

# MAINE STATE LEGISLATURE

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L.D. 1413  
(Filing No. S-222 )

STATE OF MAINE  
SENATE  
114TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A" to S.P. 517, L.D. 1413, Bill, "An Act to Establish a State Arbitration Program for Lemon Motor Vehicles"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 10 MRSA §1161, sub-§5 is enacted to read:

5. State-certified arbitration. "State-certified arbitration" means the informal dispute settlement procedure administered by the Department of the Attorney General which arbitrates consumer complaints dealing with new motor vehicles that may be so defective as to qualify for equitable relief under the Maine lemon laws.

Sec. 2. 10 MRSA §1163, sub-§1, as amended by PL 1985, c. 220, §3, is repealed and the following enacted in its place:

1. Repair of nonconformities. If a new motor vehicle does not conform to all express warranties, the manufacturer, its agent or authorized dealer shall make those repairs necessary to conform the vehicle to the express warranties if the consumer reports the nonconformity to the manufacturer, its agent or authorized dealer during the term of the express warranties, within a period of 2 years following the date of original delivery of the motor vehicle to a consumer, or during the first 18,000 miles of operation, whichever is the earlier date. This obligation exists notwithstanding the fact that the repairs are made after the expiration of the appropriate time period.

Sec. 3. 10 MRSA §1163, sub-§3, as amended by PL 1987, c. 359, §3, is repealed and the following enacted in its place:

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3. Reasonable number of attempts; presumption. There is a presumption that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if:

A. The same nonconformity has been subject to repair 3 or more times by the manufacturer or its agents or authorized dealers within the express warranty term, during the period of 2 years following the date of original delivery of the motor vehicle to a consumer or during the first 18,000 miles of operation, whichever is the earlier date, and at least 2 of those times the same agent or dealer attempted the repair but the nonconformity continues to exist; or

B. The vehicle is out of service by reason of repair by the manufacturer, its agents or authorized dealer, of any defect or condition or combination of defects for a cumulative total of 15 or more business days during that warranty term or the appropriate time period, whichever is the earlier date.

Sec. 4. 10 MRSA §1165, as amended by PL 1985, c. 220, §5, is further amended to read:

**§1165. Informal dispute settlement**

If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of 16 Code of Federal Regulations, Part 703, as from time to time amended, the provisions of section 1163, subsection 2, concerning refunds or replacement shall not apply to any consumer who has not first resorted to that procedure or to state-certified arbitration. This requirement shall be satisfied 40 days after notification to the informal dispute settlement procedure of the dispute or when the procedure's duties under 16 Code of Federal Regulations, Part 703.5 (d), are completed, whichever occurs sooner.

Sec. 5. 10 MRSA §1169 is enacted to read:

**§1169. State-certified, new car arbitration**

1. Neutral new car arbitration. All manufacturers shall submit to state-certified, new car arbitration if arbitration is requested by the consumer within 2 years from the date of original delivery to the consumer of a new motor vehicle or during the first 18,000 miles of operation, whichever comes first. State-certified arbitration shall be performed by one or more neutral arbitrators selected by the Department of the Attorney General operating in accordance with the rules promulgated pursuant to this chapter. The Attorney General may

1 contract with an independent entity to provide arbitration or  
2 may establish the Attorney General's office own corps of neutral  
3 arbitrators. Each party to an arbitration is entitled to one  
4 rejection of a proposed arbitrator.

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6 2. Written findings. Each arbitration shall result in a  
7 written finding of whether the motor vehicle in dispute meets the  
8 standards set forth by this chapter for vehicles that are  
9 required to be replaced or refunded. This finding shall be  
10 issued within 45 days of receipt of a properly completed  
11 application by the Department of the Attorney General of a  
12 written request by a consumer for state-certified arbitration  
13 under this section. All findings of fact issuing from a  
14 state-certified arbitration shall be taken as admissible evidence  
15 of whether the standards set forth in this chapter for vehicles  
16 required to be refunded or replaced have been met in any  
17 subsequent action brought by either party ensuing from the matter  
18 considered in the arbitration. The finding reporting date may be  
19 extended by 5 days if the arbitrator seeks an independent  
20 evaluation of the motor vehicle.

