# ASSEMBLY, No. 2634

# STATE OF NEW JERSEY

## 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

**Sponsored by:**
**Assemblyman PAUL D. MORIARTY**
**District 4 (Camden and Gloucester)**

**SYNOPSIS**

"Used Car Buyers' Bill of rights"; prohibits certain "as is" sales of used motor vehicles.

**CURRENT VERSION OF TEXT**

As introduced.

**AN ACT** concerning the sales of used motor vehicles, amending and supplementing P.L.1995, c.373, and repealing section 7 of P.L.1995, c.373.

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

1. (New section) Sections 1 through 5 of this act shall be known and may be cited as the "Used Car Buyers' Bill of Rights."

2. (New section) It shall be an unlawful practice pursuant to P.L.1960, c.39 (C.56:8-1 et seq.) for a dealer to sell or offer for sale a used motor vehicle as "certified" or any other similar descriptive term that implies the vehicle complies with the terms of a used motor vehicle certification program if:

a. the dealer knows or should have known that the odometer on the used motor vehicle does not indicate actual mileage, has been rolled back or otherwise altered to show fewer miles, or was replaced with an odometer showing fewer miles than actually driven;

b. the dealer knows or should have known that the used motor vehicle was reacquired by the vehicle's manufacturer or a dealer pursuant to state or federal warranty laws;

c. the title to the used motor vehicle has been inscribed with the notation "flood," "junk," "Lemon Law Buyback," "manufacturer repurchase," "nonrepairable," "salvage," or similar title designation required by this State or another state;

d. the used motor vehicle sustained damage in an impact, fire, or flood which, after repair prior to sale, substantially impairs the use or safety of the vehicle;

e. the dealer knows or should have known that the used motor vehicle sustained frame damage which, after repair prior to sale, substantially impairs the use or safety of the vehicle;

f. prior to sale, the dealer fails to provide the consumer with a completed inspection report indicating all the components were inspected;

g. the dealer disclaims any warranties of merchantability on the used motor vehicle; or

h. the term "certified," or any other similar descriptive term, is used in a manner that is untrue or misleading or that would cause any advertisement to be in violation of section 2 of P.L.1960, c.39 (C.56:8-2).

This section does not abrogate or limit any disclosure obligation imposed pursuant to any other law.

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined <u>thus</u> is new matter.**

3. (New section) a. A dealer shall not sell or offer for sale a used motor vehicle to a consumer without offering the consumer a contract cancellation option agreement that allows the consumer to return the used motor vehicle without cause; provided however, the provisions of this section shall not apply to:

(1) a used motor vehicle having a purchase price of $40,000 or more;

(2) a used motor vehicle which has been declared a total loss by an insurance company, or reported as a total loss in a National Motor Vehicle Title Information System history report; or

(3) a used motor vehicle which has been issued a salvage certificate of title in accordance with the provisions of P.L.1983, c.323 (C.39:10-31 et seq.), or reported as a salvage vehicle in a National Motor Vehicle Title Information System history report.

b. The fee for a contract cancellation option agreement shall not exceed the following:

(1) $75 for a used motor vehicle with a cash price of $5,000 or less;

(2) $150 for a used motor vehicle with a cash price of more than $5,000, but not more than $10,000;

(3) $250 for a used motor vehicle with a cash price of more than $10,000, but not more than $30,000; or

(4) one percent of the purchase price for a used motor vehicle with a cash price of more than $30,000, but not more than $40,000.

As used in this section, "cash price" excludes registration, transfer, titling, license, and any optional business partnership automation fees.

c. A contract cancellation option agreement shall be contained in a document separate from the contract or other purchase agreement for a used motor vehicle and shall contain, at a minimum, the following:

(1) the name of the dealer and the consumer;

(2) a description and the Vehicle Identification Number of the used motor vehicle purchased;

(3) a statement specifying the time within which the consumer shall exercise the contract cancellation option and return the used motor vehicle to the dealer. The dealer shall not specify a time that is earlier than the dealer's close of business on the second day following the day on which the vehicle was originally delivered to the consumer by the dealer;

(4) a statement that clearly and conspicuously specifies the dollar amount of any restocking fee the consumer is required to pay to the dealer to exercise the contract cancellation option.

The restocking fee shall not exceed: $175 if the used motor vehicle cash price is $5,000 or less; $350 if the used motor vehicle cash price is more than $5,000 but less than $10,000; and $500 if the used motor vehicle cash price is $10,000 or more. The dealer shall apply the fee paid by the consumer for the contract cancellation option agreement toward the restocking fee. The fee for purchasing the contract

cancellation option agreement shall not otherwise be subject to setoff or refund;

(5) a statement specifying the maximum number of miles that the used motor vehicle may be driven after its original delivery by the dealer to the consumer to remain eligible for the contract cancellation option. A dealer shall allow for the used motor vehicle to be driven at least 250 miles under the contract cancellation option agreement;

(6) a statement that the contract cancellation option agreement gives the consumer the right to cancel the contract and obtain a full refund, minus the fee for exercising the contract cancellation option; and that the right to cancel will apply only if, within the time specified in the contract cancellation option agreement, the following are personally delivered to the selling dealer by the consumer:

(a) a written notice exercising the right to cancel the contract signed by the consumer;

(b) any restocking fee specified in the contract cancellation option agreement minus the fee for the contract cancellation option agreement;

(c) the original contract cancellation option agreement, contract for the used motor vehicle, and related documents, if the dealer gave those original documents to the consumer;

(d) all original titling and registration documents for the used motor vehicle, if the dealer gave those original documents to the consumer; and

(e) the used motor vehicle, free of all liens and encumbrances, other than any lien or encumbrance created by or incident to the contract, any loan arranged by the dealer, or any purchase money loan obtained by the consumer from a third party, and in the same condition as when it was delivered by the dealer to the consumer, except for reasonable wear and tear and any defect or mechanical problem that manifests or becomes evident after delivery that was not caused by the consumer, and which shall not have been driven beyond the mileage limit specified in the contract cancellation option agreement.

The contract cancellation option agreement also may provide that the consumer will execute documents reasonably necessary to effectuate the cancellation and refund and as reasonably required to comply with this section; and

(7) at the bottom of the contract cancellation option agreement, a statement that may be signed by the consumer to indicate the consumer's election to exercise the right to cancel the contract under the terms of the contract cancellation option agreement, and the last date and time by which the option to cancel may be exercised, followed by a line for the consumer's signature. A particular form of statement is not required, but the following statement is sufficient: "By signing below, I elect to exercise my right to cancel the contract for the used motor vehicle described in this agreement." The consumer's delivery of the contract cancellation agreement to the dealer with the consumer's signature following this statement shall constitute

sufficient written notice that the consumer is exercising the right to cancel a contract pursuant to paragraph (6) of this subsection. The dealer shall provide the consumer with the statement required by this paragraph in duplicate to enable the consumer to return the signed cancellation notice and retain a copy of the cancellation agreement.

d. (1) After the consumer exercises the right to cancel a contract under the contract cancellation option agreement, the dealer shall cancel the contract and provide the consumer with a full refund, including the appropriate portion of the sales tax or other fees paid, within three business days for a used motor vehicle purchased by cash, credit or debit card, or bank loan, or 10 business days for a used motor vehicle purchased by check.

(2) If the consumer was not charged for the contract cancellation option agreement, the dealer shall return to the consumer, within three business days after the consumer exercises the right to cancel the contract, any used motor vehicle the consumer conveyed to the dealer as a down payment or trade-in. If the dealer sold or otherwise transferred title to the used motor vehicle that was conveyed as a down payment or trade-in, the full refund described in paragraph (1) of this subsection shall include the fair market value of the used motor vehicle left as a down payment or trade-in, or its value as stated in the contract, whichever is greater.

(3) If the consumer was charged for the contract cancellation option agreement, the dealer shall retain any motor vehicle the consumer conveyed to the dealer as a down payment or trade-in until the consumer exercises the right to cancel or the right to cancel expires. If the consumer exercises the right to cancel the contract, the dealer shall return to the consumer, within three business days after which the consumer exercises the right to cancel the contract, any motor vehicle the consumer conveyed to the dealer as a down payment or trade-in. If the dealer has inadvertently sold or otherwise transferred title to the motor vehicle as the result of a bona fide error, despite taking reasonable procedures to avoid that error, the inadvertent sale or transfer of title shall not be deemed a violation of this paragraph, and the full refund described in paragraph (1) of this subsection shall include the retail market value of the motor vehicle conveyed as a down payment or trade-in, or its value as stated in the contract, whichever is greater.

e. If the dealer received a portion of the purchase price by credit card, or other third-party payer on the consumer's account, the dealer may refund that portion of the purchase price to the credit card issuer or third-party payer for credit to the consumer's account.

