

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 160

H.P. 149

House of Representatives, January 16, 2001

An Act to Extend the Lemon Law to Snowmobiles.

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative BELANGER of Caribou.

Cosponsored by Representatives: CARR of Lincoln, CLARK of Millinocket, CLOUGH of Scarborough, FOSTER of Gray, McKENNEY of Cumberland, MORRISON of Baileyville, STANLEY of Medway, USHER of Westbrook.

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 **SNOWMOBILE 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, of a snowmobile, any person to whom the
18 snowmobile is registered during the duration of an express
20 warranty applicable to the snowmobile and any other person
22 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 snowmobiles.

24 2. Dealer. "Dealer" means a person who sells or solicits
 or advertises the sale of new or used snowmobiles.

26 3. Distributor or wholesaler. "Distributor" or
28 "wholesaler" means a person who sells or distributes new or used
 snowmobiles to dealers or who maintains distributor
 representatives within this State.

30 4. Franchisee. "Franchisee" means a snowmobile dealer to
32 whom a franchise is offered or granted.

34 5. Manufacturer. "Manufacturer" means a person,
36 partnership, firm, association, corporation or trust, resident or
38 nonresident, that manufactures or assembles new snowmobiles or
40 imports snowmobiles for distribution through distributors, or a
 partnership, firm, association, joint venture, corporation or
 trust, resident or nonresident, that is controlled by the
 manufacturer. "Manufacturer" includes the terms "distributor"
 and "wholesaler."

42 6. Reasonable allowance for use. "Reasonable allowance for
44 use" means that amount of use obtained by multiplying the total
46 purchase price of the snowmobile by a fraction having as its
48 denominator 1,000 and having as its numerator the number of hours
 that the snowmobile was operated prior to the manufacturer's
 acceptance of its return.

50 7. Snowmobile. "Snowmobile" means a vehicle propelled by

mechanical power that is primarily designed to travel over ice or snow supported in part by skis, belts or cleats.

8. State-certified arbitration. "State-certified arbitration" means the informal dispute settlement procedure administered by the Department of the Attorney General that arbitrates consumer complaints dealing with new snowmobiles that may be so defective as to qualify for equitable relief under this chapter.

§1199-A. Application; scope; construction

1. Application. This chapter applies to snowmobiles operated in this State.

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

3. Franchisees. This chapter does not in any way limit the rights or remedies of franchisees under this chapter or other applicable law.

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

§1199-B. Rights and duties

1. Repair of nonconformities. If a new snowmobile does not conform to all express warranties, the manufacturer, its agent or authorized dealer shall make those repairs necessary to conform the snowmobile 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 snowmobile 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 snowmobile to an applicable express warranty by repairing or correcting a defect or condition, or combination of defects or conditions, that substantially impairs the use, safety or value of the snowmobile after a reasonable number of attempts, the manufacturer shall either replace the snowmobile with a comparable new snowmobile or accept return of the snowmobile from the consumer and make a refund to the consumer and lienholder, if

2 any, as their interests may appear. The consumer may reject any
3 offered replacement and receive instead a refund. The refund
4 must consist of the following items, less a reasonable allowance
5 for use of the snowmobile:

6 A. The full purchase price including any paid finance
7 charges on the purchased snowmobile;

8
9 B. All collateral charges, including, but not limited to,
10 sales tax, license and registration fees and similar
11 government charges; and

12
13 C. Costs incurred by the consumer for towing and storage of
14 the snowmobile while the snowmobile was out of service by
15 reason of repair.

16
17 The provisions of this subsection do not affect the obligations
18 of a consumer under a loan or sales contract or the secured
19 interest of a secured party. The secured party shall consent to
20 the replacement of the security interest with a corresponding
21 security interest on a replacement snowmobile that is accepted by
22 the consumer in exchange for the original snowmobile, if the
23 replacement snowmobile is comparable in value to the original
24 snowmobile. If, for any reason, the security interest in the new
25 snowmobile having a defect or condition is not able to be
26 replaced with a corresponding security interest on a replacement
27 snowmobile accepted by the consumer, the consumer shall accept a
28 refund. Refunds required under this subsection must be made to
29 the consumer and the secured party, if any, as their interests
30 exist at the time the refund is to be made.

