



CITY OF GARDNER, MASSACHUSETTS
City Hall - Room 121 - 95 Pleasant Street
Gardner, MA 01440-2630
Tel: 978-630-4058 Fax: 978-630-2589

Date Received

APPLICATION FOR LICENSE TO BUY AND SELL SECOND HAND MOTOR VEHICLES

New ___ Renewal ___ Class 1 - Class 2 - Class 3 (Circle all that apply to this Application)

1. Legal Name of Business: _____
(Name as registered with the Secretary of the Commonwealth's Corporations Division. If individual or partnerships enter names)
2. Doing Business As: _____
(If conducted under any name other than the Applicant's Legal Name. An active Business Certificate must be on file with the City Clerk)
3. Business Address: _____
(Complete street address where business will be conducted and P.O. Box, if any)
4. Business Tel. _____ Cellular _____ Fax _____ E-Mail _____
5. Is the business an individual, partnership, association or corporation? _____
6. If an individual, state full name and residential address: _____

7. If a partnership, state full names and residential addresses of all partners: _____

8. If an association or corporation, state full names of the principal officers:
President _____
Secretary _____
Treasurer _____
9. Are you engaged principally in the business of buying, selling, or exchanging motor vehicles? _____
 - a. If so, is your principal business the sale of new motor vehicles? _____
 - b. Is your principal business the buying and selling or exchanging of second hand motor vehicles? _____
 - c. Is your principal business that of a motor vehicle junk dealer? _____
 - d. Is your principal business that of a "Repairs"? _____
 - e. Is your principal business that of "Repossession"? _____
9. Provide a complete description of all the premises to be used for the purpose of carrying on the business:

10. Are you a recognized agent of a motor vehicle manufacturer? YES _____ NO _____
If yes, state the name of the manufacturer: _____

11. Do you have a signed contract as required by Section 58, Class I? YES _____ NO _____
12. Have you ever applied for a license to deal in second hand motor vehicles or parts thereof? YES _____ NO _____
 If yes, in what city or town? _____
 Did you receive a license? YES _____ NO _____ For what year? _____
13. Has any license issued to you in Massachusetts or any other state to deal in motor vehicles or parts thereof ever been suspended or revoked? YES _____ NO _____ If yes, please explain: _____

Provide the following items/documentation with the completed Application form:

- Applicable License Application Processing Fee(s)**, check payable to **“City of Gardner”**
- Surety Bond** in the amount of **\$25,000** executed by a surety company authorized to transact business in Massachusetts, or other equivalent proof of financial responsibility satisfactory to the municipal licensing authority. A separate bond shall be required for each different name under which the dealer conducts his business. (Applies only to Class 2 Dealers).
- State and Federal Tax Certification Affidavit**
- City of Gardner **PERMIT/APPLICATION GOOD STANDING CERTIFICATE**
- Criminal Offender Record Information (CORI) Authorization form.**
- Workers Compensation Insurance Affidavit: General Businesses**
- Parking Plan** (scaled 1" = 40 ft.) showing Building Department-approved parking layout. Six (6) copies shall be reduced to either 8½" x 11", or if applicable, 11" x 17".
- Site Plan** (scaled 1" = 40 ft.) showing all available parking, driveways, entrances and exits, building location, etc. Six (6) copies shall be reduced to either 8½" x 11", or if applicable, 11" x 17".
- Zoning Opinion** from the Building Commissioner.
- Planning Board and/or Board of Appeals Decisions (*if applicable*).

THE APPLICANT CERTIFIES THAT ALL STATE TAX RETURNS HAVE BEEN FILED AND ALL STATE AND LOCAL TAXES REQUIRED BY LAW HAVE BEEN PAID AND AGREES TO COMPLY WITH THE TERMS OF ITS LICENSE AND APPLICABLE LAW, AND ALL RULES AND REGULATIONS PROMULGATED THERETO. APPLICANT FURTHER CERTIFIES THAT THE INFORMATION CONTAINED IN THIS APPLICATION IS TRUE AND ACCURATE AND ALSO AUTHORIZE THE LICENSING AUTHORITY OR ITS AGENTS TO CONDUCT WHATEVER INVESTIGATION IS NECESSARY TO VERIFY THE INFORMATION CONTAINED IN THIS APPLICATION.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY.

