

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

THE GENERAL EFFECTIVE DATE FOR
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

12. Location of filing. A tax lien filed on or after July 1, 2001 with the office identified in Title 11, section 9-1501, subsection (1), paragraph (b) is not invalid or otherwise ineffectual by reason of filing with that office.

13. Application of state law. The law of this State governs the following without recourse to this State's choice of law provisions, including those provisions found in Title 11, sections 9-1301 to 9-1307:

A. Perfection of a personal property tax lien, as provided in this section;

B. The effect of perfection or nonperfection of a personal property tax lien as provided in this section;

C. The priority of a personal property tax lien as provided in this section; and

D. All other rights and obligations of the parties with respect to personal property tax liens held by municipalities in this State.

Sec. 9. Effective date. This Act takes effect October 1, 2003.

Sec. 10. Retroactivity. This Act applies retroactively to liens authorized in the Maine Revised Statutes, Title 36, section 612 that are perfected by a filing made on or after July 1, 2001, or for which a continuation statement is filed on or after July 1, 2001. All tax lien notices filed on or after July 1, 2001 with the office identified in Title 11, section 9-1501, subsection (1), paragraph (b) may not, by reason of filing in that office, be deemed invalid or otherwise ineffectual.

Effective October 1, 2003.

CHAPTER 356

S.P. 425 - L.D. 1294

An Act To Amend the Motor Vehicle Franchise Law

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

Sec. 1. 5 MRSA §12004-G, sub-§6-B is enacted to read:

6-B. <u>Commerce and Trade</u>	<u>Maine Motor Vehicle Franchise Board</u>	<u>\$100/day</u>	<u>10 MRSA §1187</u>
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Sec. 2. 10 MRSA c. 204 is amended by repealing the chapter headnote and enacting the following in its place:

CHAPTER 204

BUSINESS PRACTICES BETWEEN MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS

SUBCHAPTER 1

REGULATION OF BUSINESS PRACTICES BETWEEN MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS

Sec. 3. 10 MRSA §1171, sub-§1-C is enacted to read:

1-C. Board. "Board" means the Maine Motor Vehicle Franchise Board created pursuant to section 1187.

Sec. 4. 10 MRSA §1171-B, sub-§3, as enacted by PL 1997, c. 521, §5, is amended to read:

3. Civil penalty. If the ~~Secretary of State~~ board determines after a proceeding conducted in accordance with ~~the Maine Administrative Procedure Act and rules of the Secretary of State~~ this chapter that a manufacturer or distributor is violating or has violated any provision of this chapter or any rule or order of the ~~Secretary of State board~~ board issued pursuant to this chapter, the ~~Secretary of State board~~ board shall levy a civil penalty of not less than \$1,000 nor more than \$10,000 for each violation. If the violation involves multiple transactions within a 60-day period, these multiple transactions are deemed a single violation.

In determining the amount of a civil penalty levied under this chapter, the ~~Secretary of State board~~ board shall consider:

- A. The seriousness of the violation, including but not limited to the nature, circumstances, extent and gravity of the prohibited acts and the harm or potential harm created to the safety of the public;
- B. The economic damage to the public caused by the violation;
- C. Any previous violations;
- D. The amount necessary to deter future violations;
- E. Efforts made to correct the violation; and
- F. Any other matters that justice may require.

Sec. 5. 10 MRSA §1173-A, as enacted by PL 1997, c. 521, §7, is repealed.

Sec. 6. 10 MRSA §1174, sub-§3, ¶B, as amended by PL 1997, c. 521, §8, is further amended to read:

B. To coerce, or attempt to coerce, a motor vehicle dealer to enter into an agreement with that manufacturer, distributor, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof, or to do any other act prejudicial to the dealer by threatening to cancel a franchise or a contractual agreement existing between that manufacturer, distributor, distributor branch or division, factory branch or division or wholesale branch or division and that dealer or by threatening or attempting to modify a franchise during the term of the franchise or upon its renewal, if the modification substantially and adversely affects the motor vehicle dealer's rights, obligations, investment or return on investment, without giving ~~60~~ 90 days' written notice by certified mail of the proposed modification to the motor vehicle dealer, unless the modification is required by law or ~~court~~ board order. Within the ~~60-day~~ 90-day notice period, the motor vehicle dealer may file with the ~~Superior Court in the county where the dealership is located~~ board and serve notice upon the manufacturer a protest requesting a determination of whether there is good cause for permitting the proposed modification. The manufacturer has the burden of proving good cause. The ~~court~~ board shall promptly schedule a hearing and decide the matter within 180 days from the date the protest is filed. Multiple protests pertaining to the same proposed modification must be consolidated for hearing. The proposed modification may not take effect pending the determination of the matter. In determining whether there is good cause for permitting a proposed modification, any relevant factors must be considered, including, but not limited to:

- (1) The reasons for the proposed modification;
- (2) Whether the proposed modification is applied to or affects all motor vehicle dealers in a nondiscriminatory manner;
- (3) Whether the proposed modification will have a substantial and adverse effect upon the motor vehicle dealer's investment or return on investment;
- (4) Whether the proposed modification is in the public interest;

(5) Whether the proposed modification is necessary to the orderly and profitable distribution; and

(6) Whether the proposed modification is offset by other modifications beneficial to the motor vehicle dealer.

Notice in good faith to a motor vehicle dealer of that dealer's violation of the terms or provisions of the franchise or contractual agreement does not constitute a violation of this chapter;

Sec. 7. 10 MRSA §1174, sub-§3, ¶M, as amended by PL 1997, c. 521, §14, is further amended to read:

M. To require, coerce or attempt to coerce a franchisee to refrain from participation in the management of, investment in or the acquisition of any other line of new motor vehicle or related products as long as the franchisee maintains a reasonable line of credit for each franchise and the franchisee remains in substantial compliance with reasonable facilities requirements of the franchisor. The reasonable facilities requirements may not include any requirement that a franchisee establish or maintain exclusive facilities, personnel or display space ~~when the requirements are unreasonable considering current economic conditions and are not otherwise justified by reasonable business considerations. The burden of proving that current economic conditions or reasonable business considerations justify exclusive facilities is on the franchisor.~~

Sec. 8. 10 MRSA §1174, sub-§4, ¶E, as enacted by PL 1997, c. 521, §22, is amended to read:

E. To fail to disclose in writing to a purchaser of a new motor vehicle before entering into a sales contract that the new motor vehicle has been damaged and repaired if the dealer has knowledge of the damage or repair ~~or~~ and if the damage calculated at the retail cost of repair to the new motor vehicle exceeds 5% of the manufacturer's suggested retail price, except that a new motor vehicle dealer is not required to disclose to a purchaser that any glass, bumpers, audio system, instrument panel, communication system or tires were damaged at any time if the glass, bumpers, audio system, instrument panel, communication system or tires have been replaced with original or comparable equipment.

Sec. 9. 10 MRSA §1174-C, sub-§1, ¶A, as amended by PL 1997, c. 521, §23, is further amended to read:

A. A designated family member of a deceased ~~or~~ incapacitated or retiring new motor vehicle

dealer, which family member has been designated under the will of the dealer or in writing to the manufacturer, distributor, factory branch, factory representative or importer, may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement if the designated family member gives the manufacturer, distributor, factory branch, factory representative or importer of new motor vehicles written notice of the intention to succeed to the dealership within 120 days of the dealer's death ~~or~~ incapacity or retirement and unless there exists good cause for refusal to honor the succession on the part of the manufacturer, factory branch, factory representative, distributor or importer.

