

CHAPTER 324

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

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

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

C.56:12-29 Findings, intentions.

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

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

C.56:12-30 Definitions.

2. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

"Motor vehicle" means a passenger automobile, authorized emergency vehicle, or motorcycle as defined in R.S.39:1-1 which is purchased or leased in the State of New Jersey or which is registered by the New Jersey Motor Vehicle Commission, except the living facilities of motor homes.

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

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

"Reasonable allowance for vehicle use" means the mileage at the time the consumer first presents the motor vehicle to the dealer, distributor, manufacturer, co-manufacturer, or post-manufacturing modifier for correction of a nonconformity times the purchase price, or the lease price if applicable, of the vehicle, divided by one hundred thousand miles.

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

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

C.56:12-31 Report of nonconformity; repairs.

3. If a consumer reports a nonconformity in a motor vehicle to the manufacturer, or, in the case of a motor vehicle that is an authorized emergency vehicle, the manufacturer, co-manufacturer or post-manufacturing modifier, or its dealer or distributor, during the first 24,000 miles of operation or during the period of two years following the date of original delivery to the consumer, whichever is earlier, the manufacturer, co-manufacturer, or post-manufacturing modifier shall make, or arrange with its dealer or distributor to make, within a reasonable time, all repairs necessary to correct the nonconformity. Such repairs if made after the first 12,000 miles of operation or after the period of one year following the date of original delivery to the consumer, whichever is earlier, shall be paid for by the consumer, unless otherwise covered by a warranty of the manufacturer, co-manufacturer or post-manufacturing modifier, and shall be recoverable as a cost under section 14 of this act.

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

C.56:12-32 Refunds.

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

manufacturing modifier, of that part of the motor vehicle containing the nonconformity, or its dealer or distributor, is unable to repair or correct the nonconformity within a reasonable time, the manufacturer, co-manufacturer, or post-manufacturing modifier shall accept return of the motor vehicle from the consumer.

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

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

(3) Nothing in this subsection shall be construed to preclude a manufacturer, co-manufacturer, or post-manufacturing modifier from making an offer to replace the vehicle in lieu of a refund; except that the consumer may, in any case, reject an offer of replacement and demand a refund. Refunds shall be made to the consumer and lienholder, if any, as their interests appear on the records of ownership maintained by the Chief Administrator of the New Jersey Motor Vehicle Commission. In the event that the consumer accepts an offer to replace the motor vehicle in lieu of a refund, it shall be the manufacturer's, co-manufacturer's, or post-manufacturing modifier's responsibility to insure that any lien on the returned motor vehicle is transferred to the replacement vehicle.

b. A consumer who leases a new motor vehicle shall have the same remedies against a manufacturer, co-manufacturer, or post-manufacturing modifier under this section as a consumer who purchases a new motor vehicle. If it is determined that the lessee is entitled to a refund pursuant to subsection a. of this section, the consumer shall return the leased vehicle to the lessor or manufacturer, co-manufacturer, or post-manufacturing modifier, and the consumer's lease agreement with the motor vehicle lessor shall be terminated and no penalty for early termination shall be assessed. The manufacturer, co-manufacturer, or post-manufacturing modifier shall provide the consumer with a full refund of the amount actually paid by the consumer under the lease agreement, including any additional charges as set forth in subsection a. of this section if actually paid by the consumer, less a reasonable allowance for vehicle use. The manufacturer, co-manufacturer, or post-manufacturing modifier shall provide the motor vehicle lessor with a full refund of the vehicle's original purchase price plus any unrecovered interest expense, less the amount actually paid by the consumer under the agreement. Refunds shall be made to the lessor and lienholder, if any, as their interests appear on the records of ownership maintained by the Chief Administrator of the Motor Vehicle Commission.

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

C.56:12-33 Presumption of inability to correct nonconformity; written notification.

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

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

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

(3) A nonconformity which is likely to cause death or serious bodily injury if the vehicle is driven has been subject to examination or repair at least once by the manufacturer, co-manufacturer, or post-manufacturing modifier, or its dealer or distributor, and the nonconformity continues to exist.

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

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

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

(2) It shall be considered as one examination or repair attempt for a motorhome if the same nonconformity is addressed more than once due to the consumer's decision to continue

traveling and to seek the repair of that same nonconformity at another authorized repair facility, rather than wait for the repair to be completed at the initial authorized repair facility.

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

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

C.56:12-34 Statements to consumers.

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

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

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

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

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

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

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

C.56:12-35 Sale, leasing of returned motor vehicle.

7. a. If a motor vehicle is returned to the manufacturer, or, in the case of an authorized emergency vehicle, to the manufacturer, co-manufacturer, or post-manufacturing modifier, under the provisions of this act or a similar statute of another state or as the result of a legal action or an informal dispute settlement procedure, it shall not be resold or re-leased in New Jersey unless:

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

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

(3) The dealer, distributor, or lessor, in accordance with the provisions of section 1 of P.L.1993, c.21 (C.39:10-9.3), notifies the Chief Administrator of the Motor Vehicle Commission of the sale or transfer of ownership of the motor vehicle.