 INDIVIDUAL, PARTNER OR AUTHORIZED CORPORATE OFFICER OR APPLICANT

DATE SIGNED _____

 SOCIAL SECURITY NUMBER

OR

 EMPLOYER IDENTIFICATION NUMBER (EIN)

License Fee must be submitted with this form. Make check payable to City of Gardner. Mail completed Application Form, along with all required documentation and check to: City Clerk, 95 Pleasant Street, Room 121, Gardner, MA 01440.

NOTICE: The filing of this application confers no rights on the part of the Applicant to undertake any activities until the license has been granted. The issuance of a license under this section or sections is subject to the Applicant's compliance with all other applicable Federal, State or local statutes, ordinances, bylaws, rules or regulations. The Licensing Authority reserves the right to request any additional information it reasonably deems appropriate for the purpose of determining the terms and conditions of the License and its decision to issue a License. The provisions of G.L. c.152 requires the filing of a Workers' Compensation Insurance Affidavit with this application. Failure to file the Affidavit, along with any other required information and/or documentation, **shall be sufficient cause for the denial of the License application.**

STATE TAX CERTIFICATION AFFIDAVIT

Individual Social Security # _____ State Identification Number _____ Federal Identification Number _____

Company: _____

P.O. Box (if any): _____ Street Address Only: _____

City/State/Zip Code: _____

Business Telephone Number: _____ Fax Number: _____ Cell Number: _____

List address(es) of all other property owned by the Concern/company in Gardner: _____

State whether the applicant is a:

Corporation _____

Individual _____ Name of Individual: _____

Partnership _____ Names of all Partners: _____

Limited Liability Company _____ Names of all Managers: _____

Limited Liability Partnership _____ Names of Partners: _____

Limited Partnership _____ Names of all General Partners: _____

You must complete the following certifications and have the signature(s) notarized on the lines below. Any certification that does not apply to you, write N/A in the blanks provided. Each section must be signed by an authorized agent of the entity and the FORM MUST BE NOTARIZED.

FEDERAL TAX CERTIFICATION AFFIDAVIT

I, _____ certify under the pains and penalties of perjury that _____, to my best knowledge and belief, has/have complied with all **United States Federal taxes** required by law.
(authorized agent) (applicant)

Applicant Authorized Person's Signature Date: _____

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF WORCESTER

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person(s) whose name is signed on the preceding and acknowledged to me that he/she signed it voluntarily for its stated purpose.

(SEAL)

Signature of Notary Public

Commission Expires



City of Gardner Treasurer/Tax Collector

95 Pleasant Street, Gardner, MA 01440 (978) 630-4016

PERMIT/APPLICATION GOOD STANDING CERTIFICATION

License/Permit Applicant Name: _____

Address: _____

License/Permit for which you are applying: _____

Applicants for Building Permits, Site Plan Review, Special Permits, Variances, Conservation Permits, and Water or Sewer Connection Permits must include the following information:

Property Owner Name: _____

Property Address: _____

For City of Gardner Use Only:

- The above named applicant and/or property owner *is* in good standing with all municipal taxes, assessments, betterments, and other municipal fees and/or fines.

City Collector

Health Department/Liquor License Commission

Civil Enforcement Officer

- The above named applicant and/or property owner has entered into a payment plan with the City for all past due municipal taxes, assessments, betterments, and other municipal fees. A copy of said payment plan is attached.

City Collector

- The above named applicant and/or property owner *is not* in good standing with all municipal taxes, assessments, betterments, and other municipal fees.

City Collector

Health Department/Liquor License Commission

Civil Enforcement Officer

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XX. PUBLIC SAFETY AND GOOD ORDER

CHAPTER 140. LICENSES

SALE OF SECOND HAND MOTOR VEHICLES

Chapter 140: Section 57. Necessity; exceptions; auctions; reports

Section 57. No person, except one whose principal business is the manufacture and sale of new motor vehicles but who incidentally acquires and sells second hand vehicles, or a person whose principal business is financing the purchase of or insuring motor vehicles but who incidentally acquires and sells second hand vehicles, shall engage in the business of buying, selling, exchanging or assembling second hand motor vehicles or parts thereof or allow any property under his control to be used as a place of sale or display of motor vehicles without securing a license as providing in section fifty-nine. This section shall apply to any person engaged in the business of conducting auctions for the sale of motor vehicles, and to any person engaged in the business of leasing or renting motor vehicles and who, as an incident to such business, sells or offers to sell any such lease or rental vehicle to the public. All sales of second-hand motor vehicles or parts thereof made by any person referred to in this section shall be reported weekly to the registrar of motor vehicles on such forms as may be prescribed by him.

Chapter 140: Section 58. Classes

Section 58. (a) Licenses granted under sections 59 and 59A shall be classified in accordance with subsections (b) to (d), inclusive.

(b) Class 1. Any person who is a recognized agent of a motor vehicle manufacturer or a seller of motor vehicles made by such manufacturer whose authority to sell the same is created by a written contract with such manufacturer or with some person authorized in writing by such manufacturer to enter into such contract, and whose principal business is the sale of new motor vehicles, the purchase and sale of second hand motor vehicles being incidental or secondary thereto, may be granted an agent's or a seller's license; provided, that with respect to second hand motor vehicles purchased for the purpose of sale or exchange and not taken in trade for new motor vehicles, such dealer shall be subject to all provisions of this chapter applicable to holders of licenses of Class 2, except subsection (c), and to rules and regulations made under those provisions; and provided further, that such dealer maintains or demonstrates access to repair facilities sufficient to enable him to satisfy the warranty repair obligations imposed by section 7N1/4 of chapter 90, and shall remain liable for all warranty repairs made and other obligations imposed by said section 7N1/4 of said chapter 90.

(c) Class 2. A person whose principal business is the buying or selling of second hand motor vehicles, a person who purchases and displays second hand motor vehicles for resale in retail transactions, and any other person who displays second hand motor vehicles not owned by him pursuant to an agreement in which he receives compensation, whether solely for displaying the vehicles, upon the sale of each vehicle, or otherwise, may be granted a used car dealer's license and shall be subject to the following conditions:

(1) The person shall obtain a bond, or equivalent proof of financial responsibility as described in paragraph (5), and continue in effect a surety bond or other equivalent proof of financial responsibility satisfactory to the municipal licensing authority in the amount of \$25,000 executed by a surety company authorized by the insurance department to transact business in the commonwealth. The bond or its equivalent shall be for the benefit of a person who purchases a vehicle from a Class 2 licensee, and who suffers loss on account of:-

(i) the dealer's default or nonpayment of valid bank drafts, including checks drawn by the dealer for the purchase of motor vehicles;

(ii) the dealer's failure to deliver, in conjunction with the sale of a motor vehicle, a valid motor vehicle title certificate free and clear of any prior owner's interests and all liens except a lien created by or expressly assumed in writing by the buyer of the vehicle;

(iii) the fact that the motor vehicle purchased from the dealer was a stolen vehicle;

(iv) the dealer's failure to disclose the vehicle's actual mileage at the time of sale;

(v) the dealer's unfair and deceptive acts or practices, misrepresentations, failure to disclose material facts or failure to honor a warranty claim or arbitration order in a retail transaction; or

(vi) the dealer's failure to pay off a lien on a vehicle traded in as part of a transaction to purchase a vehicle when the dealer had assumed the obligation to pay off the lien.

(2) Recovery against the bond or its equivalent may be made by any person who obtains a final judgment in a court of competent jurisdiction against the dealer for an act or omission on which the bond is conditioned if the act or omission occurred during the term of the bond. Every bond shall also provide that no suit may be maintained to enforce any liability on the bond unless brought within 1 year after the event giving rise to the cause of action.

(3) The bond or its equivalent shall cover only those acts and omissions described in clauses (i) to (vi), inclusive, of paragraph (1). The surety on a bond shall not be liable for total claims in excess of the bond amount, regardless of the number of claims made against the bond or the number of years the bond remained in force.

(4) A separate bond shall be required for each different name under which the dealer conducts his business and for each city or town in which the dealer has a place of business.

(5) In lieu of the bond required by this section, the municipal licensing authority may allow the dealer to deposit collateral in the form of a certificate of deposit or irrevocable letter of credit, as authorized by the banking laws of the commonwealth, which has a face value equal to the amount of the bond otherwise required. The collateral may be deposited with or executed through any authorized state depository designated by the commissioner. Interest on the certificate of deposit shall be payable to the dealer who has deposited it as collateral, or to a person as the dealer or the certificate may direct.

