trust or any legal entity.

Purchaser means any person who has obtained ownership of a motor vehicle by transfer or purchase or who has entered into an agreement or contract for the purchase of a motor vehicle.

Repair Shop means a person who, for compensation, engages in the business of diagnosing or repairing malfunctions of or damage to motor vehicles, including auto body shops and retail stores which offer automotive services, but excluding:

(a) the Commonwealth of Massachusetts and the United States government and all agencies, departments and political subdivisions thereof;

(b) any industrial or commercial establishment which repairs, services or maintains vehicles for its own use; and

(c) for purposes of 940 CMR 5.05(2) through (5) and (9), gasoline service stations which engage solely in minor repair services such as changing or repairing tires, lubrication, replacing fan belts and oil and air filters, installing light bulbs, batteries, windshield wiper blades and other minor accessories, and the like.

5.02: Advertising of Motor Vehicles

Scope: 940 CMR 5.02(1) through (15) shall apply to any advertisement published, delivered, broadcast or circulated within the Commonwealth of Massachusetts, whether or not the person placing the advertisement maintains an office in Massachusetts, if the person placing the advertisement intends to sell or actually sells motor vehicles to Massachusetts residents.

(1) It is an unfair or deceptive act or practice for a motor vehicle dealer to advertise any motor vehicles for sale unless the advertisement discloses the business name and address of the dealer.

(2) It is an unfair or deceptive act or practice for a motor vehicle dealer to advertise any vehicle for sale which is not new unless the advertisement clearly and conspicuously discloses:

(a) The stock number of the vehicle;

(b) That the vehicle is used; and

(c) A designation of the vehicle as a demonstrator, taxicab, police car, leased or daily rental vehicle, if the dealer knows or, in the exercise of reasonable care, should know that the vehicle was previously so used.

(3) It is an unfair or deceptive act or practice for a motor vehicle dealer to advertise the price of motor vehicles unless such price includes all charges of any type which are necessary or usual prior to delivery of such vehicles to a retail purchaser, including without limitation any charges for freight, handling, vehicle preparation and documentary preparation, but excluding taxes and optional charges for the dealer's preparation of title and assistance in registering a vehicle.

(4) It is an unfair or deceptive act or practice for a manufacturer to advertise the price of motor vehicles unless the advertisement clearly and conspicuously discloses the nature of all charges which are not included in the advertised price, including without limitation any charges for freight, handling or vehicle preparation, which are necessary or usual prior to delivery of such vehicles to a retail purchaser.

If a manufacturer advertises the price of motor vehicles and the name of any specific motor vehicle dealer is mentioned in such advertisement, the advertised price shall include all charges for freight, handling, dealer preparation and documentary preparation which are necessary or usual prior to delivery of such vehicles to a retail purchaser by the named motor vehicles dealer.

(5) It is an unfair or deceptive act or practice for a motor vehicle dealer to use, in connection with the advertising or sale of motor vehicles, the terms, "dealer's cost", "wholesale", "invoice price", "factory billing", or other terms of like import or any other representation that a motor vehicle will be sold at, above, or below a cost or price standard, unless:

(a) The cost or price standard represents the total consideration paid by the dealer to the manufacturer for the motor vehicle, and where no hold back, rebate, promotional fee or any other consideration has been or will be paid by the manufacturer to the dealer

prior or subsequent to the purchase of the motor vehicle which in any way reduces, diminishes or offsets the cost to the dealer of purchasing the motor vehicle; and

(b) The advertisement discloses, for each vehicle or class of vehicles offered for sale, and in close proximity to the reference to such standard and in equivalent type or print size thereto, the exact dollar figure represented by the standard and the actual price at which the vehicle or class of vehicles is offered for sale.

(6) It is an unfair or deceptive act or practice for a motor vehicle dealer to fail or refuse to sell a motor vehicle in accordance with any terms or conditions, including price or warranty, which the dealer has advertised or otherwise represented.

(7) It is an unfair or deceptive act or practice for a motor vehicle dealer to advertise motor vehicles for sale at a specified price when the price does not include certain standard equipment with which such vehicles are actually equipped or with which such vehicles are usually or ordinarily equipped unless the advertisement clearly and conspicuously discloses that such equipment is not included in the advertised price.

(8) It is an unfair or deceptive act or practice for a motor vehicle dealer to advertise a sale or promotion in connection with the sale of motor vehicles without clearly and conspicuously disclosing in such advertisement the expiration date and any other conditions of such sale or promotion, including whether the supply of vehicles or other sale goods is limited.