Sec. 10. 10 MRSA §1176, first ¶, as amended by PL 1995, c. 65, Pt. A, §16 and affected by §153 and Pt. C, §15, is further amended to read:

If a motor vehicle franchisor requires or permits a motor vehicle franchisee to perform labor or provide parts in satisfaction of a warranty created by the franchisor, the franchisor shall properly and promptly fulfill its warranty obligations, in the case of motor vehicles over 10,000 pounds gross vehicle weight rating, shall adequately and fairly compensate the franchisee for any parts so provided and, in the case of all other motor vehicles, shall reimburse the franchisee for any parts so provided at the retail rate customarily charged by that franchisee for the same parts when not provided in satisfaction of a warranty. A franchisor may not otherwise recover its costs for reimbursing a franchisee for parts and labor pursuant to this section. For purposes of this section, the retail rate customarily charged by the franchisee for parts may be established by submitting to the franchisor 100 sequential nonwarranty customer-paid service repair orders or 60 days of nonwarranty customer-paid service repair orders, whichever is less in terms of total cost, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average percentage markup so declared is the retail rate, which goes into effect 30 days following the declaration, subject to audit of the submitted repair orders by the franchisor and adjustment of the average percentage markup based on that audit. Only retail sales not involving warranty repairs, not involving state inspection, not involving routine maintenance such as changing the oil and oil filter and not involving accessories may be considered in calculating the average percentage markup. A franchisor may not require a franchisee to establish the average percentage markup by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time-consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. A franchisee may not change the average percentage markup more

than 2 times in one calendar year. Further, the franchisor shall reimburse the franchisee for any labor so performed at the retail rate customarily charged by that franchisee for the same labor when not performed in satisfaction of a warranty; ~~provided that as long as~~ the franchisee's rate for labor not performed in satisfaction of a warranty is routinely posted in a place conspicuous to its service customer. A franchisor is not required to pay the price charged by the dealer to retail customers for parts of systems, appliances, furnishings, accessories and fixtures of a motor home as defined in Title 29-A, section 101, subsection 40 that are designed, used and maintained primarily for nonvehicular residential purposes. Any claim made by a franchisee for compensation for parts provided or for reimbursement for labor performed in satisfaction of a warranty must be paid within ~~30~~ 60 days of its approval. All the claims must be either approved or disapproved within ~~30~~ 60 days of their receipt. A claim may be submitted within 90 days after the performance of services. When ~~any such a~~ claim is disapproved, the franchisee that submitted it ~~must~~ the claim must be notified in writing of ~~its~~ the claim's disapproval within that period, together with the specific reasons for its disapproval. ~~Ne~~ A franchisor may not, by agreement, by restriction upon reimbursement, or otherwise, restrict the nature or extent of labor performed or parts provided so that such restriction impairs the franchisee's ability to satisfy a warranty created by the franchisor by performing labor in a professional manner or by providing parts required in accordance with generally accepted standards.

Sec. 11. 10 MRSA §1178, sub-§1, as enacted by PL 1975, c. 573, is amended to read:

1. Agreements subject to this chapter. Written or oral agreements between a manufacturer, wholesaler or distributor with a motor vehicle dealer including, but not limited to, the franchise offering, the franchise agreement, sales agreements, policies and procedures agreements, bulletins or manuals, sales of goods, services or advertising, leases or mortgages of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such agreements in which the manufacturer, wholesaler or distributor has any direct or indirect interest, ~~shall be~~ are subject to this chapter.

Sec. 12. 10 MRSA c. 204, sub-c. 2 is enacted to read:

SUBCHAPTER 2**MAINE MOTOR VEHICLE FRANCHISE BOARD****§1187. Maine Motor Vehicle Franchise Board; established**

The Maine Motor Vehicle Franchise Board, as established in Title 5, section 12004-G, subsection 6-B and referred to in this chapter as "the board," is established for the purpose of enforcing the provisions of this chapter.

1. Membership. The board consists of 7 members:

A. Six members appointed by the Governor:

(1) Three members who are or have been franchised new motor vehicle dealers in the State of Maine;

(2) A member who is or has been an employee or representative of a franchisor; and

(3) Two members of the public; and

B. One member appointed by the Secretary of State who is not and has not been either a motor vehicle dealer or manufacturer representative and who is an attorney employed by the Secretary of State and assigned to the Bureau of Motor Vehicles.

2. Chair. The member appointed by the Secretary of State is the chair of the board. The chair shall:

A. Act as the presiding officer in all matters that come before the board;

B. Make preliminary rulings on discovery and other questions;

C. Participate fully in board deliberations; and

D. Vote on the merits of complaints that come before the board only when necessary to break a tie.

3. Terms. Appointments to the board are for 5-year terms. A member may not serve more than 2 consecutive 5-year terms. The terms of the initial board members must be staggered, with 2 members serving a term of 3 years, 2 members serving a term of 4 years and 2 members serving a term of 5 years. The term of the member who serves as chair is without limit.

4. Vacancy. Any vacancy on the board must be filled by the Governor or the Secretary of State by appointment of a person of the same category as the

board member being replaced to hold office for the unexpired term.

5. Compensation. With the exception of the chair, whose position is funded pursuant to section 1187-A, members of the board are entitled to a per diem of \$100 for each day actually engaged in the performance of their duties and may be reimbursed for reasonable and necessary expenses incurred in carrying out their duties.

6. Rulemaking. The board shall adopt rules to implement the provisions of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

7. Affiliation. The board is affiliated with the Department of the Secretary of State, Bureau of Motor Vehicles.

§1187-A. Fund

To fund the board and to pay the start-up expenses of administration and enforcement of this chapter, there is established the Maine Motor Vehicle Franchise Fund, referred to in this section as "the fund." The board shall impose an initial fee upon each new motor vehicle dealer of \$200 for each dealer's license held by that dealer and an initial fee of \$2,000 for each line make of each manufacturer. The board shall determine on an annual basis whether additional funding is required. If additional funding is required, the board shall meet those funding requirements by adopting rules pursuant to section 1187, subsection 6 to impose additional fees on motor vehicle dealers or manufacturers. In establishing those fees, the board shall ensure that revenues from those fees closely match the costs of the board to administer and enforce this chapter. The board may amend those rules biennially as necessary to ensure that the board has sufficient funds to administer and enforce this chapter. The board shall maintain a fund balance of at least \$20,000.

The fund is administered by the Secretary of State. The fund must be used exclusively for the administration and operation of the board for the enforcement of this chapter. Expenses for operation of the board, including the compensation for the chair, must be paid by the board to the Secretary of State on a quarterly basis.

§1188. Duties

The board:

1. Complaints. Shall review written complaints filed with the board by persons complaining of conduct governed by this chapter;

2. Decision. Shall issue written decisions and may issue orders to a franchisee or franchisor in violation of this chapter;

3. Penalty. May levy a civil penalty pursuant to section 1171-B, subsection 3;

4. Award costs. Shall award costs and attorney's fees pursuant to section 1173;

5. Interim order. Shall levy a civil penalty pursuant to section 1171-B, subsection 3 when a party to a complaint under this subchapter is found to have recklessly or knowingly failed, neglected or refused to comply with an interim order issued by the board; and

6. Procedures. May appoint persons to be present at the deposition of out-of-state witnesses, administer oaths, issue subpoenas to compel the presence of witnesses or documents and authorize stenographic or recorded transcripts of proceedings.

§1188-A. Prehearing conference

Prior to hearing a complaint, but not later than 45 days after the filing of the complaint, the board shall require the parties to attend a prehearing conference with the chair to discuss the possibility of settlement. If the matter is not resolved through the conference, the matter must be placed on the board's calendar for hearing. Settlement conference discussions remain confidential and may not be disclosed or used as an admission in any subsequent hearing.

§1189. Hearings

The board shall hold a hearing on the merits of a complaint within 120 days of the filing of the complaint. The hearing must be conducted pursuant to rules established by the board. A decision must be issued within 30 days of the completion of the hearing. The board shall determine the location of hearings.

