

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 814

H.P. 574

House of Representatives, January 28, 1999

An Act to Create a Lemon Law for Inboard Motorboats.

Reference to the Committee on Business and Economic Development suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative MUSE of South Portland.
Cosponsored by Representatives: BOLDUC of Auburn, CLARK of Millinocket.

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

2 Sec. 1. 10 MRSA c. 204-C is enacted to read:

4 CHAPTER 204-C

6 INBOARD MOTORBOAT WARRANTIES

8 §1199. Definitions

10 As used in this chapter, unless the context otherwise
12 indicates, the following terms have the following meanings.

14 1. Consumer. "Consumer" means the purchaser, other than for
16 purposes of resale, or the lessee, of an inboard motorboat, any
18 person to whom the inboard motorboat is registered during the
20 duration of an express warranty applicable to the boat and any
22 other person entitled by the terms of the warranty to enforce the
obligations of the warranty, except that the term "consumer" does
not include any governmental entity, or any business or
commercial enterprise that registers 3 or more inboard motorboats.

24 2. Dealer. "Dealer" means any person who sells or solicits
26 or advertises the sale of new or used inboard motorboats or
28 engines for inboard motorboats.

30 3. Distributor or wholesaler. "Distributor" or
32 "wholesaler" means any person who sells or distributes new or
34 used inboard motorboats or engines for inboard motorboats to
36 watercraft dealers or who maintains distributor representatives
38 within this State.

40 4. Franchisee. "Franchisee" means a watercraft or inboard
42 motorboat dealer to whom a franchise is offered or granted.

44 5. Inboard motorboat. "Inboard motorboat" means any
46 motorized boat that is powered by a permanently attached engine
48 or motor that is not mounted on the transom of the boat.

6. Manufacturer. "Manufacturer" means any person,
partnership, firm, association, corporation or trust, resident or
nonresident, that manufactures or assembles new inboard
motorboats or engines for inboard motorboats, or imports for
distribution through distributors of watercraft, or any
partnership, firm, association, joint venture, corporation or
trust, resident or nonresident, that is controlled by the
manufacturer. "Manufacturer" includes the terms "distributor"
and "wholesaler."

2 7. Reasonable allowance for use. "Reasonable allowance for
4 use" means that amount of use obtained by multiplying the total
6 purchase price of the inboard motorboat by a fraction having as
8 its denominator 1,000 and having as its numerator the number of
10 hours that the boat was operated prior to the manufacturer's
12 acceptance of its return.

14 8. State-certified arbitration. "State-certified
16 arbitration" means the informal dispute settlement procedure
18 administered by the Department of the Attorney General that
20 arbitrates consumer complaints dealing with new inboard
22 motorboats that may be so defective as to qualify for equitable
24 relief under the Maine lemon laws for inboard motorboats.

26 **§1199-A. Application; scope; construction**

28 1. Application. This chapter applies to inboard motorboats
30 operative on inland or coastal waters.

32 2. Consumer rights. This chapter does not in any way limit
34 the rights or remedies that are otherwise available to a consumer
36 under any other law.

38 3. Manufacturers, distributors, agents and dealers. This
40 chapter does not in any way limit the rights or remedies of
42 franchisees under this chapter or other applicable law.

44 4. Waivers void. Any agreement entered into by a consumer
46 that waives, limits or disclaims the rights set forth in this
48 chapter are void as contrary to public policy.

50 **§1199-B. Rights and duties**

1. Repair of nonconformities. If a new inboard motorboat
does not conform to all express warranties, the manufacturer, its
agent or authorized dealer shall make those repairs necessary to
conform the inboard motorboat 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 motorboat to a consumer or during the first 50
hours of operation, whichever is the earlier date. This
obligation exists even if the repairs are made after the
expiration of the appropriate time period.

2. Failure to make effective repair. If the manufacturer,
its agent or authorized dealer is unable to conform the inboard
motorboat to any applicable express warranty by repairing or
correcting any defect or condition, or combination of defects or
conditions, that substantially impairs the use, safety or value

2 of the inboard motorboat after a reasonable number of attempts,
3 the manufacturer shall either replace the inboard motorboat with
4 a comparable new inboard motorboat or accept return of the boat
5 from the consumer and make a refund to the consumer and
6 lienholder, if any, as their interests may appear. The consumer
7 may reject any offered replacement and receive instead a refund.
8 The refund must consist of the following items, less a reasonable
9 allowance for use of the inboard motorboat:

10 A. The full purchase price or, if a leased inboard
11 motorboat, the lease payments made to date, including any
12 paid finance charges on the purchased or leased inboard
13 motorboat;

14 B. All collateral charges, including, but not limited to,
15 sales tax, license and registration fees and similar
16 government charges; and

17 C. Costs incurred by the consumer for towing and storage of
18 the inboard motorboat while the boat was out of service by
19 reason of repair.

