

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1160
6

7 H.P. 819

House of Representatives, March 28, 1985

8 On motion of Representative Brannigan of Portland, referred to the
9 Committee on Business and Commerce. Sent up for concurrence and ordered
10 printed.

EDWIN H. PERT, Clerk

Presented by Representative Brannigan of Portland.

11 Cosponsored by Representative Warren of Scarborough.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Amend the Maine Lemon Law.
18

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

21 Sec. 1. 10 MRSA §1161, sub-§4 is enacted to
22 read:

23 4. Reasonable allowance for use. "Reasonable
24 allowance for use" means that amount obtained by mul-
25 tiplying the total purchase price of the vehicle by a
26 fraction having as its denominator 100,000 and having
27 as its numerator the number of miles that the vehicle
28 traveled prior to the manufacturer's acceptance of
29 its return.

30 Sec. 2. 10 MRSA §1162, sub-§3 is enacted to
31 read:

32 3. Waivers void. Any agreement entered into by
33 a consumer which waives, limits or disclaims the
34 rights set forth in this chapter shall be void as

1 contrary to public policy. These rights shall inure
2 to a subsequent transferee of the motor vehicle.

3 Sec. 3. 10 MRSA §1163, as enacted by PL 1983, c.
4 145, is amended to read:

5 §1163. Rights and duties

6 1. Repair of nonconformities. If a new motor
7 vehicle does not conform to all applicable express
8 warranties, and the consumer reports the nonconformi-
9 ty to the manufacturer, its agent or its authorized
10 dealer during the term of the express warranties or
11 within a period of one year following the date of
12 original delivery of the motor vehicle to a consumer,
13 whichever is the earlier date, the manufacturer, its
14 agent or its authorized dealer shall make those re-
15 pairs necessary to conform the vehicle to the express
16 warranties, notwithstanding the fact that the repairs
17 are made after the expiration of that term or that
18 one-year period. if the consumer reports the noncon-
19 formity to the manufacturer, its agent or its autho-
20 riized dealer within the following time periods:

21 A. In the case of a motor vehicle sold before
22 October 1, 1985, during the term of the express
23 warranties or within a period of one year follow-
24 ing the date of original delivery of the motor
25 vehicle to a consumer, whichever is the earlier
26 date; and

27 B. In the case of a motor vehicle sold on or af-
28 ter October 1, 1985, during the term of the ex-
29 press warranties, within a period of 2 years fol-
30 lowing the date of original delivery of the motor
31 vehicle to a consumer, or during the first 18,000
32 miles of operation, whichever is the earlier
33 date.

34 This obligation exists notwithstanding the fact that
35 the repairs are made after the expiration of the ap-
36 propriate time period.

37 2. Failure to make effective repair. If the
38 manufacturer or its agents or authorized dealers are
39 unable to conform the motor vehicle to any applicable

1 express warranty by repairing or correcting any defect or condition which substantially impairs the use
2 and, safety or value of the motor vehicle after a
3 reasonable number of attempts, the manufacturer shall
4 replace the motor vehicle with a comparable new motor
5 vehicle acceptable to the consumer or accept return
6 of the vehicle from the consumer and make a refund to
7 the consumer the full purchase price, including all
8 collateral charges, less a reasonable allowance for
9 the consumer's use of the vehicle. Refunds shall be
10 made to the consumer and lienholder, if any, as their
11 interests may appear. A reasonable allowance for use
12 is that amount directly attributable to use by the
13 consumer prior to his first report of the nonconform-
14 ity to the manufacturer, agent or dealer, and during
15 any subsequent period when the vehicle is not out of
16 service by reason of repair. In determining the rea-
17 sonable allowance, the parties may take into account
18 the rate of mileage reimbursement paid to state em-
19 ployees pursuant to Title 5, section 8. The refund
20 shall consist of the following items, less a reason-
21 able allowance for use of the vehicle:
22

23 A. The full purchase price;

24 B. All collateral charges, including, but not
25 limited to, sales tax, license and registration
26 fees and similar government charges; and

27 C. All incidental damages, as defined in Title
28 11, section 2-715.

29 3. Reasonable number of attempts; presumption.
30 It is presumed that a reasonable number of attempts
31 have been undertaken to conform a motor vehicle to
32 the applicable express warranties, if:

33 A. The In the case of a motor vehicle sold be-
34 fore October 1, 1985, the same nonconformity has
35 been subject to repair 4 or more times by the
36 manufacturer or its agents or authorized dealers
37 within the express warranty term or during the
38 period of one year following the date of original
39 delivery of the motor vehicle to a consumer,
40 whichever is the earlier date, and at least 2 of
41 those times to the same agent or dealer, but the
42 nonconformity continues to exist; or

1 A-1. In the case of a motor vehicle sold on or
2 after October 1, 1985, the same nonconformity has
3 been subject to repair 4 or more times by the
4 manufacturer or its agents or authorized dealers
5 within the express warranty term, during the pe-
6 riod of 2 years following the date of original
7 delivery of the motor vehicle to a consumer or
8 during the first 18,000 miles of operation,
9 whichever is the earlier date, and at least 2 of
10 those times to the same agent or dealer, but the
11 nonconformity continues to exist; or

12 B. The vehicle is out of service by reason of
13 repair, by the manufacturer, its agents or autho-
14 rized dealer, of any nonconformities covered un-
15 der subsection 2 for a cumulative total of 30 or
16 more business days during that warranty term or
17 ~~that one-year~~ the appropriate time period, which-
18 ever is the earlier date.

19 4. Time limit; extension. The term of an ex-
20 press warranty, the one-year and 2-year period
21 periods following delivery and the 30-day period pro-
22 vided in subsection 3, paragraph B, shall be extended
23 by any period of time during which repair services
24 are not available to the consumer because of a war,
25 invasion, strike or fire, flood or other natural di-
26 saster.

27 5. Dealer liability. Nothing in this chapter
28 may be construed as imposing any liability on a deal-
29 er or creating a cause of action by a consumer
30 against a dealer under this section, except regarding
31 any written express warranties made by the dealer
32 apart from the manufacturer's own warranties.

33 6. Disclosure of notice requirement. No consum-
34 er may be required to notify the manufacturer of a
35 claim under this section, unless the manufacturer has
36 clearly and conspicuously disclosed to the consumer,
37 in the warranty or owner's manual, that written noti-
38 fication of the nonconformity is required before the
39 consumer may be eligible for a refund or replacement
40 of the vehicle. The manufacturer shall include with
41 the warranty or owner's manual the name and address
42 to which the consumer shall send the written notifi-
43 cation.

1 7. Disclosure at time of resale. No motor vehi-
2 cle which is returned to the manufacturer under sub-
3 section 2, may be resold without clear and conspicu-
4 ous written disclosure to any subsequent purchaser,
5 whether that purchaser is a consumer or a dealer, of
6 the following information:

7 A. That the motor vehicle was returned to the
8 manufacturer under this chapter;

9 B. That the motor vehicle did not conform to the
10 manufacturer's express warranties; and

11 C. The ways in which the motor vehicle did not
12 conform to the manufacturer's express warranties.

13 Sec. 4. 10 MRSA §1164, sub-§1, as enacted by PL
14 1983, c. 145, is amended to read:

15 1. Lack of impairment. An alleged nonconformity
16 does not substantially impair the use and, safety or
17 value of the motor vehicle; or

18 Sec. 5. 10 MRSA §1165, as enacted by PL 1983, c.
19 145, is amended to read:

20 §1165. Informal dispute settlement

21 If a manufacturer has established an informal
22 dispute settlement procedure which complies in all
23 respects with the provisions of 16 Code of Federal
24 Regulations, Part 703, as from time to time amended,
25 the provisions of section 1163, subsection 2, con-
26 cerning refunds or replacement shall not apply to any
27 consumer who has not first resorted to that proce-
28 dure. This requirement shall be satisfied 40 days
29 after notification to the informal dispute settlement
30 procedure of the dispute or when the procedure's du-
31 ties under 16 Code of Federal Regulations, Part 703.6
32 (d), are completed, whichever occurs sooner.

33 Sec. 6. 10 MRSA §1166 is enacted to read:

34 §1166. Unfair or deceptive trade practice

35 A violation of any of the provisions of this
36 chapter shall be considered an unfair or deceptive
37 trade practice under Title 5, chapter 10.

1 8. It allows attorneys' fees to be awarded in
2 limited circumstances.

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