

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2017**

No. 197

Introduced by Council Members Espinal, Levin, Johnson, Williams, Salamanca, Levine, Richards, Menchaca, Koslowitz, Maisel, Vacca, Constantinides, Rosenthal, Garodnick, Gentile, Greenfield, Torres, Gibson, Cornegy, Cumbo, Lander, Chin, Miller, Reynoso, Vallone and Kallos.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the sale and financing of used automobiles by second-hand automobile dealers

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 20-264 of the administrative code of the city of New York, is amended to read as follows:

a. [Whenever used in this subchapter, the words] *As used in this subchapter, the following terms have the following meanings:*

Add-on product. The term “add-on product” means any product or service offered with a second-hand automobile, including, but not limited to, automobile service contracts, extended service contracts, prepaid maintenance packages, road service or club membership, theft protection, car alarm, auto immobilizer, vehicle identification number etching, mechanical breakdown, guaranteed auto protection, and credit life, accident or disability insurance, and biweekly payment plans.

Business day. The term “business day” means any day other than Saturday, Sunday, or a legal holiday.

Dealer in second-hand articles. The term “dealer in second-hand articles” [shall mean] means any person who, in any way or as a principal broker or agent:

1. Deals in the purchase or sale of second-hand articles of whatever nature, or
2. Accepts or receives second-hand articles as returns of merchandise or in exchange for or for credits on any other articles or merchandise, or
3. Deals in the purchase or sale of any second-hand manufactured article composed wholly or in part of gold, silver, platinum or other metals, or
4. Deals in the purchase or sale of old gold, silver, platinum or other precious metals, or
5. Deals in the purchase of articles or things comprised of gold, silver, platinum or other precious metals for the purpose of melting or refining, or
6. Engages in melting previous metals for the purpose of selling, or
7. Deals in the purchase or sale of pawnbroker tickets or other evidence of pledged articles, or
8. Not being a pawnbroker deals in the redemption or sale of pledged articles, or
9. Deals in the purchase or sale of any used electrical appliance, electronic equipment or component parts.

Financing. The term “financing” means any agreement, including a loan, installment agreement, or deferred payment plan where the consumer agrees to make payments subsequent to the execution of the sales contract, regardless of whether the payments are made to the second-hand automobile dealer or to a third-party assigned the agreement.

Retail installment contract. The term “retail installment contract” means a retail installment contract, as that term is defined in subdivision 5 of section 301 of the personal property law, that is

entered into in the city of New York by a second-hand automobile dealer and a consumer of a second-hand automobile for the purchase of a second-hand automobile.

Retail installment sale. The term “retail installment sale” means a retail installment sale as that term is defined in subdivision 4 of section 301 of the personal property law.

Second-hand automobile dealer. The term “second-hand automobile dealer” means a dealer in second-hand articles that deals in the purchase or sale of second-hand automobiles.

Trade-in automobile. The term “trade-in automobile” means an automobile provided to a second-hand automobile dealer by a consumer as a trade-in or a down-payment toward the purchase of a second-hand automobile pursuant to a sales contract.

§ 2. Title 20 of the administrative code of the city of New York is amended by adding a new section 20-268.1 to read as follows:

§ 20-268.1 Sale and financing of second-hand automobiles.

a. No mandatory financing. A second-hand automobile dealer shall not require a consumer to accept financing or assistance in obtaining financing from a lender as a condition of the purchase of an automobile, and shall not increase the price of such automobile on the basis that the consumer has secured financing from a third-party lender.

b. Conditional sales contract. No retail installment contract for the purchase of a second-hand automobile shall include a term rendering the contract voidable, subject to modification, or otherwise not binding upon a second-hand automobile dealer because of such dealer’s inability or unwillingness to sell, assign or otherwise transfer the contract to a third party after execution of the sales contract.

c. Payment price packing. A second-hand automobile dealer shall not:

1. Require a consumer to purchase any add-on product as a condition of purchasing a second-hand automobile or obtaining financing from a lender for the purchase of an automobile; or

2. Charge a consumer a higher amount if such consumer does not purchase an add-on product, and shall not condition a financing offer on any such purchase.

d. False information provided to lender or finance company. In connection with the sale or offer for sale of a second-hand automobile, a second-hand automobile dealer or employees or agents thereof shall not:

1. Prepare, participate, assist or direct any person to prepare, participate or assist in the submission of a false, misleading, or deceptive credit application or contract to a lender or finance company; or

2. Request or allow a consumer to sign a blank or incomplete credit application or contract.

e. Disclosures. 1. Prior to the execution of any bill of sale, a second-hand automobile dealer shall provide to each consumer a document that discloses the availability of a contract cancellation option. The form and content of the required disclosure shall be prescribed by the commissioner by rule.

2. Prior to the execution of any retail installment contract, a second-hand automobile dealer that offers financing to a consumer of a second-hand automobile or assists such consumer in obtaining financing from a lender shall provide to such consumer in writing all disclosures required by the federal truth in lending act and by article nine of the personal property law. In addition to such disclosures, a second-hand automobile dealer shall provide to such consumer, in a form prescribed by the commissioner by rule, a document containing the following disclosures:

(a) The price of each add-on product to be included in such retail installment contract;

(b) The total cost of the automobile and the monthly payments, including any amounts associated with financing, that the consumer will be required to make to purchase the automobile (i) with each such add-on product included, (ii) without any add-on product included, and (iii) with all such add-on products.

(c) The lowest annual percentage rate offered to such consumer by the financing companies from whom the dealer has solicited financing on behalf of the consumer; and

(d) Any other financing-related disclosure prescribed by the commissioner by rule.

3. The disclosures described in this subdivision shall be provided to the consumer in the language in which the sale or finance agreement was negotiated, provided the commissioner has made available to second-hand automobile dealers such disclosures in such language.

4. Receipt of the disclosures described in this subdivision must be acknowledged by the consumer by signing or initialing in writing.

f. Waiver prohibited. No retail installment contract or other contract related to the purchase of a second-hand automobile may require a consumer to waive any of the protections provided by this section.

§ 3. Title 20 of the administrative code of the city of New York is amended by adding a new section 20-268.2 to read as follows:

§ 20-268.2 Automobile contract cancellation option.

a. Prior to executing a bill of sale with a consumer for the purchase of an automobile, a second-hand automobile dealer shall offer such consumer an automobile contract cancellation option that authorizes such consumer to cancel the sales contract, subject to the conditions set

forth in this section. Until such option is declined in writing or forfeited by such consumer, such dealer may retain possession of and title to such automobile.

b. An automobile contract cancellation option shall be contained in a document separate from any sales, purchase, or financing agreement or contract and its terms shall be incorporated into the bill of sale governing each sale. The form and content of such automobile contract cancellation option document shall be prescribed by the commissioner by rule. The automobile contract cancellation option document shall contain, at a minimum, the following:

1. The name of the second-hand automobile dealer and the consumer;

2. A description of the second-hand automobile and the vehicle identification number of such automobile;

3. A statement specifying that the consumer may exercise the option to cancel the sales contract no later than the dealer's close of business on the second business day following the day on which the bill of sale was signed by the consumer or the day on which the retail installment contract was signed by the consumer, whichever occurs later;

4. A statement that the consumer has the option to cancel the sales contract and obtain a full refund and that such option will apply only if, within the two business day period specified in the automobile contract cancellation option document, such consumer personally delivers to the second-hand automobile dealer a written statement signed by such consumer, pursuant to paragraph 8 of this subdivision, exercising the option to cancel the sales contract;

5. A statement clearly indicating the date and time by which the option to cancel the sales contract may be exercised;

6. A statement specifying that the second-hand automobile dealer may retain possession of and title to such vehicle until such consumer declines in writing the option to cancel the sales contract or forfeits such option;

7. A statement that, when signed by the consumer, acknowledges receipt of the automobile contract cancellation option document and indicates whether such consumer has accepted or declined the option offered therein;

8. A statement that, if signed by such consumer, will either execute the cancellation of the sales contract, provided all necessary conditions for such cancellation have been met, or decline such cancellation, provided further that the consumer has previously accepted the automobile contract cancellation option;

9. A statement specifying that the consumer will execute documents reasonably necessary to effectuate the cancellation of the sales contract and the refund as reasonably required to comply with applicable law; and

10. If the sales contract includes a trade-in automobile, a statement specifying the consumer's rights in connection with such automobile and the terms and conditions that apply if such consumer elects to use the trade-in automobile during the cancellation period.

c. A consumer who has accepted an automobile contract cancellation option may exercise the option to cancel the sales contract no later than the dealer's close of business on the second business day following the day on which either the bill of sale or the retail installment contract was signed by such consumer, whichever such signing occurred later. A consumer shall forfeit the option to cancel the sales contract by failing to respond in writing to the business within such cancellation period.

d. A consumer's timely in-person delivery to the second-hand automobile dealer of the automobile contract cancellation option with such consumer's signature shall constitute sufficient written notice to such dealer of such consumer's exercise of the option to cancel the sales contract.

e. Upon delivery in person by a consumer of a written, signed statement exercising the option to cancel the sales contract in compliance with an automobile contract cancellation option, the second-hand automobile dealer shall immediately cancel the contract and provide such consumer with a full refund, including any sales tax collected in connection with the purchase.

