

MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
SEPTEMBER 30, 1989

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1989

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION
of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE
1989

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

Sec. 1. 34-B MRSA §3863, sub-§4, 1B, as amended by PL 1985, c. 815, is repealed and the following enacted in its place:

B. The Department of Mental Health and Mental Retardation shall be responsible for any transportation expenses under this section, including return from the hospital if admission is declined. The department shall utilize any 3rd-party payment sources which are available.

Sec. 2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1990-91

MENTAL HEALTH AND MENTAL RETARDATION, DEPARTMENT OF

Mental Health Services - Community

All Other \$44,651

Provides funds to pay for the cost of transporting individuals to a mental health hospital.

Sec. 3. Effective date. This Act shall become effective on February 1, 1991.

Effective February 1, 1991.

CHAPTER 569

H.P. 426 - L.D. 591

An Act to Clarify Parties Which May Petition the Board of Environmental Protection for a Water Level Hearing

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

Sec. 1. 38 MRSA §840, sub-§1, as amended by PL 1987, c. 402, Pt. A, §205, is further amended to read:

1. Power. The board may on its own motion and shall at the request of the owner, lessee or person in control of a dam, or upon receipt of petitions from the lesser of at least 25% or 50 of the littoral or riparian proprietors or from a water utility having the right to withdraw water from the body of water for which the water level regime is sought, conduct an adjudicatory hearing for the purpose of establishing a water level regime for the body of water impounded by any dam that is neither:

A. Licensed by the Federal Energy Regulatory Commission;

B. Authorized under the Federal Power Act, Section 23;

C. Used to store water for a downstream facility licensed by the Federal Energy Regulatory Commission or authorized under the Federal Power Act, Section 23, provided that the owner of the downstream facility possessed a majority ownership of the upstream dam as of January 1, 1983; nor

D. Operating with a permit setting water levels issued under the ~~great ponds laws, sections 391 to 394; the alteration of coastal wetlands laws, sections 471 to 478; protection of natural resources laws, sections 480-A to 480-S;~~ the site location of development laws, sections 481 to 490; the small hydroelectric generating facilities laws, sections 631 to 636; the land use regulation laws, Title 12, sections 681 to 689; ~~the stream alteration laws, sections 425 to 430;~~ or any other statute regulating the construction or operation of dams.

Sec. 2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1989-90 1990-91

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Land Quality Control

All Other \$3,000 \$3,000

Provides funds for anticipated expenses for additional water level hearings.

See title page for effective date.

CHAPTER 570

S.P. 517 - L.D. 1413

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

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

Sec. 1. 10 MRSA §1161, sub-§5 is enacted to read:

5. State-certified arbitration. "State-certified arbitration" means the informal dispute settlement procedure administered by the Department of the Attorney General which arbitrates consumer complaints dealing with new motor vehicles that may be so defective as to qualify for equitable relief under the Maine lemon laws.

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

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

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

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

A. The same nonconformity has been subject to repair 3 or more times by the manufacturer or its agents or authorized dealers within the express warranty term, during the period of 2 years following the date of original delivery of the motor vehicle to a consumer or during the first 18,000 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

B. The vehicle is out of service by reason of repair by the manufacturer, its agents or authorized 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 earlier date.

Sec. 4. 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 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 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.

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

§1169. State-certified, new car arbitration

1. Neutral new car arbitration. All manufacturers shall submit to state-certified, new car arbitration if arbitration is requested by the consumer within 2 years from the date of original delivery to the consumer of a new motor vehicle or during the first 18,000 miles of operation, whichever comes first. State-certified arbitration shall be performed by one or more neutral arbitrators selected by the Department of the Attorney General operating in accordance with the rules promulgated pursuant to this chapter. The Attorney General may contract with an independent entity to provide arbitration or the Attorney General's office may appoint neutral arbitrators. Each party to an arbitration is entitled to one rejection of a proposed arbitrator.

