

MAINE STATE LEGISLATURE

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A. O. B.

L.D. 887

DATE: 5-15-03

(Filing No. H-382)

BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 664, L.D. 887, Bill, "An Act To Amend the Maine "Lemon Law"

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

Sec. 1. 10 MRSA c. 203-A is amended by repealing the chapter headnote and enacting the following in its place:

CHAPTER 203-A

MANUFACTURER WARRANTIES ON MOTOR VEHICLES

Sec. 2. 10 MRSA §1161, sub-§3, as amended by PL 1987, c. 359, §2, is further amended to read:

3. **Motor vehicle.** "Motor vehicle" means any motor driven vehicle, designed for the conveyance of passengers or property on the public highways, ~~which~~ that is sold or leased in this State, except that the term "motor vehicle" does not include any ~~commercial~~ vehicle used primarily for commercial purposes with a gross vehicle weight of 8,500 pounds or more.

Sec. 3. 10 MRSA §1161, sub-§4, as amended by PL 1999, c. 212, §1, is further amended to read:

4. **Reasonable allowance for use.** "Reasonable allowance for use" means an amount that can not exceed the lesser of 1/3 of that amount allowed per mile by the United States Internal Revenue Service as provided by regulation, revenue procedure or revenue ruling promulgated under the United States Internal

COMMITTEE AMENDMENT

Revenue Code, Title 26, Section 162 for the use of a personal vehicle for business purposes based upon the mileage reported for that motor vehicle on the application for state-certified arbitration accepted by the State plus all mileage directly attributable to use by a consumer beyond 20,000 miles or 10% of the purchase price of the vehicle.

Sec. 4. 10 MRSA §1161-A is enacted to read:

§1161-A. Short title

This chapter may be known and cited as "the Maine Lemon Law."

Sec. 5. 10 MRSA §1163, as amended by PL 1999, c. 212, §2, is further amended to read:

§1163. Rights and duties

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 3 years following the date of original delivery of the motor vehicle to a consumer, or during the first 18,000 miles of operation of that motor vehicle, whichever is the earlier---date occurs earliest. This obligation exists notwithstanding the fact that the repairs are made after the expiration of the appropriate time period.

2. **Failure to make effective repair.** If the manufacturer or its agents or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition, or combination of defects or conditions, ~~which~~ that substantially impairs the use, safety or value of the motor vehicle after a reasonable number of attempts, the manufacturer shall 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 refund ~~shall~~ must consist of the following items, less a reasonable allowance for use of the vehicle:

A. The full purchase price or, if a leased vehicle, the lease payments made to date, including any paid finance charges on the purchased or leased vehicle;

R.O.S.

COMMITTEE AMENDMENT "A" to H.P. 664, L.D. 887

2 B. All collateral charges, including, but not limited to,
sales tax, ~~license~~ and registration fees and similar
4 government charges; and

6 C. Reasonable costs incurred by the consumer for towing and
storage of the vehicle and for procuring alternative
8 transportation while the vehicle could not be driven because
it did not conform to any applicable express warranty.

10 The provisions of this section shall do not affect the
obligations of a consumer under a loan or sales contract or the
12 secured interest of any secured party. The secured party shall
consent to the replacement of the security interest with a
14 corresponding security interest on a replacement motor vehicle
~~which that~~ is accepted by the consumer in exchange for the motor
16 vehicle, if the replacement motor vehicle is comparable in value
to the original motor vehicle. If, for any reason, the security
18 interest in the new motor vehicle having a defect or condition is
not able to be replaced with a corresponding security interest on
20 a new motor vehicle accepted by the consumer, the consumer shall
~~accept~~ is entitled to a refund. Refunds required under this
22 section shall must be made to the consumer and the secured party,
if any, as their interests exist at the time the refund is to be
24 made. Similarly, refunds to a lessor and lessee shall must be
made as their interests exist at the time the refund is to be
26 made.

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

32 A. The same nonconformity has been subject to a repair
34 attempt 3 or more times by the manufacturer or its agents or
authorized dealers within the express warranty term, during
36 the period of 2 3 years following the date of original
delivery of the motor vehicle to a consumer or during the
38 first 18,000 miles of operation of that motor vehicle,
~~whichever is the earlier date occurs earliest,~~ and at least
40 ~~2 of those times the same agent or dealer attempted the~~
~~repair but~~ the nonconformity continues to exist; or

42 A-2. The same nonconformity has resulted in a serious
44 failure of either the braking or steering systems in the
vehicle and has been subject to a repair attempt one or more
46 times by the manufacturer or its agents or authorized
dealers during the warranty term or the appropriate time
48 period, whichever occurs earlier; or

2 B. The vehicle is out of service by reason of a repair
4 attempt by the manufacturer, its agents or authorized
6 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~~ occurs earlier date.

8 **3-A. Final opportunity to repair.** If the manufacturer or
10 ~~his~~ its agents have been unable to make the repairs necessary to
conform the vehicle to the express warranties, the consumer shall
12 notify, in writing, the manufacturer or the authorized dealer of
his the consumer's desire for a refund or replacement. This
14 notice can be given after one repair attempt if the nonconformity
has resulted in a serious failure of either the braking or
16 steering systems in the vehicle. For the 7 business days
following receipt by the dealer or the manufacturer of this
18 notice, the manufacturer shall ~~have~~ has a final opportunity to
correct or repair any nonconformities. This final repair effort
20 shall ~~must~~ be at a repair facility that is reasonably accessible
to the consumer. This repair effort shall ~~shall~~ does not stay the time
22 period within which the manufacturer must provide an arbitration
hearing pursuant to section 1165.

24 **4. Time limit; extension.** The term of an express warranty,
26 ~~the one-year and 3-year periods~~ the 18,000 mileage term, the
3-year period following delivery and the 15-day period provided
28 in subsection 3, paragraph B, shall ~~shall~~ must be extended by any
period of time during which repair services are not available to
30 the consumer because of a war, invasion, or strike or fire, flood
or other natural disaster.

32 **5. Dealer liability.** Nothing in this chapter may be
34 construed as imposing any liability on a dealer or creating a
cause of action by a consumer against a dealer under this
36 section, except regarding any written express warranties made by
the dealer apart from the manufacturer's own warranties.

38 **6. Disclosure of notice requirement.** No consumer may be
40 required to notify the manufacturer of a claim under this
section, unless the manufacturer has clearly and conspicuously
42 disclosed to the consumer, in the warranty or owner's manual,
that written notification of the nonconformity is required before
44 the consumer may be eligible for a refund or replacement of the
vehicle. The manufacturer shall include with the warranty or
46 owner's manual the name and address to which the consumer shall
send the written notification.

48 **6-A. Notification of dealer.** Consumers may also satisfy a
50 manufacturer's notice requirement by notifying in writing the
authorized dealer of a claim under this section. The dealer shall

act as the manufacturer's agent and immediately communicate to the manufacturer the consumer's claim.

7. Disclosure at time of resale for failure to make effective repair. No motor vehicle which that is returned to the manufacturer under subsection 2, may not be resold without clear and conspicuous written disclosure to any subsequent purchaser, whether that purchaser is a consumer or a dealer, of the following information:

A. That the motor vehicle was returned to the manufacturer under this chapter;

B. That the motor vehicle did not conform to the manufacturer's express warranties; and

C. The ways in which the motor vehicle did not conform to the manufacturer's express warranties.

8. Disclosure at time of retail sale under settlement agreement. A motor vehicle that is surrendered to a manufacturer as a result of a settlement of a state-certified arbitration must, at the time that motor vehicle is first offered for retail sale to the public, be affixed with a clear and conspicuous written disclosure stating that the vehicle was the subject of a Maine Lemon Law settlement agreement.

Sec. 6. 10 MRSA §1168, sub-§1, ¶¶A and B, as enacted by PL 1987, c. 359, §8, are amended to read:

A. Those warranties ~~shall--be~~ are deemed to apply to the leased motor vehicles; and

B. The consumer lessee ~~shall--be~~ is deemed to be the first purchaser of the motor vehicle for the purpose of any warranty provisions limiting warranty benefits to the original purchaser.

Sec. 7. 10 MRSA §1169, sub-§1, as amended by PL 1999, c. 212, §4, is further amended to read:

1. Neutral motor vehicle arbitration. All manufacturers shall submit to state-certified, ~~---new---ear~~ motor vehicle arbitration if arbitration is requested by the consumer within 2 ~~3~~ years from the date of original delivery to the consumer of a new motor vehicle or within the term of the express warranties, whichever comes first, and the State has accepted the application as making proper Maine Lemon Law claims. State-certified arbitration must be performed by one or more neutral arbitrators selected by the Department of the Attorney General operating in

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COMMITTEE AMENDMENT "A" to H.P. 664, L.D. 887

2 accordance with the rules adopted pursuant to this chapter. The
3 Attorney General may contract with an independent entity to
4 provide arbitration or the Attorney General's office may appoint
5 neutral arbitrators. Each party to an arbitration is entitled to
6 one rejection of a proposed arbitrator.'

8 **SUMMARY**

10 This amendment replaces the bill. The amendment amends the
11 lemon law by:

12 1. Expanding the term of protection under the lemon law
13 from 2 to 3 years, the warranty period or 18,000 miles of
14 operation, whichever occurs earliest;

15 2. Allowing consumers, after one repair attempt, to claim
16 the presumption that a reasonable number of repair attempts have
17 been undertaken when the claimed nonconformity has resulted in a
18 serious failure of either the braking or steering systems in the
19 vehicle;

20 3. Requiring that a motor vehicle surrendered to a
21 manufacturer as a result of a settlement under the lemon law be
22 affixed with a notice, when that vehicle is first offered for
23 resale to the public, stating that the vehicle was the subject of
24 a Maine Lemon Law settlement agreement;

25 4. Expanding the time limit for applying for lemon law
26 state arbitration from 2 years to 3 years or to any time before
27 expiration of the manufacturer's express warranties, whichever
28 occurs earlier;

29 5. Eliminating the requirement that 2 attempts to repair
30 the defect or defects must be made by the same dealer; and

31 6. Limiting the amount that may be deducted from the refund
32 required under the lemon law for mileage to the mileage that is
33 reported on the application accepted by the State for lemon law
34 arbitration and any mileage directly attributable to use by a
35 consumer beyond 20,000 miles.

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44 **FISCAL NOTE REQUIRED**
(See attached)

COMMITTEE AMENDMENT



121st Maine Legislature
Office of Fiscal and Program Review

LD 887
An Act To Amend the Maine "Lemon Law"

LR 1367(02)
Fiscal Note for Bill as Amended by Committee Amendment " "
Committee: Business, Research and Economic Development
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund