

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1984 to June 20, 1985

Chapters 1-384

PUBLISHED BY THE REVISOR OF STATUTES IN ACCORDANCE WITH
MAINE REVISED STATUTES ANNOTATED, TITLE 3, SECTION 163-A,
SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine
1986

PUBLIC LAWS
OF THE
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1985

(1) The level of alternate revenues available to the group self-insurer to cover the further assumed costs; and

(2) The adequacy of the fund's surplus to meet obligations of the group self-insurer.

At the expiration of a period of 10 calendar days after the superintendent has received a plan for the dedication of a portion of the unimpaired surplus of a group self-insurer to increase its self-insured retention level and any additional information the superintendent has deemed necessary, the plan shall be deemed approved unless prior to the expiration of that time period it has been affirmatively approved or disapproved by the superintendent.

O. In addition, upon the filing of a plan which meets the approval of the superintendent, group self-insurers may be authorized to issue subordinated loan certificates, the proceeds of which shall be made part of the group self-insurer's surplus account and available as other surplus funds for dedication to increase the self-insured retention level. To the extent that the proceeds of these loan certificates are utilized by a group self-insurer to increase its self-insured retention in any fiscal year, the aggregate proceeds of the loan certificates so utilized shall in no event exceed 25% of the annual standard premium for that fiscal year. The obligation to redeem these loan certificates after the proceeds of the loan certificates have been dedicated to increase the aggregate excess self-insured retention level of the group self-insurer shall be subordinate to covered claims and shall not be redeemed after the dedication without the approval of the superintendent.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective May 29, 1985.

CHAPTER 220

H.P. 819 - L.D. 1160

AN ACT to Amend the Maine Lemon Law.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA §1161, sub-§4 is enacted to read:

4. Reasonable allowance for use. "Reasonable allowance for use" means that amount obtained by multiplying the total purchase price of the vehicle by a fraction having as its denominator 100,000 and having as its numerator the number of miles that the vehicle traveled prior to the manufacturer's acceptance of its return.

Sec. 2. 10 MRSA §1162, sub-§3 is enacted to read:

3. Waivers void. Any agreement entered into by a consumer which waives, limits or disclaims the rights set forth in this chapter shall be void as contrary to public policy.

Sec. 3. 10 MRSA §1163, as enacted by PL 1983, c. 145, is amended to read:

§1163. Rights and duties

1. Repair of nonconformities. If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of the express warranties or within a period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make those repairs necessary to conform the vehicle to the express warranties, notwithstanding the fact that the repairs are made after the expiration of that term or that one-year period. if the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer within the following time periods:

A. In the case of a motor vehicle sold before October 1, 1985, during the term of the express warranties or within a period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date; and

B. In the case of a motor vehicle sold on or after October 1, 1985, during the term of the express warranties, within a period of 2 years following the date of original delivery of the motor

vehicle to a consumer, or during the first 18,000 miles of operation, whichever is the earlier date.

This obligation exists notwithstanding the fact that the repairs are made after the expiration of the appropriate time period.

2. Failure to make effective repair. If the manufacturer or its agents or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and, safety or value of the motor vehicle after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a comparable new motor vehicle or accept return of the vehicle from the consumer and make a refund to the consumer the full purchase price, including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear. A reasonable allowance for use is that amount directly attributable to use by the consumer prior to his first report of the nonconformity to the manufacturer, agent or dealer, and during any subsequent period when the vehicle is not out of service by reason of repair. In determining the reasonable allowance, the parties may take into account the rate of mileage reimbursement paid to state employees pursuant to Title 5, section 8. The refund shall consist of the following items, less a reasonable allowance for use of the vehicle:

A. The full purchase price;

B. All collateral charges, including, but not limited to, sales tax, license and registration fees and similar government charges; and

C. Costs incurred by the consumer for towing and storage of the vehicle and for procuring alternative transportation while the vehicle was out of service by reason of repair.

3. Reasonable number of attempts; presumption. It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if:

A. The In the case of a motor vehicle sold before October 1, 1985, the same nonconformity has been subject to repair 4 or more times by the manufacturer or its agents or authorized dealers

within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, and at least 2 of those times to the same agent or dealer, but the nonconformity continues to exist; or

A-1. In the case of a motor vehicle sold on or after October 1, 1985, the same nonconformity has been subject to repair 4 or more times by the manufacturer or its agents or authorized dealers within the express warranty term, during the period of 2 years following the date of original delivery of the motor vehicle to a consumer or during the first 18,000 miles of operation, whichever is the earlier date, and at least 2 of those times to the same agent or dealer, but the nonconformity continues to exist; or

B. The vehicle is out of service by reason of repair, by the manufacturer, its agents or authorized dealer, of any nonconformities covered under subsection 2 for a cumulative total of 30 or more business days during that warranty term or ~~that one-year~~ the appropriate time period, whichever is the earlier date.

4. Time limit; extension. The term of an express warranty, the one-year and 2-year period periods following delivery and the 30-day period provided in subsection 3, paragraph B, shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike or fire, flood or other natural disaster.

5. Dealer liability. Nothing in this chapter may be construed as imposing any liability on a dealer or creating a cause of action by a consumer against a dealer under this section, except regarding any written express warranties made by the dealer apart from the manufacturer's own warranties.

6. Disclosure of notice requirement. No consumer may be required to notify the manufacturer of a claim under this section, unless the manufacturer has clearly and conspicuously disclosed to the consumer, in the warranty or owner's manual, that written notification of the nonconformity is required before the consumer may be eligible for a refund or replacement of the vehicle. The manufacturer shall include with the warranty or owner's manual the name and address to which the consumer shall send the written notification.

7. Disclosure at time of resale. No motor vehicle which is returned to the manufacturer under subsection 2, may be resold without clear and conspicuous written disclosure to any subsequent purchaser, whether that purchaser is a consumer or a dealer, of the following information:

A. That the motor vehicle was returned to the manufacturer under this chapter;

B. That the motor vehicle did not conform to the manufacturer's express warranties; and

C. The ways in which the motor vehicle did not conform to the manufacturer's express warranties.

Sec. 4. 10 MRSA §1164, sub-§1, as enacted by PL 1983, c. 145, is amended to read:

1. Lack of impairment. An alleged nonconformity does not substantially impair the use and, safety or value of the motor vehicle; or

Sec. 5. 10 MRSA §1165, as enacted by PL 1983, c. 145, is amended to read:

§1165. Informal dispute settlement

If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of 16 Code of Federal Regulations, Part 703, as from time to time amended, the provisions of section 1163, subsection 2, concerning refunds or replacement shall not apply to any consumer who has not first resorted to that procedure. This requirement shall be satisfied 40 days after notification to the informal dispute settlement procedure of the dispute or when the procedure's duties under 16 Code of Federal Regulations, Part 703.5 (d), are completed, whichever occurs sooner.

Sec. 6. 10 MRSA §1166 is enacted to read:

§1166. Unfair or deceptive trade practice

A violation of any of the provisions of this chapter shall be considered prima facie evidence of an unfair or deceptive trade practice under Title 5, chapter 10.

Sec. 7. 10 MRSA §1167 is enacted to read:

§1167. Attorney's fees

In the case of a consumer's successful action to enforce any liability under this chapter, a court may award reasonable attorney's fees and costs incurred in connection with the action.

Effective September 19, 1985.

CHAPTER 221

S.P. 126 - L.D. 366

AN ACT to Amend the Law Relating to
Regulation of Business Practices
Between Motor Vehicle Manufacturers,
Distributors and Dealers.

Be it enacted by the People of the State of Maine as follows:

10 MRSA §1175, as amended by PL 1979, c. 498, §2, is further amended to read:

§1175. Delivery and preparation obligations; product liability and implied warranty complaints

Every manufacturer shall specify to the dealer the delivery and preparation obligations of its motor vehicle dealers prior to delivery of new motor vehicles to retail buyers. The delivery and preparation obligations of its motor vehicle dealers and a schedule of the compensation to be paid to its motor vehicle dealers for the work and services they shall be required to perform in connection with such delivery and preparation obligations shall constitute any such dealer's only responsibility for product liability as between such dealer and such manufacturer. The compensation as set forth on said schedule shall be reasonable.

In any action or claim brought against the dealer on a product liability complaint in which it is later determined that the manufacturer is liable, the dealer shall be entitled, from the manufacturer, to receive its reasonable costs and attorney's fees incurred in defending the claim or action.

In any action or claim brought against the dealer on a breach of implied warranty complaint in which it is later determined that the manufacturer is liable,