(9) It is an unfair or deceptive act or practice for a motor vehicle dealer or manufacturer to make any representation or statement of fact in an advertisement if the dealer or manufacturer knows or should know that the representation or statement is false or misleading or if the dealer or manufacturer does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based.

(10) It is an unfair or deceptive act or practice for a motor vehicle dealer to advertise or represent in any manner the price which will be paid by such dealer for trade in vehicles unless the price of the vehicle sold by such dealer to the owner of the trade in vehicle is within the range of prices at which the dealer usually sells such vehicles and is not increased because of the amount paid for the trade in vehicle.

(11) It is an unfair or deceptive act or practice for a motor vehicle dealer to advertise or represent in any manner that a specific price will be paid by such dealer for trade in vehicles unless either the advertised price will be paid for all trade in vehicles, regardless of their condition or age, or the advertisement clearly and conspicuously discloses any conditions which trade in vehicles must meet before such price will be paid.

(12) It is an unfair or deceptive act or practice for a motor vehicle dealer to advertise or represent in any manner that a range of prices (such as "up to \$500" or "as much as \$500") will be paid by such dealer for trade in vehicles unless the advertisement clearly and conspicuously discloses the criteria (such as age, condition or mileage) which the dealer will use to determine the amount to be paid for a particular trade in vehicle.

(13) It is an unfair or deceptive act or practice for a motor vehicle dealer or manufacturer to use the terms "standard factory equipment," "fully equipped" or words of like import in any advertisement offering motor vehicles for sale; but a dealer or manufacturer may, at its option, list in an advertisement any or all of the specific equipment or accessories with which the advertised vehicle is equipped.

(14) It is an unfair or deceptive act or practice for a repair shop to advertise that it will perform a "tune up" on a motor vehicle unless the specific work to be performed on the vehicle is listed and, if a price is advertised, unless the advertisement clearly and conspicuously discloses whether the price includes parts or labor or both.

(15) It is an unfair or deceptive act or practice for a repair shop to advertise or represent in any manner that it will perform a particular repair on motor vehicles at a specified price unless the price specified includes the total charge to the customer for all parts and labor necessary to perform such repair.

5.03: Manufacturers' Responsibilities

(1) It is an unfair or deceptive act or practice for a manufacturer which, pursuant to the terms of a warranty, furnishes replacement parts or equipment for motor vehicles manufactured by it to fail to apply to such replacement parts or equipment the same express warranty which it would have applied to such parts or equipment had they been sold at retail.

(2) It is an unfair or deceptive act or practice for a manufacturer to:

(a) Fail to furnish to its dealers a price list for vehicles, optional equipment, accessories and destination or transportation charges on the basis of which the dealers may execute motor vehicle purchase contracts with purchasers; or

(b) Increase the price of any vehicle or other item included on its price list except by advance written notification to its dealers of the specific dollar amount of the increase applicable to such vehicle or item.

(3) It is an unfair or deceptive act or practice for a manufacturer which has received a written purchase order for a motor vehicle to demand payment for the vehicle or any equipment or accessories ordered in an amount greater than the price listed on the latest price list delivered to its dealers unless:

- (a) The purchase order requests delivery of the vehicle more than eight weeks after the date of the order and the manufacturer notifies the dealer of a price increase on the vehicle prior to the requested date of delivery.
- (b) The increase in price is due to a law or regulation of the United States or the Commonwealth of Massachusetts which either requires the addition of new equipment to certain vehicles or changes approved transportation rates or existing tax rates; or
- (c) In the case of foreign made cars, the increase is due to the revaluation of the United States dollar.
- (4) It is an unfair or deceptive act or practice for a manufacturer to fail to cancel any purchase order for a motor vehicle and refund all amounts received for such vehicle at the request of the dealer, if the manufacturer fails to deliver the vehicle to the dealer within eight weeks after the date of the purchase order, unless:
 - (a) The purchase order specified a different time period for delivery;
 - (b) The manufacturer had notified the dealer in writing, prior to the date of the purchase order, of a longer delivery period for the model vehicle ordered; or
 - (c) The delay is caused by acts beyond the control of the manufacturer.
- (5) It is an unfair or deceptive act or practice for a manufacturer to fail to give prompt written notice of any defect in motor vehicles manufactured by it to its distributors, zone offices, dealers and other representatives, as well as to the purchasers or owners of such vehicles who are known to the manufacturer. Such written notice shall contain the following information:
 - (a) A clear description of such defect and the identity of the model or class of vehicles in which such defect occurs;
 - (b) An evaluation of the risk of accident, impairment of operation or performance or impairment of value of the vehicle reasonably related to such defect;
 - (c) A statement of the measures to be taken to obtain remedy of such defect; and
 - (d) Whether the cost of such remedy or any part thereof will be borne by the manufacturer.
- (6) If a retail purchaser rejects a motor vehicle pursuant to M.G.L. c. 106, s. 2-601 or revokes his acceptance of a motor vehicle pursuant to M.G.L. c. 106, s. 2-608, and if the basis for such rejection or revocation is the failure of the motor vehicle to conform to specifications submitted by the dealer to the manufacturer regarding such motor vehicle, the dealer may in turn revoke its acceptance of said motor vehicle, and in such event it shall be an unfair and deceptive act or practice for a manufacturer or distributor to fail to promptly refund to the dealer, upon receipt of the motor vehicle, any and all amounts paid by the dealer to the manufacturer on account of its purchase of said motor vehicle, provided however that:
 - (a) The motor vehicle has not been further altered from the condition it was in when the purchaser rejected or revoked his or her acceptance of it under M.G.L., c. 106 and returned it to the dealer;
 - (b) Title to the same is free and clear of all liens and encumbrances; and
 - (c) All requisite title documents and instruments of transfer have been properly prepared and executed in favor of the manufacturer.

5.04: Sales Requirements

Scope: 940 CMR 5.04 et seq. pertaining to sales requirements shall apply only to sales of motor vehicles which are purchased primarily for personal, family or household purposes.

- (1) It is an unfair or deceptive act or practice for a dealer to fail to prepare a written contract for a sale of each motor vehicle and to provide a copy of such contract to the purchaser at the time the purchaser signs the contract in the form and manner prescribed in 940 CMR 5.04(2).
- (2) It is an unfair or deceptive act or practice for a dealer to use any written or printed contract, form or agreement to evidence the sale of a motor vehicle which is not clearly entitled "MOTOR VEHICLE PURCHASE CONTRACT" and which does not state:
 - (a) The name and address of the dealer and the purchaser;
 - (b) The make, model, year and identification or serial numbers of both the vehicle purchased and any trade in vehicle;
 - (c) A designation of the purchased vehicle as either "new" or "used"; and a further designation as a "police car", "taxicab", "demonstrator", "former leased car", "former daily rental" or a rebuilt vehicle which was previously declared a total loss by an insurance company, if the dealer knows or, in the exercise of reasonable care, should know of the applicability of any such designation;
 - (d) The total contract price, including an itemized list of any charges for vehicle repair or preparation, optional accessories and documentary preparation which are not already included in the purchase price;

(e) If there are any conditions precedent to the dealer's acceptance of the contract (for example, if the contract must be counter signed by an authorized dealer representative or if a trade in vehicle must be inspected and meet certain standards, etc.), the following statement, set forth in a clear and conspicuous manner, with the conditions inserted in the blank spaces:

"This contract is not binding upon either the dealer or the purchaser until the following conditions are met:

PURCHASER MAY CANCEL THIS CONTRACT AND RECEIVE A FULL REFUND AT ANY TIME UNTIL S/HE RECEIVES A COPY OF THIS CONTRACT SIGNED BY AN AUTHORIZED DEALER REPRESENTATIVE. PURCHASER MUST GIVE WRITTEN NOTICE OF CANCELLATION TO THE DEALER."

For purposes of 940 CMR 5.00, if a controversy arises concerning the date or time of receipt of any notice or document, the time and date of the postmark will be determinative unless the notice or document was hand delivered, in which case the actual time of delivery will govern;

(f) If the vehicle carries an express warranty, the following statement:

"This vehicle carries an express warranty. You may obtain a written copy of such warranty from the dealer upon request."

(g) The following statement, in either form appearing herein, set forth in a clear and conspicuous manner:

"ATTENTION PURCHASER: All vehicles are WARRANTED as a matter of state law. They must be fit to be driven safely on the roads and must remain in good running condition for a reasonable period of time. If you have significant problems with this vehicle or if it will not pass a Massachusetts inspection, you should notify the dealer immediately. He may be required to fix the car or refund your money. THIS WARRANTY IS IN ADDITION TO ANY OTHER WARRANTY GIVEN BY THE DEALER." or

"ATTENTION PURCHASER: If you have mechanical or operating problems or if this vehicle does not pass a Massachusetts safety inspection within seven days of purchase, you should notify the dealer immediately. He may be required to fix the vehicle or refund your money. This vehicle is covered by the implied warranties of merchantability and fitness for a particular purpose. THESE IMPLIED WARRANTIES ARE IN ADDITION TO ANY OTHER WARRANTIES GIVEN BY THE DEALER."