(6) A surety shall provide to the municipal licensing authority notice of cancellation of the bond within 30 days of the cancellation.

(7) Upon receipt of notification from a surety that a bond has been cancelled, the municipal licensing authority shall notify the licensee that he has 10 days to comply with the bonding requirement. If the licensee does not comply within the 10 day period, the municipal licensing authority shall revoke the Class 2 license and shall notify the registrar who shall suspend or revoke any dealer plate issued to the licensee pursuant to section 5 of chapter 90.

(8) A municipal licensing authority shall not issue or renew a Class 2 license unless it is satisfied that a bond or equivalent proof of financial responsibility meeting the requirements of this section is in effect during the term under which the license shall be issued or renewed, and that the licensee maintains or demonstrates access to repair facilities sufficient to enable him to satisfy the warranty repair obligations imposed by section 7N1/4 of chapter 90. A used car dealer shall remain liable for all warranty repairs made and other obligations imposed by said section 7N1/4 of said chapter 90.

(d) Class 3. A person whose principal business is the buying of second hand motor vehicles for the purpose of remodeling, taking apart or rebuilding and selling the same, or the buying or selling of parts of second hand motor vehicles or tires, or the assembling of second hand motor vehicle parts may be granted a motor vehicle junk license.

(e) The registrar of motor vehicles, after consulting the office of consumer affairs and business regulation, shall adopt rules and regulations defining sufficient repair facilities for the purposes of subsection (b) and paragraph (8) of subsection (c).

Chapter 140: Section 59. Licensing authorities; expiration; fees; application; prerequisites; premises; ordinance regulations; revocation; notice

Section 59. The police commissioner in Boston and the licensing authorities in other cities and towns may grant licenses under this section which shall expire on January first following the date of issue unless sooner revoked. The fees for the licenses shall be fixed by the licensing board or officer, but in no event shall any such fee be greater than \$200. Application for license shall be made in such form as shall be approved by the registrar of motor vehicles, in sections fifty-nine to sixty-six, inclusive, called the registrar, and if the applicant has not held a license in the year prior to such application, such application shall be made in duplicate, which duplicate shall be filed with the registrar. No such license shall be granted unless the licensing board or officer is satisfied from an investigation of the facts stated in the application and any other information which they may require of the applicant, that he is a proper person to engage in the business specified in section fifty-eight in the classifications for which he has applied, that said business is or will be his principal business, and that he has available a place of business suitable for the purpose. The license shall specify all the premises to be occupied by the licensee for the purpose of carrying on the licensed business. Permits for a change of situation of the licensed premises or for additions thereto may be granted at any time by the licensing board or officer in writing, a copy of which shall be attached to the license. Cities and towns by ordinance or by-law may regulate the situation of the premises of licensees within class 3 as defined in section fifty-eight, and all licenses and permits issued hereunder to persons within said class 3 shall be subject to the provisions of ordinances and by-laws which are hereby authorized to be made. No original license or permit shall be issued hereunder to a person within said class 3 until after a hearing, of which seven days' notice shall have been given to the owners of the property abutting on the premises where such license or permit is proposed to be exercised. Except in the city of Boston, the licensing board or officer may, in its discretion, waive the annual hearing for renewal of a class 3 license. All licenses granted under this section shall be revoked by the licensing board or officer if it appears, after hearing, that the licensee is not complying with sections fifty-seven to sixty-nine, inclusive, or the rules and regulations made thereunder; and no new license shall be granted to such person thereafter, nor to any person for use on the same premises, without the approval of the registrar. The hearing may be dispensed with if the registrar notifies the licensing board or officer that a licensee is not so complying. In each case where such license is revoked, the licensing board or officer shall forthwith notify the registrar of such revocation. Any person aggrieved by any action of the licensing board or officer refusing to grant, or revoking a license for any cause may, within ten days after such action, appeal therefrom to any justice of the superior court in the county in which the premises sought to be occupied under the license or permit applied for are located. The justice shall, after such notice to the parties as he deems reasonable, give a summary hearing on such appeal, and shall have jurisdiction in equity to review all questions of fact or law and may affirm or reverse the decision of the board or officer and may make any appropriate decree. The parties shall have all rights of appeal as in other cases.