31
32 3. Reasonable number of attempts; presumption. There is a
33 presumption that a reasonable number of attempts have been
34 undertaken to conform a snowmobile to the applicable express
35 warranties if:

36
37 A. The same nonconformity has been subject to repair 3 or
38 more times by the manufacturer, its agent or authorized
39 dealer within the express warranty term, during the period
40 of 2 years following the date of original delivery of the
41 snowmobile to a consumer or during the first 50 hours of
42 operation, whichever is the earlier date, and at least 2 of
43 those times the same agent or dealer attempted the repair
44 but the nonconformity continues to exist; or

45
46 B. The snowmobile is out of service by reason of repair by
47 the manufacturer, its agent or authorized dealer of any
48 defect or condition or combination of defects for a
49 cumulative total of 15 or more business days during that

2 warranty term or the appropriate time period, whichever is
3 the earlier date.

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

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

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

28 7. Disclosure of notice requirement. A consumer may not be
29 required to notify the manufacturer of a claim under this section
30 unless the manufacturer has clearly and conspicuously disclosed
31 to the consumer, in the warranty or owner's manual, that written
32 notification of the nonconformity is required before the consumer
33 is eligible for a refund or replacement of the snowmobile. The
34 manufacturer shall include with the warranty or owner's manual
35 the name and address to which the consumer shall send the written
36 notification.

37 8. Notification of dealer. Consumers may also satisfy a
38 manufacturer's notice requirement by notifying in writing the
39 authorized dealer of a claim under this section. The dealer
40 shall act as the manufacturer's agent and immediately communicate
41 to the manufacturer the consumer's claim.

42 9. Disclosure at time of resale. A snowmobile that is
43 returned to the manufacturer under subsection 2 may not be resold
44 by the manufacturer or a dealer without clear and conspicuous

2 written disclosure to any subsequent purchaser, whether that
3 purchaser is a consumer or a dealer, of the following information:

4 A. That the snowmobile was returned to the manufacturer
5 under this chapter;

6 B. That the snowmobile did not conform to the manufacturer's
7 express warranties; and

8 C. The ways in which the snowmobile did not conform to the
9 manufacturer's express warranties.

10 **§1199-C. Affirmative defense and dispute settlement**

11 **1. Affirmative defense.** It is an affirmative defense to a
12 claim under this chapter that:

13 A. An alleged nonconformity does not substantially impair
14 the use, safety or value of the snowmobile; or

15 B. A nonconformity is the result of abuse, neglect or
16 unauthorized modifications or alterations of a snowmobile by
17 someone other than the manufacturer, its agents or
18 authorized dealers since delivery to the consumer.

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

30 **3. Unfair or deceptive trade practice.** A violation of a
31 provision of this chapter is considered prima facie evidence of
32 an unfair or deceptive trade practice under Title 5, chapter 10.

33 **4. Attorney's fees.** In the case of a consumer's successful
34 action to enforce liability under this chapter, a court may award
35 reasonable attorney's fees and costs incurred in connection with
36 the action.

37 **§1199-D. State snowmobile dispute arbitration and mediation**

38 **1. Neutral new snowmobile arbitration.** A manufacturer shall
39 submit to state-certified, new snowmobile arbitration if
40

2 arbitration is requested by a consumer within 2 years from the
3 date of original delivery to the consumer of a new snowmobile or
4 during the first 50 hours of operation, whichever comes first.
5 State-certified arbitration must be performed by one or more
6 neutral arbitrators selected by the Department of the Attorney
7 General operating in accordance with the rules adopted pursuant
8 to this chapter. The Attorney General may contract with an
9 independent entity to provide arbitration or the Attorney
10 General's office may appoint neutral arbitrators. Each party to
11 an arbitration is entitled to one rejection of a proposed
12 arbitrator.

13 **2. Written findings.** An arbitration must result in a
14 written finding of whether the snowmobile in dispute meets the
15 standards set forth by this chapter for a snowmobile that is
16 required to be replaced or for which a refund is required. This
17 finding must be issued within 45 days of receipt by the
18 Department of the Attorney General of a properly completed
19 written request by a consumer for state-certified arbitration
20 under this section. All findings of fact issuing from a
21 state-certified arbitration must be taken as admissible evidence
22 of whether the standards set forth in this chapter for a
23 snowmobile required to be replaced or for which a refund is
24 required have been met in any subsequent action brought by either
25 party ensuing from the matter considered in the arbitration. The
26 finding reporting date may be extended by 5 days if the
27 arbitrator seeks an independent evaluation of the snowmobile.