(h) The provisions of 940 CMR 5.04(2) shall not apply to a retail installment sale agreement, or security agreement, or any other document given or taken in connection with the sale of a motor vehicle, so long as a motor vehicle purchase contract in the form specified in 940 CMR 5.00 has been properly executed.

(3) It is an unfair or deceptive act or practice for a dealer to fail to provide to any person, upon request, a written statement of the terms and conditions of any express warranty applicable to motor vehicles offered for sale by such dealer.

(4) It is an unfair or deceptive act or practice for a dealer to fail to provide to a purchaser, without additional charge, an exact copy of any document signed by such purchaser (other than the purchaser's transfer or assignment of title to the dealer) at the time the purchaser signs such document.

(5) It is an unfair or deceptive act or practice for a dealer to make any changes or additions to a document signed by a purchaser unless such purchaser consents to the changes or additions in writing and the dealer immediately provides to the purchaser, without additional charge, an exact copy of the document with the changes or additions.

(6) It is an unfair or deceptive act or practice for a dealer to fail to display the following statement in a clear and conspicuous manner on the left front window of each used motor vehicle it delivers to a purchaser.

"REFUND RIGHTS

ATTENTION PURCHASER: For your own protection, if you have purchased this vehicle for personal or family use, you should have the vehicle inspected within 7 days after purchase, even if it already has an inspection sticker on it. If the vehicle fails a Massachusetts safety inspection, you may return it to the dealer and receive a full refund of the purchase price, pursuant to M.G.L. c. 90, § 7N, if:

(1) The car is inspected within seven days after purchase at an authorized Massachusetts inspection station;

(2) The estimated cost of repairs necessary for the car to pass inspection is more than 10% of the purchase price of the car;

(3) The defects which cause the vehicle to fail inspection were not caused by the abusive or negligent operation of the vehicle or by damage resulting from an accident occurring after the date of the sale;

- (4) You obtain from the inspection station a signed, written statement of the reasons why the car failed inspection and an estimate of the cost of repairs necessary for it to pass inspection; and
- (5) You return the car to the dealer *within ten days* from the date of purchase and give him a copy of the statement and estimate prepared by the inspection station."
- (7) It is an unfair or deceptive act or practice for a dealer to use a liquidated damage clause, or any clause requiring the forfeiture of a purchaser's deposit, trade in vehicle or other property in the event the purchaser cancels or breaches the contract, in any motor vehicle purchase contract unless:
- (a) The clause contains a specific dollar amount which is to be retained by the dealer as liquidated damage;
 - (b) The clause is clearly and conspicuously disclosed on the motor vehicle contract; and
 - (c) The purchaser indicates his or her assent to the inclusion of such clause in the contract by initialing it.
- (8) It is an unfair or deceptive act or practice for a dealer to represent that a motor vehicle offered for sale can or will be delivered on or about a specified date or within a specified time period when the dealer knows or should know that the vehicle cannot be delivered on such date or within such time or when the dealer has no information upon which such a representation could be reasonably based.
- (9) It is an unfair or deceptive act or practice for a dealer to fail to refund the full amount of a purchaser's deposit promptly when:
- (a) The purchaser cancels the motor vehicle purchase contract before it has been accepted by an authorized dealer representative;
 - (b) The dealer and the purchaser have agreed to make the contract subject to the purchaser's ability to obtain financing of his or her choice and the purchaser cannot obtain such financing after exerting reasonable efforts to do so;
 - (c) The dealer does not accept the contract;
 - (d) The dealer fails to deliver a motor vehicle to the purchaser which conforms to the terms of the contract; or
 - (e) The purchaser cancels the contract because the dealer has failed to deliver the vehicle to the purchaser within the time period specified in the contract, or, if no time period is specified, within eight weeks after the date of the contract, unless the delay is caused by acts beyond the control of the dealer and manufacturer.
- (10) It is an unfair or deceptive act or practice for a dealer to increase the price of a motor vehicle after the dealer has accepted an offer to purchase it, except:
- (a) The price of a new vehicle may be increased in an amount equal to any price increase imposed by the manufacturer which is the result of a law or regulation of the United States or the Commonwealth of Massachusetts which either requires the addition of new equipment to certain vehicles or changes approved transportation costs or existing tax rates, or in the case of foreign made vehicles, is due to a revaluation of the United States dollar; and
 - (b) A trade in vehicle may be reappraised if the dealer has reason to believe that the vehicle has suffered any damage or serious mechanical deterioration prior to its delivery to the dealer or if parts or accessories, including tires, have been removed from the vehicle or replaced with parts or accessories of inferior quality.
- (11) It is an unfair or deceptive act or practice for any person who sells a motor vehicle to fail to execute an assignment and warranty of title for such vehicle in the space provided on the title certificate or on such other form as may be prescribed by the Registrar of Motor Vehicles and to mail or deliver such assignment to either the purchaser, the registrar or the secured party, as the case may be, on the day the vehicle is delivered to the purchaser.
- (12) It is an unfair or deceptive act or practice for a dealer who sells a used motor vehicle to fail to remove from such vehicle, before delivering it to the purchaser, all state safety inspection stickers which were affixed to the vehicle prior to its registration in the name of such purchaser.
- (13) It is an unfair or deceptive act or practice for a dealer to fail:
- (a) To acknowledge in writing, within three business days after being so notified, a purchaser's rejection of a motor vehicle made pursuant to M.G.L. c. 106, s. 2-601; and,
 - (b) If the dealer has no reasonable basis in fact to believe that the purchaser is not entitled to reject the motor vehicle, to promptly refund any and all amounts paid on account of the purchase price thereof, including the trade in vehicle or its value as stated on the sales contract, upon receipt of documents of title properly executed or otherwise endorsed; and,

1. A clear and marketable title to the vehicle, including all requisite instruments of transfer; or
2. A title which is clear and marketable except for liens which the purchaser has agreed may be discharged by an application of his refund.

(14) It is an unfair or deceptive act or practice for a dealer to fail:

(a) To acknowledge in writing, within three business days after being so notified, a purchaser's revocation of his or her acceptance of a motor vehicle made pursuant to M.G.L. c. 106, s. 2-608; and,

(b) If the dealer has no reasonable basis in fact to believe that the purchaser is not entitled to revoke such acceptance, to promptly refund any and all amounts paid on account of the purchase price thereof, including the trade in vehicle or its value as stated on the sales contract, provided that:

1. The vehicle has not been substantially altered from the condition it was in when the purchaser took possession of it excepting any alteration resulting from the condition for which acceptance of the automobile is being revoked and/or solely from normal use;

2. No accessory, component or item of equipment (including tires) has been removed or substituted for by any item of inferior quality than what was originally supplied or which results in a substantial impairment of the obligation of the manufacturer under an express warranty covering the vehicle;

3. All documents of title have been properly executed or otherwise endorsed; and,

4. The purchaser has delivered a clear and marketable title of the vehicle including all requisite instruments of transfer or a title which is clear and marketable except for liens which the purchaser has agreed may be discharged by an application of his refund.

The rights provided in 940 CMR 5.04(14) shall be in addition to and not exclusive of any rights of remedies available under applicable law.

(15) It is an unfair or deceptive act or practice for a dealer to use any words or phrases in connection with the retail sale of motor vehicles purchased primarily for personal, family or household purposes, which limit or imply a limitation on the implied warranties of merchantability and fitness for a particular purpose, including such phrases as "as is," "with all faults," and "50/50 warranty."

(16) It is an unfair or deceptive act or practice for a dealer who receives a written notice from the manufacturer of the existence of a defect in certain motor vehicles to fail to notify persons who purchased such vehicles from it about the information contained in the notice, unless those persons have already been notified by the manufacturer.

(17) It is an unfair or deceptive act or practice for a dealer, distributor, zone office or other authorized representative of a manufacturer who receives a written notice from the manufacturer of the existence of a defect in certain motor vehicles, to fail to inform any person who inquires about the defect of the information contained in the notice.

(18) It is an unfair or deceptive act or practice for a dealer to fail to inform a purchaser on request of the name and address of the prior owner of the vehicle.

(19) It is an unfair or deceptive act or practice for a motor vehicle manufacturer or dealer or other person engaged in trade or commerce to fail to do the following:

(a) display the RESALE VEHICLE NOTICE set forth below in a clear and conspicuous manner on the right front window of each vehicle which is offered for sale or distribution at retail or otherwise after having been returned to its manufacturer pursuant to M.G.L. c. 90, s. 7N1/2;

(b) obtain on a copy of such Resale Vehicle Notice the signature, and printed name and address of each purchaser of such motor vehicle;

(c) provide each such purchaser with a legible copy of the Resale Vehicle Notice the purchaser signs, at the time s/he signs it, and with a copy of all such Resale Vehicle Notices previously executed by prior purchasers of that vehicle; and

(d) retain a copy of all such Resale Vehicle Notices for four years from the date of execution of each.

(20) The Resale Vehicle Notice shall read as follows:

RESALE VEHICLE NOTICE

This is a used vehicle. It was originally sold on [Here insert the month, day, and year of sale.] The original owner returned this vehicle to the manufacturer because it contained one or more defects which the manufacturer was unable to repair adequately. This vehicle is now being resold.

Massachusetts law (M.G.L. c. 90, s. 7N1/2) allows a consumer who buys a new motor vehicle to return the vehicle to its manufacturer if the vehicle has a defect which substantially impairs its use, market value or safety and which is not repaired after a reasonable number of attempts or within a certain period of time.

The original owner returned this vehicle to its manufacturer under this law, complaining of the following defects:

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

Of the defects listed above, the following have been repaired:

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

Massachusetts law entitles you to the name and address of the original owner of this vehicle. You can obtain this information from the seller on request. Note If less than one year has expired since the date this vehicle was originally sold, and if it has traveled less than 15,000 miles, you as a buyer have warranty and repair rights, also required by M.G.L. c. 90, s. 7N1/2. You should contact the Massachusetts Executive Office of Consumer Affairs and Business Regulation for detailed information on your rights under this law.

I ACKNOWLEDGE RECEIPT OF THIS NOTICE.

DATE: _____

(Buyer's Signature)

~~PRINT OR TYPE THE INFORMATION BELOW~~

Buyers name	Street Address	City or Town.
-------------	----------------	---------------

~~This notice is required by M.G.L. c. 90, s. 7N1/2.~~ _____

(21) A dealer, manufacturer or other person engaged in trade or commerce who purchases or acquires a motor vehicle previously purchased by a consumer pursuant to 940 CMR 5.04(19) and (20), shall no longer be subject to those sections unless he knows, or in the absence of negligence should know, that such motor vehicle was returned to its manufacturer pursuant to M.G.L. c. 90, s. 7N1/2.

5.05: Repairs and Services

(1) It is an unfair or deceptive act or practice for a repair shop to make or authorize to be made in any manner or by any means a statement which it knows to be or, in the exercise of reasonable care, should know to be untrue or misleading including, with out limitation, the following types of statements:

- (a) That repairs are necessary or desirable when such is not a fact;
- (b) That a vehicle is in a dangerous condition or that a customer's continued use of a vehicle may be harmful to the customer or others when such is not a fact; or

(c) That repairs have been performed on a vehicle when such is not a fact.

(2) It is an unfair or deceptive act or practice for a repair shop, prior to commencing repairs on a customer's vehicle, to fail to record in writing the following information:

(a) The name and address of the customer and a telephone number at which the customer may be reached;

(b) The date and approximate time the customer's vehicle was delivered to the repair shop;

(c) The year, make and registration number of the customer's vehicle;

(d) The odometer reading on the customer's vehicle; and

(e) The specific repairs requested by the customer, or, if the customer has not requested specific repairs, a brief description of the problems the customer has encountered with the vehicle which caused him to bring it to the repair shop.

(3) It is an unfair or deceptive act or practice for a repair shop to charge a customer for any repairs on a customer's motor vehicle unless either:

(a) The repair shop has received written authorization signed by the customer listing the specific repairs to be performed and the total price to be paid for such repairs, including parts and labor; or

(b) The repair shop has received written authorization signed by the customer listing the specific repairs to be performed and the charges for such repairs, including parts and labor, are displayed in a clear and conspicuous manner on the premises of the repair shop; or

(c) If the repair shop is unable to obtain written authorization from the customer to perform specific repairs (as when the specific repairs to be performed on the vehicle are not known at the time the vehicle is delivered to the repair shop), the repair shop notifies the customer, prior to commencing any repairs, of the specific repairs to be performed on the vehicle and the total price to be charged the customer for such repairs, including parts and labor, and obtains the customer's authorization to perform such repairs; or

(d) The repair shop has obtained, prior to commencing repair of the vehicle, a written waiver, in the following form, executed by the customer in a knowing, voluntary and intelligent manner:

Waiver

I understand that I have the right to know before authorizing any repairs what the repairs to my car will be and what their cost will be. You need not obtain approval from me for repairs or inform me prior to performing repairs what the repairs are or their cost, if the total amount for repairs does not exceed \$. _____

SIGNATURE _____

Such waiver may be included as part of a repair order provided, however, that such waiver is printed in clear and conspicuous type and that its execution may only be accomplished by the customer's signature separate from that appearing elsewhere on the order.

