

New York Farm Equipment Lemon Law

General Business Law, Article 33-B

§ 697. **Definitions.** Whenever used in this article:

1. “Consumer” means a New York resident who is the purchaser, lessee or transferee of farm equipment, other than for the purposes of resale.
2. “Farm equipment” means any self propelled farm equipment and implements of husbandry and the accessories and parts included in the sale or lease of same designed and manufactured primarily to be used for agricultural purposes and for the United States market or in compliance with the laws and standards of the United States for which the purchase or lease price for each piece of farm equipment exceeds one thousand five hundred dollars and which is being transferred for the first time from a manufacturer, distributor or new farm machinery dealer and has not been registered or titled in this state or any other state.
3. “Express warranty” or “warranty” means the written affirmation of fact or promise made by a supplier to a consumer in connection with the sale of farm equipment which relates to the nature of the material or workmanship, including any terms or conditions precedent to the enforcement of obligations under that warranty.
4. (a) “Use deduction formula” shall be used on farm equipment which does not contain an engine hour meter or for which hours is not the basic usage standard and means a dollar amount obtained by multiplying the full purchase price or lease price of the farm equipment by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days after delivery of the farm equipment.

(b) “Non-seasonal equipment hours deduction formula” shall be used on farm equipment which contains an engine hour meter and for which hours is the basic usage standard and means the hours of use times the full purchase price, or lease price if applicable, divided by five thousand hours.

(c) “Seasonal equipment hours deduction formula” shall be used on self-propelled harvesting equipment which contains an engine hour meter and for which hours is the basic usage standard and means the hours of use times the full purchase price, or lease price if applicable, divided by two thousand hours.
5. “Lessee” means any consumer who leases farm equipment pursuant to a written lease agreement which provides that the lessee is responsible for repairs to such farm equipment.
6. “Lease price” means the aggregate of: (a) the lessor's actual purchase cost; (b) the freight cost, if applicable; (c) the cost for accessories, if applicable; (d) any fee paid

to another to obtain the lease; and (e) an amount equal to five percent of the lessor's actual purchase cost as prescribed in paragraph (a) of this subdivision.

7. "Supplier" means the manufacturer, wholesaler or distributor that issues the warranty effective in New York state for the farm equipment sold by the dealer.
8. "Dealer" means any person selling or agreeing to sell farm equipment under an agreement with a manufacturer, wholesaler or distributor.
9. "Nonconformity" means any condition of the farm machinery that substantially impairs the value or safety of such equipment, or its use for the purpose for which it was intended.

§ 697-a. Warranty to consumers.

1. Every supplier of new farm equipment which is sold within or outside of this state shall provide a fair and reasonable warranty on all new farm equipment that shall be of no less duration than twelve months following the date of original delivery of the farm equipment to the consumer. If the new farm equipment does not conform to all applicable express warranties during the warranty period, and the consumer reports the nonconformity, defect or condition to the supplier or its dealer in writing before the end of the warranty period, or verbally within thirty days before the warranty ends and then in writing within thirty days after the expiration of the warranty period, such supplier or dealer shall make such repairs as are necessary to conform the new equipment to such express warranties at no charge to the consumer.
 - 1-a. Farm equipment that is not specifically manufactured for the United States market or in compliance with the laws and standards of the United States is not covered by this article. A dealer who sells such farm equipment shall receive written acknowledgement from the purchaser that the purchaser has been made aware that such equipment is not covered by this article.
2. If the supplier or its dealer are unable to conform the farm equipment to any applicable express warranty by repairing the nonconformity after a reasonable number of attempts, the supplier, at the option of the consumer, shall replace the farm equipment with comparable farm equipment provided that such comparable equipment is available from the supplier, or accept return of the equipment from the consumer and refund to the consumer the full purchase price or, if applicable, the lease price and any trade-in allowance plus fees and charges, less a deduction for use calculated pursuant to the formula provided in subdivision four of section six hundred ninety-seven of this article. For purposes of this section, fees and charges shall include but not be limited to license fees, registration fees or other governmental charges. Refunds shall be made to the consumer or lienholder, if any, as their interests may appear on the records of ownership. Such refund shall also be accompanied by the proper application for credit for refund of state and local sales tax as published by the department of taxation and finance and by a notice that the sales tax paid on the purchase price, lease price or portion thereof being refunded is refundable by the

commissioner of taxation and finance in accordance with the provisions of subdivision (f) of section eleven hundred thirty-nine of the tax law.

3. If a dealer refuses to undertake the repairs within the time allotted pursuant to subdivision one of this section, the consumer may immediately forward written notice of such refusal to the supplier, who shall have twenty days from receipt of such notice to commence such repairs.

4. (a) If the supplier refuses to undertake the repairs, the supplier shall provide information for consumer complaint remedies which shall inform the consumer of, among other things, whether an informal dispute settlement mechanism has been established by the supplier and how the consumer may avail himself or herself of such mechanism.

(b) If a supplier has established an informal dispute settlement mechanism, such mechanism shall provide, at a minimum, the following:

(i) That the arbitrators and the consumers who request arbitration are given a written copy of the provisions of this article together with the notice set forth below entitled "New Farm Equipment Bill of Rights" and that the arbitrators participating in such mechanism are trained in arbitration and are familiar with the provisions of this article;

(ii) That the consumers, upon request, are given an opportunity to make an oral presentation to the arbitrator; and

(iii) That the rights and procedures used in the mechanism comply with federal regulations promulgated by the federal trade commission relating to informal dispute settlement mechanisms.

(c) Each consumer shall have the option of submitting any dispute arising under this section, upon the payment of a prescribed filing fee, to an alternate arbitration mechanism established pursuant to regulations promulgated hereunder by the state attorney general. Upon application of the consumer and payment of the filing fee, all suppliers shall submit to such alternate arbitration, and shall pay a fee established pursuant to regulations of the attorney general. Such alternate arbitration shall be conducted by a professional arbitrator or arbitration firm appointed by the state attorney general. Such mechanism shall insure the personal objectivity of its arbitrators and the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut and refute such presentation. In all other respects, such alternate arbitration mechanism shall be governed by article seventy-five of the civil practice law and rules.

(d) A supplier shall have up to thirty days from the date the consumer notifies the supplier of his or her acceptance of the arbitrator's decision to comply with the terms of that decision. Failure to comply with the thirty day limitation shall also entitle the consumer to recover a fee of twenty-five dollars a day for each business day of

noncompliance up to five hundred dollars. Provided, however, that nothing contained in this paragraph shall impose any liability on a supplier where a delay beyond the thirty day period is attributable to a consumer who has requested replacement farm equipment built to order or with options that are not comparable to the farm equipment being replaced or otherwise made compliance impossible within said period. In no event shall a consumer who has resorted to an informal dispute settlement mechanism be precluded from seeking the rights or remedies available by law.

(e) A court may award reasonable attorney's fees to a prevailing plaintiff or to a consumer who prevails in any judicial action or proceeding arising out of an arbitration proceeding held pursuant to paragraph (c) of this subdivision. In the event a prevailing plaintiff is required to retain the services of an attorney to enforce collection of an award granted pursuant to this section, the court may assess against the supplier reasonable attorney's fees for services rendered to enforce collection of such award.

(f) Any action brought pursuant to this section shall be commenced within twenty-four months of the date of original delivery of the farm equipment to the consumer.

(g) It shall be presumed that a reasonable number of attempts have been undertaken to conform the farm equipment to the applicable express warranties, if:

(i) the same nonconformity, defect or condition has been subject to repair four times by the supplier or its authorized dealers and such nonconformity continues to exist; or

(ii) the farm equipment is out of service by reason of repair of one or more nonconformities by the supplier or its dealer for a cumulative total of thirty calendar days during the warranty period.

(h) The term of an express warranty, the one year warranty period and the thirty day out of service period shall be extended by any reasonable time during which repair services are not available to the consumer for reasons which shall include war, terrorist attack, pestilence, invasion or strike, fire, flood or other natural disaster or unforeseen and unanticipated extraordinary circumstances.

§ 697-b. Affirmative defenses.

It shall be an affirmative defense to claim under this section that:

(a) the nonconformity, defect or condition does not substantially impair the value, use or safety of the equipment;

(b) the nonconformity, defect or condition is the result of abuse, neglect or unauthorized modifications or alterations of the farm equipment;

(c) a claim by the consumer was not filed in a timely manner; or

(d) any other affirmative defense allowed by law.

§ 697-c. Cumulative remedies; prohibition against waiver.

The warranty under this article shall be in addition to and not in derogation of all other rights and privileges which such consumer may have under any other law or instrument. Waiver of any rights by the buyer under this article shall be deemed contrary to public policy and shall be unenforceable and void.

§ 697-d. New farm equipment bill of rights.

A supplier shall provide the following notice, entitled "New Farm Equipment Bill of Rights" along with a written copy of the provisions of this article, to its authorized dealers in this state, and the dealer shall provide such bill of rights to each consumer at the time of purchase or lease of farm equipment. Such notice shall be printed in conspicuous ten point bold face type.

NEW FARM EQUIPMENT BILL OF RIGHTS

(1) IN ADDITION TO ANY WARRANTIES PROVIDED FOR YOUR FARM EQUIPMENT, YOUR NEW FARM EQUIPMENT, PURCHASED WITHIN OR OUTSIDE OF THIS STATE, IS WARRANTED AGAINST ALL MATERIAL DEFECTS FOR ONE YEAR.

(2) YOU MUST REPORT ANY PROBLEMS TO THE WARRANTOR OR ITS DEALER IN WRITING WITHIN THE WARRANTY PERIOD. ALTHOUGH, IF IN THE LAST THIRTY DAYS OF THE WARRANTY, YOU ARE ONLY ABLE TO PROVIDE A VERBAL NOTICE, YOU WILL HAVE UP TO THIRTY DAYS AFTER THE EXPIRATION OF THE WARRANTY TO PROVIDE A WRITTEN NOTICE.

(3) A WARRANTOR OR A DEALER MAY NOT CHARGE FOR THE PARTS OR LABOR INVOLVED IN THE REPAIR OF THE DEFECT WITHIN THE WARRANTY PERIOD.

(4) IF THE SAME PROBLEM CANNOT BE REPAIRED AFTER FOUR ATTEMPTS DURING THE WARRANTY PERIOD; OR IF YOUR EQUIPMENT IS OUT OF SERVICE TO REPAIR A PROBLEM FOR A TOTAL OF THIRTY DAYS DURING THE WARRANTY PERIOD; OR IF THE SUPPLIER OR ITS DEALER REFUSES TO REPAIR A SUBSTANTIAL DEFECT OR CONDITION WITHIN TWENTY DAYS OF RECEIPT OF WRITTEN NOTICE SENT BY YOU TO THE SUPPLIER; THEN YOU MAY BE ENTITLED, AT YOUR OPTION, TO EITHER COMPARABLE FARM EQUIPMENT OR A REFUND OF YOUR PURCHASE PRICE FROM THE WARRANTOR, MINUS A USE ALLOWANCE.

(5) A WARRANTOR MAY DENY LIABILITY IF THE PROBLEM IS CAUSED BY ABUSE, NEGLIGENCE, OR UNAUTHORIZED MODIFICATIONS OF THE EQUIPMENT.

(6) A WARRANTOR MAY REFUSE TO EXCHANGE COMPARABLE EQUIPMENT OR REFUND YOUR PURCHASE PRICE IF THE PROBLEM DOES NOT SUBSTANTIALLY IMPAIR THE VALUE, SAFETY OR USE OF YOUR FARM EQUIPMENT.

(7) IF THE WARRANTOR DOES NOT HAVE AN ARBITRATION PROCEDURE, YOU MAY RESORT TO ANY REMEDY BY LAW AND MAY BE ENTITLED TO YOUR ATTORNEY'S FEES IF YOU PREVAIL.

(8) NO CONTRACT OR AGREEMENT CAN VOID ANY OF THESE RIGHTS.

(9) AS AN ALTERNATIVE TO THE ARBITRATION PROCEDURE MADE AVAILABLE THROUGH THE WARRANTOR, YOU MAY INSTEAD CHOOSE TO SUBMIT YOUR CLAIM TO AN INDEPENDENT ARBITRATOR, APPROVED BY THE ATTORNEY GENERAL. YOU WILL HAVE TO PAY A FEE FOR SUCH AN ARBITRATION. CONTACT YOUR LOCAL CONSUMER OFFICE OR ATTORNEY GENERAL'S OFFICE TO FIND OUT HOW TO ARRANGE FOR INDEPENDENT ARBITRATION.