

13:45A-17.5 Initial and renewal applications

(a) Each home improvement contractor required to be registered under this subchapter shall initially register with the Division by submitting the following on forms provided by the Director:

1. The name and street address of each place of business of the home improvement contractor and any fictitious or trade name to be used by the home improvement contractor;
2. The type of business organization;
3. The name, residence and business street address of each officer, director, principal and person with an ownership interest of 10 percent or more in the home improvement contractor business, including the percentage of ownership held;
4. The name and number of any professional or occupational license, certificate or registration issued by this State or any other governmental entity to any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business;
5. Whether the entity, any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business has been adjudged liable in an administrative or civil action involving any of the situations in (a)5i through vi below. For the purposes of this paragraph, a judgment of liability in an administrative or civil action shall include, but not be limited to, any finding or admission that the entity, officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business engaged in an unlawful practice or practices related to any of the named situations in (a)5i through vi below regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of a license, certification or registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any State or Federal agency. As described above, this paragraph covers the following situations:
 - i. Obtained any registration, certification or license by fraud, deception or misrepresentation;
 - ii. Engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
 - iii. Engaged in gross negligence, gross malpractice or gross incompetence;
 - iv. Engaged in acts of negligence, malpractice or incompetence involving selling or making a home improvement; and

v. Engaged in professional or occupational misconduct;

6. Whether the entity, any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business has been convicted of any crime involving moral turpitude or any crime relating adversely to selling or making home improvements. For the purpose of this paragraph, a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;

7. Whether the entity, any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business has had their authority to engage in the activity regulated by the Director revoked or suspended by any other state, agency or authority;

8. Whether the entity, any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business has violated or failed to comply with the provisions of any act, regulation or order administered or issued by the Director;

9. Whether the entity, any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business believes they are unable to meet the requirements of the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq. or rule in this subchapter for medical or any other good cause to the detriment of the public's health, safety and welfare; and

10. The name and street address of an agent in the State of New Jersey for service of process.

(b) An application that is not completed because of the applicant's failure to cure a deficiency or to comply with the Director's request for additional information within six months from the date of the first deficiency notice or the date of the first written request for additional information shall be deemed to have been abandoned.

(c) In addition to the information required in (a) above, the applicant shall include the following with the initial application:

1. A properly completed disclosure statement that complies with the requirements of N.J.A.C. 13:45A-17.6;

2. Proof of the home improvement contractor's commercial general liability insurance policy in a minimum amount of \$500,000 per occurrence that complies with the requirements of N.J.A.C. 13:45A-17.12; and

3. The initial registration fee in the amount specified in N.J.A.C. 13:45A-17.14.

(d) A registered home improvement contractor shall include the following with the annual renewal application:

1. A completed renewal application that will be on a form specified by the Director;

2. Proof of the home improvement contractor's commercial general liability insurance policy in a minimum amount of \$500,000 per occurrence that complies with the requirements of N.J.A.C. 13:45A-17.12;

3. The renewal registration fee in the amount specified in N.J.A.C. 13:45A-17.14; and

4. If the completed renewal application is received by the Division after the renewal application's due date as specified on the renewal application, the late fee in the amount specified in N.J.A.C. 13:45A-17.14.

Amended by R.2012 d.016, effective January 17, 2012.

See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

Added new (b); and recodified former (b) and (c) as (c) and (d).

13:45A-17.6 Disclosure statement

(a) Each applicant shall file a disclosure statement with the Director stating whether it or any of its officers, directors, principals or persons with an ownership interest of 10 percent or more in the home improvement contractor business has been convicted of any violations of the following provisions of the "New Jersey Code of Criminal Justice," Title 2C of the New Jersey Statutes, or the equivalent under the laws of any other jurisdiction:

1. Any crime of the first degree;

2. Any crime which is a second or third degree crime and is a violation of chapter 20 or 21 of Title 2C of the New Jersey Statutes; or

3. Any other crime which is a violation of N.J.S.A. 2C:5-1 or 2C:5-2 (conspiracy), N.J.S.A. 2C:11-2 (criminal homicide), N.J.S.A. 2C:11-3 (murder), N.J.S.A. 2C:11-4 (manslaughter), N.J.S.A. 2C:12-1 (assault), N.J.S.A. 2C:12-3 (terroristic threats), N.J.S.A. 2C:13-1 (kidnapping), N.J.S.A. 2C:14-2 (sexual assault), subsection a. or b. of N.J.S.A. 2C:17-1 (arson and related offenses), subsection a. or b. of N.J.S.A. 2C:17-2 (causing or risking widespread injury or damage), N.J.S.A. 2C:15-1 (robbery), N.J.S.A. 2C:18-2 (burglary), N.J.S.A. 2C:20-4 (theft by deception), N.J.S.A. 2C:20-5 (theft by extortion), N.J.S.A. 2C:20-7 (receiving stolen property), N.J.S.A. 2C:20-9 (theft by failure to make required disposition of property received), N.J.S.A. 2C:21-2 (criminal simulation), N.J.S.A. 2C:21-2.1 (fraud relating to driver's license or other document issued by governmental agency to verify identity or age; simulation), N.J.S.A. 2C:21-2.3 (fraud relating to motor vehicle insurance identification card; production or sale), N.J.S.A. 2C:21-3 (frauds relating to public records and recordable instruments), N.J.S.A. 2C:21-4 (falsifying or tampering with records), N.J.S.A. 2C:21-6 (fraud relating to credit cards), N.J.S.A. 2C:21-7 (deceptive business practices), N.J.S.A. 2C:21-12 (defrauding secured creditors), N.J.S.A. 2C:21-14 (receiving deposits in a failing financial institution), N.J.S.A. 2C:21-15 (misapplication of

entrusted property and property of government of financial institution), N.J.S.A. 2C:21-19 (wrongful credit practices and related offenses), N.J.S.A. 2C:27-2 (bribery in official and political matters), N.J.S.A. 2C:27-3 (threats and other improper influence in official and political matters), N.J.S.A. 2C:27-5 (retaliation for past official action), N.J.S.A. 2C:27-9 (public servant transacting business with certain persons), N.J.S.A. 2C:27-10 (acceptance or receipt of unlawful benefit by public servant for official behavior), N.J.S.A. 2C:27-11 (offer of unlawful benefit by public servant for official behavior), N.J.S.A. 2C:28-1 (perjury), N.J.S.A. 2C:28-2 (false swearing), N.J.S.A. 2C:28-3 (unsworn falsification to authorities), N.J.S.A. 2C:28-4 (false reports to law enforcement officials), N.J.S.A. 2C:28-5 (tampering with witnesses and informants; retaliation against them), N.J.S.A. 2C:28-6 (tampering with or fabricating physical evidence), N.J.S.A. 2C:28-7 (tampering with public records or information), N.J.S.A. 2C:28-8 (impersonating a public servant or law enforcement officer), N.J.S.A. 2C:30-2 (official misconduct), N.J.S.A. 2C:30-3 (speculating or wagering on official action or information), N.J.S.A. 2C:35-5 (manufacturing, distributing or dispensing a controlled dangerous substance), N.J.S.A. 2C:35-10 (possession, use or being under the influence or failure to make lawful disposition of a controlled dangerous substance), N.J.S.A. 2C:37-2 (promoting gambling), N.J.S.A. 2C:37-3 (possession of gambling records), or N.J.S.A. 2C:37-4 (maintenance of a gambling resort).

13:45A-17.7 Duty to update information

(a) Whenever any information required to be included in the application changes, or if additional information should be added after the filing of the application, the applicant or registered home improvement contractor, as appropriate, shall provide that information to the Director, in writing, within 20 calendar days of the change or addition. Whenever any other information filed with the Director pursuant to the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., or this subchapter has changed, the applicant or registered home improvement contractor, as appropriate, shall provide that information to the Director, in writing, within 20 calendar days of the change or addition.

(b) Whenever any information required to be included in the disclosure statement changes, or if additional information should be added after the filing of the statement, the applicant or registered home improvement contractor, as appropriate, shall provide that information to the Director, in writing, within 30 calendar days of the change or addition.

13:45A-17.8 Requirement to cooperate

Home improvement contractor applicants seeking to register with the Division and registered home improvement contractors shall have the continuing duty to provide any assistance or information; to produce any records requested by the Director; and to cooperate in any inquiry, investigation or hearing conducted by the Director.

