

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1413

S.P. 517

In Senate, May 1, 1989

Reference to the Committee on Business Legislation suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BRANNIGAN of Cumberland.

Cosponsored by Representative ALLEN of Washington, Representative
CONSTANTINE of Bar Harbor and Senator TITCOMB of Cumberland.

STATE OF MAINE

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

An Act to Establish a State Arbitration Program for Lemon Motor Vehicles.



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

3 Sec. 1. 10 MRSA §1161, sub-§§3-A and 5 are enacted to read:

5 3-A. Nonconformity. "Nonconformity" means any specific or
7 generic defect or malfunction, or any concurrent combination of
9 defects or malfunctions, that substantially impairs the use,
11 market value or safety of a motor vehicle.

13 5. State-certified, new car arbitration. "State-certified,
15 new car arbitration" means the dispute settlement procedure
17 administered by the Department of the Attorney General which
19 arbitrates consumer complaints dealing with new motor vehicles
21 that may be so defective as to qualify for equitable relief under
23 the Maine lemon law.

25 Sec. 2. 10 MRSA §1163, sub-§1, as amended by PL 1985, c. 220,
27 §3, is repealed and the following enacted in its place:

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

33 Sec. 3. 10 MRSA §1163, sub-§2, as amended by PL 1987, c. 359,
35 §3, is further amended to read:

37 2. Failure to make effective repair. If the manufacturer
39 or its agents or authorized dealers are unable to conform the
41 motor vehicle to any applicable implied or express warranty by
43 repairing or correcting any defect or condition, or combination
45 of defects or conditions, which substantially impairs the use,
47 safety or market value of the motor vehicle after a reasonable
49 number of attempts, the manufacturer, at the consumer's option,
51 shall provide the following equitable remedy: either replace the
motor vehicle with a comparable new motor vehicle or accept
return of the vehicle from the consumer and make a refund to the
consumer and lienholder, if any, as their interests may appear.
The--consumer--may--reject--any--offered--replacement--and--receive
instead--a--refund.--The A refund shall consist of the following
items, less a reasonable allowance for use of the vehicle:

51 A. The full purchase price or, if a leased vehicle, the
lease payments made to date;

1 B. All collateral charges, including, but not limited to,
3 sales tax, license and registration fees and similar
5 government charges; and

7 C. Costs Incidental costs incurred by the consumer due to
9 the breach of warranty, including, but not limited to, costs
11 for towing and storage of the vehicle and for procuring
13 alternative transportation while the vehicle was out of
15 service by reason of repair.

17 The provisions of this section shall not affect the obligations
19 of a consumer under a loan or sales contract or the secured
21 interest of any secured party. The secured party shall consent to
23 the replacement of the security interest with a corresponding
25 security interest on a replacement motor vehicle which is
27 accepted by the consumer in exchange for the motor vehicle, if
the replacement motor vehicle is comparable in value to the
original motor vehicle. If, for any reason, the security interest
in the new motor vehicle having a defect or condition is not able
to be replaced with a corresponding security interest on a new
motor vehicle accepted by the consumer, the consumer shall accept
a refund. Refunds required under this section shall be made to
the consumer and the secured party, if any, as their interests
exist at the time the refund is to be made. Similarly, refunds to
a lessor and lessee shall be made as their interests exist at the
time the refund is to be made.

29 Whenever a vehicle is replaced pursuant to this chapter, the
31 manufacturer shall reimburse the consumer for any registration
33 fees or sales taxes incurred by the consumer as a result of the
35 replacement, and for towing and storage costs and alternative
transportation costs that were a direct result of the vehicle
nonconformity.

37 **Sec. 4. 10 MRSA §1163, sub-§3,** as amended by PL 1987, c. 359,
§3, is repealed and the following enacted in its place:

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

45 A. The same nonconformity has been subject to repair 3 or
47 more times by the manufacturer or its agents or authorized
49 dealers within the applicable warranty term, during the
51 period of 2 years following the date of original delivery of
the motor vehicle to a consumer or during the first 12,000
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

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

11 **Sec. 5. 10 MRSA §1163, sub-§5, as enacted by PL 1983, c. 145,**
13 **is amended to read:**

15 **5. Dealer liability.** Nothing in this chapter may be
17 construed as imposing any liability on a dealer or creating a
19 cause of action by a consumer against a dealer under this
21 section, ~~except regarding any written express warranties made by~~
23 ~~the dealer apart from the manufacturer's own warranties, with~~
25 respect to:

27 A. Failure by an authorized dealer to properly effect
29 preparation, installation of options or repairs when that
31 preparation, installation of options or repairs would have
33 prevented the occurrence of or cured a nonconformity;

35 B. Express warranties offered by an authorized dealer which
37 exceed the provisions of the manufacturer's express
39 warranties; and

41 C. That portion of the cost of reimbursing a consumer for
43 dealer-added options which represents the dealer profit from
45 the addition of those options.