f. The second-hand automobile dealer shall provide a consumer with a copy of the contract cancellation option document containing such consumer's signature accepting or declining the terms of the option. If the consumer exercises such option, the dealer shall provide such consumer with a copy of the document submitted by such consumer exercising such option.

g. A consumer who accepts an automobile contract cancellation option as part of a sales contract in which a trade-in automobile is included shall pay a refundable deposit of \$100, and may:

1. Leave the trade-in automobile with the second-hand automobile dealer, who shall retain such automobile until the consumer exercises the option to cancel the sales contract or the option expires. If the consumer exercises the option to cancel the sales contract, such dealer shall keep the \$100 deposit and return the trade-in automobile to the consumer no later than the day on which the consumer exercises such option. If the consumer declines to exercise the option to cancel the sales contract, such dealer shall return the \$100 deposit to the consumer. If such dealer inadvertently sells or otherwise transfers title to the trade-in automobile as a result of bona fide error, notwithstanding reasonable procedures designed to avoid that error, such sale or transfer

of title shall not be considered a violation of this paragraph, and the full refund described in subdivision e of this section shall include the retail market value of such trade-in automobile, or its value as stated in the sales contract, whichever is greater; or

2. Use the trade-in automobile during the cancellation period for a non-refundable fee of \$50 payable to the second-hand automobile dealer. During such cancellation period, the consumer shall be prohibited from driving more than 250 miles in the trade-in automobile and must return such automobile in the same condition as when such automobile was presented to such dealer as a trade-in automobile, excepting any reasonable wear and tear. If the consumer declines to exercise the option to cancel the sales contract, such dealer shall return the \$100 deposit to the consumer, provided that if the consumer does not comply with the terms and conditions governing the use of such trade-in automobile during the cancellation period, the dealer may either cancel the sales contract or keep such deposit. The dealer shall not be required to deliver the second-hand automobile to the consumer until the trade-in automobile has been delivered to the dealer.

h. A second-hand automobile dealer shall not increase the price of an automobile or impose a fee on a consumer in connection with the exercise of an automobile contract cancellation option except as provided in subdivision g of this section.

i. A second-hand automobile dealer shall not require that a consumer declines an automobile contract cancellation option or declines cancelling a sales contract as a condition for the purchase of a second-hand automobile.

§ 4. Title 20 of the administrative code of the city of New York is amended by adding a new section 20-268.3 to read as follows:

§ 20-268.3 Second-hand automobile contract documents to be provided in advance. In advance of execution of any contract between a second-hand automobile dealer and a customer for the sale of a second-hand automobile, including, but not limited to, a buyer's order, retail installment contract, bill of sale, automobile contract cancellation option document, or service contract, a second-hand automobile dealer shall provide to such consumer a copy of such contract, all documents incorporated or referenced in such contract, and all documents to be signed or initialed by such consumer in connection with such contract, in the language used by such dealer to negotiate the sale of such second-hand automobile.

§ 5. Title 20 of the administrative code of the city of New York is amended by adding a new section 20-268.5 to read as follows:

§ 20-268.5 Second-hand automobile records and reports. a. A second-hand automobile dealer shall maintain a physical or electronic copy of each of the following documents relating to the sale of a second-hand automobile for six years after the date of execution by the consumer of such documents:

- 1. The buyer's order, bill of sale, any retail installment contract, and any document incorporated by reference into the bill of sale or retail installment contract;*
- 2. Every document signed or initialed by the consumer in connection with the sale transaction;*
- 3. Every written disclosure provided to, and signed or initialed by, the consumer pursuant to this subchapter;*
- 4. Each signed automobile contract cancellation option document, whether accepted or declined by the consumer; and*

5. *Each signed document cancelling a sales contract or declining to cancel a sales contract pursuant to an automobile contract cancellation option.*

b. The department may inspect and audit all records required to be maintained pursuant to this section.

c. A second-hand automobile dealer shall maintain a report on consumer use of automobile contract cancellation options in a format to be prescribed by the commissioner by rule. The report shall be made available upon request of the commissioner but in no instance shall such request be made more than once annually. The report shall include:

1. The total number of consumers that accepted an automobile contract cancellation option in connection with their second-hand automobile purchase; and

2. The total number of consumers that canceled their second-hand automobile sales contracts pursuant to an automobile contract cancellation option.

§ 6. Title 20 of the administrative code of the city of New York is amended by adding a new section 20-268.6 to read as follows:

§ 20-268.6 Legislative recommendations. The commissioner may submit to the council and the mayor a report of legislative recommendations on the regulation of the second-hand automobile dealer industry. Such report, should the commissioner elect to submit it, may address (i) whether it is advisable to create additional enforcement tools to promote compliance with sections 20-268.1, 20-268.2, 20-268.3, 20-268.4 and 20-268.5 by licensees; (ii) the effect such sections have had on the prevalence of predatory practices in the second-hand automobile dealer industry; (iii) whether new predatory practices have emerged in the second-hand automobile dealer industry; (iv) whether additional disclosure or reporting requirements for second-hand automobile dealers

would mitigate consumer harm; and (v) the effectiveness of the department's outreach and education efforts in this area.

§ 7. Subdivisions a and b of section 20-271 of the administrative code of the city of New York, as amended by local law number 44 for the year 2015, are amended to read as follows:

a. Every person licensed as a dealer in second-hand articles, who also sells new articles within the licensed premises, shall label all second-hand articles in such manner that the public will be informed that such articles are not new.

b. Every person required to be licensed as a second-hand automobile dealer pursuant to section 20-265 of this subchapter, who sells second-hand automobiles at retail, shall clearly and conspicuously post:

1. the total selling price, which shall include any administrative, service or other fee charged by the second-hand automobile dealer exclusive of all taxes and fees for securing a registration or certificate of title, of each second-hand automobile offered for sale at his or her place of business, by means of a sign on the dashboard of each such automobile or by means of a sign at the point of display of each such automobile; and

2. the total selling price of any add-on product offered for sale by means of a sign at the point of display of the second-hand automobile for which such product is available for purchase or at each location within the dealer's place of business where any such product is offered for sale. Such sign shall inform consumers that the purchase of any add-on product is optional *and that the purchase of an add-on product is not required to obtain financing*. [For purposes of this paragraph, "add-on product" shall mean vehicle service contracts, extended service contracts, prepaid maintenance packages, road service or club membership, theft protection, car alarm, auto immobilizer, vehicle

identification number etching, mechanical breakdown, guaranteed auto protection, and credit life, accident or disability insurance.]

§ 8. Section 20-275 of the administrative code of the city of New York, as amended by local law number 44 for the year 2015, is amended to read as follows:

a. Any person who [shall violate] *violates* any of the provisions of this subchapter or any rule or regulation issued thereunder shall be guilty of a class A misdemeanor and upon the first conviction be subject to a fine of at least [five hundred dollars] *\$500* and upon any subsequent conviction be subject to a fine of [one thousand dollars and/or] *\$1,000*, imprisonment of at least [fifteen] 15 days, *or both*.

b. Except as otherwise provided in this subchapter, any person who violates any of the provisions of this subchapter or any rule or regulation issued thereunder shall be subject to a civil penalty of not more than [five hundred dollars] *\$500* for each violation; except that a person shall not be subject to such civil penalty for a first-time violation of section 20-270 or 20-271 of this subchapter or any rule or regulation issued thereunder, if such person proves to the satisfaction of the department, within [thirty] *30* days of the issuance of the notice of violation and prior to the commencement of an adjudication of the violation, that the violation has been cured. The submission of proof of a cure shall be deemed an admission of liability for all purposes. The option of presenting proof that the violation has been cured shall be offered as part of any settlement offer made by the department to a person who has received, for the first time, a notice of violation of section 20-270 or section 20-271 of this subchapter or any rule or regulation issued thereunder. The department shall permit such proof to be submitted electronically or in person. A person may seek review, in the department's administrative tribunal, of the determination that the person has

not submitted proof of a cure within [fifteen] 15 days of receiving written notification of such determination.

c. Any person who violates section 20-268.1, 20-268.2 20-268.3, 20-268.4, or 20-268.5 or any rule or regulation issued thereunder shall be subject to a civil penalty of not less than \$500 or more than \$1,000 for each violation.

d. The commissioner may suspend or revoke a second-hand automobile dealer license if the licensee violates section 20-268.1, 20-268.2, 20-268.3, 20-268.4, 20-268.5, or 20-271 or any rule or regulation issued thereunder, provided, however, that the commissioner shall suspend or revoke a second-hand automobile dealer license upon the third violation by the licensee within three years of the first violation.

e. The commissioner may order a second-hand automobile dealer to pay to a consumer up to 10% of the full refund amount owed the consumer per day for each day that the dealer fails to cancel the sales contract and provide such refund to the consumer in violation of subdivision e of section 20-268.2. In determining whether to order such payment and the amount of such payment, the commissioner shall consider, but is not limited to, the following factors:

- 1. Any prior violation of subdivision e of section 20-268.2 by such dealer;*
- 2. Any justification offered by the dealer for the delay in canceling the sales contract and providing such refund;*
- 3. The extent of the delay; and*
- 4. Any particular harm suffered by the consumer as a result of the delay.*

§ 9. Severability. If any portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed

severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§ 10. This local law takes effect 120 days after it becomes law, except that the commissioner may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, prior to such date.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on September 27, 2017 and approved by the Mayor on October 16, 2017.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 197 of 2017, Council Int. No. 1539-A of 2017) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel.