

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 929

H. P. 757

House of Representatives, March 6, 1975

Referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Boudreau of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Requiring the Disclosure of Information in Certain Used Car Sales
and Concerning Used Car Warranties.

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

10 MRSA c. 215 is enacted to read:

CHAPTER 215

USED CAR INFORMATION

§ 1451. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. **Conspicuous.** "Conspicuous or conspicuously" means that a term or clause is written or printed in a manner that so differentiates it from any accompanying matter that an ordinary person against whom it is to operate could be fairly presumed to have been made fully aware of the term or clause.

2. **Dealer.** "Dealer" means and includes a natural person, firm, corporation, partnership and any other legal entity that is engaged in the business of selling used motor vehicles and includes the officers, agents and employees thereof.

3. **Mechanical defect.** "Mechanical defect" means any defect, failure or malfunction of the mechanical system of a motor vehicle, including but not limited to the motor and transmission, electrical, hydraulic or suspension systems, and any defect, damage, failure or malfunction that affects the safety or normal use of a motor vehicle.

4. Motor vehicle. "Motor vehicle" means any self-propelled vehicle designed primarily to transport not more than 10 individuals upon the public roads, streets and highways, except motorcycles as defined in Title 29, section 1, subsection 4, and any vehicles operated exclusively on a rail or rails.

5. Person. "Person" means and includes natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entities.

6. Purchaser. "Purchaser" means any person who has obtained ownership of a used motor vehicle from a dealer by transfer, gift or purchase.

7. Used motor vehicle. "Used motor vehicle" means a motor vehicle that is offered for sale to a person after having been once registered or which is not covered by a new car warranty.

8. Warranty. "Warranty" shall have the same meaning in this chapter as in Title 11, Article 2, and shall include any expression or affirmation of dealer's willingness or ability to repair the vehicle, or make it conform to other affirmations or expressions of its qualities, communicated in any manner to a purchaser at or before the agreement to sell.

§ 1452. Exclusions

Nothing in this chapter shall apply to motor vehicles sold, offered for sale or transferred for a purpose other than transportation if that purpose is conspicuously written in the contract, but evidence outside the contract will be admissible to contradict such a contract provision.

§ 1453. Warranty

1. Warranty content. A dealer warrants that the motor vehicle he sells, offers for sale or transfers to a person has been inspected in accordance with Title 29, section 2122 and with the rules and regulations promulgated thereunder and that the motor vehicle is in the condition and meets the standards required by that statute and the rules and regulations.

2. Exclusion limitation, modification or waiver prohibited. The warranty referred to in subsection 1 herein, and any person's remedies for breach thereof, may not be excluded, limited, modified, or waived by words or conduct of either the dealer or any other person, notwithstanding the provisions of Title 11, section 2-316.

3. Dealer to furnish certain written statements concerning warranty. No dealer shall sell, offer for sale or transfer a used motor vehicle to a person unless he furnishes to such person a written statement containing the warranty required by subsection 1. Any other warranty, in addition to that required by subsection 1, that may be extended or agreed to by the dealer must be set forth in this written statement in accordance with further requirements of this section. Every written statement shall contain, fully and conspicuously disclosed, the following information:

A. The name and address of the dealer's place of business, where repairs, replacement of parts and other service under the warranty are to be per-

formed or, if such repairs, replacement of parts and other service under the warranty are not to be performed at such place of business, the name, address and other identifying information of each facility within a radius of 50 miles of the dealer's place of business to which the vehicle may be brought for repairs, replacement of parts and other service under the warranty;

B. The following notice: "If a dealer fails to perform his obligation under the warranty, the purchaser shall give the dealer written notice of such failure before the purchaser initiates a civil action in accordance with Title 10, section 1455." The notice must be sent by registered mail to the dealer's last known business address.

In addition, said written statement shall contain, fully and conspicuously disclosed, the following information concerning any additional warranty not required by subsection 1;

C. The date or number of days or mileage at which the warranty will terminate;

D. The parts or systems of the vehicle that are warranted against mechanical defects, or the parts or systems of the vehicle excluded from the warranty; and

E. A statement of what the dealer will do in the event of a mechanical defect and at whose expense.

§ 1454. Disclosure of information

1. Written disclosure of description of motor vehicle required. No dealer shall sell or transfer any used motor vehicle to any person, and no person shall sell or transfer any used motor vehicle to any dealer, unless he furnishes to such person or dealer a written statement containing the information required by subsection 2 before transferring title, accepting any part of the purchase price or making an agreement to sell, if any, whichever of these events occurs earliest.

2. Required contents of description of motor vehicle. The statement required by subsection 1 shall contain a complete description of the motor vehicle to be sold, including, but not limited to:

A. The make, model, year of manufacture and any identification or serial numbers of the motor vehicle;

B. The date on which the motor vehicle will be delivered to the purchaser and the total cumulative mileage which the motor vehicle will have been driven at the time of transfer;

C. The name and address of the previous registered owner of the motor vehicle, the principal use to which the motor vehicle was put by that owner, such as personal transportation, police car, daily rental car, taxi or other descriptive term, and the type of sale or other means by which the person acquired the motor vehicle, such as trade-in, sheriff's sale, repossession, auction or other descriptive term, to the extent that such information is reasonably available to the person;

D. A statement of all mechanical defects and fire, water or substantial collision damage known to the person at the time of the sale; and

E. A statement indicating whether or not the vehicle was acquired as salvage or was acquired after having been rebuilt after damage from flood, fire, substantial collision or other cause.

§ 1455. Performance under warranty

1. Failure to perform warranty obligations prohibited. No dealer shall fail to perform his obligation under any warranty made in accordance with this chapter. It shall not constitute a failure to perform such obligations if a dealer refuses to act in accordance with the provisions of that warranty with respect to any mechanical defect that resulted from unreasonable use or maltreatment of that motor vehicle by the purchaser.

2. Conditions deemed failure to perform warranty. A dealer shall be considered to have failed to perform his obligations under a warranty made in accordance with this chapter, if:

A. He fails to perform repair or replacement of parts required under the warranty within:

(1) Five calendar days, excluding Saturday, Sunday and legal holidays, after the date on which the purchaser delivers the motor vehicle to him for such repair or replacement; or

(2) Thirty-five calendar days after the date on which the purchaser delivers the motor vehicle to him if necessary parts are not available to the dealer during the period set forth in subparagraph (1); or

B. He fails to provide the purchaser with the use of an operating motor vehicle of substantially equivalent utility to the motor vehicle being repaired, at no cost, except gasoline and oil, beginning at the conclusion of the time stated in paragraph A, subparagraphs (1) and (2), and continuing until repairs have been completed; or

C. He fails in any other material respect to perform an obligation arising out of the warranty within a reasonable time.

3. Purchaser's rights upon failure of dealer to perform warranty obligations. If the dealer fails to perform his obligations under the warranty, the purchaser, in addition to any other rights he or she may have, shall have the right to:

A. Rescind the contract of sale and recover the full consideration paid for the motor vehicle, including the fair market value of any property forming part of that consideration, reduced only by:

(1) The amount of damage caused to the motor vehicle by the purchaser, other than damage resulting primarily from a mechanical defect repairable under the warranty, and

(2) With respect to vehicles that have been in possession of the purchaser for more than 30 days, diminution, if any, in the retail fair mar-

ket value of the motor vehicle attributable to the period during which the consumer has had possession of said motor vehicle in useable condition. Fair market value for the purposes of this subparagraph shall be measured by the average retail price listed in the National Automobile Dealer's Association Official Used Car Guide, New England Edition, issued next before the sale and next before the rescission.

B. Recover damages in an amount equal to the differences between the fair market value of the motor vehicle in its actual condition at the time the dealer fails to perform his obligations under the warranty and the fair market value of the motor vehicle had it been as warranted. Such damages may be deducted from any balance due on the contract or recovered by the purchaser in a civil action.

Before initiating a civil action pursuant to this paragraph, the purchaser must give the dealer written notice that the dealer has failed to perform his obligations under the warranty. The written notice shall be given to the dealer by registered or certified mail addressed to his usual place of business or to his last known business address.

4. Attorney's fees. If the court finds, in any action commenced under this section that the dealer failed to perform his obligations under the warranty, the petitioner shall, in addition to other relief provided for by this section and irrespective of the amount in controversy, be awarded reasonable attorney's fees and costs incurred in connection with said action.

§ 1456. Dealer to maintain records

1. Dealer to maintain certain records. Each dealer shall maintain, for a period of not less than 3 years after the date on which a used motor vehicle is sold, a complete record relating to the sale of that motor vehicle including:

A. The name and address of the purchaser; and

B. Copies of the warranty, if any, and a section 1454 disclosure statement issued in connection with the sale of that motor vehicle.

2. Inspection of records. Any dealer who sells used motor vehicles shall upon request of the Secretary of State, or his duly authorized agents, or any law enforcement officer or representative of the Attorney General permit that officer or agent to inspect the records required to be maintained by subsection 1.

§ 1457. Violations

1. Violations of this chapter to be violations of the Unfair Trade Practices Act. Any violation of this chapter shall constitute a violation of Title 5, chapter 10, Unfair Trade Practices Act.

2. Penalty. Whoever, being obligated by this chapter to make and preserve any record or document under section 1456:

A. Willfully fails to make and preserve any such record or document; or

B. Makes any such record or document containing any information which is false or misleading, with knowledge or with reason to believe that such

information is false or misleading, shall be guilty of a misdemeanor and shall be punished by a fine not in excess of \$500.

STATEMENT OF FACT

Purchasers frequently do not know enough about the mechanics of a motor vehicle to recognize safety and mechanical defects. Consequently, these consumers often spend large sums of money to obtain a vehicle for transportation only to discover that the vehicle is unsafe or does not work.

This bill applies only when a vehicle is sold to be used for purposes of transportation. It is designed to insure that persons who buy used motor vehicles for the purpose of transportation obtain a vehicle that has been inspected in accordance with state inspection laws and is safe. The bill, therefore, requires the dealer to warrant that the motor vehicle has been inspected in accordance with the inspection laws of this State. The present law is inadequate to protect a consumer who is sold a vehicle that should not have passed inspection. Except for this warranty of inspection which cannot be waived when a vehicle is sold for the purposes of transportation, no other warranties are required and all other warranties may be waived in accordance with present law by such terms as "as is".

In addition, this bill requires that the prospective purchaser be provided with information concerning prior use of the used motor vehicle. In many cases if the consumer had had information concerning the prior use of the vehicle, he would not have purchased it or at least he would have been in a better position to determine whether he was paying a reasonable price. The purpose of this bill is to provide the consumer with more information prior to purchase so that he can determine the condition of the car that he is buying and the type and extent of the express warranty, if any, that he is receiving. This bill leaves the terms of an express warranty, if one is provided, subject to the agreement between the dealer and the purchaser.