

MAINE STATE LEGISLATURE

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(New Draft of S.P. 326, L.D. 954)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1735

S.P. 584

In Senate, June 3, 1987

Reported by Senator Whitmore of Androscoggin for the Committee on Business Legislation and printed under Joint Rule 2. Original Bill sponsored by Senator Brannigan of Cumberland. Cosponsored by: Representative Cote of Auburn, Representative Gurney of Portland.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

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

AN ACT to Amend the Maine Lemon Laws.

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

5 Sec. 1. 10 MRSA §1161, sub-§1, as enacted by PL
6 1983, c. 145, is amended to read:

7 1. Consumer. "Consumer" means the purchaser,
8 other than for purposes of resale, or the lessee, of
9 a motor vehicle, any person to whom the motor vehicle
10 is transferred during the duration of an express war-
11 ranty applicable to the motor vehicle and any other
12 person entitled by the terms of the warranty to en-
13 force the obligations of the warranty, except that
14 the term "consumer" shall not include any governmen-
15 tal entity, or any business or commercial enterprise
16 which registers 3 or more motor vehicles.

1 Sec. 2. 10 MRSA §1161, sub-§3, as enacted by PL
2 1983, c. 145, is amended to read:

3 3. Motor vehicle. "Motor vehicle" means any mo-
4 tor driven vehicle, designed for the conveyance of
5 passengers or property on the public highways, which
6 is sold or leased in this State, except that the term
7 "motor vehicle" does not include any commercial vehi-
8 cle with a gross vehicle weight of 8,500 pounds or
9 more.

10 Sec. 3. 10 MRSA §1163, sub-§§2 and 3, as amended
11 by PL 1985, c. 220, §3, are further amended to read:

12 2. Failure to make effective repair. If the
13 manufacturer or its agents or authorized dealers are
14 unable to conform the motor vehicle to any applicable
15 express warranty by repairing or correcting any de-
16 fect or condition, or combination of defects or con-
17 ditions, which substantially impairs the use, safety
18 or value of the motor vehicle after a reasonable num-
19 ber of attempts, the manufacturer shall either re-
20 place the motor vehicle with a comparable new motor
21 vehicle or accept return of the vehicle from the con-
22 sumer and make a refund to the consumer and lienhold-
23 er, if any, as their interests may appear. The con-
24 sumer may reject any offered replacement and receive
25 instead a refund. The refund shall consist of the
26 following items, less a reasonable allowance for use
27 of the vehicle:

28 A. The full purchase price or, if a leased vehi-
29 cle, the lease payments made to date;

30 B. All collateral charges, including, but not
31 limited to, sales tax, license and registration
32 fees and similar government charges; and

33 C. Costs incurred by the consumer for towing and
34 storage of the vehicle and for procuring alterna-
35 tive transportation while the vehicle was out of
36 service by reason of repair.

37 The provisions of this section shall not affect the
38 obligations of a consumer under a loan or sales con-
39 tract or the secured interest of any secured party.

1 The secured party shall consent to the replacement of
2 the security interest with a corresponding security
3 interest on a replacement motor vehicle which is ac-
4 cepted by the consumer in exchange for the motor ve-
5 hicle, if the replacement motor vehicle is comparable
6 in value to the original motor vehicle. If, for any
7 reason, the security interest in the new motor vehi-
8 cle having a defect or condition is not able to be
9 replaced with a corresponding security interest on a
10 new motor vehicle accepted by the consumer, the con-
11 sumer shall accept a refund. Refunds required under
12 this section shall be made to the consumer and the
13 secured party, if any, as their interests exist at
14 the time the refund is to be made. Similarly, refunds
15 to a lessor and lessee shall be made as their inter-
16 ests exist at the time the refund is to be made.

17 3. Reasonable number of attempts; presumption.
18 It is presumed that a reasonable number of attempts
19 have been undertaken to conform a motor vehicle to
20 the applicable express warranties, if:

21 A. In the case of a motor vehicle sold before
22 October 1, 1985, the same nonconformity has been
23 subject to repair 4 3 or more times by the manu-
24 facturer or its agents or authorized dealers
25 within the express warranty term or during the
26 period of one year following the date of original
27 delivery of the motor vehicle to a consumer,
28 whichever is the earlier date, and at least 2 of
29 those times to the same agent or dealer, but the
30 nonconformity continues to exist;

31 A-1. In the case of a motor vehicle sold on or
32 after October 1, 1985, the same nonconformity has
33 been subject to repair 4 3 or more times by the
34 manufacturer or its agents or authorized dealers
35 within the express warranty term, during the pe-
36 riod of 2 years following the date of original
37 delivery of the motor vehicle to a consumer or
38 during the first 18,000 miles of operation,
39 whichever is the earlier date, and at least 2 of
40 those times to the same agent or dealer, but the
41 nonconformity continues to exist; or

42 B. The vehicle is out of service by reason of
43 repair, by the manufacturer, its agents or autho-

1 rized dealer, of any nonconformities defect or
2 condition or combination of defects or conditions
3 covered under subsection 2 for a cumulative total
4 of 30 15 or more business days during that war-
5 ranty term or the appropriate time period, which-
6 ever is the earlier date.

