

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 850

H. P. 718

House of Representatives, February 13, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Brannigan of Portland.

Cosponsors: Representative Tarbell of Bangor, Representative Aloupis of Bangor, Senator N. Clark of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT Relating to the Used Car Information Act.

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

Sec. 1. 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 and implied warranties of merchantability arising in connection with transactions under this chapter may be excluded or modified only in accordance with section 1473-A.

Sec. 2. 10 MRSA § 1473-A is enacted to read:

§ 1473-A. Implied warranty of merchantability

1. Exclusion or modification. The implied warranty of merchantability may be excluded or modified as to any part of a used motor vehicle by making an appropriate designation on the following written statement:

“IMPLIED WARRANTY OF MERCHANTABILITY

This vehicle is warranted to be reasonably suitable for ordinary transportation, taking into consideration its description and appearance. Any part listed below with a ✓ or an X in the adjacent box is NOT covered by this warranty.

- BODY**
- BRAKES**
- COOLING SYSTEM**
- ENGINE**
- EXHAUST SYSTEM**
- FUEL SYSTEM**
- STEERING**
- SUSPENSION**
- TRANSMISSION**
- WHEELS/AXLES**
- ALL OTHER PARTS**

Any lawsuit based on a breach of any implied warranty of merchantability above must be brought within _____ months of the date of sale.”

2. Purchaser’s copy. Whether or not the implied warranty of merchantability is excluded or modified, the dealer shall furnish the statement contained in subsection 1 to the purchaser before transferring title, accepting any part of the purchase price or making an agreement to sell, if any, whichever of these events occurs earliest. No exclusion or modification of the implied warranty or merchantability under subsection 1 may be effective unless, in addition to complying with section 1475, subsection 1, the dealer complies with this subsection.

3. Statute of limitations. Notwithstanding any provision of Title 11, Article 2 to the contrary, an action for breach of the implied warranty under this chapter shall be commenced within 2 years after the cause of action has accrued. The dealer and the purchaser may, in the manner prescribed in subsection 1, reduce the period of limitation to not less than one year.

Sec. 3. 10 MRSA § 1475, sub-§ 1, as enacted by PL 1975, c. 770, § 57, is repealed and the following enacted in its place:

1. Written disclosure statement. No dealer may sell, negotiate the sale of, offer for sale or transfer any used motor vehicle unless he affixes to the vehicle a conspicuous written statement containing the information required by subsection 2.

Sec. 4. 10 MRSA § 1475, sub-§ 2, ¶¶ C and D, as enacted by PL 1975, c. 770, § 57, are amended to read:

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; and

Sec. 5. 10 MRSA § 1475, sub-§ 2, ¶ E is enacted to read:

E. Whether or not the implied warranty of merchantability is excluded or modified, a statement, fully and conspicuously disclosed, containing at least the first paragraph and checklist of the statement required to be furnished under section 1473-A, subsection 1.

Sec. 6. 10 MRSA § 1477, sub-§ 2 is enacted to read:

2. Civil penalty. In addition to any other remedy, if a dealer violates this chapter, he shall be liable to the purchaser in an amount determined by the court not less than \$100 nor more than \$1,000 and for costs and reasonable attorney's fees. No action may be brought under this subsection more than 6 years after the date of the occurrence of the violation. No dealer may be held liable under this subsection if it shows by a preponderance of evidence that the violation was unintentional and a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

STATEMENT OF FACT

State law requires used car dealers to disclose certain information to consumers about mechanical defects and collision damage. The law also requires every seller of new or used consumer goods to guarantee what he sells as being of fair and average quality, taking into account their age, description and appearance. This guarantee is called the implied warranty of merchantability. Used car dealers are the only type of merchants who may legally disclaim or renounce this obligation. This bill makes 2 procedural changes in these laws.

1. The bill requires that used car disclosures be "window-posted" on the vehicle. The law presently allows dealers to give these disclosures immediately before accepting the customer's payment. Information that might be important to the customer's decision is thus lost in a sheaf of paper exchanged across a desk at the time of sale. "Window-posting" on the other hand, will help consumers shop more knowledgeably before they've made up their minds.

2. The bill requires a used car dealer to specify which major parts he refused to guarantee as being of average quality; he can do this on a short, simple checklist prescribed in the bill. Presently, a dealer can disclaim his implied warranty obligation simply by inserting a phrase like "as is" in the contract. This

bill still permits the dealer to disclaim whatever he wishes, but a "check list" method will help consumers know which parts of a vehicle they should examine more closely.

In addition, the bill makes dealers liable to purchasers in a fixed amount for violations of the disclosure law. This device is common in consumer legislation where significant financial harm is difficult to prove; it will be an effective enforcement tool as well.