28 **3. Rules.** The Department of the Attorney General shall
29 adopt rules governing the proceedings of state-certified
30 arbitration that will promote fairness and efficiency. These
31 rules must include, but are not limited to, a requirement of the
32 personal objectivity of each arbitrator in the dispute that the
33 arbitrator will hear and the protection of the right of each
34 party to present its case and to be in attendance during any
35 presentation made by the other party. Rules adopted pursuant to
36 this section are major substantive rules as defined in Title 5,
37 chapter 375, subchapter II-A.

38 **4. Consumer arbitration relief.** If a snowmobile is found by
39 state-certified arbitration to have met the standards set forth
40 in section 1199-B, subsection 2 for a snowmobile required to be
41 replaced or for which a refund is required to be made and if the
42 manufacturer of the snowmobile is found to have failed to provide
43 the refund or replacement as required, the manufacturer shall,
44 within 21 days from the receipt of a finding, deliver the refund
45 or replacement, including the costs and collateral charges set
46 forth in section 1199-B, subsection 2, or appeal the finding in
47 Superior Court. For good cause, a manufacturer may seek from the
48 Department of the Attorney General an extension of the time
49 to appeal the finding.
50

2 within which it must deliver to the consumer a replacement
3 snowmobile.

4 5. Appeal of arbitration decision. An appeal by a
5 manufacturer or the consumer of the arbitrator's findings may not
6 be heard unless the petition for appeal is filed with the
7 Superior Court of the county in which the sale occurred, within
8 21 days of issuance of the finding of the state-certified
9 arbitration.

10 In the event that a state-certified arbitration resulting in an
11 award of a refund or replacement is upheld by the court, recovery
12 by the consumer may include continuing damages up to the amount
13 of \$25 per day for each day subsequent to the day on which the
14 snowmobile was returned to the manufacturer, pursuant to section
15 1199-B, that the snowmobile was out of use as a direct result of
16 any nonconformity not issuing from owner negligence, accident,
17 vandalism or any attempt to repair or substantially modify the
18 snowmobile by a person other than the manufacturer, its agent or
19 authorized dealer, provided that the manufacturer did not make a
20 comparable snowmobile available to the consumer free of charge.

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

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

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

44 8. Manufacturer's failure to abide by arbitrator's
45 decision. The failure of a manufacturer either to abide by the
46 decision.

2 decision of state-certified arbitration or to file a timely
3 appeal entitles a prevailing consumer who has brought an action
4 to enforce this chapter to an award of no less than 2 times the
5 original award, unless the manufacturer can prove that the
6 failure was beyond the manufacturer's control or can show it was
7 the result of a written agreement with the consumer.

8 **9. Consumer request for information.** Upon request from the
9 consumer, the manufacturer, its agent or authorized dealer shall
10 provide a copy of all repair records for the consumer's
11 snowmobile and all reports relating to that snowmobile, including
12 reports by the manufacturer, its agent or authorized dealer
13 concerning any technical reports, bulletins or notices issued by
14 the manufacturer regarding the specific make and model of the
15 consumer's new snowmobile as it pertains to any material, feature
16 to component or to the performance of the snowmobile.

17 **10. Penalties.** It is prima facie evidence of an unfair
18 trade practice under Title 5, chapter 10 for a manufacturer,
19 within 21 days of receipt of a finding in favor of the consumer
20 in state-certified arbitration, to fail to appeal the finding and
21 not deliver a refund or replacement snowmobile or not receive
22 from the Department of the Attorney General an extension of time
23 for delivery of the replacement snowmobile.

24 **11. Arbitration and mediation account.** To defray the costs
25 incurred by the Department of the Attorney General in resolving
26 disputes through state-certified snowmobile arbitration, a \$1
27 state-certified arbitration fee must be collected by the
28 authorized new snowmobile dealer from the purchaser as part of
29 each new snowmobile sale agreement.

30 The Secretary of State shall adopt rules to implement this
31 subsection. The rules must provide that the fee imposed by this
32 subsection must be forwarded annually by the dealer or its
33 successor to the Secretary of State and deposited in the General
34 Fund. At the end of each fiscal year, the Department of the
35 Attorney General shall prepare a report listing the money
36 generated by these fees during the fiscal year and the expenses
37 incurred in administering state-certified new snowmobile
38 arbitration established under this section. Rules adopted
39 pursuant to this subsection are major substantive rules as
40 defined in Title 5, chapter 375, subchapter II-A.

44 SUMMARY

45 This bill establishes a "lemon law" governing the sale of
46 new snowmobiles in the State. It also establishes
47 state-certified arbitration for disputes over new snowmobiles.
48
49
50