2. Written findings. Each arbitration shall result in a written finding of whether the motor vehicle in dispute meets the standards set forth by this chapter for vehicles that are required to be replaced or refunded. This finding shall be issued within 45 days of receipt by the Department of the Attorney General of a properly completed written request by a consumer for state-certified arbitration under this section. All findings of fact issuing from a state-certified arbitration shall be taken as admissible evidence of whether the standards set forth in this chapter for vehicles required to be refunded or replaced have been met in any subsequent action brought by either party ensuing from the matter considered in the arbitration. The finding reporting date may be extended by 5 days if the arbitrator seeks an independent evaluation of the motor vehicle.

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

4. Consumer arbitration relief. If a motor vehicle is found by state-certified arbitration to have met the standards set forth in section 1163, subsection 2, for vehicles required to be replaced or refunded, and if the manufacturer of the motor vehicle is found to have failed to provide the refund or replacement as required, the manufacturer shall, within 21 days from the receipt of a finding, deliver the refund or replacement, including the costs and collateral charges set forth in section 1163, subsection 2, or appeal the finding in Superior Court. For good cause, a manufacturer may seek from the Department of the Attorney General an extension of the time within which it must deliver to the consumer a replacement vehicle.

5. Appeal of arbitration decision. No appeal by a manufacturer or the consumer of the arbitrator's findings may be heard unless the petition for appeal is filed with the Superior Court of the county in which the sale occurred,

within 21 days of issuance of the finding of the state-certified arbitration.

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

In addition to any other recovery, any prevailing consumer shall be awarded reasonable attorney's fees and costs. If the court 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.

6. Consumer's rights if arbitrator denies relief.

The provisions of this chapter shall not be construed to limit or restrict in any way the rights or remedies provided to consumers under this chapter or any other state law. In addition, if any consumer is dissatisfied with any finding of state-certified arbitration, the consumer shall have 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.

7. Disclosure of consumer lemon law rights.

A clear and conspicuous disclosure of the rights of the consumer under this chapter shall be provided by the manufacturer to the consumer along with ownership manual materials. The form and manner of these notices shall be prescribed by rule of the Department of the Attorney General. The notice disclosures shall not include window stickers.

8. Manufacturer's failure to abide by arbitrator's decision.

The failure of a manufacturer either to abide by the decision of state-certified arbitration or to file a timely appeal shall entitle 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.

9. Consumer request for information.

Upon request from the consumer, the manufacturer or dealer shall provide a copy of all repair records for the consumer's motor vehicle and all reports relating to that motor vehicle, including reports by the dealer or manufacturer concerning inspection, diagnosis or test-drives of that vehicle and any technical reports, bulletins or notices issued by the manufacturer regarding the specific make and model of the consumer's new motor vehicle as it pertains to any material, feature, component or the performance of the motor vehicle.

10. Penalties. It shall be prima facie evidence of an unfair trade practice under Title 5, chapter 10, for a manufacturer, within 21 days of receipt of any finding in favor of the consumer in state-certified arbitration, to fail to appeal the finding and not deliver a refund or replacement vehicle or not receive from the Department of the Attorney General an extension of time for delivery of the replacement vehicle.

11. New car arbitration account. To defray the costs of this program, a \$1 arbitration fee shall be collected by the authorized dealer from the purchaser as part of the new motor vehicle sale agreement. Pursuant to rules adopted by the Secretary of State, this fee shall be forwarded annually by the dealer or its successor to the Secretary of State and deposited in the General Fund. At the end of each fiscal year, the Department of the Attorney General shall prepare a report listing the annual money generated and the expenses incurred in administering this arbitration program.

Sec. 6. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
ATTORNEY GENERAL, DEPARTMENT OF THE		
Positions	(2)	(2)
Personal Services	\$33,264	\$46,860
All Other	13,500	18,000
Capital Expenditures	4,000	
DEPARTMENT OF THE ATTORNEY GENERAL TOTAL	\$50,764	\$64,860

See title page for effective date.

CHAPTER 571

S.P. 284 - L.D. 730

An Act Making Appropriations from the General Fund for the Expenditures of State Government for the Fiscal Years Ending June 30, 1990, and June 30, 1991, and Changing Certain Provisions of Law Necessary for the Proper Operation of State Government

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, certain obligations and expenses incident to the operation of certain departments will become due and payable on or immediately after July 1, 1989; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,