20 The provisions of this section do not affect the obligations of a
21 consumer under a loan or sales contract or the secured interest
22 of any secured party. The secured party shall consent to the
23 replacement of the security interest with a corresponding
24 security interest on a replacement inboard motorboat that is
25 accepted by the consumer in exchange for the original inboard
26 motorboat, if the replacement inboard motorboat is comparable in
27 value to the original inboard motorboat. If, for any reason, the
28 security interest in the new inboard motorboat having a defect or
29 condition is not able to be replaced with a corresponding
30 security interest on a new inboard motorboat accepted by the
31 consumer, the consumer shall accept a refund. Refunds required
32 under this section must be made to the consumer and the secured
33 party, if any, as their interests exist at the time the refund is
34 to be made. Similarly, refunds to a lessor and lessee must be
35 made as their interests exist at the time the refund is to be
36 made.

37 3. Reasonable number of attempts; presumption. There is a
38 presumption that a reasonable number of attempts have been
39 undertaken to conform an inboard motorboat to the applicable
40 express warranties if:

41 A. The same nonconformity has been subject to repair 3 or
42 more times by the manufacturer, its agent or authorized
43 dealer within the express warranty term, during the period
44 of 2 years following the date of original delivery of the
45 inboard motorboat to a consumer or during the first 50 hours
46 of use.

2 of operation, whichever is the earlier date, and at least 2
3 of those times the same agent or dealer attempted the repair
4 but the nonconformity continues to exist; or

5 B. The inboard motorboat is out of service by reason of
6 repair by the manufacturer, its agent or authorized dealer
7 of any defect or condition or combination of defects for a
8 cumulative total of 15 or more business days during that
9 warranty term or the appropriate time period, whichever is
10 the earlier date.

11 4. Final opportunity to repair. If the manufacturer, its
12 agent or authorized dealer has been unable to make the repairs
13 necessary to conform the inboard motorboat to the express
14 warranties, the consumer shall notify, in writing, the
15 manufacturer, its agent or authorized dealer of the consumer's
16 desire for a refund or replacement. For the 7 business days
17 following receipt of this notice by the manufacturer, its agent
18 or authorized dealer, the manufacturer, its agent or authorized
19 dealer has a final opportunity to correct or repair any
20 nonconformities. This final repair effort must be at a repair
21 facility that is reasonably accessible to the consumer. This
22 repair effort does not stay the time period within which the
23 manufacturer must provide an arbitration hearing pursuant to
24 section 1199-C.

25 5. Time limit; extension. The term of an express warranty,
26 the one-year and 2-year periods following delivery and the 15-day
27 period provided in subsection 3, paragraph B must be extended by
28 any period of time during which repair services are not available
29 to the consumer because of a war, invasion, strike or fire, flood
30 or other natural disaster.

31 6. Dealer liability. This chapter may not be construed as
32 imposing any liability on a dealer or creating a cause of action
33 by a consumer against a dealer under this section, except
34 regarding any written express warranties made by the dealer apart
35 from the manufacturer's own warranties.

36 7. Disclosure of notice requirement. A consumer may not be
37 required to notify the manufacturer of a claim under this section
38 unless the manufacturer has clearly and conspicuously disclosed
39 to the consumer, in the warranty or owner's manual, that written
40 notification of the nonconformity is required before the consumer
41 is eligible for a refund or replacement of the inboard
42 motorboat. The manufacturer shall include with the warranty or
43 owner's manual the name and address to which the consumer shall
44 send the written notification.

45 8. Notification of dealer. Consumers may also satisfy a
46 manufacturer's notice requirement by notifying in writing the

2 authorized dealer of a claim under this section. The dealer
3 shall act as the manufacturer's agent and immediately communicate
4 to the manufacturer the consumer's claim.