Chapter 140: Section 59A. Motor vehicle junkyards; requirements

Section 59A. No license shall be granted under section fifty-nine to a person within Class 3 as defined in section fifty-eight, for a motor vehicle junkyard, unless such junkyard

(a) is to be operated and maintained entirely within a building; or

(b) is to be operated and maintained exclusively for the purpose of salvaging the value as scrap of the material collected, as opposed to reselling parts to be used for the purpose for which they were originally manufactured, and is to be located in a built-up industrial or commercial area, or contiguous to a railroad siding, or on or contiguous to docking facilities; or

(c) is:

(1) more than one thousand feet from the nearest edge of any highway on the interstate or primary system, and

(2) more than six hundred feet from any other state highway, and

(3) more than three hundred feet from any park, bathing beach, playground, school, church or cemetery and is not within ordinary view therefrom; or unless it is

(4) screened from view by natural objects or well-constructed and properly maintained fences at least six feet high acceptable to said city or town and in accordance with regulations as promulgated by the department of highways and as specified on said license.

No license shall be granted under the provisions of clause (4) of subsection (c) unless a copy of the application for such license has been forwarded by the applicant to the department of highways within three working days of the filing of said application.

Chapter 140: Section 60. Registrar's rules and regulations

Section 60. The registrar may from time to time make rules and regulations consistent with sections fifty-seven to sixty-nine, inclusive, relative to the purchase, sale or exchange of second hand motor vehicles or parts thereof.

Chapter 140: Section 61. Repealed, 1996, 429

Chapter 140: Section 62. Record book; contents

Section 62. Every licensee shall keep a book on the licensed premises, in such form as shall be approved by the registrar, in which, at the time of the purchase, sale, exchange, or receipt for the purpose of sale, of any second hand motor vehicle or parts thereof, shall be legibly written in the English language an account and description of such motor vehicle or parts, with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom such motor vehicle or parts were purchased or received or to whom they were delivered, as the case may be. Such description, in the case of motor vehicles, shall also include the identifying number or numbers required by the registrar, and shall also include a statement that the identifying number or numbers have been removed, defaced, altered, changed, destroyed, obliterated or mutilated if such is the fact.

Chapter 140: Section 63. Repealed, 1977, 553

Chapter 140: Section 64. Repealed, 1996, 429

Chapter 140: Section 65. Repealed, 1961, 45, Sec. 2

Chapter 140: Section 66. Entering premises; investigation; examination of vehicles; parts, books, papers and inventories

Section 66. The colonel of state police, the attorney general or such persons as he may designate, the police commissioner in Boston, the chief of police of any other city, the selectmen of a town or any police officer authorized by any of said officials may at any time enter upon any premises used by any person licensed under section fifty-nine for the purpose of carrying on his licensed business, ascertain how he conducts the same, and examine all second hand motor vehicles or parts thereof kept or stored in or upon the premises, and all books, papers and inventories relating thereto.

Chapter 140: Section 67. Obstruction of entrance or examination by officers; refusal to exhibit items demanded

Section 67. A licensee under section fifty-nine, or a clerk, agent or other person in charge of the licensed premises, who refuses to admit thereto an officer authorized to enter the same, or who fails to exhibit to him on demand all such motor vehicles, parts thereof, and books, papers and

inventories relating thereto, and any person who wilfully hinders, obstructs or prevents such officer from entering the premises or from making the examination authorized in the preceding section, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than one year, or both.

Chapter 140: Section 67A. Junked motor vehicles, registration and identification plates; removal and forwarding to registrar; penalty

Section 67A. Any person licensed under section 54 or 59 shall comply with subsection (a) of section 20E of chapter 90D. The registrar may notify the licensing authority which issued the license to any person who has failed to comply with the provisions of this section of such failure and said authority shall suspend or revoke such license and shall not thereafter reinstate, renew or issue any such license to such person without the written consent of the registrar.

Chapter 140: Section 68. Unlicensed business

Section 68. Whoever, not being licensed, carries on the business for which a license is required by section fifty-seven, or is concerned therein, or, being licensed, carries on such business or is concerned therein in any other place or manner than that designated in his license, or after notice to him that his license has been revoked or suspended, shall be punished by a fine of not less than two hundred and not more than one thousand dollars or by imprisonment for not more than one year, or both.

In cases of two or more convictions, under the provisions of this section, the attorney general shall be notified for action under section six of chapter ninety-three A.

