

14.3: CONSUMER PROTECTIONS

CONSUMER CONTRACTS:

The General Obligations Law (GOB) § 5-327 defines a consumer contract as:

“Consumer contract” means a written agreement entered into between a creditor, seller or lessor as one party with a natural person who is the debtor, buyer or lessee as the second party, and the money, other personal property or services which are the subject of the transaction are primarily for personal, family or household purposes;”

There are numerous consumer protection laws under federal and NYS statutes. The following are just a few.

New York Deceptive Trade Practice: NY Gen Bus L §§ 349-350 prohibits deceptive trade practices, such as false advertising, and Vehicle and Traffic Law (VAT) § 417-b and Gen. Bus. §392-addresses the tampering with a car’s odometer.

New York Interest Rates: GOB § 5-501(1) and Banking § 14-a address interest rates and usury regulations. The maximum interest rate a lender can charge for a loan is 16%.

New York Identity Theft:

It is a crime to use someone else’s personally identifying information to secure credit or purchase goods.

- New York Penal Law Section 190.77 (identity theft offenses)
- New York Penal Law Section 190.78 (third degree identity theft)
- New York Penal Law Section 190.79 (second degree identity theft)
- New York Penal Law Section 190.80 (first degree identity theft)
- New York Penal Law Section 190.80-a (aggravated identity theft)

New York Lemon Law: General Business Law § 198-a protects consumers who purchase or lease new automobiles while General Business Law § 198-b protects consumers who purchase used automobiles from a dealer. Private sales are not covered under NYS’s Lemon Law.

New Automobiles: For new automobiles, the law places a duty on the manufacturer to correct a problem during the first 18,000 miles or two years, whichever comes first, free of charge to the buyer. If the manufacturer or dealer is unable to repair the problem after a reasonable number of attempts, and if the problem substantially impairs the value of the car to the consumer, then the manufacturer, at the consumer’s option, must either

- refund the full purchase (or lease) price, or
- offer a comparable replacement car.

There additional restrictions placed on this law once a vehicle reaches 12,000 miles or more in terms of the amount of a refund the consumer will get.

Used Automobiles: For used automobiles purchased from a dealer (which is defined as a person selling 3 or more vehicles over a 12-month period of time), you are entitled to the following warranty:

Automobiles with 36,000 miles or less	90 days or 4,000 miles, whichever comes first
Automobiles with over 36,000 up to 80,000 miles	60 days or 3,000 miles, whichever comes first
Automobiles with more than 80,000 miles	No warranty

Consumer Contracts Cooling Off Period: There is a three day “cooling off period” that applies to door-to-door solicitations, dating services, health clubs, and home improvement contracts. Contracts for those types of services must clearly stipulate your right to cancel the agreement within 72 hours.

Fair Debt Collection Practices Act (FDCPA): This is a federal statute that is enforced by the Consumer Financial Protection Bureau. The general purpose of the law is to eliminate abusive practices in the collection of consumer debts and promote fair debt

collection. A few of the prohibited actions of debt collectors are:

- Contacting consumers by telephone outside of the hours of 8:00 a.m. to 9:00 p.m. local time.
- Communicating with consumers after receiving written notice that said consumer wishes no further communication with the debt collector.
- Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously: with intent to annoy, abuse, or harass a person.
- Communicating with consumers at their place of employment after having been advised that this is unacceptable.
- Contacting consumer known to be represented by an attorney.
- Threatening arrest or legal action that is either not permitted or not actually contemplated.
- The use of abusive or profane language by the debt collector.
- Reporting false information on a consumer's credit report or threatening to do so in the process of collection.

Credit Card Accountability Responsibility and Disclosure Act of 2009, (CARD Act): This federal consumer protection law was passed to reform the credit card business by mandating more transparency, and requiring easier-to-understand credit card terms. Some of the protections the law provides credit card users are:

- retroactive interest rate increases on existing card balances is prohibited
- increased the time to pay monthly bills
- requires greater advance notice of changes in credit card terms
- provides consumers the right to opt out of significant changes in terms on accounts.
- provides consumers with more time, 45 days instead of 15, to shop around for better deals if they don't like the new terms
- bans the issuance of credit cards to anyone under 21, unless they have adult co-signers on the accounts or can show proof they have enough income to repay the card debt
- requires that credit card companies stay at least 1,000 feet from college campuses if they are offering free food or gifts to entice students to apply for credit cards

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