13:45A-17.9 Refusal to issue, suspension or revocation of registration; hearing; other sanctions

(a) The Director may refuse to issue or renew, or may suspend or revoke any registration issued by the Division upon proof that an applicant or registrant or any of its officers, directors, principals or persons with an ownership interest of 10 percent or more in the home improvement contractor business:

1. Has obtained any registration, certification or license by fraud, deception or misrepresentation;
2. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
3. Has engaged in gross negligence, gross malpractice or gross incompetence;
4. Has engaged in repeated acts of negligence, malpractice or incompetence involving selling or making a home improvement;
5. Has engaged in professional or occupational misconduct;
6. Has been adjudged liable in an administrative or civil action involving any finding or admission which would provide a basis for discipline pursuant to (a)1 through 5 above regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of a license, certification or registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any State or Federal agency;
7. Has been convicted of any crime involving moral turpitude or any crime relating adversely to selling or making home improvements. For the purpose of this paragraph, a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;
8. Has had his or her authority to engage in the activity regulated by the Director revoked or suspended by any other state, agency or authority for reasons consistent with this section;
9. Has violated or failed to comply with N.J.S.A. 56:8-136 et seq. or any provision of this subchapter or the provisions of any act, regulation or order administered or issued by the Director; or
10. Is unable to meet the requirements of the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., or rule in this subchapter for medical or any other good cause to the detriment of the public's health, safety and welfare.

(b) Information contained in the application required pursuant to N.J.A.C. 13:45A-17.5 and information contained in the disclosure statement required to be filed pursuant to N.J.A.C. 13:45A-17.6 may be used by the Director as

grounds for denying, suspending or revoking a registration. An applicant whose registration is denied or a home improvement contractor whose registration is suspended or revoked based upon information contained in the application or disclosure statement or any amendments thereto shall be afforded an opportunity to be heard pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, upon written request to the Director within 30 days of the notice of denial, suspension or revocation which shall contain the basis for such action. In any matter in which the provisions of the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq., apply, the Director shall comply with the requirements of that Act.

(c) Except as provided in (b) above, prior to refusing to issue or renew or suspending or revoking a home improvement contractor registration or assessing a penalty, the Director shall notify the applicant or registrant and provide an opportunity to be heard.

(d) In addition to assessing a monetary penalty for any violation of this subchapter, the Director may revoke a registration or suspend the registration for a period of time dependent upon the seriousness of the violation.

(e) Nothing contained in this subchapter shall limit the Director from imposing any additional fees, fines, penalties, restitution or any other sanctions as permitted under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

13:45A-17.10 Reinstatement of suspended registration

A registration that is suspended by the Director may be reinstated upon the contractor satisfying the conditions for reinstatement as determined by the Director and paying all outstanding fees, fines, penalties and restitution, including the payment of the reinstatement fee specified in N.J.A.C. 13:45A-17.14.

13:45A-17.11 Ownership and use of registration number; replacement and duplicate certificates

(a) Each registration number and certificate containing such registration number issued by the Director to a home improvement contractor remain the property of the State of New Jersey. If the Director suspends, fails to renew, or revokes a registration, the home improvement contractor shall immediately return all registration certificates to the Director and shall remove the registration number from all vehicles, advertising and anything else on which the registration number is displayed or otherwise communicated.

(b) The Director shall issue a replacement certificate upon payment of the replacement certificate fee as set forth in N.J.A.C. 13:45A-17.14 and receipt by the Director of an affidavit or certified statement attesting that the original was either lost, destroyed, mutilated or is otherwise no longer in the custody of and cannot be recovered by the certificate holder.

(c) The Director shall issue a duplicate certificate to a registered contractor upon payment of the duplicate certificate fee as set forth in N.J.A.C. 13:45A-17.14 and receipt by the Director of an affidavit or certified statement that the registered contractor has multiple places of business in which the contractor must display a certificate. A registered contractor may not possess more registration certificates than the number of places of business utilized by the contractor.

(d) A registered home improvement contractor shall prominently display:

1. The original registration certificate or a duplicate registration certificate issued by the Division at each place of business; and
2. The contractor's registration number on all advertisements distributed within this State, on business documents, contracts and correspondence with consumers of home improvement services in this State.

(e) All commercial vehicles registered in this State and leased or owned by a registrant and used by the registrant for the purpose of providing home improvements, except for vehicles leased or rented by a registrant to a customer of that registrant, shall be marked on both sides with the following information:

1. The name of the registered home improvement contractor in lettering at least one inch in height; and
2. "HIC reg. #" followed by the registration number of the registrant in lettering at one inch in height.

(f) Any invoice, contract or correspondence given by a registrant to a consumer shall prominently contain the toll-free telephone number provided by the Division pursuant to (b) of N.J.S.A. 56:8-149 and shall be displayed in all caps in at least 10-point boldface type as follows: FOR INFORMATION ABOUT CONTRACTORS AND THE CONTRACTORS' REGISTRATION ACT, CONTACT THE NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CONSUMER AFFAIRS AT 1-888-656-6225.

Amended by R.2008 d.232, effective August 4, 2008.

See: 40 N.J.R. 1611(a), 40 N.J.R. 4598(c).

Rewrote (d)2; added new (e); recodified former (e) as (f); and rewrote (f).

Amended by R.2012 d.016, effective January 17, 2012.

See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

In (f), substituted "Any" for "As of November 4, 2008, any" and "boldface" for "bold-face".

Administrative correction.

See: 46 N.J.R. 2113(b).

13:45A-17.12 Mandatory commercial general liability insurance

(a) Every registered home improvement contractor shall secure and maintain in full force and effect during the entire

term of registration a commercial general liability insurance policy and shall file with the Director proof that such insurance is in full force and effect.

(b) The insurance policy required to be filed with the Director shall be a commercial general liability insurance policy, occurrence form, and shall provide a minimum coverage in the amount of \$500,000 per occurrence. Every registered contractor engaged in home improvements whose commercial general liability insurance policy is canceled or nonrenewed shall submit to the Director a copy of the certificate of commercial general liability insurance for a new or replacement policy, which meets the requirements of (a) above before the former policy is no longer effective.

(c) The proof of insurance required by (a) above shall be a certificate provided by the insurer containing the insured's name, business street address, policy number, term of the insurance, and information assuring that the policy conforms with (b) above.

(d) A home improvement contractor who either does not renew or otherwise changes the contractor's commercial general liability policy shall submit a copy of the certificate of commercial general liability insurance for the new policy before the former policy is no longer effective.

Administrative change.

See: 37 N.J.R. 2212(a).

Amended by R.2012 d.016, effective January 17, 2012.

See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

In (a), substituted "Every" for "On or after December 31, 2005 every"; in (b), substituted "Every" for "On or after December 31, 2005, every" and "Director" for "director", and inserted a comma following "replacement policy".

13:45A-17.13 Requirements of certain home improvement contracts

In addition to the requirements of a home improvement contract pursuant to N.J.A.C. 13:45A-16.2, every home improvement contract in which a person required to be registered as a home improvement contractor is a party shall comply with the provisions of N.J.S.A. 56:8-151.

13:45A-17.14 Fees

(a) The Division shall charge the following non-refundable home improvement contractor registration fees:

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| 1. Initial registration fee | \$90.00; |
| 2. Renewal registration fee | \$75.00; |
| 3. Late fee | \$25.00; |
| 4. Reinstatement fee | \$50.00; |
| 5. Replacement or duplicate certificate fee | \$20.00. |

“Motor vehicle” means a passenger automobile, authorized emergency vehicle or motorcycle as defined in N.J.S.A. 39:1-1, that is registered, sold or leased in the State of New Jersey, whether purchased, leased or repaired in the State or outside the State, except the living facilities of motor homes.

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

“OAL” means the Office of Administrative Law.

“Out of service” means the number of days the defective motor vehicle is on the premises of a repair facility for the purpose of repairing one or more nonconformities; delays caused by the consumer, such as a delay in picking up the motor vehicle from the facility after notification that it is ready, shall not be counted as days out of service.

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

“Term of protection” means within the first 24,000 miles of operation or the two years following the original date of delivery of the motor vehicle to the consumer, whichever is the earlier date.

“Title” means the certificate of ownership of a motor vehicle.

Amended by R.1992 d.236, effective June 1, 1992.
See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).

Revised definition “motor vehicle”.

Amended by R.1994 d.176, effective April 4, 1994.
See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

Amended by R.2010 d.166, effective August 2, 2010.
See: 41 N.J.R. 4187(a), 42 N.J.R. 1740(a).

Added definition “Examination”; in definition “Motor vehicle”, deleted a comma following the second occurrence of “leased”, and inserted “, except the living facilities of motor homes”; and in definition “Terms of protection”, substituted “24,000” for “18,000”.

Amended by R.2012 d.016, effective January 17, 2012.
See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

Added definitions “Co-manufacturer”, “Dealer”, “Distributor”, “Manufacturer” and “Post-manufacturing modifier”; and in definition “Motor vehicle”, inserted “, authorized emergency vehicle”.

