

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 18, 1999

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
1999

The motor vehicle lessor shall release the motor vehicle title to the manufacturer upon payment by the manufacturer under this chapter.

Sec. 4. 10 MRSA §1169, sub-§§1, 2 and 5, as enacted by PL 1989, c. 570, §5, are amended to read:

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 or within the term of the express warranties, whichever comes first.~~ State-certified arbitration ~~shall~~ **must** be performed by one or more neutral arbitrators selected by the Department of the Attorney General operating in accordance with the rules ~~promulgated~~ **adopted** 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~~ **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~~ **must** 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~~ **must** 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. In addition to the other remedies provided by this chapter, the arbitrator may award a consumer whose motor vehicle is required to be replaced or refunded reasonable witness fees for a professional motor vehicle mechanic or engineer who prepared a notarized report on the condition of the vehicle or who testified at the arbitration hearing on behalf of the consumer.

5. Appeal of arbitration decision. ~~No~~ **An** appeal by a manufacturer or the consumer of the arbitrator's findings may ~~not~~ 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. The appeal must be a trial de novo. The arbitrator and the Department of the Attorney General may not be parties in any such appeal and may not be

called as witnesses. The Department of the Attorney General may submit an amicus curiae brief.

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~~ **must** 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.

See title page for effective date.

CHAPTER 213

S.P. 443 - L.D. 1318

An Act to Amend the Treatment of Security Deposits Upon the Sale of a Building

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

Sec. 1. 14 MRSA §6035, sub-§1, as enacted by PL 1977, c. 359, is repealed and the following enacted in its place:

1. Landlord's termination of interests in dwelling unit. Upon termination of a landlord's interest in the dwelling unit, whether by sale, assignment, death, appointment of a receiver or otherwise, the person in possession of a security deposit, including, but not limited to, the landlord, the landlord's agent or the landlord's executor shall, upon the transfer of the interest in the dwelling unit:

A. Provide to the landlord's successor in interest an accounting of the amount of each security deposit paid by each tenant and held by the person in possession of the security deposits, transfer the funds or any remainder after lawful deduction under this chapter to the landlord's successor in interest and provide to the tenant by mail:

(1) Notice of that transfer;

(2) Notice of the transferee's name and address; and

(3) A copy of the accounting of the amount of the security deposit transferred; or

B. Return the funds or any remainder after lawful deductions under this section to the tenant.

Sec. 2. 14 MRSA §6038, as amended by PL 1981, c. 428, §12, is further amended to read:

§6038. Treatment of security deposit

During the term of a tenancy, a security deposit given to a landlord as part of a residential rental agreement ~~shall may~~ not be treated as an asset to be commingled with the assets of the landlord. All security deposits received after October 1, 1979, ~~shall~~ must be held in an account of a bank or other financial institution under ~~such~~ terms ~~as will~~ that place the security deposit beyond the claim of creditors of the landlord, including a foreclosing mortgagee or trustee in bankruptcy, and ~~as will~~ that provide for transfer of the security deposit to a subsequent owner of the dwelling unit or to the tenant in accordance with section 6035. Upon the transfer of the dwelling unit, the new owner shall assume all responsibility for maintaining and returning to tenants all security deposits accounted for and transferred pursuant to section 6035. Upon request by ~~his~~ a tenant, a landlord shall disclose the name of the institution and the account number where the security deposit is being held. A landlord may use a single escrow account to hold security deposits from all of ~~his~~ the tenants.

See title page for effective date.

CHAPTER 214

S.P. 784 - L.D. 2199

**An Act Concerning Licensure of
Chiropractors**

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

Whereas, an opinion of the Department of the Attorney General dated February 18, 1999 concludes that acupuncture is not within the scope of chiropractic practice; and

Whereas, this opinion has created considerable confusion as to whether chiropractors may continue to use acupuncture as a method of treatment; 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,

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

Sec. 1. 32 MRSA §451, sub-§1, as enacted by PL 1983, c. 113, §1, is amended to read:

1. Chiropractic. "Chiropractic" means the art and science of identification and correction of subluxation and the accompanying physiological or mechanical abnormalities. The term subluxation, as utilized within the chiropractic health care system, means a structural or functional impairment of an intact articular unit. "Chiropractic" includes chiropractic acupuncture. Chiropractic recognizes the inherent recuperative capability of the human body as it relates to the spinal column, musculo-skeletal and nervous system.

Sec. 2. 32 MRSA §451, sub-§1-A is enacted to read:

1-A. Chiropractic acupuncture. "Chiropractic acupuncture" means the insertion of acupuncture needles through the skin at specific points. It is a chiropractic methodology used for the correction of the soft tissue components contributing to subluxation and the accompanying physiological or mechanical abnormalities. Except as provided in section 502, chiropractic acupuncture may only be practiced by a licensee who has received a chiropractic acupuncture certification from the board.

Sec. 3. 32 MRSA §502, first ¶, as repealed and replaced by PL 1991, c. 392, §3, is amended to read:

The board shall meet at least twice each year at such times and places as its chair may designate to consider applications, examine applicants and consider such other business as may properly come before the board. At its first meeting in each calendar year, the board shall elect one of its members as chair for a term of one year and one of its members as secretary to hold office at the pleasure of the board. Special meetings may be called at the pleasure of the chair and, in case of the death or inability of the chair, the secretary may call special meetings. The board shall keep correct records of all proceedings. The chair and secretary are empowered to administer oaths in matters connected with the duties of the board. The records, or duplicates of the records, must be open to inspection and are prima facie evidence of all matters recorded in the records. Four members of the board constitute a quorum for the transaction of business, but a license to practice chiropractic may not be granted except on an affirmative vote of at least 4 members of