5 9. Disclosure at time of resale. An inboard motorboat that
6 is returned to the manufacturer under subsection 2 may not be
7 resold without clear and conspicuous written disclosure to any
8 subsequent purchaser, whether that purchaser is a consumer or a
9 dealer, of the following information:

10 A. That the inboard motorboat was returned to the
11 manufacturer under this chapter;

12 B. That the inboard motorboat did not conform to the
13 manufacturer's express warranties; and

14 C. The ways in which the inboard motorboat did not conform
15 to the manufacturer's express warranties.

16 **§1199-C. Affirmative defense and dispute settlement**

17 1. Affirmative defense. It is an affirmative defense to
18 any claim under this chapter that:

19 A. An alleged nonconformity does not substantially impair
20 the use, safety or value of the inboard motorboat; or

21 B. A nonconformity is the result of abuse, neglect or
22 unauthorized modifications or alterations of an inboard
23 motorboat by anyone other than the manufacturer, its agents
24 or authorized dealers since delivery to the consumer.

25 2. Informal dispute settlement. If a manufacturer has
26 established an informal dispute settlement procedure that
27 complies in all respects with the provisions of 16 Code of
28 Federal Regulations, Part 703, as from time to time amended, the
29 provisions of section 1199-B, subsection 2 concerning refunds or
30 replacement do not apply to any consumer who has not first
31 resorted to that procedure or to state-certified arbitration.
32 This requirement must be satisfied 40 days after notification to
33 the informal dispute settlement procedure of the dispute or when
34 the procedure's duties under 16 Code of Federal Regulations, Part
35 703.5 (d) are completed, whichever occurs sooner.

36 3. Unfair or deceptive trade practice. A violation of any
37 of the provisions of this chapter is considered prima facie
38 evidence of an unfair or deceptive trade practice under Title 5,
39 chapter 10.

2 4. Attorney's fees. In the case of a consumer's successful
3 action to enforce any liability under this chapter, a court may
4 award reasonable attorney's fees and costs incurred in connection
5 with the action.

6 **§1199-D. New inboard motorboat leases**

8 For the purposes of this chapter only, the following apply
9 to leases of new inboard motorboats.

10 1. Warranties. If express warranties are regularly
11 furnished to purchasers of substantially the same kind of inboard
12 motorboats:

14 A. Those warranties are deemed to apply to the leased
15 inboard motorboats; and

18 B. The consumer lessee is deemed to be the first purchaser
19 of the inboard motorboat for the purpose of any warranty
20 provisions limiting warranty benefits to the original
21 purchaser.

22 2. Lessee's rights. The lessee of an inboard motorboat has
23 the same rights under this chapter against the manufacturer and
24 any person making express warranties that the lessee would have
25 under this chapter if the boat had been purchased by the lessee.
26 The manufacturer and any person making express warranties have
27 the same duties and obligations under this chapter with respect
28 to the boat that the manufacturer and other person would have
29 under this chapter if the goods had been sold to the lessee.

32 **§1199-E. State inboard motorboat dispute arbitration and mediation**

34 1. Neutral new inboard motorboat arbitration. All
35 manufacturers shall submit to state-certified, new inboard
36 motorboat arbitration if arbitration is requested by the consumer
37 within 2 years from the date of original delivery to the consumer
38 of a new inboard motorboat or during the first 50 hours of
39 operation, whichever comes first. State-certified arbitration
40 must be performed by one or more neutral arbitrators selected by
41 the Department of the Attorney General operating in accordance
42 with the rules adopted pursuant to this chapter. The Attorney
43 General may contract with an independent entity to provide
44 arbitration or the Attorney General's office may appoint neutral
45 arbitrators. Each party to an arbitration is entitled to one
46 rejection of a proposed arbitrator.

48 2. Written findings. Each arbitration must result in a
49 written finding of whether the inboard motorboat in dispute meets
50 the standards set forth by this chapter for boats that are

2 required to be replaced or refunded. This finding must be issued
3 within 45 days of receipt by the Department of the Attorney
4 General of a properly completed written request by a consumer for
5 state-certified arbitration under this section. All findings of
6 fact issuing from a state-certified arbitration must be taken as
7 admissible evidence of whether the standards set forth in this
8 chapter for boats required to be refunded or replaced have been
9 met in any subsequent action brought by either party ensuing from
10 the matter considered in the arbitration. The finding reporting
11 date may be extended by 5 days if the arbitrator seeks an
12 independent evaluation of the motorboat.

13 **3. Administered by Attorney General.** The Department of the
14 Attorney General shall adopt rules governing the proceedings of
15 state-certified arbitration that will promote fairness and
16 efficiency. These rules must include, but are not limited to, a
17 requirement of the personal objectivity of each arbitrator in the
18 results of the dispute that that arbitrator will hear and the
19 protection of the right of each party to present its case and to
20 be in attendance during any presentation made by the other
21 party. Rules adopted pursuant to this section are major
22 substantive rules as defined in Title 5, chapter 375, subchapter
23 II-A.