Case Notes

Initial Decision (2010 N.J. AGEN LEXIS 550) adopted, which found that petitioner failed to establish by a preponderance of the credible evidence that his motorcycle had nonconformities that continued to exist and that any of the alleged nonconformities, defects or conditions, substantially impaired the use, value or safety of the vehicle, particularly where petitioner’s claim that the motorcycle stalled was not mentioned when the vehicle was first presented for repair and, even if the manufacturer was noticed with a “stalling” problem by a later letter, no further evidence of stalling was recorded at the time of the second repair. Additionally, the increasing mileage on the motorcycle and the lack of evidence from petitioner that the nonconformity continued to exist failed to support petitioner’s application for relief. *Dixon v. BMW*, OAL Dkt. No. CMA 09308-10, 2010 N.J. AGEN LEXIS 784, Final Decision (October 25, 2010).

Initial Decision (2010 N.J. AGEN LEXIS 250) adopted, which found that petitioner failed to establish by a fair preponderance of the credible

evidence that the alleged problems or defects of the vehicle, specifically the vehicle’s gas mileage, brakes and power sliding door, were “nonconformities” where there was no evidence of any mechanical difficulty which was causing an alleged lowering of gas mileage, the “grinding” or “vibration” of brakes were corrected, and there was no evidence that the power sliding door posed a threat of death or serious bodily harm. *Berger v. Chrysler Group*, OAL Dkt. No. CMA 03840-10, 2010 N.J. AGEN LEXIS 688, Final Decision (June 7, 2010).

Noise defect qualified as a nonconformity for purposes of the Lemon Law where the consumer’s safety fears caused him to avoid hauling materials, making it so that the consumer was unable to use the vehicle in the manner intended; it was reasonable to conclude that a noise emanating from a vehicle was indicative of some underlying problem and would have shaken the confidence of any reasonable consumer, substantially impairing the value of the vehicle (adopting as modified 2009 N.J. AGEN LEXIS 106). *Rufrano v. Nissan North America, Inc.*, OAL Dkt. No. CMA 11891-08, 2009 N.J. AGEN LEXIS 616, Final Decision (March 10, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 791) adopted, which concluded that consumer seeking Lemon Law relief failed to establish the existence of an abnormal vibration in the gas pedal through objective factual evidence or expert testimony; he and his mother made regular use of the vehicle, the manufacturer was not able to duplicate the alleged defect, nor was the alleged defect duplicated on the test-drive conducted by the ALJ. *Ragusano v. Ford Motor Co.*, OAL Dkt. No. CMA 8077-08, 2008 N.J. AGEN LEXIS 1050, Final Decision (October 10, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 664) adopted, which concluded that noisy brakes were not a nonconformity that substantially impaired the safety, value, or use of the motor vehicle; although the sound may have been an annoyance to the consumer, there was no showing that the noise was the result of some defect found in the braking system impairing the ability to stop. *Pospisil v. Kia Motors America*, OAL Dkt. No. CMA 09952-07, 2007 N.J. AGEN LEXIS 997, Final Decision (November 9, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 768) adopted, which found that noise from the power steering and leak of power steering fluid on leased vehicle did not rise to the level of a nonconformity under the Lemon Law; the defect had been reduced to a slow leak and the problem with the steering could be solved by adding power steering fluid. *Jones v. Ford Motor Co.*, OAL Dkt. No. CMA 9433-07, 2007 N.J. AGEN LEXIS 957, Final Decision (October 29, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 462) adopted, which concluded that the consumer failed to prove a remediable steering vibration under the Lemon Law. *Moore v. Hyundai Motor America*, OAL Dkt. No. CMA 03904-07, 2007 N.J. AGEN LEXIS 852, Final Decision (July 13, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 398) adopted, which concluded that difficulties with a leased vehicle’s telephone system and radio did not rise to the level of substantial impairments under the Lemon Law; vehicle performance was not affected and the telephone was an optional feature, which the consumer was urged to avoid. *Samuels v. Mercedes-Benz USA, Inc.*, OAL Dkt. No. CMA 03179-06, 2006 N.J. AGEN LEXIS 526, Final Decision (May 26, 2006).

Remanded by the Director for further findings of fact with respect to the frequency of occurrence of the defective condition, i.e., the thumping and jerking; if the defect occurs with sufficient frequency that the consumer could not reasonably be expected to sell the vehicle without either substantially lowering the price from the prevailing price of such a vehicle, or would have to misrepresent the condition of the vehicle to a prospective buyer in order to obtain the prevailing price, then the defect constitutes a nonconformity, and the consumer is entitled to Lemon Law relief. *Bernal v. Ford Motor Co.*, OAL Dkt. No. CMA 12680-05, 2006 N.J. AGEN LEXIS 95 (January 31, 2006).

Where rotten egg smell was present frequently but not constantly and there was no evidence that the odor was linked to a health or safety problem, the smell was not so intense as to constitute a substantial impairment under the Lemon Law. *Gellis v. Mitsubishi Motor Sales*, OAL Dkt. No. CMA 08005-05, 2005 N.J. AGEN LEXIS 647, Initial Decision (November 9, 2005).

Intermittent failure of the consumer's vehicle to start occurred with sufficient frequency to constitute a nonconformity under the Lemon Law. *Toney v. Nissan North America, Inc.*, OAL Dkt. No. CMA 1971-05; CMA 11690-04, 2005 N.J. AGEN LEXIS 1165, Final Decision (October 14, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 424) adopted, which found that thumping sound in the rear of the consumer's vehicle when it accelerated quickly from a full stop if the gasoline tank was full or three-quarters full did not substantially impair the use, value, or safety of the vehicle under the Lemon Law. *LaPelusa v. Lexus Division, Toyota Motor Sales, U.S.A., Inc.*, OAL Dkt. No. CMA 7866-05, 2005 N.J. AGEN LEXIS 1069, Final Decision (September 1, 2005).

No Lemon Law remedy for new car consumer failing to prove alleged defects impair use, safety and value. *Sera v. General Motors Corporation*, 97 N.J.A.R.2d (CMA) 149.

Failure to demonstrate nonconformity leads to dismissal of Lemon Law claim. *Pizzute v. American Suzuki Motor Corporation*, 97 N.J.A.R.2d (CMA) 147.

Lemon Law claim dismissed when burden of proof not met. *Petonak v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 143.

Irreparable defects substantially impairing use and safety of car entitles lessee to Lemon Law remedies. *Hall v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 142.

Vibration impaired the use, value and safety of vehicle. *Randall v. Chevrolet, Division of General Motors Corporation*, 97 N.J.A.R.2d (CMA) 135.

Dismissal of Lemon Law complaint due to failure to demonstrate substantial impairment of vehicle affirmed. *Leonard v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 132.

Vehicle's use, value or safety not impaired by vibration. *King v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 129.

Vehicle's use, value or safety not impaired by alleged defects in transmission and brake fluid. *Galanty v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 127.

Vehicle's use, value or safety not impaired by noise from power steering system. *Haralambidis v. Chevrolet Motor Division-G.M.*, 97 N.J.A.R.2d (CMA) 125.

Vehicle's use, value or safety not effected by alleged hesitation in transmission. *Wilks v. Mazda Motor of America*, 97 N.J.A.R.2d (CMA) 117.

Repeated stalling constitutes substantial impairment of vehicle's use, value and safety. *Franco v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 113.

Alignment defect constitutes substantial impairment of vehicle's use, value and safety. *Albrecht v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 107.

No lemon law recovery when consumer's gas choice causes new car stalling. *Hamilton v. Mitsubishi Motor Sales of America*, 97 N.J.A.R.2d (CMA) 103.

New car lessor receives lemon law refund when transmission defect substantially affects value and safety. *Archibald v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 97.

Dashboard reflection on front window not substantial defect. *Doyle v. General Motors*, 97 N.J.A.R.2d (CMA) 95.

Subjective dislike of new car's alleged rotten egg smell insufficient basis for lemon law claim. *Dworkis v. General Motors Corporation*, 97 N.J.A.R.2d (CMA) 93.

Four-wheel drive pulling condition not nonconformity for lemon law purposes. *Hynes v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 88.

Nonconforming vehicle defects caused by road accident not remedial under lemon law. *Jones v. Chrysler Motor Company*, 97 N.J.A.R.2d (CMA) 77.

Subjective noise complaint insufficient for lemon law claim. *Choudhury v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 75.

Car owner's unhappiness with transmission insufficient for lemon law recovery. *Weiss v. Ford Motor Corporation*, 97 N.J.A.R.2d (CMA) 52.

Automobile owner who experienced engine knocking noise, followed by loss of power, was entitled to relief under Lemon Law. *Capps v. Nissan Motor Corporation*, 97 N.J.A.R.2d (CMA) 19.