(e) The provisions of 940 CMR 5.05(3) shall not be applicable if the customer brings his or her motor vehicle to the repair shop before or after its usual business hours, or, at the customer's request, repair services are rendered off the premises of the repair shop.

(4) It is an unfair or deceptive act or practice for a repair shop to fail to inform a customer, prior to obtaining oral or written authorization to perform repairs on the customer's vehicle, of the following information:

- (a) The conditions under which the repair shop may impose storage charges and the daily or hourly amount of such charges;
- (b) That the customer has a right to have any parts replaced by the repair shop returned to him or her at the completion of the repairs or to inspect such parts in the event the repair shop is required to return the replaced parts to the manufacturer or some other person under a warranty or rebuilding arrangement; and
- (c) The amount of any charge to the customer for an estimate or diagnosis.

For purposes of 940 CMR 5.00, a repair shop shall be deemed to have informed its customers of the information contained in 940 CMR 5.05(4)(a) through (c) if the repair shop displays such information in a clear and conspicuous manner on the repair shop's premises.

(5) It is an unfair or deceptive act or practice for a repair shop which receives any oral authorization from a customer (whether such authorization is to perform certain repairs, to proceed with repairs even at an increased cost, to extend the time during which repairs may be performed, or any other type of authorization) to fail to maintain written records containing the following information:

- (a) The date and time the authorization was received;
 - (b) The name of the repair shop employee receiving the oral authorization and the name of the person making the authorization;
 - (c) A statement of the exact authorization received; and
 - (d) If the authorization was received over the telephone and the repair shop placed the call, the telephone number called.
- (6) It is an unfair or deceptive act or practice for a repair shop to fail to complete repairs on a motor vehicle on the day the vehicle is delivered to the repair shop by the customer unless the customer is informed of and consents to a further delay or the repair shop can show that the delay was caused by circumstances beyond its control and which could not have been reasonably anticipated.
- (7) It is an unfair or deceptive act or practice for a repair shop which discovers in the course of repairing a customer's vehicle that the vehicle needs repairs other than those authorized by the customer, or that the price for performing such repairs will exceed either the price authorized by the customer or the price noted on a posted schedule of repair charges by more than \$10.00, to fail to inform the customer of such fact and to obtain the customer's authorization to continue with the repair work before proceeding with the repairs.
- (8) It is an unfair or deceptive act or practice for a repair shop to fail to remedy promptly, at no charge to the customer, any repairs performed by it on the customer's vehicle which were not performed in a good and workmanlike manner in accordance with accepted trade standards.
- (9) It is an unfair or deceptive act or practice for a repair shop to fail to provide to a customer, at the completion of the repair work performed on the customer's vehicle, including warranty repair work, a dated written bill containing the following information:
- (a) The name and address of the customer and the repair shop;
 - (b) The date the customer's vehicle was delivered to the repair shop;
 - (c) The year, make and registration number of the customer's vehicle and the odometer reading of the vehicle on the date it was delivered to the repair shop;
 - (d) An itemized list of the repairs performed on the customer's vehicle;
 - (e) A list of the parts supplied to the customer by name and number, the price charged to the customer for each such part, and the total amount charged to the customer for parts;
 - (f) If any part supplied was not new, a statement as to whether it was used, reconditioned or rebuilt;
 - (g) The number of hours of labor charged for the repair work, a designation of such hours as actual hours worked or flat rate hours, the price charged to the customer for each such hour and the total amount charged to the customer for labor; and
 - (h) The total amount charged to the customer for parts and labor. If the price charged to the customer for the repair work is a flat charge for the particular repair which was included in a schedule of charges posted in a clear and conspicuous manner on the premises of the repair shop at the time the vehicle was delivered, the repair shop need not list the price of each part supplied, the number of hours charged or the charge for each hour of labor.
- (10) It is an unfair or deceptive act or practice for a repair shop to charge a customer for repairs which have not actually been performed.
- (11) It is an unfair or deceptive act or practice for a repair shop to fail or refuse to provide to a customer a copy of any document signed by the customer either at the time the document is signed or at the completion of the repair work.