f. Notwithstanding subsection a. of this section, a dealer is not required to offer a contract cancellation option agreement if the consumer has exercised this right with the dealer during the immediately preceding 30 days. A dealer shall not be required to give notice to a subsequent consumer that a used motor vehicle has been

returned pursuant to this section. This subsection does not abrogate or limit any disclosure obligation imposed pursuant to any other law.

g. This section does not affect or alter the legal rights, duties, obligations, or liabilities of the consumer, the dealer, or the dealer's representatives, that would exist in the absence of a contract cancellation option agreement. The consumer is the owner of a used motor vehicle upon receipt of the vehicle from the dealer until it is returned to the dealer pursuant to a contract cancellation option agreement.

h. Nothing in this section is intended to affect the ability of a consumer to rescind the contract or revoke acceptance under any other law.

4. (New section) A dealer shall include with any contract to lease or purchase a used motor vehicle a notice with a heading in at least 12-point bold type and the text in at least 10-point bold type, circumscribed by a line, immediately above the contract signature line, that reads as follows:

THERE IS NO CANCELLATION PERIOD UNLESS YOU OBTAIN A CONTRACT CANCELLATION OPTION

New Jersey law requires a seller to offer a 2-day contract cancellation option on used vehicles with a purchase price of less than $40,000, subject to certain statutory conditions. This contract cancellation option is not available to the purchaser of a motorcycle or an off-road vehicle. New Jersey law does not provide for a cancellation period for the sale of a vehicle with a purchase price of $40,000 or more. Therefore, you cannot later cancel this contract simply because you change your mind, decide the vehicle costs too much, or wish you acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud. See the vehicle contract cancellation option agreement for details.

5. (New section) A dealer shall conspicuously display a notice, not less than eight inches high and 10 inches wide, in each sales office and cubicle of the dealer's established place of business where written terms of specific sale or lease transactions are provided to consumers, and in each room of the dealer's established place of business where sale and lease contracts are regularly executed, stating the following:

THERE IS NO CANCELLATION PERIOD UNLESS YOU OBTAIN A CONTRACT CANCELLATION OPTION

New Jersey law requires a seller to offer a 2-day contract cancellation option on used vehicles with a purchase price of less than $40,000, subject to certain statutory conditions. This contract cancellation option requirement does not apply to the sale of a

motorcycle or an off-road vehicle. New Jersey law does not provide for a cancellation period for vehicle lease contracts or purchase contracts for vehicles with a purchase price of $40,000 or more. Therefore, you cannot later cancel a contract simply because you change your mind, decide the vehicle costs too much, or wish you acquired a different vehicle. After you sign a motor vehicle purchase or lease contract, it may only be canceled with the agreement of the seller or lessor or for legal cause, such as fraud. See the vehicle contract cancellation option agreement for details.

6. Section 2 of P.L.1995, c.373 (C.56:8-68) is amended to read as follows:

2. It shall be an unlawful practice for a dealer:

a. To misrepresent the mechanical condition of a used motor vehicle;

b. To fail to disclose, prior to sale, any material defect in the mechanical condition of the used motor vehicle which is known to the dealer;

c. To represent that a used motor vehicle, or any component thereof, is free from material defects in mechanical condition at the time of sale, unless the dealer has a reasonable basis for this representation at the time it is made;

d. To fail to disclose, prior to sale, the existence and terms of any written warranty, service contract or repair insurance currently in effect on a used motor vehicle provided by a person other than the dealer, and subject to transfer to a consumer, if known to the dealer;

e. To misrepresent the terms of any written warranty, service contract or repair insurance currently in effect on a used motor vehicle provided by a person other than the dealer, and subject to transfer to a consumer;

f. To fail to disclose, prior to sale, the existence and terms of any written warranty, service contract or repair insurance offered by the dealer in connection with the sale of a used motor vehicle;

g. To misrepresent the terms of any warranty, service contract or repair insurance offered by the dealer in connection with the sale of a used motor vehicle;

h. To represent, prior to sale, that a used motor vehicle is sold with a warranty, service contract or repair insurance when the vehicle is sold without any warranty, service contract or repair insurance;

i. To fail to disclose, prior to sale, that a used motor vehicle is sold without any warranty, service contract, or repair insurance; and

j. To **[**fail to provide a clear written explanation, prior to sale, of what is meant by the term "as is," if the**]** <u>sell or offer for sale to a consumer a</u> used motor vehicle **[**is sold**]** "as is **[**.**]**,**"** <u>unless:</u>