Chapter 140: Section 69. Violation of statutes, rules or regulations

Section 69. Whoever violates any provision of sections fifty-seven to sixty-eight, inclusive, or any rule or regulation made by the registrar under section sixty, unless a penalty other than the revocation of a license is prescribed therefor elsewhere in said sections, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or both. A conviction of a violation of any of said sections, rules or regulations shall be reported forthwith by the court or magistrate to the registrar of motor vehicles who may, after a hearing, suspend or revoke any certificate of registration issued under section five of chapter ninety.

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIV. PUBLIC WAYS AND WORKS

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 90: Section 7N1/2. Defective or malfunctioning new motor vehicles; sale and repair or replacement

Section 7N1/2. (1) For purposes of this section the following terms shall have the following meanings:

"Business day", any day during which the service departments of authorized dealers of the manufacturer of the motor vehicle are normally open for business.

"Consumer", a buyer or lessee, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of any express or implied warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce its obligations.

"Dealer", any class one seller of motor vehicles as defined in section fifty-eight of chapter one hundred and forty.

"Lessee", any person who acquires the right to possession of and use of a motor vehicle under a lease agreement for a term of not less than one year.

"Manufacturer", any person who is engaged in the business of manufacturing motor vehicles, or, in the case of motor vehicles not manufactured in the United States, any person who is engaged in the business of importing motor vehicles.

“Motor vehicle” or “vehicle”, any motor vehicle as defined in section one sold, leased or replaced by a dealer or manufacturer after the effective date of this section, except that it shall not include auto homes, vehicles built primarily for off-road use or any vehicle used primarily for business purposes.

“Nonconformity”, any specific or generic defect or malfunction, or any concurrent combination of such defects or malfunctions that substantially impairs the use, market value or safety of a motor vehicle.

“Term of protection”, one year or fifteen thousand miles of use from the date of original delivery of a new motor vehicle, whichever comes first; or, in the case of a replacement vehicle provided by a manufacturer to a consumer under this section, one year or fifteen thousand miles from the date of delivery to the consumer of said replacement vehicle, whichever comes first.

(2) If a motor vehicle does not conform to any applicable express or implied warranty, and the consumer reports the nonconformity to the manufacturer of the vehicle, its agent or its authorized dealer during the term of protection, the manufacturer, its agent or its authorized dealer shall effect such repairs as are necessary to conform the vehicle to such warranty.

(3) If the manufacturer, its agent or authorized dealer does not conform the motor vehicle to any such applicable express or implied warranty by curing any nonconformity after a reasonable number of attempts, the manufacturer shall accept return of the vehicle from the consumer. In instances in which a vehicle is sold and subsequently returned, the manufacturer shall refund the full contract price of the vehicle including all credits and allowances for any trade-in vehicle, less any cash award that was made by the manufacturer in an attempt to resolve the dispute and was accepted by the consumer, and a reasonable allowance for use, or shall offer to replace the vehicle. In instances in which a vehicle is leased and subsequently returned, the manufacturer shall refund all payments made by the consumer to the manufacturer under the terms of the lease agreement less any cash award that was made by the manufacturer in an attempt to resolve the dispute and was accepted by the consumer, and a reasonable allowance for use, or shall offer to replace the vehicle. The consumer shall have an unqualified right to reject a manufacturer’s offer of replacement and demand a refund. In instances in which a vehicle is replaced by a manufacturer under the provisions of this section, said manufacturer shall reimburse the consumer for any fees for the transfer of registration or any sales tax incurred by the consumer as a result of such replacement. In instances in which a leased vehicle is replaced by a manufacturer under the terms of this section, an identical model vehicle shall be provided to the consumer for the remaining term of the original lease agreement. In instances in which a vehicle which was financed by the manufacturer or its subsidiary or agent is replaced under the provisions of this section, said manufacturer, subsidiary or agent shall not require the consumer to enter into any refinancing agreement which would create any financial obligations upon such consumer beyond those implied by the original financing agreement. In instances in which a vehicle which was leased from a dealer or manufacturer is replaced under the provisions of this section, said dealer or manufacturer shall not require the consumer to enter into any lease agreement which would create any financial obligations upon such consumer beyond those implied by the original lease agreement. In instances in which a refund is tendered under the provisions of this section, the manufacturer shall also reimburse the consumer for incidental costs including sales tax, registration fee, finance charges and any cost of options added by an authorized dealer. Whenever a vehicle is replaced a refund is given under the provisions of this section, in instances in which towing services and rental vehicles were not made available at no cost to the consumer, the manufacturer shall also reimburse the consumer for towing and reasonable rental costs that were a direct result of vehicle nonconformity. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear. A reasonable allowance for use for all motor vehicles other than motorcycles shall be obtained by multiplying the total contract price of the vehicle, or in the case of a leased vehicle the total amount of payments made by the consumer to the manufacturer under the terms of the lease agreement, by a fraction having as its denominator one hundred thousand and having as its numerator the number of miles that vehicle traveled prior to the manufacturer’s acceptance of its return. A reasonable allowance for use for motorcycles shall be obtained by multiplying the total contract price of the motorcycle by a fraction having as its denominator twenty-five thousand and having as its numerator the number of miles that the vehicle traveled prior to the manufacturer’s acceptance of its return.