7 Sec. 4. 10 MRSA §1163, sub-§3-A is enacted to
8 read:

9 3-A. Final opportunity to repair. If the manu-
10 facturer or his agents have been unable to make the
11 repairs necessary to conform the vehicle to the ex-
12 press warranties, the consumer shall notify, in writ-
13 ing, the manufacturer or the authorized dealer of his
14 desire for a refund or replacement. For the 7 busi-
15 ness days following receipt by the dealer or the man-
16 ufacturer of this notice, the manufacturer shall have
17 a final opportunity to correct or repair any
18 nonconformities. This final repair effort shall be at
19 a repair facility that is reasonably accessible to
20 the consumer. This repair effort shall not stay the
21 time period within which the manufacturer must pro-
22 vide an arbitration hearing pursuant to section 1165.

23 Sec. 5. 10 MRSA §1163, sub-§4, as amended by PL
24 1985, c. 220, §3, is further amended to read:

25 4. Time limit; extension. The term of an ex-
26 press warranty, the one-year and 2-year periods fol-
27 lowing delivery and the 30-day 15-day period provided
28 in subsection 3, paragraph B, shall be extended by
29 any period of time during which repair services are
30 not available to the consumer because of a war, inva-
31 sion, strike or fire, flood or other natural disas-
32 ter.

33 Sec. 6. 10 MRSA §1163, sub-§5, as enacted by PL
34 1985, c. 220, §3, is amended to read:

35 6. Disclosure of notice requirement. No consum-
36 er may be required to notify the manufacturer of a
37 claim under this section, unless the manufacturer
38 manufacturer has clearly and conspicuously disclosed
39 to the consumer, in the warranty or owner's manual,
40 that written notification of the nonconformity is re-

1 quired before the consumer may be eligible for a re-
2 fund or replacement of the vehicle. The manufacturer
3 shall include with the warranty or owner's manual the
4 name and address to which the consumer shall send the
5 written notification.

6 Sec. 7. 10 MRS §1163, sub-§6-A is enacted to
7 read:

8 6-A. Notification of dealer. Consumers may also
9 satisfy a manufacturer's notice requirement by noti-
10 fying in writing the authorized dealer of a claim un-
11 der this section. The dealer shall act as the manu-
12 facturer's agent and immediately communicate to the
13 manufacturer the consumer's claim.

14 Sec. 8. 10 MRS §1168 is enacted to read:

15 §1168. New car leases

16 For the purposes of this chapter only, the fol-
17 lowing apply to leases of new motor vehicles.

18 1. Warranties. If express warranties are regu-
19 larly furnished to purchasers of substantially the
20 same kind of motor vehicles:

21 A. Those warranties shall be deemed to apply to
22 the leased motor vehicles; and

23 B. The consumer lessee shall be deemed to be the
24 first purchaser of the motor vehicle for the pur-
25 pose of any warranty provisions limiting warranty
26 benefits to the original purchaser.

27 2. Lessee's rights. The lessee of a motor vehi-
28 cle has the same rights under this chapter against
29 the manufacturer and any person making express war-
30 ranties that the lessee would have under this chapter
31 if the vehicle had been purchased by the lessee. The
32 manufacturer and any person making express warranties
33 have the same duties and obligations under this chap-
34 ter with respect to the vehicle that the manufacturer
35 and other person would have under this chapter if the
36 goods had been sold to the lessee.

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STATEMENT OF FACT

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This new draft accomplishes the following.

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1. Current law exempts business vehicles from provisions of the lemon laws. The original bill removed the exemption. This new draft puts it back in.

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2. The new draft clarifies the provision of the original bill that a consumer may reject a replacement vehicle and elect a refund.

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3. The new draft states that the law shall not affect the obligation of the purchaser to anyone from whom he has secured a loan to enable him to purchase the vehicle. It states that the person making the loan must accept a comparable value replacement vehicle as security for the loan.

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4. The new draft gives the manufacturer one final opportunity to repair the vehicle.

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5. The new draft eliminates the legislative study of the arbitration provisions of the lemon laws. The Department of the Attorney General has indicated that it can perform this study and report the results to the committee. It indicated that no funding will be necessary.

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