<u>(1) the used motor vehicle which has been declared a total loss by an insurance company, or reported as a total loss in a National</u>

Motor Vehicle Title Information System history report, and with respect to which the consumer, at or prior to the time of sale, has been advised in writing that the used motor vehicle has been declared a total loss; or

(2) the used motor vehicle which has been issued a salvage certificate of title in accordance with the provisions of P.L.1983, c.323 (C.39:10-31 et seq.), or reported as a salvage vehicle in a National Motor Vehicle Title Information System history report, and with respect to which the consumer, at or prior to the time of sale, has been advised in writing that the used motor vehicle is a salvage vehicle.

(cf: P.L.1995, c.373, s.2)

7. Section 3 of P.L.1995, c.373 (C.56:8-69) is amended to read as follows:

3. It shall be an unlawful practice for a dealer to sell a used motor vehicle to a consumer without giving the consumer a written warranty which shall at least have the following minimum durations:

a. If the used motor vehicle has **[**24,000**]** less than 40,000 miles **[**or less**]**, the warranty shall be, at a minimum, 90 days or **[**3,000**]** 3,750 miles, whichever comes first;

b. If the used motor vehicle has **[**more than 24,000**]** 40,000 miles or more, but less than **[**60,000**]** 80,000 miles, the warranty shall be, at a minimum, 60 days or **[**2,000**]** 2,500 miles, whichever comes first; **[**or**]**

c. If the used motor vehicle has **[**60,000**]** 80,000 miles or more, but less than 125,000 miles, the warranty shall be, at a minimum, 30 days or **[**1,000**]** 1,250 miles, whichever comes first **[**, except that a consumer may waive his right to a warranty as provided under section 7 of this act.**]**; or

d. If the used motor vehicle has 125,000 miles or more, a consumer shall be, at a minimum, entitled to any implied warranties created by law.

(cf: P.L.1995, c.373, s.3)

8. Section 8 of P.L.1995, c.373 (C.56:8-74) is amended to read as follows:

8. If a dealer fails to give a written warranty required by this act, the dealer nevertheless shall be deemed to have given the warranty as a matter of law**[**, unless a waiver has been signed by the consumer in accordance with section 7 of this act**]**.

(cf: P.L.1995, c.373, s.8)

9. Section 10 of P.L.1995, c.373 (C.56:8-76) is amended to read as follows:

10. The provisions of sections 3, 4, and 5 of P.L.1995, c.373 (C.56:8-69 through C.56:8-71) shall not apply to:

a. any used motor vehicle sold for less than $3,000;

b. any used motor vehicle over seven or more model years old;

c. any used motor vehicle which has been declared a total loss by an insurance company, or reported as a total loss in a National Motor Vehicle Title Information System history report, and with respect to which the consumer, at or prior to the time of sale, has been advised in writing that the used motor vehicle has been declared a total loss [by an insurance company];

d. any used motor vehicle which has been issued a salvage certificate of title in accordance with the provisions of P.L.1983, c.323 (C.39:10-31 et seq.), or reported as a salvage vehicle in a National Motor Vehicle Title Information System history report, and with respect to which the consumer, at or prior to the time of sale, has been advised in writing that the used motor vehicle is a salvage vehicle; or,

e. any used motor vehicle with more than [100,000] 125,000 miles.

(cf: P.L.1995, c.373, s.10)

10. Section 7 of P.L.1995, c.373 (C.56:8-73) is repealed.

11. This act shall take effect on the first day of the second month next following the date of enactment.

STATEMENT

This bill, designated the "Used Car Buyers' Bill of Rights," prohibits "as is" sales of used motor vehicles to consumers, requires dealers to offer contract cancellation option agreements for certain used vehicles, and establishes additional requirements for dealers selling used vehicles. The bill does not apply to transactions between private parties or the sale of used motorcycles, motor homes, or off-road vehicles.