It shall be an affirmative defense to any claim under this section: (i) that an alleged nonconformity does not substantially impair the use, market value or safety of the vehicle; (ii) that a nonconformity is the result of owner negligence, damage caused by accident, vandalism, or attempt to repair the vehicle by a person other than the manufacturer, its agent or authorized dealer; or (iii) that a nonconformity is the result of any attempt substantially to modify the vehicle which was not authorized by the manufacturer.

A consumer shall have the option of retaining the use of any vehicle returned under the provisions of this section until such time as said consumer has been tendered a full refund or a replacement that is acceptable to the consumer. The use of any vehicle retained by a consumer after its return to a manufacturer under the provisions of this section, shall, in instances in which a refund is tendered, be reflected in the above mentioned reasonable allowance for use.

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

provides or makes provision for the free use of a vehicle to any consumer whose vehicle is out of service by reason of repair during a strike. The burden shall be on the manufacturer to show that any event claimed as a reason for an extension under the provisions of this paragraph was the direct cause for the failure of the manufacturer, its agent or authorized dealer to cure any nonconformity during the time of said event. Extensions for concurrent events shall not be cumulative.

(5) Nothing in this section shall be construed as imposing any liability on an authorized dealer or creating any cause of action by a consumer against a dealer under the provisions of this section.

Nothing in this section shall be construed to limit the rights or remedies which are otherwise available to a consumer or manufacturer under any other applicable provision of law.

Nothing in this section shall be construed as imposing any liability on a dealer or creating a cause of action by a manufacturer against its authorized dealer under this section except with respect to (i) failure by an authorized dealer to properly effect preparation, installation of options or repairs when such preparation, installation of options or repairs would have prevented the occurrence of or cured a nonconformity; (ii) express warranties offered by an authorized dealer which exceed the provisions of the manufacturer's express warranties; and (iii) that portion of the cost of reimbursing a consumer for dealer-added options which represents the dealer profit from the addition of such options. The manufacturer shall reimburse its authorized dealer for all incidental and consequential damages, including attorney's fees, incurred by such dealer as a direct result of any legal action brought by a consumer under this section.

No consumer shall be required by any manufacturer, its agent or its authorized dealer to give notice directly to a manufacturer of the existence of any nonconformity before resorting to state-certified, new car arbitration.

No motor vehicle that is returned to the manufacturer under the provisions of this section shall be resold in the commonwealth without clear and conspicuous written disclosure of the fact that it was so returned prior to resale of the vehicle. The attorney general shall prescribe the exact form and content of any such disclosure statement.

(6) All manufacturers shall submit to state-certified, new car arbitration, if such arbitration is requested by the consumer within eighteen months from the date of original delivery to such consumer of a new motor vehicle. State-certified, new car arbitration shall be performed by a professional arbitrator or arbitration firm appointed by the director of consumer affairs and business regulation and operating in accordance with the regulations promulgated pursuant to this section, and shall result in a written finding of whether the motor vehicle in dispute meets the standards set forth by this section for vehicles that are required to be replaced or refunded. Said finding shall be issued within forty-five days of receipt by said director of a request by a consumer for state-certified arbitration under this section. Said director shall promulgate rules and regulations governing the proceedings of state-certified, new car arbitration which shall promote their fairness and efficiency. Such rules and regulations shall include, but not be limited to, a requirement of the personal objectivity of each arbitrator in the results of the dispute he will hear, and the protection of the right of each party to present its case and to be in attendance during any presentation made by the other party. All findings of fact issuing from a state-certified, new car arbitration shall be taken as prima facie evidence of whether the standards set forth in this section for vehicles required to be refunded or replaced have been met in any subsequent action brought by either party ensuing from the matter considered in said arbitration.

If a motor vehicle is found by state-certified, new car arbitration to have met the standards set forth by this section for vehicles required to be replaced or refunded, and if the manufacturer of said motor vehicle is found to have failed to provide said refund or replacement as required, such manufacturer shall, within twenty-one days from the issuance of such finding, deliver such refund or replacement, including the incidental and other costs set forth in subsection (3), or appeal the finding in superior court. No appeal by a manufacturer shall be heard unless the petition for such appeal is filed with the clerk of the superior court within twenty-one days of issuance of the finding of the state-certified arbitration and is accompanied by a bond in a principal sum equal to the money award made by the state-certified arbitrator plus two thousand five hundred dollars for anticipated attorneys' fees, secured by cash or its equivalent, payable to the consumer.

The liability of the surety of any bond filed pursuant to this section shall be limited to the indemnification of the consumer in the action. Such bond shall not limit or impair any right of recovery otherwise available pursuant to law, nor shall the amount of the bond be relevant in determining the amount of recovery to which the consumer shall be entitled. In the event that any state-certified arbitration, resulting in an award of a refund or replacement, is upheld by the court, recovery by the consumer shall include continuing damages in the amount of twenty-five dollars per day for each day, subsequent to the day the motor vehicle was returned to the manufacturer pursuant to subsection three, that said vehicle was out of use as a direct result of any nonconformity not issuing from owner negligence, accident, vandalism, or any attempt to repair or substantially modify the vehicle by a person other than the manufacturer, its agent or authorized dealer; provided, however, that the manufacturer did not make a comparable vehicle available to the consumer free of charge. In addition to any other recovery, any prevailing consumer shall be awarded reasonable attorneys' fees and costs. If the court finds that the manufacturer did not have any reasonable basis for its appeal or that the appeal was frivolous, the court shall double the amount of the total award made to the consumer. Any consumer dissatisfied with any finding of state-certified, new car arbitration shall have the right to file a claim pursuant to chapter ninety-three A.

(6A) A clear and conspicuous listing of the rights of the consumer under this section shall be affixed by a sticker to a window of each new motor vehicle offered for sale or lease in the commonwealth. An enumeration of these rights shall also be provided along with ownership manual materials. The form and manner of these notices shall be prescribed by the director of consumer affairs and business regulations.

(7) Failure to comply with any of the provisions of this section shall constitute an unfair or deceptive act under the provisions of chapter ninety-three A. The failure of a manufacturer either to abide by the decision of a state-certified arbitration or to file a timely appeal shall entitle any prevailing consumer to an award of no less than two times the actual damages, unless said manufacturer can prove that such failure was beyond his control. For the purposes of said chapter ninety-three A, the timely delivery by a manufacturer of a refund or acceptable replacement, pursuant to a finding by state-certified arbitration, shall constitute the granting of relief upon demand.

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

(8) Whoever, within twenty-one days of any finding in favor of the consumer of the state-certified, new car arbitration, fails to appeal such finding and does not deliver a refund or replacement vehicle or notify the consumer of the estimated delivery date of the replacement vehicle, shall be punished by a fine of five thousand dollars per day until the delivery of such refund or replacement. The estimated delivery date shall not exceed sixty days from the date the manufacturer notifies the consumer that a delivery will be made. Said fine shall not exceed fifty thousand dollars for each such violation. The amount of said fine shall begin to accumulate on the twenty-second day following the arbitration decision. If eighty-one days has elapsed from the issuance of a finding in favor of the consumer of the state-certified, new car arbitration and no appeal has been taken and no award delivered and no fine paid, the attorney general shall initiate proceedings against said manufacturer for failure to pay said fine. The proceedings initiated pursuant to the provisions of this section shall be commenced in superior court department of the trial court.

In addition to the remedies hereinbefore provided, the attorney general may bring an action on behalf of the commonwealth to restrain further violation of this section, to enforce any provision, and for such other relief as may be appropriate.