



Model Transparent and Consistent Pricing of Motor Vehicle Add-Ons Act

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Pricing for add-on products sold by car dealers, such as service contracts, GAP (Guaranteed Asset Protection), and window etching, is not transparent or consistent. Consumers, and even most regulators, lack information about what car buyers are charged for these products and what a reasonable price might be. Dealers decide what to charge each consumer and generally only the dealer, the finance company, and the third party provider of the add-on ever know what other consumers are paying. Consumers have far more resources available to determine a reasonable price for a vehicle than they do for add-ons.

Dealers often price add-on products in an inconsistent manner. Even within individual dealerships some consumers are charged many times more than other consumers for the same product with the same dealer cost. This inconstant pricing for the same add-ons leads to pricing discrimination.¹

This opaque and inconsistent pricing harms consumers who are charged more for a product than similarly situated consumers. It also harms dealers who want to charge consumers consistent and transparent prices because they cannot compete on the price of the car itself with dealers who use inconsistent and opaque add-on pricing. Dealers that use those pricing abuses for add-ons can make so much money from that practice that they can undercut other dealers on the price of the car itself just to get consumers in the door. These inconsistent and hidden prices set in place a chain of other consequences for consumers. The expensive add-ons increase the price of cars, putting them out of reach for some consumers. They also increase the loan to value (LTV) ratio for cars, as they increase the amount consumers finance without providing any real increase to the value of the car. These higher LTVs result in more negative equity, which hurts consumers and other players in the auto sales and finance market because a consumer who owes more than his or her existing car is worth will have a hard time trading it in and buying a new car. High LTVs have also been associated with higher default rates,² again harming consumers and the industry as a whole.

¹ See John W. Van Alst, Carolyn Carter, Marina Levy, and Yael Shavit, National Consumer Law Center, *Auto Add-Ons Add Up, How Dealer Discretion Drives Excessive, Arbitrary, and Discriminatory Pricing* (October 2017), available at <https://www.nclc.org/issues/auto-add-ons-add-up.html> .

² Understanding automotive loan charge-off patterns can help mitigate lender risk, Experian Information Solutions, 2012, (finding high loan-to-value ratios predictive of potential charge-offs) available at <http://www.experian.com/assets/consumer-information/white-papers/auto-vision-wp.pdf>

NCLC's Model Transparent and Consistent Pricing of Motor Vehicle Add-Ons Act is designed to address these problems. Many of its provisions are drawn from statutes or ordinances currently being used to achieve consistent and transparent pricing.³ The core provisions of the model law are:

- **It requires dealers to establish prices in advance for add-ons or some method for determining prices.** Under the model law dealers can no longer create “sucker prices” for car buyers that the dealer thinks can be charged more for items than other people.
- **It requires dealers to submit prices for their add-ons to the Attorney General.** The Attorney General's office then posts the prices on line so that consumers can comparison shop and determine reasonable prices for offered add-ons.
- **It requires dealers to post the available add-ons and their prices on each car offered for sale.** To prevent the dealer from reintroducing non-transparency by offering discounts to some customers but not others, the prices for the add-on products must be non-negotiable.

It provides remedies for violations of the Act including a private right of action for aggrieved consumers, attorneys' fees, the potential loss of a dealer's license, and civil penalties.

The National Consumer Law Center's Model Transparent and Consistent Pricing of Motor Vehicle Add-Ons Act

§ 101: Short Title and Declaration of Purpose

1. This statute may be cited as the “Transparent and Consistent Pricing of Motor Vehicle Add-ons Act”
2. The legislature intends this statute to make the pricing of add-on products sold in conjunction with motor vehicle sales transparent and consistent and to protect consumers from paying arbitrary and discriminatory prices for add-on products. Consumers have greater difficulty finding information or comparing prices on vehicle add-ons than for the vehicle itself.
3. While the statute is intended primarily to protect consumers, it will also protect automobile dealers from the competitive disadvantage they face when some dealers engage in opaque and unfair pricing practices.

³ The model looks to a number of existing statutes and regulations for inspiration including: CONN. GEN. STAT. ANN. § 14-99h, ME. REV. STAT. ANN. tit. 10 § 1174(3)(E), N.Y.C. ADMIN. CODE § 20-271, and other statutes and regulations described in the comments following the relevant sections of the model.

