

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

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Legislative Document

No. 1934

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H. P. 1708

House of Representatives, June 16, 1975

Reported by Mr. Tierney from Committee on Business Legislation and printed under Joint Rules No. 18.

EDWIN H. PERT, Clerk

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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

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

Sec. 1. 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, offering for sale, or negotiating the sale of used motor vehicles, except auctioneers licensed by the Secretary of State 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 14 individuals, except motorcycles as defined in Title 29, section 1, subsection 4, and any vehicles operated exclusively on a rail or rails. This definition is intended to include motor trucks that have a gross vehicle weight of not more than 10,000 pounds as certified by the vehicle manufacturer or its franchised representative pursuant to Title 29, section 1652.

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 either has been once registered or is not covered by a manufacturer's 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. Construction

The provisions of this chapter shall not be construed to limit or restrict in any way the rights or warranties provided to persons under any other Maine law, except that Title 11, section 2-316, subsection 5 shall not apply to transactions under this chapter.

#### § 1454. Warranty

1. Warranty content. A dealer warrants that the motor vehicle he sells, negotiates the sale of, 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.

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 performed 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; and

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 section 1456. 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.

#### § 1455. Disclosure of information

1. Written disclosure statement. No dealer shall sell or transfer any used motor vehicle to any person, unless he furnishes to such person 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 disclosure statement. 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, model year and any identification or serial numbers of the motor vehicle;

B. The name and address of the previous owner of the motor vehicle, or dealer, 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;

C. A statement identifying any and all mechanical defects known to the dealer at the time of sale; and

D. A statement identifying the type of damage, if any, that the vehicle has sustained, such as fire, water or substantial collision damage, if such information is known to the dealer.

3. A dealer shall obtain from the seller of a used motor vehicle a written statement containing the following information:

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

B. The name and address of the seller, the principal use to which the motor vehicle was put by the seller, such as personal transportation, police car, daily rental car, taxi or other descriptive term;

C. A statement identifying any and all mechanical defects known to the seller at the time of sale; and

D. A statement identifying the type of damage, if any, that the vehicle has sustained, such as fire, water or substantial collision damage, if such information is known to the seller.

#### § 1456. Performance under warranty

1. Failure to perform warranty obligations prohibited. No dealer shall fail to perform his obligation under a 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 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

(3) A reasonable period after the period set forth in subparagraph (2) if necessary parts are not available to the dealer because of a strike,

natural disaster or other disaster affecting the manufacture, distribution or shipment of parts; or

B. He fails to provide the purchaser with the use of an operating motor vehicle 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 transfers ownership of a used motor vehicle which does not conform to the warranty imposed by section 1454, subsection 1; or

D. 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 market 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 an authorized used car guide, such as 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.

**§ 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.

Sec. 2. 29 MRSA § 355, as last amended by PL 1973, c. 738, § 2, is further amended to read:

**§ 355. Record of transactions**

A dealer shall complete and maintain for a period of not less than 3 years after the date of sale a record of the purchase and sale of all vehicles purchased or sold by him, which record shall consist of, but not be limited to, the following:

1. A description of vehicles;
2. The name and address of person from whom purchased;
3. The name of legal owner, if different;
4. The name and address of purchaser;
5. Mileage when vehicle was received and sold;
6. A copy of any warranty and of the disclosure statement pursuant to Title 10, section 1454 received by and issued by the dealer in connection with the sale of the motor vehicle.

Such record shall at all times be available for inspection by the Secretary of State, or his duly authorized agents or duly authorized members of law enforcement agencies or representatives of the Attorney General's office. A copy of the records, except the information required by subsection 6, shall be filed with the Secretary of State's office immediately following the sale or disposition of the vehicle.

Sec. 3. **Effective date.** This Act shall take effect on January 1, 1976.