(12) It is an unfair or deceptive act or practice for a repair shop to use a customer's vehicle for any purpose other than a test drive or delivery to the customer unless the express written authorization of the customer has been obtained in advance.

5.06: Severability

If any provision of 940 CMR 5.00 or the application of such provision to any person or circumstance is held to be invalid, the validity of the remainder of 940 CMR 5.00 and the applicability of such provision to other persons or circumstances shall not be affected thereby.

REGULATORY AUTHORITY

940 CMR 5.00: M.G.L. c. 93A, s. 2(c).

MOTOR VEHICLES

Chapter 90: Section 7N. Voiding contracts of sale

Section 7N. Notwithstanding any disclaimer of warranty, a motor vehicle contract of sale may be voided by the buyer if the motor vehicle fails to pass, within seven days from the date of such sale, the periodic staggered inspection at an inspection station licensed pursuant to section seven W; provided, that the defects which are the reasons for the failure to issue a certificate of inspection were not caused by the abusive or negligent operation of the motor vehicle or by damage resulting from an accident or collision occurring after the date of the sale; and provided, further, that the cost of repairs necessary to permit the issuance of a certificate of inspection exceeds ten per cent of the purchase price of the motor vehicle.

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

CHAPTER 90. MOTOR VEHICLES AND AIRCRAFT

MOTOR VEHICLES

Chapter 90: Section 7N1/4. Express warranty by dealer of used motor vehicle; issuance; consumer's rights and remedies

Section 7N1/4. (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 N1/2.

(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 N1/2, 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 N1/2, 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 N1/2 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 N1/2, 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

CHAPTER 106. UNIFORM COMMERCIAL CODE

ARTICLE 2. SALES

PART 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

Chapter 106: Section 2 -314. Implied Warranty: Merchantability; Usage of Trade

Section 2-314. (1) Unless excluded or modified by section 2 -316, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must at least be such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified by section 2 -316, other implied warranties may arise from course of dealing or usage of trade

Applicable Law

ARTICLE 2. SALES

PART 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

Chapter 106: Section 2-315. Implied Warranty; Fitness for Particular Purpose

Section 2-315. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

ARTICLE 2. SALES

PART 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

Chapter 106: Section 2-316A. Limitation on Exclusion or Modification of Warranties

Section 2-316A. (1) The provisions of section 2-316 shall not apply to the extent provided in this section.

(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.

(3) Any language, oral or written, used by a manufacturer of consumer goods, which attempts to limit or modify a consumer's remedies for breach of such manufacturer's express warranties, shall be unenforceable, unless such manufacturer maintains facilities within the commonwealth sufficient to provide reasonable and expeditious performance of the warranty obligations.

(4) Any language, oral or written, used by a seller or manufacturer of 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 remedies for breach of those warranties, shall be unenforceable with respect to injury to the person. This subsection does not affect the validity under other law of an agreement between a seller or manufacturer of goods and services and a buyer that is an organization (see Section 1-201(28)), allocating, as between them, the risk of damages from or providing indemnity for breaches of those warranties with respect to injury to the person.

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

Appendices

201 CMR 11.00 (OCABR New and Used Motor Vehicle Arbitration Regulations)

940 CMR 5.00 (Attorney General Motor Vehicle Regulations)

G.L. c. 90, § 7N ¼ (Used Vehicle Warranty Law)

G.L. c. 90, § 7N (Sales Cancellation Law)

G.L. c. 106, § 2-314 (Uniform Commercial Code—Warranty of Merchantability)

G.L. c. 106, § 2-315 (Uniform Commercial Code—Warranty of Fitness for Particular Purpose)

G.L. c. 106, § 2-316A—(No Disclaimer of Warranty in Consumer Sale)

This publication provides general information about Massachusetts Used Vehicle Warranty Laws. It is not designed to address all questions in detail and dealers or consumers are encouraged to seek further guidance by contacting the agency directly.

FOR ADDITIONAL INFORMATION

OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

www.mass.gov/consumer
Motor Vehicle Hotline
617-973-8787 or 888-283-3757

OFFICE OF THE ATTORNEY GENERAL

www.mass.gov/ago
Consumer Hotline
617-727-8400

REGISTRY OF MOTOR VEHICLES

www.massdot.state.ma.us/rmv
Telephone Center
617-351-4500 (from the 339/617/781/857 area codes)
or 800-858-3926 (from all other MA area codes)

DEPARTMENT OF REVENUE

www.mass.gov Information Lines
617-887-MDOR
800-392-6089 (toll-free in Massachusetts)

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