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22 3. Administered by Attorney General. The Department of the  
23 Attorney General shall promulgate rules governing the proceedings  
24 of state-certified arbitration which shall promote fairness and  
25 efficiency. These rules shall include, but are not limited to, a  
26 requirement of the personal objectivity of each arbitrator in the  
27 results of the dispute that that arbitrator will hear, and the  
28 protection of the right of each party to present its case and to  
29 be in attendance during any presentation made by the other party.

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31 4. Consumer arbitration relief. If a motor vehicle is  
32 found by state-certified arbitration to have met the standards  
33 set forth in section 1163, subsection 2, for vehicles required to  
34 be replaced or refunded, and if the manufacturer of the motor  
35 vehicle is found to have failed to provide the refund or  
36 replacement as required, the manufacturer shall, within 21 days  
37 from the receipt of a finding, deliver the refund or replacement,  
38 including the costs and collateral charges set forth in section  
39 1163, subsection 2, or appeal the finding in Superior Court. For  
40 good cause, a manufacturer may seek from the Department of the  
41 Attorney General an extension of the time within which it must  
42 deliver to the consumer a replacement vehicle.

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44 5. Manufacturer's appeal of arbitration decision. No  
45 appeal by a manufacturer may be heard unless the petition for  
46 appeal is filed with the clerk of the Superior Court within 21  
47 days of issuance of the finding of the state-certified  
48 arbitration.

49  
50 In the event that any state-certified arbitration resulting in an  
51 award of a refund or replacement is upheld by the court, recovery

1 by the consumer may include continuing damages up to the amount  
2 of \$25 per day for each day subsequent to the day the motor  
3 vehicle was returned to the manufacturer, pursuant to section  
4 1163, that the vehicle was out of use as a direct result of any  
5 nonconformity, not issuing from owner negligence, accident,  
6 vandalism or any attempt to repair or substantially modify the  
7 vehicle by a person other than the manufacturer, its agent or  
8 authorized dealer, provided that the manufacturer did not make a  
9 comparable vehicle available to the consumer free of charge.

11 In addition to any other recovery, any prevailing consumer shall  
12 be awarded reasonable attorney's fees and costs. If the court  
13 finds that the manufacturer did not have any reasonable basis for  
14 its appeal or that the appeal was frivolous, the court shall  
15 double the amount of the total award to the consumer.

17 6. Consumer's rights if arbitrator denies relief. The  
18 provisions of this chapter shall not be construed to limit or  
19 restrict in any way the rights or remedies provided to consumers  
20 under any other state law. If any consumer is dissatisfied with  
21 any finding of state-certified arbitration, the consumer shall  
22 have the right to apply to the manufacturer's informal dispute  
23 settlement procedure, if the consumer has not already done so.

25 7. Disclosure of consumer lemon law rights. A clear and  
26 conspicuous disclosure of the rights of the consumer under this  
27 chapter shall be provided by the manufacturer to the consumer  
28 along with ownership manual materials. The form and manner of  
29 these notices shall be prescribed by the Department of the  
30 Attorney General. The notice disclosures shall not include  
31 window stickers.

33 8. Manufacturer's failure to abide by arbitrator's  
34 decision. The failure of a manufacturer either to abide by the  
35 decision of state-certified arbitration or to file a timely  
36 appeal shall entitle any prevailing consumer who has brought an  
37 action to enforce this chapter to an award of no less than 2  
38 times the actual award, unless the manufacturer can prove that  
39 the failure was beyond the manufacturer's control or can show it  
40 was the result of a written agreement with the consumer.