Automobile's slipping clutch substantially impaired its safety, use, and value, entitling owners to Lemon Law relief. *Totin v. Hyundai Motor Company*, 97 N.J.A.R.2d (CMA) 16.

Grinding noise in automobile's brakes did not impair its safety, use, or value, and thus owner was not entitled to relief under Lemon Law. *Davis v. Toyota Motor Sales*, 97 N.J.A.R.2d (CMA) 14.

Rotten egg smell emanating from automobile's exhaust pipe did not substantially impair its safety, use, or value, and thus owner was not entitled to Lemon Law relief. *Monninger v. Hyundai Motor Company*, 97 N.J.A.R.2d (CMA) 12.

Poor gas mileage is not covered under Lemon Law. *Hassmiller v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 10.

Owner's unverifiable allegation that automobile's engine raced at idle was insufficient to support Lemon Law relief. *Glombiak v. Nissan Motor Corporation*, 97 N.J.A.R.2d (CMA) 7.

Strong odor of rotten eggs which emanated from automobile, particularly during stops and starts, constituted nonconformity entitling owner to Lemon Law relief. *Conte v. Mitsubishi Motor Sales of America, Inc.*, 97 N.J.A.R.2d (CMA) 4.

Owner failed to show that value of automobile was substantially impacted by transmission whine, wind noise, and rattles and vibrations in passenger door and dashboard. *Martins v. Ford Motor Corporation*, 97 N.J.A.R.2d (CMA) 1.

Squeaking noise in van's wheels was significant enough to constitute substantial defect and to impair van's use, safety and value. *Lloyd v. Chrysler Corporation*, 96 N.J.A.R.2d (CMA) 282.

Steering problem was substantial nonconformity which impaired use, value and safety of automobile. *Toth v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 281.

Fact that lessor had driven automobile 16,000 miles in 17 months controverted his claim that engine noise, backfiring, loss of power and excessive gasoline consumption had impaired his use of automobile. *Mohamadi v. Mercedes-Benz of N.A.*, 96 N.J.A.R.2d (CMA) 279.

Lessor of new van failed to show that loud creaking noise in front end of vehicle indicated steering or suspension problem. *Shtutman v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 277.

Automobile lessor failed to show that automobile's propensity for stalling in damp or rainy weather constituted continuing nonconformity. *Christelles v. Nissan Motor Corporation*, 96 N.J.A.R.2d (CMA) 274.

Brake noise was nonconformity which substantially impaired safety and value of leased automobile. *Orefice v. Chrysler Corporation*, 96 N.J.A.R.2d (CMA) 271.

Noxious smoke venting from engine into passenger compartment of automobile was nonconformity which substantially impaired its use, safety and value. *Noonan v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 269.

Lemon Law relief was denied where automobile noise did not impair its use, value or safety. *Primiano v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 265.

Slight transmission noise was found not to constitute substantial defect warranting Lemon Law relief. *Ciccone v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 263.

Lemon Law claim was denied where truck's drifting to left and right was easily corrected by driver's steering. *Sreenen v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 259.

matters shall be directed to the attention of the Lemon Law Unit, as follows:

Division of Consumer Affairs
Lemon Law Unit
Post Office Box 45026
Newark, New Jersey 07101
Telephone (973) 504-6226

Amended by R.1992 d.236, effective June 1, 1992.
See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).

Revised (c).

Administrative change.

See: 25 N.J.R. 1516(b).

Amended by R.1994 d.176, effective April 4, 1994.

See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

Administrative Change.

See: 32 N.J.R. 1037(a).

13:45A-26.5 Preliminary steps to initiate a Lemon Law action within the Division of Consumer Affairs Lemon Law Unit

(a) To initiate a claim within the Division of Consumer Affairs Lemon Law Unit under the Lemon Law:

1. Written notification of the potential claim shall be sent certified mail, return receipt requested, by or on behalf of a consumer, to the manufacturer of a nonconforming motor vehicle if and only after one of the following occurs during the first 24,000 miles of operation or within 24 months after the date of original delivery, whichever is earlier:

i. Except as set forth in (a)1iii below, substantially the same nonconformity has been subject to examination or repair two or more times by the manufacturer or its dealer and the nonconformity continues to exist;

ii. The motor vehicle has been out of service by reason of repair for one or more nonconformities for a minimum of 20 days, or in the case of a motor home, for a minimum of 45 days, since the original delivery of the motor vehicle, and a nonconformity continues to exist; or

iii. In the case of nonconformity that is likely to cause death or serious bodily injury if the vehicle is driven, the nonconformity has been subject to examination or repair at least once by the manufacturer or its dealer and the nonconformity continues to exist; and

2. The manufacturer has one more opportunity to examine, repair or correct the nonconformity within 10 days following receipt of the written notification from the consumer of a potential claim provided for in (a)1 above. If the nonconformity continues to exist after expiration of the 10-day time period and the manufacturer refuses to replace or refund the price of the vehicle, the consumer may pursue a Lemon Law claim with the Lemon Law Unit.

(b) Nothing contained in this section shall preclude a consumer from alternatively filing an action in Superior Court.

(c) When a motor home or authorized emergency vehicle has been constructed by more than one manufacturer, an examination or repair attempt will not count towards the examination or repair attempts referred to in (a)1 above, if the repair facility is not authorized to provide services by the manufacturer, co-manufacturer or post-manufacturing modifier who constructed the nonconforming portion of the vehicle.

(d) If a nonconformity in a motor home is addressed more than once due to a consumer's decision to continue travelling and to seek examination or repair of the same nonconformity at another authorized repair facility rather than waiting for the examination or repair to be completed at the initial repair facility, it shall constitute one examination or repair for the purpose of the examination or repair attempts referred to in (a)1 above.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

Section heading was "Preliminary steps"; in introductory paragraph (a), added "within the Division of Consumer Affairs Lemon Law Unit" and substituted "shall" for "must"; in (a)2, substituted "a minimum of 20 days" for "a cumulative total of 20 or more days"; rewrote (b); added (c).

Amended by R.2010 d.166, effective August 2, 2010.

See: 41 N.J.R. 4187(a), 42 N.J.R. 1740(a).

In the introductory paragraph of (a), substituted a colon for "written" at the end; inserted new designation (a)1; redesignated former (a)1 and (a)2 as (a)1i and (a)1ii; in the introductory paragraph of (a)1, inserted "Written", and substituted "and only after one" for "either" and "24,000" for "18,000"; in (a)1i, substituted "Except as set forth in (a)1iii below, substantially" for "Substantially", inserted "examination or", and deleted "or" at the end; in (a)1ii, inserted "or in the case of a motor home, for a minimum of 45 days", and substituted "or" for a period at the end; added (a)1iii; redesignated former (b) as (a)2 and former (c) as (b); in (b)2, inserted "examine", inserted "the" preceding "written", and inserted "provided for in (a)1 above"; and added new (c) and (d).

Amended by R.2012 d.016, effective January 17, 2012.

See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

In (c), inserted "or authorized emergency vehicle" and "co-manufacturer or post-manufacturing modifier", and substituted "vehicle" for "motor home".

Case Notes

Petitioner failed to establish by a preponderance of credible evidence in the record that the alleged defect of "shimmying at high rates of speed" continued to exist. Though petitioner's attorney argued that post-claim test drives should not have controlled the outcome of the case, in fact, the failure to demonstrate that the defect continued to exist was determinative pursuant to N.J.A.C. 13:45A-26.5 (adopting 2009 N.J. AGEN LEXIS 1037). Popielarski v. Nissan Motor Corp, OAL Dkt. No. CMA 10386-09, 2009 N.J. AGEN LEXIS 1126, Final Decision (December 3, 2009).

Intermittent failure of petitioner's vehicle to start, so that it has to be jump-started, was a defect which substantially impaired the use and safety of the vehicle; petitioner worked at night in an urban area and was responsible for regularly driving around two children. Michels v. Chrysler Group, OAL Dkt. No. CMA 09842-09, 2009 N.J. AGEN LEXIS 884, Final Decision (October 19, 2009).

Because petitioner failed to show that the stalling defect continued to exist, and failed to provide notification to respondent of the racing defect, he did not meet the requirements of the presumption of N.J.S.A. 56:12-33, and consequently was not eligible for relief in the administrative forum. Caruso v. Ducati North America Inc., OAL Dkt. No. CMA 12681-08, 2009 N.J. AGEN LEXIS 885, Final Decision (February 19, 2009).

Consumer's "last chance" letter gave sufficient notice to the manufacturer that he intended to file a Lemon Law claim, but the letter was sent at a time when his car was actually being repaired, and contained inaccurate information such that the notice was defective; the lack of specifics of the "last chance" letter, the timing of the letter, and the failure to stress the fact that the vehicle was currently under repair and that the consumer was distressed about the length of time the repair was taking, all combined to deprive the manufacturer of meaningful notice and opportunity to repair the vehicle. *Chazkel v. Daimler Chrysler Motors Co.*, OAL Dkt. No. CMA 8880-07, 2008 N.J. AGEN LEXIS 248, Final Decision (January 31, 2008).

Once a consumer had knowledge of the existence of the override button, a window's pinch protection mechanism that malfunctioned on the average of once a week did not substantially impair the use of the vehicle; however, the defect substantially impaired the value of the vehicle and posed a substantial safety risk where it would cause a driver to be distracted. *Vigilante v. Saab Cars USA, Inc.*, OAL Dkt. No. CMA 3765-07, 2007 N.J. AGEN LEXIS 996, Final Decision (September 10, 2007).

Consumer is not required, in order to obtain Lemon Law relief, to present the vehicle for repair following the last chance repair; under N.J.S.A. 56:12-33, there is a presumption of an inability to repair in a reasonable time where substantially the same nonconformity has been subject to repair three or more times and it continues to exist. *Vigilante v. Saab Cars USA, Inc.*, OAL Dkt. No. CMA 3765-07, 2007 N.J. AGEN LEXIS 996, Final Decision (September 10, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 1027) adopted, which concluded that consumer's loss of confidence in the vehicle was not a sufficient basis for granting Lemon Law relief where the stalling problem with consumer's vehicle had not continued to exist following the third repair. *Moesch v. Volkswagen of America*, OAL Dkt. No. CMA 11648-06, 2007 N.J. AGEN LEXIS 89, Final Decision (January 2, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 479) adopted, which denied Lemon Law relief because the alleged braking noise had not continued to exist and the evidence failed to show a nonconformity; the vehicle had never failed to stop properly, the consumer admitted to pumping the brakes in emergency situations, and the evidence weighed heavily in favor of the finding that the braking system was operating as designed. *Roger v. General Motors Corp.*, OAL Dkt. No. CMA 5899-06, 2006 N.J. AGEN LEXIS 763, Final Decision (August 23, 2006).

Lemon Law claim was dismissed with prejudice because consumers' "last chance" letter, required pursuant to N.J.A.C. 13:45A-26.5, failed to identify the specific continuing nonconformity alleged. *Velez v. Winnebago Industries*, OAL Dkt. No. CMA 05445-06, 2006 N.J. AGEN LEXIS 358, Initial Decision (May 24, 2006).

Even if, arguendo, certain alleged defects in consumer's Lemon Law application constituted a substantial impairment of vehicle use or value, the failure to allege them in the "last chance" letter precluded them procedurally from consideration. *Ciraulo v. Daimler Chrysler Motor Co.*, OAL Dkt. No. CMA 110-06, 2006 N.J. AGEN LEXIS 146, Final Decision (February 22, 2006).

Lack of qualifying nonconformity defeats Lemon Law claim. *O'Connell v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 139.

Lemon Law claim dismissed due to failure to present vehicle for three repair attempts for the same nonconformity. *Doryk v. General Motors Corporation (Chevrolet Motor Division)* (CMA) 122.

Consumer's failure to give statutorily prescribed notice before filing lemon law complaint defeats claim. *Goldberg v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 36.

Purchaser was entitled to Lemon Law presumption that manufacturer was unable to repair nonconformity where automobile was out-of-service for 34 days during first repair attempt. *Ramnanan v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 229.

Lemon Law complaint was dismissed where automobile's problems were repaired by dealer. *Hampton v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 192.

Lemon Law relief granted where automobile dealer failed to avail itself of last chance repair opportunity. *Sigman v. Nissan Motor Corporation, U.S.A.*, 96 N.J.A.R.2d (CMA) 168.

Consumer's failure to comply with Lemon Law's statutory filing requirements precludes claim. *Rivera v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 63.

Consumer denied Lemon Law relief for failure to inform manufacturer of problems and offer opportunity for repair before filing Lemon Law complaint. *Vitale v. Buick Motor Division-GM*, 96 N.J.A.R.2d (CMA) 61.

Lemon Law claim that pickup truck pulled to right while braking was dismissed when defect was corrected by manufacturer at last-chance opportunity. *Boothroyd v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 47.

Lemon Law complainant failed to allow dealer sufficient opportunity to repair automobile problems. *Conrad-Kessaris v. Mitsubishi Motor Sales of America, Inc.*, 96 N.J.A.R.2d (CMA) 19.

Consumer failed to meet procedural requirements by submitting allegedly defective vehicle to repair three or more times and affording manufacturer a last chance opportunity. *Shepps v. Mitsubishi Motor*, 95 N.J.A.R.2d (CMA) 78.

Failure to give manufacturer a final opportunity to repair alleged defect in vehicle was fatal to consumer's claim. *Viccaro v. Mitsubishi Motor*, 95 N.J.A.R.2d (CMA) 56.

Presumption of inability to correct nonconformity was not available when manufacturer commenced repair but was thereafter prevented by consumer from completing repair. *Stassi v. Hyundai Motor*, 95 N.J.A.R.2d (CMA) 49.

Remedies under Lemon Law were not available to consumer without affording dealer last chance opportunity to correct alleged defects in vehicle. *Benenati v. Mitsubishi Motor Sales*, 95 N.J.A.R.2d (CMA) 9.

Failure to tell repairer that malfunction occurred only when the headlights were turned on required the manufacturer be given last chance to repair the nonconformity. *Measley v. Volkswagen of America, Inc.*, 93 N.J.A.R.2d (CMA) 1.

Failure to send correct last chance notice required the complaint under the Lemon Law be dismissed without prejudice. *Millar, Patrick J., v. Chrysler Corporation*, 92 N.J.A.R.2d (CMA) 180.

Settlement agreement was in full force and effect after the manufacturer honestly and in good faith performed its duties under the agreement. *Guarino v. Ford Motor Company*, 92 N.J.A.R.2d (CMA) 99.

13:45A-26.6 Eligibility

(a) To be eligible for the Dispute Resolution System, a consumer must provide the following items to the LLU:

1. A photocopy of the consumer's notification to the manufacturer of a potential claim; and
2. A completed Application for Dispute Resolution; the form will be supplied upon request by the LLU.

(b) During any periods when forms are not available, any written request for dispute resolution shall be accepted by the LLU provided all information, items and statements listed in N.J.A.C. 13:45A-26.7 are included.

(c) A consumer is eligible for dispute resolution by the Division as to a specific motor vehicle only once; no further applications from that consumer relating to the same motor vehicle will be accepted if a final decision has been rendered pursuant to N.J.A.C. 13:45A-26.12(b).

Administrative correction to (b). Effective July 3, 1989.
See: 21 N.J.R. 1831(a).

Phrase "following the term of protection" deleted.
Amended by R.2012 d.016, effective January 17, 2012.
See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

In the introductory paragraph of (a), deleted "by certified mail, return receipt requested" following "LLU".

Case Notes

Intermittent failure of petitioner's vehicle to start was a nonconformity substantially impairing the use and safety of the vehicle. Such a determination was factually based and, given the dates of the incidents which were documented, the failure to start occurred with sufficient frequency to constitute a nonconformity. *Toney v. Nissan*, OAL Dkt. No. CMA 1971-05, 2010 N.J. AGEN LEXIS 288, Final Decision (October 14, 2005).

13:45A-26.7 Application

(a) Application for dispute resolution shall require submission of the following:

1. Information as follows:
 - i. The name and address of the consumer and lienholder, if any;
 - ii. The date of original delivery of the motor vehicle to the consumer;
 - iii. The mileage on the date the nonconformity was first reported to the manufacturer or its dealer; and
 - iv. The mileage on the date the application is mailed back to LLU.
2. A written account of the events resulting in the dispute, including description of the claimed nonconformity(s) and a chronology of the repair attempts.
3. A photocopy of the notification of a potential claim sent by or on behalf of the consumer to the manufacturer after two or more attempts to repair or 20 calendar days out of service, and a photocopy of the return receipt signed by the manufacturer's agent.
4. Photocopies of the statements of repair required by section 6(b) of the Lemon Law, to be given to the consumer by the manufacturer through its dealer, each time a motor vehicle is returned from being examined or repaired.
5. Photocopies of the agreement of sale or lease, including any stated credit or allowance for the consumer's used motor vehicle, the receipt for payment of any options or other modifications arranged, installed or made by the manufacturer or its dealer within 30 days after the date of original delivery, receipts for any other charges or fees including but not limited to:
 - i. Sales tax;
 - ii. License and registration fees;
 - iii. Finance charges;
 - iv. Towing;
 - v. Rental of a motor vehicle equivalent to the consumer's motor vehicle for the period when the con-

sumer's motor vehicle was out of service due to a nonconformity; and

vi. Any other documents related to the dispute.

(b) The application must contain a statement as to the following:

1. That the consumer believes the motor vehicle's use, market value, or safety is substantially impaired by the nonconformity(s) complained of or that the nonconformity is a defect, which is likely to cause death or serious bodily injury if the vehicle is driven;
2. That the nonconformity(s) complained of is not the result of abuse, neglect, or unauthorized modifications of the motor vehicle by anyone other than the manufacturer or its dealer;
3. That within the term of protection the manufacturer, its agent or authorized dealer failed in at least two attempts, or in the case of a defect that is likely to cause death or serious bodily injury if the vehicle is driven, one attempt, to correct the same substantial defect, or the vehicle was out of service by reason of repair for at least 20 days;
4. That within the term of protection the consumer gave the manufacturer written notification by certified mail, return receipt requested, of a potential claim pursuant to the Lemon Law, section 5(b); and
5. That within the term of protection:
 - i. The consumer gave the manufacturer or its dealer at least three attempts, or in the case of a defect that is likely to cause death or serious bodily injury if the vehicle is driven, two attempts (including the post-notification attempt) to repair substantially the same nonconformity and the nonconformity continues to exist; or
 - ii. The vehicle was out of service by reason of repair for one or more nonconformities for a cumulative total of 20 or more days since the original delivery of the motor vehicle, the manufacturer has been given the post-notification opportunity to repair, and a nonconformity continues to exist.

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Amended by R.1999 d.269, effective August 16, 1999.

See: 31 N.J.R. 925(a), 31 N.J.R. 2365(a).

In (b), deleted a former 6.

Amended by R.2012 d.016, effective January 17, 2012.

See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

In (b)1, inserted a comma following "value", and "or that the nonconformity is a defect, which is likely to cause death or serious bodily injury if the vehicle is driven"; in (b)3, inserted ", or in the case of a defect that is likely to cause death or serious bodily injury if the vehicle is driven, one attempt,"; and in (b)5i, inserted ", or in the case of a defect that is likely to cause death or serious bodily injury if the vehicle is driven, two attempts".

Case Notes

Manufacturer may not insulate itself from Lemon Law responsibilities by having subcontractors undertake separate warranties. *McCarthy v. Hyundai Motor America*, 92 N.J.A.R.2d (CMA) 132.

13:45A-26.8 Filing fee

(a) A consumer whose application for dispute resolution is accepted by the Division shall pay a filing fee of \$50.00 by certified check or money order payable to the "New Jersey Division of Consumer Affairs". The filing fee shall be nonrefundable but is recoverable as a cost if the consumer prevails.

(b) The filing fee shall be requested by the LLU when it has determined that the consumer's application is complete and that it complies with this subchapter and the Lemon Law.

Case Notes

The Lemon Law filing fee is not part of purchase or lease price, but is recoverable as a cost. *Montesian v. Chrysler Motor Corporation*, 93 N.J.A.R.2d (CMA) 19.

13:45A-26.9 Processing of applications

(a) Submitted applications shall be reviewed by the LLU for completeness and compliance with the Lemon Law and this subchapter.

1. Incomplete applications shall be promptly returned for completion to the consumer.

2. Applications not in compliance with this subchapter and the Lemon Law (including but not limited to the required number of repair attempts or the number of days out of service) will be rejected. The reason for the rejection will be sent to the consumer. No judgment will be made by the LLU as to whether the claimed defect(s) are substantiated by the evidence or whether they substantially impair the use, market value or safety of a motor vehicle.

(b) Upon receipt of the filing fee of \$50.00, the application shall be date-stamped to indicate its acceptance for dispute resolution.

13:45A-26.10 Notification and scheduling of hearings

(a) Each manufacturer of motor vehicles sold or leased in New Jersey shall forward to the Division of Consumer Affairs, Lemon Law Unit (LLU), the name, address, and telephone number of the person designated by the manufacturer to receive notices under the Lemon Law dispute resolution process. The manufacturer shall update this information, as necessary.

(b) On the day that an application is accepted for resolution by the LLU, a notice shall be sent by hand delivery or certified mail, return receipt requested by the LLU to the consumer and manufacturer's designee. This notice shall indicate that the consumer's request for resolution has been accepted, and shall provide general information about the resolution process.

(c) The LLU shall immediately thereafter refer an accepted application for dispute resolution to the OAL and arrange a hearing date acceptable to all parties. The dispute resolution shall be conducted as a contested case by the OAL in

accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and Special Rules, N.J.A.C. 1:13A.

(d) The date of the hearing shall be no later than 20 days from the date of the notice of acceptance unless a later date is agreed to by the consumer.

(e) Notice of the date, time, and location of the hearing shall be mailed by the OAL to both parties.

(f) A copy of the application materials shall be sent by the LLU simultaneously with the notice of acceptance of the application, to the manufacturer's designee. Within 10 days of receiving the transmittal sheet from the Office of Administrative Law indicating the judge assigned to the case, the manufacturer shall mail by certified mail, return receipt requested, to the consumer and to the Clerk of the Office of Administrative Law at the address stated on the transmittal sheet, a response to each of the statements set forth in the consumer application.

(g) Applications by the consumer or the manufacturer with consent of the consumer for adjournments or rescheduling of the hearing shall be made in accordance with N.J.A.C. 1:1-9.6.

Amended by R.1999 d.269, effective August 16, 1999.

See: 31 N.J.R. 925(a), 31 N.J.R. 2365(a).

In (f), deleted a former third sentence.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (a), deleted "Within 10 days after the effective date of this subchapter," from the beginning of the first sentence, added "(LLU)" and made grammatical changes; in (f), added "the receipt of" and corrected the address.

Amended by R.2012 d.016, effective January 17, 2012.

See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

In (b), inserted "hand delivery or"; and rewrote (f).

13:45A-26.11 Computation of refund

(a) The refund claimed by a consumer pursuant to section 4(a) of the Lemon Law, whether through the Division of Consumer Affairs automotive dispute resolution system or a manufacturer's informal dispute resolution process, shall include:

1. The total purchase or lease price of the motor vehicle including finance charges, sales tax, license fees, registration fees, and any stated credit or allowance for the consumer's used motor vehicle, provided that:

i. The full refund of purchase price that may be claimed by a consumer under section 4(a) shall not include any portion of a stated credit or allowance for the consumer's used motor vehicle that grossly exceeds the true value of the consumer's used motor vehicle.

ii. During the Office of Administrative Law hearing, a manufacturer may challenge the stated credit or allowance for the consumer's used motor vehicle. The manufacturer shall bear the burden of proof, and shall

provide evidence that the purchase price included a trade-in allowance grossly disproportionate in amount to the true value of the consumer's used motor vehicle. Such evidence shall include, but not be limited to, the value of the motor vehicle as listed in the N.A.D.A. Official Used Car Guide.

2. The cost of any options or other modification arranged, installed or made by the manufacturer or its dealer within 30 days after the date of original delivery.

3. Other charges or fees, including, but not limited to:

- i. Reimbursement for towing, if any;
- ii. Reimbursement for actual expenses incurred by the consumer for the rental of a motor vehicle equivalent to the consumer's motor vehicle for the period during which the consumer's motor vehicle was out of service due to a nonconformity;
- iii. Filing fee for participation in the Division's dispute resolution system; and
- iv. Reimbursement for reasonable attorney's fees, fees for expert witnesses and costs.

(b) From the total sum of the items in (a) above, a deduction shall be made, representing an allowance for vehicle use. This deduction shall be calculated as follows:

1. Multiply the mileage at the time the consumer first presented the motor vehicle to the dealer or manufacturer for correction of the nonconformity(s) in question by the total purchase price of the vehicle (or the total lease price, if applicable), then divide by 100,000 miles.

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

Correction: "manufacturer's" was spelled "manufacturers'".

Amended by R.1994 d.176, effective April 4, 1994.

See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

Amended by R.2012 d.016, effective January 17, 2012.

See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

In (a)3iv, deleted "reports prepared by" preceding "expert" and a comma following "witnesses"; and added (c).

Case Notes

In computation of refund under the Lemon Law, finance charge and the Lemon Law filing fee should not have been included as part of the purchase price of the vehicle, and should not have been part of the calculations for the offset for vehicle use (modifying 2009 N.J. AGEN

LEXIS 106). *Rufrano v. Nissan North America, Inc.*, OAL Dkt. No. CMA 11891-08, 2009 N.J. AGEN LEXIS 616, Final Decision (March 10, 2009).

Manufacturer's request to extend period of time for compliance with Lemon Law refund order from 15 to 30 days denied. *Miller v. Hyundai Motor America*, OAL Dkt. No. CMA 00035-07, 2007 N.J. AGEN LEXIS 955, Final Decision (November 7, 2007).

