

201 CMR: OFFICE OF CONSUMER
AFFAIRS AND BUSINESS REGULATION

201 CMR 11.00: NEW AND USED MOTOR VEHICLE ARBITRATION

Section

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11.01: Purpose and Definitions

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

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

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

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

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

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

OCABR means the Office of Consumer Affairs and Business Regulation.

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

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11.02: Arbitration Requests

- (1) To apply for state certified arbitration a consumer must submit a "request for arbitration" form, which will be supplied on request by the Office of Consumer Affairs and Business Regulation (OCABR).
- (2) To be accepted for new car arbitration, the request for arbitration must:
 - (a) be submitted on the designated form and received by the arbitration firm or OCABR within 18 months of the date the owner took possession of the motor vehicle (for new cars);
 - (b) state that the consumer believes the motor vehicle's use, market value, or safety is substantially impaired by the nonconformity(s) complained of;
 - (c) state that the nonconformity(s) complained of is not the result of owner negligence, damage caused by accident (except as a result of the nonconformity(s)), vandalism, attempts to repair the vehicle by a person other than the manufacturer, its agent or authorized dealer, or any attempt to substantially modify the vehicle without the manufacturer's authorization;
 - (d) state that the consumer either gave the manufacturer, the agent or authorized dealer at least three attempts to correct the same substantial defect, or that the vehicle was out of service by reason of repair for at least 15 business days within the term of protection;
 - (e) state that the consumer gave the manufacturer its seven business day final opportunity to cure the non-conformity(s) after the limits set forth in 201 CMR 11.02(2)(d) were met or exceeded;
 - (f) include a narrative description of the claimed nonconformity(s) and a chronology of the repair attempts;
 - (g) be in compliance with all other rules, regulations, procedures and provisions of law.
- (3) To be accepted for used car arbitration, requests for arbitration must:
 - (a) be submitted within six months of the date the consumer took possession of the motor vehicle (for used cars).
 - (b) state that the vehicle was purchased from a used car dealer located in Massachusetts;
 - (c) state that the consumer owns the vehicle;
 - (d) state that the vehicle is not used primarily for business purposes, that it was not purchased by and is not owned by or registered to a business;
 - (e) state that the motor vehicle's safety or use has been impaired by a defect that arose during the duration of the dealer's warranty;
 - (f) state that the defect(s) complained of is not the result of:
 1. owner negligence;
 2. abuse;
 3. damage caused by accident (except as a result of the defect(s));
 4. vandalism;
 5. an attempt to repair the vehicle by a person other than the dealer, the dealer's designee, or the manufacturer's representative; or
 6. an attempt by the consumer to modify the vehicle:
 - (g) state that the consumer either gave the dealer at least three attempts to repair the same defect, or that the vehicle was out of service for a cumulative total of more than ten business days after the consumer returned it to the dealer for repair of any defect and that a defect recurred during the warranty period or continued to exist after the three attempts or ten business days;
 - (h) include a narrative description of the defect(s) and a chronology of the repair attempts;
 - (i) be in compliance with all other applicable rules, regulations, and provisions of law;
 - (j) include payment of the required fee, if any; and
 - (k) include copies of the following:
 1. the motor vehicle purchase contract;
 2. the bill of sale;
 3. the motor vehicle registration;
 4. the financing agreement, if any;
 5. any applicable credit insurance policy and verification of payments therefor;
 6. any applicable motor vehicle insurance policy and verification of charges and payments made for each coverage provided under that policy;

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7. all motor vehicle service contracts and verification of payments therefor;
 8. all receipts for payment to the dealer for warranty repairs;
 9. all warranty repair receipts; and
 10. all receipts for towing charges and alternative transportation charges related to the defect.
- (4) Any consumer who is eligible to be accepted for both used car arbitration and new car arbitration pursuant to M.G.L. c. 90, § 7N½, must proceed first through new car arbitration. If the new car arbitration does not result in an award in favor of the consumer, the consumer may then proceed through used car arbitration.

