

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

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FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 13, 2003

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

Penmor Lithographers
Lewiston, Maine
2003

Protection, in consultation with the Director of the Bureau of Forestry within the Department of Conservation, shall review rules adopted by the commissioner or the Board of Environmental Protection pertaining to timber harvesting and timber harvesting activities in shoreland areas and provide for the repeal or amendment of rules that duplicate or conflict with the rules adopted by the Commissioner of Conservation pursuant to Maine Revised Statutes, Title 12, section 8867-B. The Commissioner of Environmental Protection and the board shall ensure that any necessary changes become effective January 1, 2006.

See title page for effective date.

CHAPTER 336

H.P. 637 - L.D. 860

An Act To Allow Smelt Fishing in Long Lake in Aroostook County

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

Sec. 1. 12 MRSA §7552-A is enacted to read:

§7552-A. Smelt fishing in Long Lake

Notwithstanding section 7552, a person may fish for smelt by use of a dip net in the parts of Long Lake and its tributaries that are within Township 17, Range 3, Aroostook County. A person may not:

1. **Exceed daily bag limit.** Exceed the daily bag limit of 2 quarts per person. A person who violates this subsection commits a Class E crime; or

2. **Harvest for commercial purposes.** Harvest smelt for commercial purposes. A person who violates this subsection commits a Class D crime for which a fine of not less than \$1,000 may be adjudged.

This section is repealed December 31, 2005.

See title page for effective date.

CHAPTER 337

H.P. 664 - L.D. 887

An Act To Amend the Maine "Lemon Law"

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

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 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;
- B. All collateral charges, including, but not limited to, sales tax, ~~license and~~ registration fees and similar government charges; and
- C. Reasonable costs incurred by the consumer for towing and 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.

The provisions of this section ~~shall do~~ not affect the obligations of a consumer under a loan or sales contract or the secured interest of any secured party. The secured party shall consent to the replacement of the security interest with a corresponding security interest on a replacement motor vehicle ~~which that~~ is accepted by the consumer in exchange for the motor vehicle, if the replacement motor vehicle is comparable in value 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~~ is entitled to 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 a lessor and lessee ~~shall~~ must be made as their interests exist at the time the refund is to be made.

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 a repair attempt 3 or more times by the manufacturer or its agents or authorized dealers within

the express warranty term, during the 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, and ~~at least 2 of those times the same agent or dealer attempted the repair but~~ the nonconformity continues to exist; ~~or~~

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

- B. The vehicle is out of service by reason of a repair attempt 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 occurs earlier ~~date~~.

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

4. Time limit; extension. The term of an express warranty, ~~the one year and 2 year periods the 18,000 mileage term, the 3-year period~~ following delivery and the 15-day period provided in subsection 3, paragraph B, ~~shall~~ must be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, or strike or fire, flood or other natural disaster.

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

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

6-A. Notification of dealer. Consumers may also satisfy a 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~~ A 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 car~~ 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 accordance with the rules 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.

See title page for effective date.

CHAPTER 338

S.P. 507 - L.D. 1515

An Act To Promote and Monitor Competition in the Solid Waste Industry

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

Sec. 1. 38 MRSA §2112 is enacted to read:

§2112. Small container contract restrictions

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Small container" means a 2- to 10-cubic-yard container or dumpster.

B. "Small containerized solid waste hauling service" means providing solid waste hauling service to customers by providing the customer with a small container or dumpster that is picked up and emptied mechanically using a front-loading or rear-loading truck. "Small containerized solid waste hauling service" does not include hand pickup service or service using a compactor that is attached to or part of a small container.

C. "Solid waste hauling service" means the collection, removal and transportation to a solid waste transfer station or disposal site of trash and garbage. As used in this paragraph, trash and garbage do not include construction and demolition debris, medical waste, hazardous waste, organic waste, special waste such as contaminated soil or sludge or recyclable materials.