41 9. Consumer request for information. Upon request from the  
42 consumer, the manufacturer or dealer shall provide a copy of all  
43 repair records for the consumer's motor vehicle and all reports  
44 relating to that motor vehicle, including reports by the dealer  
45 or manufacturer concerning inspection, diagnosis or test-drives  
46 of that vehicle and any technical reports, bulletins or notices  
47 issued by the manufacturer regarding the specific make and model  
48 of the consumer's new motor vehicle as it pertains to any  
49 material, feature, component or the performance of the motor  
50 vehicle.

1           10. Penalties. It shall be prima facie evidence of an  
 3           unfair trade practice under Title 5, chapter 10, for a  
 5           manufacturer, within 21 days of receipt of any finding in favor  
 7           of the consumer in state-certified arbitration, to fail to appeal  
           the finding and not deliver a refund or replacement vehicle or  
           not receive from the Department of the Attorney General an  
           extension of time for delivery of the replacement vehicle.

9           11. New car arbitration account. To defray the costs of  
 11           this program, a \$1 arbitration fee shall be collected by the  
 13           authorized dealer from the purchaser as part of the new motor  
 15           vehicle sale agreement. Pursuant to rules adopted by the  
 17           Secretary of State, this fee shall be forwarded annually by the  
           dealer or its successor to the Secretary of State and deposited  
           in the General Fund. At the end of each fiscal year, the  
           Department of the Attorney General shall prepare a report listing  
           the annual money generated and the expenses incurred in  
           administering this arbitration program.

19           **Sec. 6. Appropriation.** The following funds are appropriated  
 21 from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
<b>ATTORNEY GENERAL, DEPARTMENT OF THE</b>		
	(2)	(2)
Positions		
Personal Services	\$33,264	\$46,860
All Other	13,500	18,000
Capital Expenditures	4,000	
<b>DEPARTMENT OF THE ATTORNEY GENERAL</b>		
<b>TOTAL</b>	<u>\$50,764</u>	<u>\$64,860</u>

**FISCAL NOTE**

39           Enactment of this bill will require a General Fund  
 41           appropriation to the Department of the Attorney General in the  
 43           amount of \$50,764 in fiscal year 1989-90, and \$64,860 in fiscal  
 45           year 1990-91. These funds are needed to establish an arbitration  
 47           program for lemon motor vehicles. As stated in this bill, the  
           costs of this program will be defrayed through a \$1 fee collected  
           by the automobile dealer and will be deposited in the General  
           Fund.

49           This bill, if enacted, will result in an increase of revenue  
           to the General Fund of \$52,500 in fiscal year 1989-90, and  
           \$70,000 in fiscal year 1990-91.'

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STATEMENT OF FACT

The major revisions to the bill made in this amendment are as follows.

1. Sections 1 to 6 of the bill are generally removed from this amendment, except for specific provisions necessary to implement the state administered new car arbitration program. For example, revised section 1 now only defines the state lemon arbitration program and revised sections 2 and 3 only delete from current law the unnecessary reference to cars sold before October 1, 1985.

2. The major changes in the state administered new car arbitration program are as follows.

A. In the Maine Revised Statutes, Title 10, section 1169, subsection 1, each party to an arbitration is allowed one opportunity to object to the assigned arbitrator.

B. The findings of a state arbitrator are no longer prima facie evidence in any subsequent actions; rather, they are simply admissible evidence in any subsequent actions.

C. The requirement that the manufacturer put up a bond whenever it appeals an arbitrator's decision is deleted.

D. If the manufacturer appeals the decision of the state arbitrator and then loses that appeal, it is no longer mandatory that the court award \$25 per day damages to the consumer.

E. Instead of a \$5,000 per day fine if the manufacturer refuses to honor the decision of the state arbitrator, such a failure is declared to be prima facie evidence of an unfair trade practice.

F. The Attorney General will publish each year an accounting of the money generated and the expenses incurred in administering this arbitration program. The \$1 arbitration fee will be collected from all new car purchases, but not lessees, and will be forwarded to the Secretary of State and then deposited in the General Fund.

G. The notice provided consumers shall not include window stickers.

3. The amendment adds an appropriation section and a fiscal note to the bill.