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

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

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

C.56:12-36 Informal dispute settlement procedure.

8. a. If a manufacturer, or, in the case of an authorized emergency vehicle, a manufacturer, co-manufacturer, or post-manufacturing modifier, has established, or participates in, an informal dispute settlement procedure pursuant to section 110 of Pub.L.93-637 (15 U.S.C. s.2310) and the rules promulgated thereunder, or the requirements of this section, a consumer may submit a dispute regarding motor vehicle nonconformities, including a dispute between a manufacturer, co-manufacturer, or post-manufacturing modifier regarding the source of nonconformities and resulting liability to the consumer, to the dispute settlement body provided by that procedure, but a consumer shall not be required to first participate in the informal dispute settlement procedure before participating in the division's summary hearing procedure under this act.

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

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

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

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

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

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

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

(5) A dispute shall not be heard if there has been a recent attempt by the manufacturer, co-manufacturer, or post-manufacturing modifier to repair a consumer's vehicle, but no response has yet been received by the dispute settlement body from the consumer as to whether the repairs were successfully completed. This provision shall not prejudice a consumer's right under this section.

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

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

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

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

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

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

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

C.56:12-37 Dispute resolution.

9. a. A consumer shall have the option of submitting any dispute arising under section 4 of this act to the division for resolution, including, in the case of an authorized emergency

vehicle, a dispute between a manufacturer, co-manufacturer, or post-manufacturing modifier regarding the source of nonconformities and resulting liability to the consumer. The director may establish a filing fee, to be paid by the consumer, fixed at a level not to exceed the cost for the proper administration and enforcement of this act. This fee shall be recoverable as a cost under section 14 of this act. Upon application by the consumer and payment of any filing fee, the manufacturer, co-manufacturer, or post-manufacturing modifier shall submit to the State hearing procedure. The filing of the notice in subsection b. of section 5 of P.L.1988, c.123 (C.56:12-33) shall be a prerequisite to the filing of an application under this section.

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

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

d. A manufacturer, co-manufacturer, or post-manufacturing modifier, or a consumer may appeal a final decision to the Appellate Division of the Superior Court. An appeal by a manufacturer, co-manufacturer, or post-manufacturing modifier shall not be heard unless the petition for the appeal is accompanied by a bond in a principal sum equal to the money award made by the administrative law judge plus \$2,500.00 for anticipated attorney's fees and other costs, 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. The 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. If a final decision resulting in a refund to the consumer is upheld by the court, recovery by the consumer shall include reimbursement for actual expenses incurred by the consumer for the rental of a motor vehicle equivalent to the consumer's motor vehicle and limited to the period of time after which the consumer's motor vehicle was offered to the manufacturer, co-manufacturer, or post-manufacturing modifier for return under this act, except in those cases in which that party made a comparable vehicle available to the consumer free of charge during that period. If the

court finds that the manufacturer, co-manufacturer, or post-manufacturing modifier had no reasonable basis for its appeal or that the appeal was frivolous, the court shall award treble damages to the consumer. Failure of the Office of Administrative Law to render a written decision within 20 days of the conclusion of the summary hearing as required by subsection b. of this section shall not be a basis for appeal.

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

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

C.56:12-38 Statistics.

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

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

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

C.56:121-39 Decision binding.

11. A consumer shall not be required to participate in a manufacturer's, or, in the case of an authorized emergency vehicle, a manufacturer's, co-manufacturer's, or post-manufacturing modifier's, informal dispute settlement procedure or the division's summary hearing procedure before filing an action in the Superior Court. However, a decision rendered in a proceeding brought pursuant to the division's summary hearing procedure shall be binding on the consumer and the manufacturer, co-manufacturer, or post-manufacturing modifier, subject to the right of appeal as set forth in subsection d. of section 9 of this act, and shall preclude the institution of any other action in the Superior Court under this act.

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

C.56:12-40 Affirmative defense.

12. It shall be an affirmative defense to a claim under this act that the alleged nonconformity does not substantially impair the use, value, or safety of the new motor vehicle or that the nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the motor vehicle by anyone other than the manufacturer, or, in the case of an authorized emergency vehicle, the manufacturer, co-manufacturer, or post-manufacturing modifier, or its dealer or distributor.

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

C.56:12-42 Attorney, expert fees; cost.

14. In any action by a consumer against a manufacturer, or, in the case of an authorized emergency vehicle, a manufacturer, co-manufacturer, or post-manufacturing modifier, brought in Superior Court or in the division pursuant to the provisions of this act, a prevailing consumer shall be awarded reasonable attorney's fees, fees for expert witnesses and costs.

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

C.56:12-44 Inherent design defect.

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

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

C.56:12-45 Proceedings.

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

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

C.56:12-46 No liability, cause of action.

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

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

17. This act shall take effect immediately.

Approved January 18, 2010.