

# MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1878

H. P. 1777

House of Representatives, January 25, 1980.

Reported by Mr. Brannigan from the Committee on Business Legislation and printed under Joint Order 17 pursuant to H. P. 1459.

EDWIN H. PERT, Clerk of the House

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

**AN ACT Relating to Motor Vehicle Warranties and Repairs.**

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

**Sec. 1.** 10 MRSA § 1176, first ¶, as enacted by PL 1975, c. 573, is repealed and the following enacted in its place:

**If a motor vehicle franchisor requires or permits a motor vehicle franchisee to perform labor or provide parts in satisfaction of a warranty created by the franchisor, the franchisor shall properly and promptly fulfill its warranty obligations and adequately and fairly compensate the franchisee for any parts so provided. Further, the franchisor shall reimburse the franchisee for any labor so performed in an amount equal to the retail price customarily charged by that franchisee for the same labor when not performed in satisfaction of a warranty; provided that the franchisee's rate for labor not performed in satisfaction of a warranty is routinely posted in a place conspicuous to its service customers. Any claim made by a franchisee for compensation for parts provided or for reimbursement for labor performed in satisfaction of a warranty shall be paid within 30 days of its approval. All the claims shall be either approved or disapproved within 30 days of their receipt. When any such claim is disapproved, the franchisee that submitted it shall be notified in writing of its disapproval within that period, together with the specific reasons for its disapproval. No franchisor may, by agreement, by restriction upon reimbursement, or otherwise, restrict the nature or extent of labor performed or parts provided so that such restriction impairs the franchisee's ability to satisfy a warranty created by the**

franchisor by performing labor in a good and workmanlike manner or by providing parts required in accordance with generally accepted standards.

Sec. 2. 10 MRSA § 1473, as enacted by PL 1975, c. 770, § 57, is amended to read:

**§ 1473. 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.~~

Sec. 3. 10 MRSA § 1474, sub-§ 3, 2nd sentence, as enacted by PL 1975, c. 770, § 57, is amended to read:

Any other warranty, in addition to that required by subsection 1, **but not including a warranty created under Title 11, section 2-314 or 2-315**, 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.

Sec. 4. 29 MRSA c. 23 is enacted to read:

**CHAPTER 23**

**MOTOR VEHICLE REPAIR**

**§ 2601. Definitions**

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

1. **Customer.** "Customer" means an individual, corporation or other legal entity, including an agent, who contracts with a repair facility for repair of a motor vehicle.

2. **Flat rate.** "Flat rate" means any method of calculating charges for labor that is not based upon the amount of time actually spent repairing a motor vehicle.

3. **Motor vehicle.** "Motor vehicle" means "motor vehicle" as defined in section 1, subsection 7.

4. **Repair.** "Repair" means the examination, maintenance, servicing, adjustment, improvement, replacement, removal or installation of any part of a motor vehicle, including body work and painting and incidental services such as storage and towing, but excluding the sale of motor fuel.

5. **Repair facility.** "Repair facility" means an individual, corporation or other legal entity which repairs motor vehicles for the general public for compensation.

**§ 2602. Maximum charge for repair**

1. **Written designation by customer.** Before a repair facility begins repairing a customer's motor vehicle, the facility shall specially give the customer an opportunity, and the customer shall have a right, to designate in writing a specific amount of charges for repair in excess of which the customer does not agree to be liable without further specific agreement, either oral or written.

2. **No liability without agreement.** A customer is not liable for any charge for repair in excess of the specific amount designated in accordance with subsection 1 without further specific agreement, either oral or written.

3. **Retention of written designation.** The repair facility shall retain the original of any designation written in accordance with subsection 1 and shall give the customer a copy at the time of designation.

#### § 2603. Replaced parts

Before payment of any charge is demanded, a repair facility shall specially give the customer an opportunity, and the customer shall have a right, to inspect any replaced parts. Further, a repair facility shall return, and the customer shall have a right to the return of, any replaced parts which the customer requests, unless the facility is required to return the parts to the manufacturer or distributor under a bona fide warranty or exchange arrangement.

#### § 2604. Used parts

No repair facility may install a used, reconditioned or rebuilt part unless the customer specifically agrees before that part is installed.

#### § 2605. Notices

A repair facility shall post the following notice in a place where it is reasonably likely to be seen by its repair customers. The notice shall be completed with information on charges and printed so that it is conspicuous and can be read by the average person.

**“NOTICE TO OUR CUSTOMERS  
REQUIRED UNDER STATE LAWS**

Before we begin making repairs, you have a right to specify in writing the maximum amount which you agree to pay without further, specific agreement. You will not be liable for any charge over that amount unless you specifically agree to it. You have a right to a copy of any written specification at the time you sign it.

Before you pay your bill, you have a right to inspect any replaced parts. You have a right to take with you any replaced parts, unless we are required to return the parts to our distributor or manufacturer.

We may not install any used or rebuilt parts without your specific agreement in advance.

**You may not be charged any fee for exercising these rights.**

**WE CHARGE \$ PER HOUR FOR LABOR  
(We round off the time to the nearest .)''**

**The notice shall also contain the following if it applies.**

**''We also charge a flat rate for some repairs. Our service manager will explain what a flat rate is and show you how much it may cost you.''**

**§ 2606. Fee prohibited**

**No repair facility may, directly or indirectly, charge any fee for its performance of any obligation or for the exercise of any right in accordance with this chapter.**

**§ 2607. Unfair trade practice**

**A repair facility's failure to comply with this chapter constitutes an unfair trade practice under Title 5, chapter 10, et seq.**

**§ 2608. Waiver prohibited**

**Unless specifically provided otherwise, the duties imposed by and rights created under this chapter may not be waived or otherwise modified. Any waiver or modification is contrary to public policy and is void and unenforceable.**

**§ 2609. Savings clause**

**This chapter is in addition to, and does not limit or replace in anyway, rights or procedures provided to customers either by statute or by common law.**

**STATEMENT OF FACT**

Section 1 requires automakers to reimburse auto dealers at the same rate for labor normally charged other customers when repairs are not covered by warranty. With their superior bargaining position, automakers have in the past forced dealers to accept reimbursement at a rate substantially lower than the dealers' usual retail rate. The net effect has been that, through an inflated labor rate, nonwarranty customers have subsidized automakers who were unwilling to pay the fair and full price for repairs made necessary when their automobiles failed to meet warranty standards. This section prevents the recurrence of this problem and, to avoid any possible abuse, requires dealers to post their normal labor rate.

Under present law, used cars are the only type of consumer goods that may be sold with an exclusion or modification of the Uniform Commercial Code's implied warranties, in other words, "as is". Section 2 eliminates this exception. Section 3 does not make a substantive change in the law but merely clarifies a point of possible confusion, specifically, that implied warranties need not be set forth in writing, as are express warranties.

Section 4 helps protect the auto repair customer against common abuses and helps to eliminate misunderstanding between the customer and the repair shop. This new chapter accomplishes these purposes responsibly, without creating a massive licensing bureaucracy or a cumbersome regulatory scheme and without imposing unfair or unreasonable burdens on repair shops. The law would apply to auto repairs of all kinds, including mechanical and body work and to any repair shop doing business with the public for compensation. It would also cover any customer, whether consumer or commercial. The law would require a repair shop to give the customer a special opportunity to designate in writing a specific amount over which the customer will not be liable without further, specific agreement. The customer would have to be given a copy of the designation at the time it is made. Before the customer pays the final bill, the shop would have to give the customer a special opportunity to inspect any replaced parts and return any which the customer requests, unless the shop is required to return them to the manufacturer or distributor. Repair shops would be prohibited from installing rebuilt parts without the customer's consent in advance. The law would require every repair shop to post a conspicuous notice informing customers of their legal rights and the shop's rates. Finally, the law would authorize the Attorney General to enforce the law under the Unfair Trade Practices Act.