§ 102: Definitions

1. “Vehicle Add-on”

a. **Vehicle Add-on means** any good, service, promise, or benefit, offered for sale or sold to a consumer by a dealer in conjunction with the sale or lease of a new or used motor vehicle. The term includes any product for which the offer or sale is arranged by the dealer as part of the sale or lease transaction even if the product is a contract or arrangement between a consumer and a third party. Vehicle add-ons include, but are not limited to:

- i. **Service contracts or extended warranties** promising to pay for or perform maintenance or repairs during a specified period.
- ii. **Vehicle protection products and services** such as vehicle identification number etching, alarm systems, or tracking devices, whether sold alone or with the promise to pay or provide a discount on a replacement vehicle if the vehicle is lost, stolen, or damaged.
- iii. **Guaranteed Asset Protection (GAP)** products promising to pay or waive the difference between the amount a consumer owes on a vehicle and the vehicle’s value if the vehicle is lost, damaged, destroyed, or sold.
- iv. **Key, tire, and dent protection plans** that promise to pay the replacement cost of lost or damaged items or parts.
- v. **Rust proofing treatments.**
- vi. **Lease products** promising to pay, in part or in full, the costs a consumer would otherwise have to cover at the end of a lease term due to damage to the vehicle or other occurrences.
- vii. **Such other products** as the Attorney General may identify through rulemaking to further define vehicle add-on for purposes of this title.

b. Vehicle add-ons do not include:

- i. The vehicle itself;
- ii. Vehicle options itemized on the vehicle’s original sticker required by 15 U.S.C. § 1232;
- iii. Financing that is provided for the vehicle or for add-ons;
- iv. Add-ons that are offered at no charge;
- v. Credit insurance with authorized rates established under [insert reference to relevant state mechanism for establishing credit insurance rates here];
- vi. Alterations, or additions added or made to the car prior to it being offered for sale and included in the purchase price of the vehicle; and

- vii. Physical items not listed in (1) (a), such as entertainment systems, navigation systems, pickup truck bed covers, and cosmetic alternations where the physical product is the predominant part of the transaction.
2. **“Consumer”** means any individual buyer, lessee, or prospective buyer or lessee of a motor vehicle or a vehicle add-on, provided that the individual is not purchasing or leasing the vehicle for the purpose of reselling or re-leasing the vehicle.
3. **“Motor vehicle”** means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.
4. **“Dealer”** has the same meaning as [insert state motor vehicle dealer definition here].

§ 102 Comment

This section sets forth key definitions for this model law. In § 102(4), states should insert a cross-reference to the definition of motor vehicle dealer in their existing motor vehicle laws. States may also wish to replace § 102(3), which defines “motor vehicle,” with a cross-reference to a definition in existing state law. The definition presented here is the same definition as that in 49 U.S.C § 30102(a) (7).

“Vehicle add-on” can be a difficult term to define given the broad range of products and services under its umbrella. The definition here seeks to cover any service or product sold either before or after the vehicle is sold, provided the product is sold in *conjunction* with the auto sale. This requirement is similar to New York City’s requirement, in its definition of “add-on product,” that the product be “offered with” the vehicle. N.Y.C. Admin. Code § 20-264. This is intended to prevent sellers from getting around the requirements of this model law by selling add-ons in separate transactions after the auto sale is technically completed. At the same time, the definition is intended to limit the scope of the protections so that later transactions unconnected to the original auto sale will not be subject to the provisions of this law.

Credit insurance is excluded from the definition of vehicle add-on as it already regulated for price (through a prescribed method of establishing rates) in most states.

§ 103: Construction.

The provisions of this statute shall be interpreted liberally in the interests of consumers. Where ambiguity exists, the ambiguity shall be resolved in favor of the consumer unless such an interpretation would result in grave injustice for a seller, supplier, or another party.

§ 103 Comment

§ 103 gives interpretive guidance and reinforces the consumer protection purpose of the law.

§ 104: Transparent and Consistent Pricing

1. **Schedule of Prices.** Dealers shall submit an itemized schedule to the Attorney General stating clearly each vehicle add-on that the dealer will offer and its price to the consumer. If the vehicle add-on is of a nature that its price varies based on the motor vehicle with which it is being sold, the schedule should indicate the formula or method by which the dealer will determine the price. Such schedule shall be submitted in a form and format designated by the Attorney General. The Attorney General shall post this information electronically in a manner available to the public, identifying the pricing available from each individual identified dealer.
2. **Price Changes.** A dealer may not sell or offer to sell any vehicle add-on to any consumer at a higher or lower price than the pricing schedule provided to the Attorney General. A dealer must submit an updated schedule to the Attorney General in advance of any price changes. Such price changes may be temporary, such as those related to a sale, in which case the update may simply indicate the dollar or percentage change for individual items. Whether the updated schedule represents a temporary or permanent change to the dealer's pricing, it must be submitted in a form and format and within such time as shall be designated by the Attorney General.
3. **Price Schedule Submission Fee.** The Attorney General may establish a fee for the submission of prices schedules as may be necessary to defray the cost of collecting and providing publicly the vehicle add-on pricing information.
4. **Price Disclosure.** Dealers must clearly and conspicuously post on the vehicle itself the price to the consumer of each vehicle add-on offered with that vehicle. A dealer must also disclose clearly and conspicuously in a prominent location at each of its sale or lease locations a copy of the pricing schedule submitted to the Attorney General.
5. **Requirement That Vehicle Add-Ons be Optional.**
 - a. Purchase of a vehicle add-on is optional and may not be made a condition of the sale or lease of the vehicle.
 - b. Each posting under (4) on both the vehicle and at each sale or lease location must state:
 - ii. that the purchase of a vehicle add-on is optional,
 - iii. that the purchase of any vehicle add-on may not be made a condition of the sale or lease of the vehicle.

§ 104 Comment

§ 104 (1) and (4) are based on and expand existing laws that require sellers to set and post a price. Requirements for posted pricing for many retail items already exist in many states.⁴ For new cars, federal law requires that cars have a sticker with the manufacturer's suggested retail

⁴ See U.S. Department of Commerce, National Institute of Standards and Technology, U.S. Pricing Laws and Regulations by listing state, available at: <https://www.nist.gov/pml/weights-and-measures/laws-and-regulations/retail-and-unit-pricing-laws>

price (MSRP), the suggested retail price of each accessory or option that is physically attached to the vehicle at the time of delivery to the dealer and that is not included in the suggested retail price, the amount charged to the dealer for transportation of the vehicle to the location at which it is delivered to the dealer, and the sum of the vehicle's suggested retail price, options, and delivery charges. 15 U.S.C. § 1232. While the MSRP is not a posted price for the car, it does give consumers some idea of where a reasonable price might start. New York City has extended this idea to pricing add-ons. N.Y.C. Admin. Code § 20-271.

§ 104 (2) prohibits charging different prices for different customers. A prohibition on charging some car buyers different prices than others already exists in Maine but only for the protection of dealers buying cars from manufacturers, not for consumers buying cars from dealers. ME. REV. STAT. ANN. tit. 10 § 1174(3) (E). The fairness concerns underlying the Maine statute are at least as strong in the consumer context, and resonate strongly with consumers. In fact, although it may seem counterintuitive to forbid lower prices, research indicates that 72% of Americans do not support prices being lowered based on the individual customer even if it means lower prices for them personally.⁵ This model law extends Maine's protection to consumers. Forbidding sellers from arbitrarily lowering prices will prevent sellers from inflating the sticker price of add-ons and then offering discounts in a discriminatory manner, undermining the purpose of § 104.

The requirement in §104 (1) and (2) to provide a pricing schedule to a state entity is based in part on requirements in Connecticut for pricing of vehicle identification number etching. There a statute requires dealers to submit prices for this add-on to the Department of Motor Vehicles and to submit an amended rate schedule for price changes. Conn. Gen. Stat. Ann. § 14-99h. Under the model dealers may revise prices or have limited duration sale prices by submitting new price schedules under § 104(2) to the Attorney General.

Under the model law the Attorney General will set the form and format for the price schedules. While some add-ons will lend themselves to one price no matter what car is being sold, other such as service contracts may have different costs for the dealer depending on the vehicle with which they are being sold. In these instances, the Attorney General may allow dealers to submit a formula such as the dealer's cost for the add-on plus a markup percentage or a flat dollar amount to yield the final consumer price.

These price schedules will then be available electronically in a public format. Consumers can discover in advance either the exact price for add-ons or the formula by which the add-on price at that dealer is determined. Regulators, researchers, and consumer advocates will be able to see what prices are from dealer to dealer. This type of pricing information is necessary for healthy competition.

§ 104(5) requires vehicle add-ons to be optional, and requires dealers to disclose this fact. This will help prevent the practice of dealers misinforming consumers that they must buy a particular add-on, a practice that not only harms consumers generally but also enables discriminatory

⁵ The disapproval figure jumped to 76% when respondents were asked to contemplate other people paying less than them for the same products. See Joseph Turow, Lauren Feldman & Kimberly Meltzer, Annenberg Pub. Policy Ctr. of the Univ. of Pa., Open to Exploitation: America's Shoppers Online and Offline 3 (2005), available at: https://repository.upenn.edu/asc_papers/35/?utm_source=repository.upenn.edu%2Fasc_papers%2F35&utm_medium=PDF&utm_campaign=PDFCoverPages.

practices. African American and Latino consumers, for example, are about three times more likely to be told that add-ons are mandatory compared with white consumers.⁶ A notice that add-ons are optional will help to combat this practice.

§ 105: Rulemaking Authority.

The Attorney General shall adopt such rules, regulations, fees, and standards which may be necessary to effectuate the purposes of this title.

§ 106: Enforcement.

1. Any consumer purchaser or lessee who purchases a vehicle add-on in conjunction with the sale or lease of a new or used motor vehicle and who is aggrieved by a violation of this Act may recover the greater of two thousand five hundred dollars (\$2,500) or three times the actual damages sustained, together with costs and reasonable attorney's fees.
2. A violation of this Act is a violation of [the state unfair and deceptive practices statute].
3. A pattern of repeated violation of this Act may be grounds for revocation of a motor vehicle dealer's license under [the revocation provision of the state motor vehicle dealer licensing statute].
4. It is a misdemeanor subject to a minimum fine of one thousand dollars (\$1,000) for any person or entity to knowingly violate this Act.

For more information, please contact National Consumer Law Center attorney John Van Alst: jvanalst@nclc.org



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⁶ See DAVIS, *supra* note 13, at 12.