24 **4. Consumer arbitration relief.** If an inboard motorboat is
25 found by state-certified arbitration to have met the standards
26 set forth in section 1199-B, subsection 2 for boats required to
27 be replaced or refunded and if the manufacturer of the inboard
28 motorboat is found to have failed to provide the refund or
29 replacement as required, the manufacturer shall, within 21 days
30 from the receipt of a finding, deliver the refund or replacement,
31 including the costs and collateral charges set forth in section
32 1199-B, subsection 2, or appeal the finding in Superior Court.
33 For good cause, a manufacturer may seek from the Department of
34 the Attorney General an extension of the time within which it
35 must deliver to the consumer a replacement boat.

36 **5. Appeal of arbitration decision.** An appeal by a
37 manufacturer or the consumer of the arbitrator's findings may not
38 be heard unless the petition for appeal is filed with the
39 Superior Court of the county in which the sale occurred, within
40 21 days of issuance of the finding of the state-certified
41 arbitration.

42 In the event that any state-certified arbitration resulting in an
43 award of a refund or replacement is upheld by the court, recovery
44 by the consumer may include continuing damages up to the amount
45 of \$25 per day for each day subsequent to the day the inboard
46 motorboat was returned to the manufacturer, pursuant to section
47 1199-B, that the boat was out of use as a direct result of any
48 nonconformity not issuing from owner negligence, accident,
49 vandalism or any attempt to repair or substantially modify the
50 boat by a person other than the manufacturer, its agent or
51 representative.

2 authorized dealer, provided that the manufacturer did not make a
comparable boat available to the consumer free of charge.

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

10 6. Consumer's rights if arbitrator denies relief. The
12 provisions of this chapter may not be construed to limit or
14 restrict in any way the rights or remedies provided to consumers
16 under this chapter or any other state law. In addition, if any
18 consumer is dissatisfied with any finding of state-certified
arbitration, the consumer has the right to apply to the
manufacturer's informal dispute settlement procedure, if the
consumer has not already done so, or may appeal that finding to
the Superior Court of the county in which the sale occurred,
within 21 days of the decision.

20 7. Disclosure of consumer lemon law rights. A clear and
22 conspicuous disclosure of the rights of the consumer under this
24 chapter must be provided by the manufacturer to the consumer
26 along with ownership manual materials. The form and manner of
28 these notices must be prescribed by rule of the Department of the
Attorney General. Rules adopted pursuant to this subsection are
routine technical rules as defined in Title 5, chapter 375,
subchapter II-A.

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

38 9. Consumer request for information. Upon request from the
40 consumer, the manufacturer, its agent or authorized dealer shall
42 provide a copy of all repair records for the consumer's inboard
44 motorboat and all reports relating to that inboard motorboat,
46 including reports by the manufacturer, its agent or authorized
dealer concerning any technical reports, bulletins or notices
issued by the manufacturer regarding the specific make and model
of the consumer's new motorboat as it pertains to any material,
feature, component or the performance of the inboard motorboat.

48 10. Penalties. It is prima facie evidence of an unfair
50 trade practice under Title 5, chapter 10 for a manufacturer,
52 within 21 days of receipt of any finding in favor of the consumer
in state-certified arbitration, to fail to appeal the finding and

2 not deliver a refund or replacement boat or not receive from the
3 Department of the Attorney General an extension of time for
4 delivery of the replacement boat.

6 11. Arbitration and mediation account. To defray the costs
7 incurred by the Department of the Attorney General in resolving
8 consumer new inboard motorboat disputes through state-certified
9 inboard motorboat arbitration, the following fee is imposed: A
10 \$1 state-certified arbitration fee must be collected by the
11 authorized new boat dealer from the purchaser as part of each new
12 motorboat sale agreement.

14 The Secretary of State shall adopt rules to implement this
15 subsection. The rules must provide that the fee imposed by this
16 subsection must be forwarded annually by the dealer or its
17 successor to the Secretary of State and deposited in the General
18 Fund. At the end of each fiscal year, the Department of the
19 Attorney General shall prepare a report listing the money
20 generated by these fees during the fiscal year and the expenses
21 incurred in administering state-certified new motorboat
22 arbitration established under this section. Rules adopted
23 pursuant to this subsection are major substantive rules as
24 defined in Title 5, chapter 375, subchapter II-A.

26 SUMMARY

28 This bill establishes a "lemon law" governing the sale and
29 lease of new inboard motorboats in the State. It also
30 establishes state-certified arbitration for disputes over new
inboard motorboats.