

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1125

H. P. 949

House of Representatives, March 5, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Locke of Sebec.

Cosponsor: Representative Hayden of Durham.

STATE OF MAINE

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

AN ACT Relating to Attorney's Fees and Costs in Certain Lawsuits Arising out of Consumer Transactions.

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

Sec. 1. 11 MRSA § 2-316, sub-§ (5), ¶ (a), as enacted by PL 1973, c. 444, is amended by adding at the end a new sentence to read:

Any attempt to disclaim implied warranties or to modify or exclude consumer remedies in violation of this subsection shall constitute an unfair and deceptive practice declared unlawful under Title 5, section 207.

Sec. 2. 11 MRSA § 2-316, sub-§ (5), ¶ (b) is enacted to read:

(b) In addition to any damages available to a consumer prevailing in a suit for breach of the implied warranties guaranteed by sections 2-314 and 2-315, and irrespective of the amount in controversy, the prevailing consumer shall be awarded reasonable attorney's fees and costs incurred in connection with the suit.

Sec. 3. 11 MRSA § 2-711, sub-§ (4) is enacted to read:

(4) Where the buyer rightfully rejects or justifiably revokes acceptance of goods purchased for personal or family or household purposes, the buyer shall recover the costs, including reasonable attorney's fees, of enforcing his rights under this Part.

Sec. 4. 11 MRSA § 2-719, sub-§ (1), first sentence is amended to read:

Subject to the provisions of subsections (2) ~~and~~, (3) ~~and~~ (4) of this section and of section 2-718 on liquidation of damages:

Sec. 5. 11 MRSA § 2-719, sub-§ (4) is enacted to read:

(4) The buyer's remedy under section 2-711, subsection (4), may not be modified or limited. Any such modification or limitation is void and unenforceable.

STATEMENT OF FACT

Under current law, the purchaser of goods may return the goods to the seller and recover the purchase price or other damages when the goods have substantial defects, Title 11, sections 2-508, 2-601 and 2-608. The purpose of this bill is to restore the buyer to the position he was in before he purchased the goods. However, a consumer cannot be made completely whole unless he is reimbursed for the costs, including attorney's fees, incurred in enforcing his right to cancel the purchase. These costs have effectively prevented many consumers from enforcing their rights, a problem eliminated under this bill.

Presently under Maine law, Title 11, section 2-316, subsection (5), paragraph (a), breaches of implied warranties are unfair trade practices under Title 5, section 207. A consumer successfully suing for breaches of the implied warranties under Title 11, section 2-314, merchantability, and section 2-315, fitness for a particular purpose, is therefore entitled to attorney's fees. The bill clarifies the section establishing that right and indicates that no change or reduction of the consumer's right to attorney's fees in these cases is intended.