

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 887

H.P. 664

House of Representatives, February 20, 2003

An Act To Amend the Maine "Lemon Law"

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative McKEE of Wayne.
Cosponsored by Senator TREAT of Kennebec and
Representatives: BLISS of South Portland, COWGER of Hallowell, NORTON of Bangor,
PINGREE of North Haven, THOMPSON of China.

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

2
4 **Sec. 1. 10 MRSA §1161, sub-§4**, as amended by PL 1999, c. 212,
§1, is repealed.

6 **Sec. 2. 10 MRSA §1163, sub-§2**, as amended by PL 1999, c. 212,
8 §2, is further amended to read:

10 **2. Failure to make effective repair.** If the manufacturer
12 or its agents or authorized dealers are unable to conform the
14 motor vehicle to any applicable express warranty by repairing or
16 correcting any defect or condition, or combination of defects or
18 conditions, which substantially impairs the use, safety or value
20 of the motor vehicle after a reasonable number of attempts, the
22 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--vehiele:~~

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

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

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

36 The provisions of this section shall may not affect the
38 obligations of a consumer under a loan or sales contract or the
40 secured interest of any secured party. The secured party shall
42 consent to the replacement of the security interest with a
44 corresponding security interest on a replacement motor vehicle
46 which that is accepted by the consumer in exchange for the motor
48 vehicle, if the replacement motor vehicle is comparable in value
50 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 must
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

2 a lessor and lessee shall ~~shall~~ must be made as their interests exist
at the time the refund is to be made.

4 **Sec. 3. 10 MRSA §1163, sub-§3, ¶¶A and B**, as repealed and
replaced by PL 1989, c. 570, §3, are amended to read:

6
8 A. The same nonconformity has been subject to repair 3 or
more times by the manufacturer or its agents or authorized
10 dealers within the express warranty term, during the period
of 2 years following the date of original delivery of the
12 motor vehicle to a consumer or during the first 18,000 miles
of operation, whichever is the earlier date, and at least 2
14 of those times the same agent or dealer attempted the repair
but the nonconformity continues to exist; ~~or~~

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

22 **Sec. 4. 10 MRSA §1163, sub-§3, ¶C** is enacted to read:

24
26 C. The vehicle has multiple problems that have not been
successfully repaired after the vehicle has been out of
service for 15 or more business days within the warranty
28 term as a result of those problems.

30 **Sec. 5. 10 MRSA §1169, §1, 2 and 5**, as amended by PL 1999, c.
212, §4, are further amended to read:

32
34 **1. Neutral new car arbitration.** All manufacturers shall
submit to state-certified, new car arbitration if arbitration is
36 requested by the consumer within 2 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
38 first. State-certified arbitration must be performed by ~~one or~~
more a panel of 5 neutral arbitrators selected by the Department
40 of the Attorney General operating in accordance with the rules
adopted pursuant to this chapter. ~~The--Attorney--General--may~~
42 ~~contract-with-an-independent-entity-to-provide-arbitration-or-the~~
~~Attorney-General's-office-may-appoint-neutral-arbitrators.~~ The 5
44 members of the arbitration panel must include one person who is a
new car dealer, one person who is knowledgeable about automobile
46 mechanical systems and 3 members of the general public. Each
party to an arbitration is entitled to one rejection of a
48 proposed arbitrator.

2 **2. Written findings.** Each arbitration results in a written
3 finding of whether the motor vehicle in dispute meets the
4 standards set forth by this chapter for vehicles that are
5 required to be replaced or refunded. This finding must be issued
6 within 45 days of receipt by the Department of the Attorney
7 General of a properly completed written request by a consumer for
8 state-certified arbitration under this section. All findings of
9 fact issuing from a state-certified arbitration must be taken as
10 admissible evidence of whether the standards set forth in this
11 chapter for vehicles required to be refunded or replaced have
12 been met in any subsequent action brought by either party ensuing
13 from the matter considered in the arbitration. The finding
14 reporting date may be extended by 5 days if the ~~arbitrator~~
15 arbitration panel seeks an independent evaluation of the motor
16 vehicle. In addition to the other remedies provided by this
17 chapter, the ~~arbitrator~~ arbitration panel may award a consumer
18 whose motor vehicle is required to be replaced or refunded
19 reasonable witness fees for a professional motor vehicle mechanic
20 or engineer who prepared a notarized report on the condition of
21 the vehicle or who testified at the arbitration hearing on behalf
22 of the consumer.

23 **5. Appeal of arbitration decision.** An appeal by a
24 manufacturer or the consumer of the ~~arbitrator's~~ arbitration
25 panel's findings may not be heard unless the petition for appeal
26 is filed with the Superior Court of the county in which the sale
27 occurred, within 21 days of issuance of the finding of the
28 state-certified arbitration. The appeal must be a trial de
29 novo. The arbitrator and the Department of the Attorney General
30 may not be parties in any such appeal and may not be called as
31 witnesses. The Department of the Attorney General may submit an
32 amicus curiae brief.

33
34 In the event that any state-certified arbitration resulting in an
35 award of a refund or replacement is upheld by the court, recovery
36 by the consumer may include continuing damages up to the amount
37 of \$25 per day for each day subsequent to the day the motor
38 vehicle was returned to the manufacturer, pursuant to section
39 1163, that the vehicle was out of use as a direct result of any
40 nonconformity not issuing from owner negligence, accident,
41 vandalism or any attempt to repair or substantially modify the
42 vehicle by a person other than the manufacturer, its agent or
43 authorized dealer, provided that the manufacturer did not make a
44 comparable vehicle available to the consumer free of charge.

45 In addition to any other recovery, any prevailing consumer must
46 be awarded reasonable attorney's fees and costs. If the court
47 finds that the manufacturer did not have any reasonable basis for
48 its appeal or that the appeal was frivolous, the court shall
49 double the amount of the total award to the consumer.
50

2

SUMMARY

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6 This bill eliminates the laws that allow automobile
8 manufacturers or their agents or dealers to deduct an allowance
for mileage from the amount refunded to an automobile owner who
qualifies for a refund under the State's "lemon law".

10

12 The bill also increases from one to five the number of
14 arbitrators that must be involved in a "lemon law" arbitration
process and requires that those arbitrators include a new car
dealer, someone experienced in automobile mechanics and three
public members.

16

18 The bill also adds a provision to the criteria that
20 establish when an automobile qualifies under the "lemon law" that
states that an automobile qualifies if it has multiple problems
that have not been successfully repaired after the vehicle has
been out of service for 15 or more business days within the
warranty term.