11.03: Processing of Arbitration Forms

- (1) Submitted arbitration forms will be date-stamped and assigned a case number upon receipt. A request for arbitration form shall be deemed to be timely filed if it is date-stamped or post marked within the respective time periods provided for in M.G.L. c. 90, §§ 7N¼ and 7N½.
- (2) New and used car arbitration request forms shall be reviewed for completeness and compliance with 201 CMR 11.02(2) and (3), respectively.
 - (a) Incomplete forms shall be returned to the consumer promptly for completion. Such forms when completed must be received by the OCABR or arbitration firm within 30 days or the consumers period of eligibility for filing the request, whichever is later. The arbitration firm may reject a request that is not timely returned.
 - (b) Forms found not in compliance with 201 CMR 11.02 will be rejected, with the reason for rejection sent to the consumer.
- (3) Complying, complete, reviewed forms shall be date-stamped to indicate their acceptance for arbitration. This acceptance date shall trigger the 45 day period in which the arbitrator must render a decision in the case, and shall be deemed to be the date "received" for purposes of M.G.L. c. 90, §§ 7N¼ and 7N½, as the case maybe.
- (4) The OCABR or arbitration firm may rescind any acceptance granted in error or because of incomplete or erroneous information.
- (5) Any fees charged to the applicant by the arbitration firm including, but not limited to, filing and hearing fees, shall be determined by the OCABR in accordance with M.G.L. c. 7, § 3B.

11.04: Notification and Scheduling of Arbitration Hearings

- (1) When scheduling hearings, the arbitration firm shall attempt to accommodate the geographic and time-of-day needs of the parties.
- (2) The arbitrator shall mail a notice to the consumer and to the respondent-dealer or respondent-manufacturer (or its designee), as the case may be, within seven days of acceptance of a request for arbitration. The notice shall indicate that the consumer's request for arbitration has been accepted and shall also include general information about the arbitration process, a copy of the consumer's request for arbitration and accompanying narrative.
- (3) The foregoing notice shall constitute sufficient notice to the manufacturer that it must cure the nonconformity(s) within seven business days, if the consumer had not previously given such opportunity to the manufacturer as required by M.G.L. c. 90, § 7N½.
- (4) The hearing shall be held within 44 days of the date that the request for arbitration was accepted. The hearing shall be held no earlier than 21 days after the date of the notice of acceptance unless agreed to by both parties. Notice of the date, time, location of the hearing, and name of the arbitrator shall be mailed by the arbitrator to both parties no later than ten days prior to the hearing.

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

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

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

11.05: Rescheduling Arbitration Hearings

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

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

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

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

11.06: Defaults

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

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

11.07: Withdrawal

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

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

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

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11.08: Requests for Information

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

11.09: The Arbitrator

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

11.10: The Hearing

- (1) The conduct of the hearing will encourage a full and complete disclosure of the facts.
- (2) The arbitrator shall tape record the hearing. Either party may tape record or transcribe the hearing at its own expense. Such party shall provide a copy of the recording or transcription to the other party upon request. The requesting party shall pay the copying costs.
- (3) The arbitrator shall administer an oath or affirmation to each individual who testifies.
- (4) The formal rules of evidence will not apply. The parties may introduce any relevant evidence that will assist the arbitrator in making a decision. The arbitrator may exclude unduly repetitious or clearly irrelevant evidence.

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- (5) The consumer or his representative will present his evidence first, then the respondent-dealer or manufacturer or its representative will present its evidence.
- (6) Each party may question the other after his or her presentation and may question each witness after his or her testimony. The arbitrator may question any party or witness at any time.
- (7) Each party is responsible for presenting all his evidence in a concise manner on the day of the hearing.
- (8) All written testimony shall include a statement signed by the witness under oath that his testimony is true.
- (9) The consumer shall bring the vehicle to the hearing unless the consumer provides a reasonable basis to believe that it is inoperable or unsafe to operate. The arbitrator may, in his discretion, examine, drive, or ride in or on the vehicle.
- (10) After a warning, the arbitrator may terminate any hearing that becomes unmanageable due to the behavior of either party and enter judgment by default against the party whose behavior made the hearing unmanageable.
- (11) Upon a showing of good cause and with the consent of the other party, a party may present its case by telephone, provided that no less than seven days advance notice is given to the arbitrator and to the other party. In such cases, the party requesting the telephonic hearing shall pay all costs associated therewith, including but not limited to costs for long distance calls, conference calls, and telephone amplification equipment.
- (12) Unless the arbitrator receives a consumer's written consent to a delayed decision, the arbitrator may keep the record open only for additional evidence that the arbitrator requests if that will not interfere with the timely rendering of a decision. Such additional evidence shall be provided to both parties.

11.11: The Decision

- (1) All decisions shall be in writing, dated and signed by the arbitrator, and mailed to both parties and the arbitration firm.
- (2) The arbitrator may make an oral decision at the hearing but it shall not be binding until a written decision is mailed, and shall not be used to determine compliance with any time-sensitive deadlines. The arbitrator's decision is final.
- (3) The full written decision shall contain a summary of the evidence presented, a finding of facts, a conclusion of whether the motor vehicle meets the standards for refund or replacement (new cars only), a clear calculation of the monetary award if the vehicle meets such standards, and an order if appropriate.
- (4) The arbitrator shall mail a decision in each case within 45 days of the acceptance date stamped on the request for arbitration form. Failure to mail the decision within such time period, or to hold the hearing within 44 days of acceptance of the request for arbitration, shall not invalidate the decision.
- (5) The date of mailing of the decision, shall determine compliance with the 45 day requirement and be the date used to calculate appeal deadlines.
- (6) The arbitrator's decision shall only determine whether the motor vehicle does or does not meet the standards for refund or replacement (new cars only).
- (7) Any monetary award for new vehicle arbitration shall be calculated in accordance with M.G.L. c. 90, § 7N½, but may be affected by any previous awards or settlements made to the consumer.

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- (8) The consumer shall be reimbursed for all continuing costs upon return of the defective vehicle if the consumer has previously submitted documentation to the manufacturer and the arbitration firm that such costs have been accrued.
- (9) The arbitrator shall make the following findings with respect to new motor vehicles:
- (a) As long as the arbitrator determines that:
 - 1. The nonconformity(s) complained of substantially impairs the use, market value, or safety of the vehicle; and
 - 2. The consumer gave the manufacturer or dealer a reasonable number of attempts to repair the vehicle as defined in M.G.L. c. 90, § 7N½(4), and
 - 3. That all other requirements of M.G.L. c. 90, § 7N½ have been met, the arbitrator must find for the consumer, and order the manufacturer to make a refund or replacement at the consumer's option within 21 days of the finding in favor of the consumer.
 - (b) In determining compliance with 201 CMR 11.11(9)(a) the arbitrator shall consider the entirety of the circumstances in each case, including but not limited to one or more of the following:
 - 1. whether the motor vehicle's market value is at least 10% lower than it would have been but for the nonconformity(s);
 - 2. How seriously the nonconformity(s) interferes with the consumer's use of the motor vehicle; and
 - 3. Whether the nonconformity(s) creates or has the potential to create a substantial danger to occupants, others, or to property; provided however, that evidence that the nonconformity(s) can be repaired given an additional attempt(s) subsequent to the hearing shall not be taken into consideration by the arbitrator in determining whether the vehicle is substantially impaired.
- (10) The arbitrator shall make the following findings with respect to used motor vehicles:
- (a) As long as the arbitrator determines that:
 - 1. The defect(s) complained of impairs the safety or use of the vehicle;
 - 2. A defect continued to exist or recurred during the warranty period after three repair attempts for the same defect or a cumulative total of more than ten business days out of service after being returned for repair; and
 - 3. That all other requirements of M.G.L. c. 90, § 7N¼ and 201 CMR 11.00 have been met, the arbitrator must find for the consumer, and order the dealer to refund the full repurchase amount within 21 days. The arbitrator may not, under any circumstances, order a partial refund or any relief other than a full refund.
 - (b) In determining compliance with 201 CMR 11.11(10)(a)(1) the arbitrator shall consider the entirety of the circumstances in each case, including but not limited to one or more of the following:
 - 1. Whether the defect(s) interferes with the consumer's use of the motor vehicle; and
 - 2. Whether the defect(s) creates or has the potential to create a danger to occupants, others, or to property.
- (11) The calculation for the Repurchase Amount for used motor vehicles is as follows:
- (a) If a dealer is required to or elects to repurchase a vehicle pursuant to M.G.L. c. 90, § 7N¼, he shall pay to the consumer the full repurchase amount, less a reasonable allowance for use.
 - (b) The repurchase amount shall be calculated by adding the following:
 - 1. the full purchase price of the vehicle, including amounts allowed for any trade-in vehicle;
 - 2. finance charges;
 - 3. registration fees;
 - 4. the payments made for credit life and credit accident and health insurance;
 - 5. the pro rata cost of motor vehicle damage, collision and comprehensive insurance;
 - 6. the payments made for any service contract;

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7. incidental damages including, but not limited to, the following:
 - a. the reasonable costs of towing from the point of breakdown up to 30 miles to obtain required repairs or to return the vehicle to the dealer;
 - b. the reasonable costs of obtaining alternative transportation during the warranty period after the second day following each breakdown not to exceed \$15.00 per day;
 - c. the cost of all options added by the dealer;
 - d. the cost of all options not added by the dealer that cannot be removed without damage to either the vehicle or the option;
 - e. amounts paid to the dealer or his designee for repair of the vehicle;
 - f. the amount of any arbitration application fee paid by the consumer.
 8. Incidental damages do not include the following:
 - a. attorneys' fees;
 - b. excise tax;
 - c. lost wages; and
 - d. other consequential damages;
 - e. sales tax.
 9. The consumer shall be reimbursed for all continuing costs upon return of the defective vehicle if the consumer has previously submitted documentation to the dealer and the arbitration firm that such costs have been accrued.
- (12) The repurchase amount for used vehicles shall be further calculated by subtracting the following:
- (a) any cash award that was made by the dealer in an attempt to resolve the dispute and accepted by the consumer;
 - (b) any refunds or rebates to which the consumer is entitled;
 - (c) 15¢ for each mile the vehicle was operated between its sale and the dealer's repurchase, other than miles the vehicle was operated during repair attempts;
 - (d) the amount of any over allowance on a trade-in vehicle if the amount of the over allowance and the actual cash value of the trade-in vehicle are separately stated and identified as such on the copy of the motor vehicle purchase contract or bill of sale or other document given to the consumer prior to or at the time of sale; provided, however, that the arbitrator may decrease the amount of the over allowance if the evidence shows that the amount stated as the "actual cash value" on the document(s) given the consumer is lower than the true cash value of the trade-in vehicle.
- (13) Rather than paying to the consumer the amount allowed for the trade-in vehicle, the dealer may return the trade-in vehicle itself, if the dealer still owns the trade in vehicle, and if it has not suffered any damage and has not been driven more than an incidental number of miles since the consumer traded it in. If the dealer returns the trade-in vehicle, the amount of any over allowance shall not be deducted from the repurchase amount.

11.12: Disputing the Arbitrator's Decision

- (1) The arbitrator, OCABR, or the arbitration firm may make "technical corrections" to an arbitrator's decision. "Technical corrections" shall generally be defined as computational corrections, typographical corrections, or other minor corrections.
- (2) Either party may request a technical correction in writing, setting forth the requested correction and reason therefor, and must be received by the OCABR and the arbitration firm within 14 days of the mailing of the arbitrator's full written decision. A request for technical corrections will not toll the 21 day award/appeal period.
- (3) All claims concerning procedural irregularities, or complaints concerning an arbitrator's conduct or legal errors should be made by parties in writing to the OCABR. This information is requested to assist the OCABR in its oversight of the arbitration process and will not constitute an appeal of any kind.
- (4) A dissatisfied manufacturer or dealer may appeal a decision through a court of competent jurisdiction. A dissatisfied consumer may file suit against the dealer under M.G.L. c. 93A.