New Jersey Lemon Law, N.J.S.A. 56:12-29 et seq., recognizes only the allowance in the refund computation pursuant to N.J.A.C. 13:45A-26.11(b) of a limited deduction for vehicle use; wear and tear damages can only be considered if presented as an affirmative defense pursuant to N.J.S.A. 56:12-40. *Miller v. Hyundai Motor America*, OAL Dkt. No. CMA 00035-07, 2007 N.J. AGEN LEXIS 955, Final Decision (November 7, 2007).

Lemon Law award incorrectly deducted the trade-in allowance at purchase, contrary to N.J.S.A. 56:12-32(a). *Wicks v. Volvo Cars of North America*, OAL Dkt. No. CMA 00731-05S, 2005 N.J. AGEN LEXIS 1123, Final Decision (November 21, 2005).

Automobile purchaser was entitled to Lemon Law refund plus reasonable attorney fees and costs. *Clyde v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 188.

Administrative law judge calculated damages for stipulated judgment in Lemon Law case. *Martir v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 154.

Nine bent wheel rims over a period of time, when not due to misuse, were indicative of a nonconformity affecting safety and use requiring manufacturer to provide consumers with reimbursement and a reasonable attorney's fee. *Jurofsky v. Volvo Cars*, 95 N.J.A.R.2d (CMA) 157.

Faulty temperature gauge that erroneously indicated an overheating engine was nonconformity requiring refund with reasonable allowance for vehicle use. *Lamoree v. Chevrolet Motor*, 95 N.J.A.R.2d (CMA) 155.

Classification of vehicle as "lemon" due to abnormal rumbling noises; Lemon Law filing fee as added cost. *Law v. Chrysler Motor Corporation*, 94 N.J.A.R.2d (CMA) 7.

Agreement of parties; total restitution. N.J.S.A. 56:12-29 et seq. *Stine v. Chrysler Motor Corp.*, 93 N.J.A.R.2d (CMA) 74.

Hourly rate of \$150 was reasonable for attorney's fees in Lemon Law action. *Pardo v. Chevrolet Motor Division*, 92 N.J.A.R.2d (CMA) 105.

Expert fees and attorney fees would be determined after submission of a proper Affidavit of Services. *Sager v. Nissan Motor Corporation in U.S.A.*, 92 N.J.A.R.2d (CMA) 35.

13:45A-26.12 Final decision

(a) The Director shall review the OAL proposed decision submitted by the administrative law judge who conducts the administrative hearing and shall adopt, reject, or modify the decision no later than 15 days after receipt.

(b) At the conclusion of the 15-day review period, the Director shall give notification of the rejected, modified or adopted decision to both parties, the lien-holder, if any, the OAL, and, if the vehicle in question is to be returned to the manufacturer, the Special Title Section of the MVC. The notification to the manufacturer and consumer shall be by hand delivery or certified mail, return receipt requested. Within 45 days of receipt of the final decision, any party may file an appeal in the Appellate Division of the Superior Court.

(c) The manufacturer shall advise the Director as to its compliance with the final decision no later than 10 days following the date stated for completion of all awarded remedies.

(d) If the manufacturer unreasonably fails to comply with the decision within the specified time period, the manufacturer shall be liable for penalties in the amount of \$5000 for each day the manufacturer unreasonably fails to comply, commencing on the day after the specified date for completion of all awarded remedies.

Amended by R.1994 d.176, effective April 4, 1994.

See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (b), substituted "MVC" for "DMV".

Amended by R.2012 d.016, effective January 17, 2012.

See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

In (b), substituted "shall give" for "shall mail" and "notification" for "mailing", and inserted "hand delivery or".

13:45A-26.13 Appeals

(a) A manufacturer or a consumer may appeal a final decision to the Appellate Division of Superior Court; a notice of appeal must be filed with the Director no later than 45 days after the date of the final decision as defined in N.J.A.C. 13:45A-26.12(b).

(b) An appeal by a manufacturer shall not be heard unless the notice of appeal is accompanied by a bond which shall be:

1. For a principal sum equal to the money award made by the administrative law judge, plus \$2500 for anticipated attorney's fees and other costs;
2. Secured by cash or its equivalent; and
3. Payable to the consumer.

13:45A-26.14 Manufacturer's reporting requirements

(a) The LLU shall compile a roster of American and foreign manufacturers of passenger automobiles and motorcycles registered, sold or leased in New Jersey.

(b) Manufacturers who establish or participate in an informal dispute settlement procedure shall:

1. Advise the LLU of the existence of its informal dispute settlement procedure; and
2. Send the LLU an outline of the steps that a consumer must take in order to participate in the manufacturer's informal dispute resolution procedure; the information shall include all necessary addresses and phone numbers.

(c) On January 15 and July 15 of every year, the LLU shall send a questionnaire by hand delivery or certified mail, return receipt requested, to every manufacturer on the roster com-

plied pursuant to (a) above, requesting the following information:

1. Any and all informal dispute settlement procedures utilized by the manufacturer. If the informal dispute settlement procedure is an in-house customer assistance mechanism or private arbitration or private buy-back program instituted by the manufacturer, the information provided shall include the reasons for establishing and maintaining such programs.

2. The number of purchase price and lease price refunds requested, the number awarded by any dispute settlement body or other settlement procedure identified in (c)1 above, the amount of each award and the number of awards satisfied in a timely manner.

3. The number of awards in which additional repairs or a warranty extension was the remedy, the amount or value of each award, and the number of awards satisfied in a timely manner;

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

5. The average number of days from the date of a consumer's initial request to use the manufacturer's informal dispute settlement procedure until the date of the decision and the average number of days from the date of the decision to the date on which performance of the award was satisfied; and

6. A list of all motor vehicles and their Vehicle Identification Numbers stamped with "R—RETURNED TO MANUFACTURER UNDER LEMON LAW OR OTHER PROCEEDING," which have been reported to the MVC Special Title Section during the previous six months.

(d) Failure of the manufacturer to return the completed questionnaire to the LLU within 60 days of receipt shall be a violation of this subchapter and the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

Correction: Inserted comma after Act and deleted extra period at end of sentence, from the February 21, 1989 update.

Amended by R.1992 d.236, effective June 1, 1992.

See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).

Revised (a).

Amended by R.1994 d.176, effective April 4, 1994.

See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In introductory paragraph (b), deleted "within 30 days after the effective date of this subchapter"; in (c)5, substituted "decision" for "design"; in (c)6, substituted "MVC" for "MRS".

Amended by R.2012 d.016, effective January 17, 2012.

See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

In the introductory paragraph of (c), substituted "send" for the first occurrence of "mail", and inserted "hand delivery or".

13:45A-26.15 Index of disputes

(a) The Division of Consumer Affairs shall maintain an index of all motor vehicle disputes by make and model and shall compile and maintain statistics indicating the record of manufacturer compliance with any settlement procedure decisions.

(b) The index and statistical record of compliance shall be made available to the public.

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (b), deleted "initial" and "on July 1, 1990 and every six months thereafter".

SUBCHAPTER 26A. MOTOR VEHICLE ADVERTISING PRACTICES

13:45A-26A.1 Scope

Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the rules contained in this subchapter set forth motor vehicle advertising practices which are prohibited as unlawful under the Consumer Fraud Act; the rules also include mandatory disclosure in advertisements of certain information relating to advertised motor vehicles as well as on-site disclosures relating to advertised motor vehicles.

Recodified from 13:45A-2.1 by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Division's adjudication jurisdiction is not limited by a "retail restriction"; Consumer Fraud Act applies to franchising. *Morgan v. Air Brook Limousine, Inc.*, 211 N.J.Super. 84, 510 A.2d 1197 (Law Div.1986).

Purpose of 1976 amendments examined. *Barry v. Arrow Pontiac, Inc.*, 100 N.J. 57, 494 A.2d 804 (1985).

13:45A-26A.2 Application

(a) These rules shall apply to the following advertisements:

1. Any advertisement, including radio and television broadcasts, uttered, issued, printed, disseminated, published, circulated or distributed within this State concerning motor vehicles offered for sale or lease at locations exclusively within this State; and
2. Any advertisement, including radio and television broadcasts, uttered, issued, printed, disseminated, published, circulated or distributed to any substantial extent within this State concerning motor vehicles offered for sale or lease at locations within this State and outside this State, or at locations exclusively outside the State.

Recodified from 13:45A-2.2 by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Evidence supported finding that dealership engaged in unconscionable business practices in violation of Consumer Fraud Act; fact that sales contract was unenforceable by virtue of statute of frauds did not prevent Consumer Fraud Act award based on ascertainable loss of monies or property; plaintiff entitled to treble damages plus costs and attorneys fees. *Truex v. Ocean Dodge, Inc.*, 219 N.J.Super. 44, 529 A.2d 1017 (App.Div.1987).

Dealer's advertisement of cars "priced well below dealer invoice" found a violation of N.J.A.C. 13:45A-2.2(a)7iv; regulation upheld against First Amendment constitutional challenge. *Div. of Consumer Affairs v. Arrow Pontiac, Inc.*, 7 N.J.A.R. 48 (1981) affirmed 193 N.J.Super. 613, 475 A.2d 632, affirmed 100 N.J. 57, 494 A.2d 804.

13:45A-26A.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Advertised motor vehicle" means any new or used motor vehicle offered for sale or lease and specifically identified by an advertised price. With respect to an advertisement which offers a group of new or used vehicles for sale or lease covering a specified price range (for example, "1995 Metros for sale—\$10,000 to 12,999," or "Lease a new Olds for \$298 a month and up."), the least expensive motor vehicle in that advertised range is considered to be an advertised motor vehicle.

"Advertised price" means the dollar amount required to purchase or lease a motor vehicle, advertised as:

1. The total price; or
2. The monthly payment price; or
3. The deferred payment price; or
4. A specific discount or savings on the manufacturer's suggested retail price.

"Advertisement" means any advertisement as defined by N.J.S.A. 56:8-1(a) of any motor vehicle, including any statement appearing in a newspaper, periodical, pamphlet, circular or other publication, paper, sign, radio or television broadcast, electronic medium or delivered to or through any computer, which offers a motor vehicle for sale or lease at retail.

"Advertiser" means any person as defined by N.J.S.A. 56:8-1(d) who in the ordinary course of business is engaged in the sale, leasing or financing of motor vehicles at retail or who in the course of any 12 month period offers more than three motor vehicles for sale or lease or who is engaged in the brokerage of motor vehicles whether for sale or lease and who causes an advertisement to be made for the retail sale or lease of motor vehicles. An advertising agency and the owner or publisher of a newspaper, magazine, periodical, circular, billboard or radio or television station acting on behalf of an

advertiser shall be deemed an advertiser within the meaning of this subchapter, when the agency or owner's or publisher's staff prepares and places an advertisement for publication. The agency, owner, or publisher shall not be liable for a violation of this subchapter when reasonably relying upon data, information or material supplied by the person for whom the advertisement is prepared or placed or when the violation is caused by an act, error or omission beyond the preparer's control, including but not limited to, the post-publication performance of the person on whose behalf such advertisement was placed.

"Broker" means a person who in the course of any 12 month period arranges or offers to arrange the retail sale or lease of more than three motor vehicles from the inventory of other business entities.

"Closed-end lease" means a lease in which the lessee is not responsible for the value of the motor vehicle at the end of the lease term unless there is excessive damage, wear and tear, or mileage.

"Dealer" means any person who in the ordinary course of business is engaged in the sale or leasing of motor vehicles at retail or who in the course of any 12-month period offers more than three motor vehicles for sale or lease at retail.

"Demo" means a motor vehicle used exclusively by a dealer or dealer's employee that has never been titled and to which the new vehicle warranty still applies.

"Dealer-installed option" means optional equipment installed by the dealer at an additional cost.

"Lease" means a contract for the use of a motor vehicle for a period of time exceeding four months whether or not the lessee may become the owner of the motor vehicle at the expiration of the lease.

"Lessee" means a person as defined in the Consumer Fraud Act, N.J.S.A. 56:8-1(d), who leases a motor vehicle from a broker or dealer.

"Open-end lease" means a lease in which the lessee may owe additional amounts that is, a "balloon" payment, depending on the value of the motor vehicle at the end of the lease term.

"Monroney label" is the label required by Section 3 of the Automobile Information Disclosure Act, 15 U.S.C. §§ 1231-1233.

"Motor vehicle" means any vehicle driven otherwise than by muscular power, excepting such vehicles as those which run only upon rails or tracks.

"MSRP" means the manufacturer's suggested retail price.

"Period of publication" means two calendar days prior to the date of first publication of an advertisement and midnight of the third calendar day following the date of final publica-

tion; in the case of a special offer, the period of publication shall extend until midnight of the date the special offer ends.

"Person" means a person as defined in the Consumer Fraud Act, N.J.S.A. 56:8-1(d).

"Rebate" means any payment of money by the manufacturer to or on behalf of a consumer who has bought or leased a motor vehicle, whether called "rebate", "factory rebate", "cash back", "money back", or a term of similar import.

"Sale" means a sale as defined by N.J.S.A. 56:8-1(e) of any motor vehicle.

"Special offer" means any advertisement of a reduction from the usual selling price for an applicable time period, whether called "sale", "sale days", "bargain", "bargain days", "special offer", "discount", "reduction", "clearance", "prices slashed", "special savings", or a term of similar import.

"Taxes, licensing costs and registration fees" means those usual taxes, charges and fees payable to or collected on behalf of governmental agencies and necessary for the transfer of any interest in a motor vehicle or for the use of a motor vehicle.

"Used motor vehicle" means any motor vehicle with an odometer reading of greater than 1,000 miles, except for a "demo".

Administrative correction.

See: 21 N.J.R. 1520(a).

Revised punctuation in "open end lease" and deleted potentially misleading language in definition of "closed-end lease" describing payment options.

Recodified from 13:45A-2.3 and amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Amended by R.2012 d.016, effective January 17, 2012.

See: 43 N.J.R. 1130(a), 44 N.J.R. 166(b).

In definition "Advertisement", inserted a comma following "vehicle", deleted a comma following "circular", substituted "sign," for "sign or", and inserted "; electronic medium or delivered to or through any computer,"; and in definition "Period of publication", substituted "two calendar days" for "the time period between 48 hours" and "calendar day" for "business day".

13:45A-26A.4 Bait and switch

(a) The following motor vehicle advertising practices constitute "bait and switch" and are prohibited and unlawful:

1. The advertisement of a motor vehicle as part of a plan or scheme not to sell or lease it or not to sell or lease it at the advertised price.

2. Without limiting other means of proof, the following shall be prima facie evidence of a plan or scheme not to sell or lease a motor vehicle as advertised or not to sell or lease it at the advertised price:

- i. Refusal to show, display, sell, or lease the advertised motor vehicle in accordance with the terms of the

advertisement, unless the vehicle has been actually sold or leased during the period of publication; in that case, the advertiser shall retain records of that sale or lease for 180 days following the date of the transaction, and shall make them available for inspection by the Division of Consumer Affairs.

ii. Accepting a deposit for an advertised motor vehicle, then switching the purchaser to a higher-priced motor vehicle, except when the purchaser has initiated the switch as evidenced by a writing to that effect signed by the purchaser.

iii. The failure to make delivery of an advertised motor vehicle, then switching the purchaser to a higher-priced motor vehicle; except when the purchaser has initiated the switch as evidenced by a writing to that effect signed by the purchaser.

Recodified from 13:45A-2.4 by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-26A.5 Advertisements; mandatory disclosure requirements in all advertisements for sale

(a) In any advertisement in which an advertiser offers a new motor vehicle for sale at an advertised price, the following information must be included:

1. The advertiser's business name and business address;

2. A statement that "price(s) include(s) all costs to be paid by a consumer, except for licensing costs, registration fees, and taxes". If this statement appears as a footnote, it must be set forth in at least 10 point type. For purposes of this subsection, "all costs to be paid by a consumer" means manufacturer-installed options, freight, transportation, shipping, dealer preparation, and any other costs to be borne by a consumer except licensing costs, registration fees, and taxes;

3. The manufacturer's suggested retail price as it appears on the Monroney label, clearly denominated by using the abbreviation "MSRP";

4. The year, make, model, and number of engine cylinders of the advertised motor vehicle;

5. Whether the transmission is automatic or manual; whether the brakes and steering mechanism are power or manual; and whether the vehicle has air conditioning, unless those items are standard equipment on the advertised motor vehicle. This provision shall not apply to advertisements for motorcycles;

6. The last eight digits of the vehicle identification number, preceded by the letters "VIN". This provision shall not apply to radio and television broadcasts, or to advertisements for motorcycles;

7. A list of any dealer installed options on the advertised motor vehicle and the retail price of each, as determined by the dealer.

(b) In any advertisement offering for sale a used motor vehicle at an advertised price, the information described in (a)1, 2, 4, 5 and 6 above must be included, as well as the following additional information:

1. The actual odometer reading as of the date the advertisement is placed for publication; and

2. The nature of prior use unless previously and exclusively owned or leased by individuals for their personal use, when such prior use is known or should have been known by the advertiser.

(c) In any advertisement offering a "demo" for sale, the information listed in (a) above must be included, as well as:

1. Identification as a "demo"; and

2. The actual odometer reading as of the date the advertisement is placed for publication.