47 The manufacturer shall reimburse its authorized dealer for all
49 incidental and consequential damages, including attorney's fees,
51 incurred by that dealer as a direct result of any legal action
 brought by a consumer under this section.

Sec. 6. 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~~ a 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, new car 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.

1 Any manufacturer selling new motor vehicles in this State
2 shall be required upon request to provide the Department of the
3 Attorney General with statistics concerning its customers'
4 warranty complaints and the resolutions of those complaints.

5 **Sec. 7. 10 MRSA §1169** is enacted to read:
6

7 **§1169. State-certified, new car arbitration**
8

9 **1. Neutral new car arbitration.** All manufacturers shall
10 submit to state-certified, new car arbitration if arbitration is
11 requested by the consumer within 2 years from the date of
12 original delivery to the consumer of a new motor vehicle or
13 during the first 18,000 miles of operation, whichever comes
14 first. State-certified, new car arbitration shall be performed
15 by one or more neutral arbitrators selected by the Department of
16 the Attorney General operating in accordance with the rules
17 promulgated pursuant to this chapter. The Attorney General may
18 contract with a private entity to provide arbitration or may
19 establish its own corps of neutral arbitrators.

20 **2. Written findings.** Each arbitration shall result in a
21 written finding of whether the motor vehicle in dispute meets the
22 standards set forth by this chapter for vehicles that are
23 required to be replaced or refunded. This finding shall be
24 issued within 45 days of receipt by the Department of the
25 Attorney General of a written request by a consumer for
26 state-certified arbitration under this section. All findings of
27 fact issuing from a state-certified, new car arbitration shall be
28 taken as prima facie evidence whether the standards set forth in
29 this chapter for vehicles required to be refunded or replaced
30 have been met in any subsequent action brought by either party
31 ensuing from the matter considered in the arbitration. The
32 finding reporting date may be extended by 5 days if the
33 arbitrator seeks an independent evaluation of the motor vehicle.

34 **3. Administered by Attorney General.** The Department of the
35 Attorney General shall promulgate rules and regulations governing
36 the proceedings of state-certified, new car arbitration which
37 shall promote fairness and efficiency. These rules and
38 regulations shall include, but not be limited to, a requirement
39 of the personal objectivity of each arbitrator in the results of
40 the dispute that arbitrator will hear, and the protection of the
41 right of each party to present its case and to be in attendance
42 during any presentation made by the other party.

43 **4. Consumer arbitration relief.** If a motor vehicle is
44 found by state-certified, new car arbitration to have met the
45 standards set forth by this chapter for vehicles required to be
46 replaced or refunded, and if the manufacturer of the motor
47 vehicle is found to have failed to provide the refund or
48 replacement as required, the manufacturer shall, within 21 days
49 of the finding, provide the refund or replacement.

1 from the issuance of a finding, deliver the refund or
2 replacement, including the incidental and collateral costs set
3 forth in section 1163, or appeal the finding in Superior Court.

5 5. Manufacturer's appeal of arbitration decision. No
6 appeal by a manufacturer may be heard unless the petition for
7 appeal is filed with the clerk of the Superior Court within 21
8 days of issuance of the finding of the state-certified
9 arbitration and is accompanied by a bond in a principal sum equal
10 to the money award made by the state-certified arbitrator plus
11 \$2,500 for anticipated attorney's fees, secured by cash or its
12 equivalent, payable to the consumer.

13 The liability of the surety of any bond filed pursuant to this
14 section shall be limited to the indemnification of the consumer
15 in the action. This bond shall not limit or impair any right or
16 recovery otherwise available pursuant to law, nor shall the
17 amount of the bond be relevant in determining the amount of
18 recovery to which the consumer shall be entitled.

21 In the event that any state-certified arbitration resulting in an
22 award of a refund or replacement is upheld by the court, recovery
23 by the consumer shall include continuing damages in the amount of
24 \$25 per day for each day subsequent to the day the motor vehicle
25 was returned to the manufacturer pursuant to section 1163 that
26 the vehicle was out of use as a direct result of any
27 nonconformity, not issuing from owner negligence, accident,
28 vandalism or any attempt to repair or substantially modify the
29 vehicle by a person other than the manufacturer, its agent or
30 authorized dealer, provided that the manufacturer did not make a
31 comparable vehicle available to the consumer free of charge.

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

39 6. Consumer's rights if arbitrator denies relief. If any
40 consumer is dissatisfied with any finding of state-certified, new
41 car arbitration, the consumer shall have the right to:

43 A. Apply to the manufacturer for an informal dispute
44 settlement procedure, if any; or

45 B. File a civil claim pursuant to this chapter and the
46 Maine Unfair Trade Practices Act, Title 5, chapter 10.

49 7. Disclosure of consumer lemon law rights. A clear and
50 conspicuous listing of the rights of the consumer under this
51 chapter shall be provided the consumer along with ownership
manual materials. In addition, a summary of the consumer rights

1 under this chapter shall be affixed by a sticker to a window of
3 each new car sold in this State. The form and manner of these
5 notices shall be prescribed by the Department of the Attorney
7 General.

8. Manufacturer's failure to abide by arbitrator's
7 decision. The failure of a manufacturer either to abide by the
9 decision of state-certified arbitration or to file a timely
11 appeal shall entitle any prevailing consumer to any award of no
13 less than 2 times the actual award, unless the manufacturer can
15 prove that the failure was beyond the manufacturer's control.

9. Consumer request for information. Upon request from the
13 consumer, the manufacturer or dealer shall provide a copy of all
15 repair records for the consumer's motor vehicle and all reports
17 relating to that motor vehicle, including reports by the dealer
19 or manufacturer concerning inspection, diagnosis or test-drives
21 of that vehicle and any technical reports, bulletins or notices
23 issued by the manufacturer regarding the year and model of the
25 consumer's new motor vehicle as it pertains to any material,
27 feature, component or the performance thereof.

10. Penalties. Whoever, within 21 days of any finding in
23 favor of the consumer of the state-certified, new car
25 arbitration, fails to appeal the finding and does not deliver a
27 refund or replacement vehicle or notify the consumer of the
29 estimated delivery date of the replacement vehicle, shall be
31 punished by a fine of \$5,000 per day until the delivery of the
33 refund or replacement. The estimated delivery date shall not
35 exceed 60 days from the date the manufacturer notifies the
37 consumer that a delivery will be made. The fine shall not exceed
39 \$50,000 for each violation. The amount of the fine shall begin
41 to accumulate on the 22nd day following the arbitration
43 decision. If 81 days have elapsed from the issuance of a finding
45 in favor of the consumer of the state-certified, new car
47 arbitration and no appeal has been taken and no award delivered
49 and no fine paid, the Attorney General shall initiate proceedings
in District Court or Superior Court against the manufacturer for
failure to pay the fine.

11. New car arbitration account. To defray the costs of
41 this program, a \$1 arbitration fee shall be collected by the
43 authorized dealer or lessor from the consumer as part of the new
45 motor vehicle sale or lease agreement. This fee shall be
47 forwarded to the State Tax Assessor and deposited in the General
49 Fund.

1 STATEMENT OF FACT

3 This bill adopts a state-administered lemon law arbitration
5 program which would be available to any Maine consumer who has
7 purchased a seriously defective new motor vehicle. State
9 arbitration would be limited to the issue of whether a motor
11 vehicle was so defective as to be eligible for a refund or
13 replacement by the manufacturer under the Maine lemon law.

15 Most states, including this State, have enacted automobile
17 lemon laws, which statutorily define when a car is so defective
19 as to be considered a lemon. However, in order to take advantage
21 of the statutory remedies, lemon owners are required to first
23 utilize the manufacturer's arbitration program, if the program
25 meets federal standards.

27 In response to consumer dissatisfaction with the
29 manufacturers' arbitration programs, states such as New York,
31 Connecticut, Vermont and others have established state-operated
33 lemon arbitration programs. This bill proposes a state
35 arbitration program modeled on the Massachusetts approach. The
37 Attorney General's Consumer and Antitrust Division would process
39 all potential lemon complaints and then assign, by bid, the
41 actual arbitration to a neutral arbitrator.

43 Unlike the arbitration boards established by the
45 manufacturers, the state arbitrator program is required to order
47 a refund or replacement, rather than further repairs, whenever
49 the consumer's vehicle meets the statutory definition of a lemon.

51 This arbitration program would be financed by a \$1 fee
collected by the dealer at the completion of the sale and
deposited in the General Fund.

53 In addition to establishing a state-administered lemon law
55 arbitration program, this bill revises the Maine lemon law in the
57 following ways:

- 59 1. Defines when a lemon motor vehicle is in nonconformity
61 with express or implied warranties;
- 63 2. Allows consumers to apply lemon law remedies to breaches
65 of not only express warranties but also implied warranties;
- 67 3. Makes clear that it is the consumer's choice whether to
69 accept a refund or replacement for a lemon vehicle;
- 71 4. Ensures that owners of lemon vehicles will be reimbursed
73 for incidental costs related to owning the lemon vehicle;
- 75 5. Further limits the dealer's, as opposed to the
77 manufacturer's, liability for selling a lemon motor vehicle;

1

3 6. Clarifies that the Maine lemon law provides equitable
remedies to injured consumers; and

5

7 7. Requires the new car manufacturers to provide the
Department of the Attorney General with information concerning
its settlements of consumer complaints.