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11.13: The Award for “Used Cars”

- (1) After an arbitrator’s finding in favor of a consumer, the dealer shall notify the consumer whether it intends to issue an award or appeal the decision. If the dealer indicates its intention to issue an award, the dealer and the consumer shall take all reasonable steps to ensure that the award is issued within the award/appeal period. Among other reasonable steps, the consumer and the dealer shall cooperate with each other to execute all necessary documents in order to clear the title of any encumbrances.
- (2) The consumer shall have the option of rejecting the award and retaining possession of the vehicle. A consumer who rejects an award will not be entitled to further M.G.L. c. 90, § 7N¼ warranty repairs.
- (3) In computing the award/appeal period, the last day of the period so computed shall be included unless it is not a business day, in which event the period runs until the end of the next business day.
- (4) Within seven days after issuing a refund to a consumer pursuant to an award, the dealer shall notify the arbitration firm in writing of the consumer’s name, the arbitration firm case number, the date and amount of the refund.

11.14: Damaged Vehicles

- (1) If a vehicle that is the subject of arbitration is damaged beyond reasonable wear and tear through no fault of the dealer or manufacturer, and that damage is unrelated to the defect, the consumer must:
 - (a) repair the damage; or
 - (b) pay to the dealer the reasonable costs of repair; or
 - (c) allow a deduction from the award for the reasonable costs of repair.
- (2) The consumer must notify the dealer or manufacturer of the existence and nature of such damage before the hearing, or, if the damage occurs after the hearing, within three days of occurrence.
- (3) If the issue of damage is raised at the hearing, the arbitrator may assess fault and the cost to repair the damage. If the arbitrator assesses fault, and if he determines that the damage is the fault of neither the dealer nor the manufacturer, the arbitrator shall deduct from the amount of the award the cost to repair the damage.
- (4) If the issue of damage is not resolved by the arbitrator, the manufacturer or dealer may submit a request in writing to the arbitration firm for permission to delay issuing the award until the issue of damage is resolved. Unless such permission is granted, the dealer shall pay the full award, or appeal the arbitrator’s ruling, within the award/appeal period.

11.15: Used Vehicle Dealer Warranty

- (1) Every dealer that sells a used vehicle that is covered by the warranty established by M.G.L. c. 90, § 7N¼ shall complete and give to the consumer at the time of sale at no charge a copy of the warranty set forth in 201 CMR 11.22(3) on a separate piece of paper.
- (2) The dealer shall ask the consumer to sign and date a copy of that warranty and shall retain that copy for 12 months after the delivery of the vehicle to the consumer. This signed copy will serve as evidence that a copy of the warranty was provided to the consumer as required by M.G.L. c. 90, § 7N¼.

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

(4) No dealer shall seek a waiver by a consumer of his or her rights pursuant to M.G.L. c. 90, § 7N¹/₄ and 201 CMR 11.00. Any such waiver will be unenforceable.

11.16: Used Vehicle Dealer Warranty Repair Period

(1) Subject to the tolling provisions and manufacturer warranty provisions of M.G.L. c. 90, § 7N¹/₄ and 201 CMR 11.00, the dealer shall accept return of the vehicle from the consumer and refund the full repurchase amount, less a reasonable allowance for use, if either:

- (a) the same defect was subject to three repair attempts and continued to exist or recurred within the warranty period; or
- (b) the vehicle was out of service for a cumulative total of more than ten business days for repair of any defect or defects and a defect continued to exist, recurred or arose during the warranty period; provided that such defect or defects impaired the use or safety of the vehicle.

(2) For the purposes of the three repair attempt period, an attempt to diagnose a defect after a vehicle has been returned for repair will count as a repair attempt even if no repairs are made.

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

(4) The more than ten business day period will be tolled if a part necessary to repair the defect is not in the dealer's possession and the requirements of M.G.L. c. 90, § 7N¹/₄(3)(A)(ii) and 201 CMR 11.18 have been met. In no event will the more than ten business day period be tolled for more than a total of 21 days because a part or parts is not in the dealer's possession.

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

11.17: Used Vehicle Dealer Warranty Repair Receipts

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

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

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

- (a) every part necessary to repair the defect that was not in the dealer's possession;
- (b) the date that the dealer became aware that the part was necessary to repair the defect;
- (c) the date and the means by which the dealer ordered the part;
- (d) the entity from which the dealer ordered the part; and
- (e) the date the dealer received the part.

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

11.18: Manufacturer Warranty Repairs

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

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

11.19: Used Vehicle Dealer Repurchases

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

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

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

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

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

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

11.20: Used Vehicles Purchased For Less Than \$700

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

11.21: Resale of Repurchased Vehicles

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

11.22 Notices to Consumers (Used Vehicles)

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

ATTENTION CONSUMERS OF USED CARS

The Massachusetts Used Car Warranty Law, M.G.L. c. 90, § 7N¼ protects consumers who have problems with their used vehicle.

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

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

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

Office of Consumer Affairs and Business Regulation
One Ashburton Place
Boston, Massachusetts 02108
Used Car Warranty Law information: (617) 727-7780, 1-888-283-3757

Department of the Attorney General: (617) 727-8400

Every dealer that sells a used vehicle that is covered by the warranties established by M.G.L. c. 90, § 7N¼ shall also give to the consumer at the time of sale the following notice, either printed on the reverse side of the warranty set forth below, or on a separate sheet of paper:

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11.22: continued

CONSUMER RIGHTS FOR USED CAR BUYERS

I. USED CAR WARRANTY LAW

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

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

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

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

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

II. LEMON AID LAW

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

III. IMPLIED WARRANTY LAW

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

It is illegal to sell a car "AS IS", "WITH ALL FAULTS", or with a "50/50 WARRANTY". THIS SHEET PROVIDES ONLY A SUMMARY OF YOUR RIGHTS.

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

Office of Consumer Affairs and Business Regulation
One Ashburton Place
Boston, Massachusetts 02108
Used Car Warranty Law information: (617) 727-7780, 1-888-283-3757

Department of the Attorney General: (617) 727-8400

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

LIMITED USED VEHICLE WARRANTY

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

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

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

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

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

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

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

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

11.23: Notices to Consumers (New Vehicles)

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

ATTENTION CONSUMERS

The Massachusetts "Lemon Law", General Laws Chapter 90, Section 7N 1/2 provides protection for consumers who have serious problems with their new vehicle.

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

- (a) there is a substantial defect(s), AND
- (b) the defect still exists or has recurred after either:
 - 1. three or more repair attempts for the same defect, or
 - 2. being out of service by reason of repair for any combination of defects for a cumulative total of 15 or more business days, within one year or 15,000 miles (whichever comes first) after original delivery, AND

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(c) the manufacturer has been notified of the defect and given one final repair attempt of no more than seven business days.

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

FORMOREINFORMATION, REFER TO THE "LEMON LAW" INFORMATION PROVIDED WITH YOUR OWNERSHIP MANUAL MATERIALS, OR CONTACT:

Office of Consumer Affairs and Business Regulation
One Ashburton Place
Boston, Massachusetts 02108
Lemon Law information: (617) 727-7780, 1-888-283-3757

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

"LEMON LAW" INFORMATION:

IF YOU HAVE SERIOUS PROBLEMS WITH THIS VEHICLE

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

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

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

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

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

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

THIS SHEET PROVIDES ONLY A SUMMARY OF YOUR RIGHTS.

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

Office of Consumer Affairs and Business Regulation
One Ashburton Place
Boston, Massachusetts 02108
Lemon Law information: (617) 727-7780, 1-888-283-3757

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

11.24: Sales Reports

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

11.25: Miscellaneous Provisions

(1) All correspondence by parties to the OCABR should be directed to the attention of the New and Used Vehicle Arbitration Director.

(2) Situations not covered in 201 CMR 11.00 shall be handled by the OCABR or the arbitrator in an equitable and efficient manner.

(3) The OCABR may issue advisory opinions regarding issues arising in the arbitration program.

(4) Upon a finding of extraordinary circumstances, the OCABR may, in its sole discretion, waive any of 201 CMR 11.00, if such waiver would be in the public interest, and serve to carry out the purpose or intent of the New and Used Vehicle Arbitration Program.

REGULATORY AUTHORITY

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