The bill makes it an unlawful practice under the consumer fraud act for a dealer to sell to a consumer a used vehicle deemed to be "certified" or any other similar descriptive term that implies the vehicle complies with the terms of a used motor vehicle certification program if: the dealer knows or should know that the odometer is inaccurate; the dealer knows or should know that the vehicle was reacquired by a manufacturer or dealer pursuant to state or federal warranty laws; the title to the vehicle is inscribed with the notation "flood," "junk," "Lemon Law Buyback," "manufacturer repurchase," "nonrepairable," "salvage," or another similar title designation; the vehicle sustained damage in an impact, fire, or flood which substantially impairs its use or safety; the dealer knows

or should know that the vehicle sustained frame damage which, after repair prior to sale, substantially impairs the use or safety of the vehicle; prior to sale, the dealer fails to provide a consumer with a completed inspection report indicating all the components were inspected; the dealer disclaims any warranties of merchantability on the vehicle; or the term "certified," or any other similar descriptive term, is used in a manner that is untrue or misleading.

The bill requires that a dealer offer a consumer a contract cancellation option agreement that allows the consumer to return the used motor vehicle, without cause, if the used motor vehicle has a purchase price of less than $40,000. The contract cancellation option agreement gives the consumer the right to cancel the contract and obtain a refund. The bill sets forth the information to be contained in any contract cancellation option agreement, including the deadline for exercising the cancellation option and returning the vehicle to the dealer, the maximum mileage the vehicle may be driven, which could not be less than 250 miles, and any restocking fee. A dealer would be required to apply toward the restocking fee the price paid by the consumer for the contract cancellation option agreement. A dealer also is required to give notice at its business location and in the contract for the used motor vehicle that there is no cancellation period, sometimes referred to as a "cooling-off" period, unless a consumer obtains a contract cancellation option. Under the bill, the requirement that a dealer offer a contract cancellation option to a consumer does not apply to total loss or salvage vehicles.

The bill provides that the fee for the contract cancellation option agreement is not to exceed the following: (1) $75 for a used motor vehicle with a cash price of $5,000 or less; (2) $150 for a used motor vehicle with a cash price of between $5,000.01 and $10,000; (3) $250 for a used motor vehicle with a cash price of between $10,000.01 and $30,000; or (4) one percent of the purchase price for a used motor vehicle with a cash price of $30,000.01 to $40,000.

Under the bill, after a consumer exercises the right to cancel a contract under the agreement, no later than three business days for a used motor vehicle purchased by cash, credit or debit card, or bank loan, or 10 business days for a used motor vehicle purchased by check, the dealer is required to cancel the contract and provide the consumer with a refund, including the appropriate portion of the sales tax or other fees paid. In addition, within three business days, a dealer would be required to return to the consumer any used vehicle the consumer conveyed to the dealer as a down payment or trade-in. If the dealer sold or otherwise transferred title to that used vehicle, the refund would include the fair market value of that used vehicle or its value as stated in the contract, whichever is greater.

Currently, P.L.1995, c.373 (C.56:8-67 et seq.) sets forth minimum warranty requirements when a dealer sells to a consumer a used vehicle. Under current law, in the event that a used motor

vehicle is sold "as is," it is an unlawful practice for a dealer to fail to provide a clear written explanation, prior to sale, of what is meant by the term "as is." The bill amends current law to make it an unlawful practice under the consumer fraud act for a dealer to sell a consumer a used vehicle "as is," i.e., without any warranty. The bill eliminates the existing ability of a dealer to sell a consumer a used vehicle "as is" as a result of negotiating a lower price in exchange for waiving the dealer's obligation to provide a warranty. The bill revises the mileage requirements under the dealer's required written warranty. If the motor vehicle has less than 40,000 miles, the warranty would be 90 days or 3,750 miles, whichever comes first. If the motor vehicle has 40,000 miles or more, but less than 80,000 miles, the warranty would be 60 days or 2,500 miles, whichever comes first. If the used motor vehicle has 80,000 miles or more, but less than 125,000 miles, the warranty would be 30 days or 1,250 miles, whichever comes first. If the used motor vehicle has 125,000 miles or more, a consumer would be entitled to any implied warranties created by law.

Under the bill, a dealer may sell a used motor vehicle "as is" and is not required to provide a written warranty to a consumer if the used motor vehicle has been issued a salvage certificate of title by the New Jersey Motor Vehicle Commission or declared a total loss by an insurance company, of if the used motor vehicle has been reported as a salvage vehicle or as a total loss in a National Motor Vehicle Title Information System history report.

An unlawful practice under the consumer fraud act is punishable by a monetary penalty of not more than $10,000 for a first offense and not more than $20,000 for any subsequent offense. Additionally, violations may result in cease and desist orders issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to the injured party.