§1189-A. Discovery

The parties to a hearing conducted pursuant to this subchapter are permitted to conduct and use the same discovery procedures as provided in the Maine Rules of Civil Procedure, subject to any amendments to the rules as the board might adopt to secure that discovery is expedited.

Compliance with discovery procedures authorized by this section and by rule may be enforced by application to the board or on the board's own motion.

§1189-B. Appeal

A party appealing an order of the board to the Superior Court shall indicate in the appeal whether it is an appeal on issues of law or on factual matters.

1. Appeal as matter of law. An order or decision may be appealed solely on the basis that the board made an error of law. An order or decision appealed may not be set aside or vacated except for an error of law. Additional evidence may not be heard or taken by the Superior Court on an appeal made under this section.

2. Appeal involving factual matters. A party to a decision by the board may appeal to the Superior Court for a hearing on the merits of the dispute. In any such hearing before the Superior Court, all findings of fact of the board are presumed to be correct unless rebutted by clear and convincing evidence.

A copy of the decision, certified as true and accurate by the chair must be admitted into evidence in any appeal hearing. There is a right to trial by jury in any action brought in Superior Court under this section. An appeal for hearing is subject to the provisions of section 1173.

§1190. Statute of limitations

If a complaint is filed with the board by a person otherwise entitled to bring a complaint in the courts of the State, then the applicable statute of limitations is tolled and a civil action in a court of competent jurisdiction is barred pending the outcome of proceedings before the board.

§1190-A. Action filed; court

An action, filed in a court of competent jurisdiction, that gives rise or could give rise to a claim or defense under this chapter must be stayed if, within 60 days after the date of filing of the complaint, or service of process, whichever date is later, a party to the action files a complaint with the board asserting the claims or defenses under this chapter.

Sec. 13. Position created. An attorney position is created within the Department of the Secretary of State, Bureau of Motor Vehicles. The incumbent in that position serves as the full-time chair of the Maine Motor Vehicle Franchise Board, as provided by the Maine Revised Statutes, Title 10, section 1187. This position is funded entirely from the Maine Motor Vehicle Franchise Fund, as provided in Title 10, section 1187-A.

Sec. 14. Appropriations and allocations. The following appropriations and allocations are made.

SECRETARY OF STATE, DEPARTMENT OF THE

Bureau of Administrative Services and Corporations 0692

Initiative: Allocates funds for one Attorney position and operating costs necessary to staff the Maine Motor Vehicle Franchise Board.

Other Special Revenue Funds	2003-04	2004-05
Positions - Legislative Count	(1,000)	(1,000)
Personal Services	\$51,188	\$74,057
All Other	\$13,788	\$10,488
Capital Expenditures	\$15,297	\$0
<hr/>		
Other Special Revenue		
Funds Total	\$80,273	\$84,545

See title page for effective date.

CHAPTER 357

H.P. 1044 - L.D. 1425

An Act Relating to the Protection of Whistleblowers

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

Sec. 1. 26 MRSA §833, sub-§1, ¶D, as enacted by PL 1987, c. 782, §4, is amended to read:

D. The employee acting in good faith, has refused to carry out a directive to engage in activity that would be a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States or that would expose the employee or any individual to a condition that would result in serious injury or death, after having sought and been unable to obtain a correction of the illegal activity or dangerous condition from the employer.

Sec. 2. Printing of poster. Notwithstanding the Maine Revised Statutes, Title 26, section 42-B, the Department of Labor, Bureau of Labor Standards is not required to modify and redistribute the printed notice required by that section to reflect the changes in the laws resulting from this Act. The Bureau of Labor Standards shall modify the printed notice to reflect the changes contained in this Act when it becomes necessary to print additional notices due to an insufficient supply of such notices or future changes in the laws.

See title page for effective date.

CHAPTER 358

H.P. 1028 - L.D. 1401

An Act To Provide the Office of the State Fire Marshal with Adequate Funding for Construction Plans Review

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

Sec. 1. 25 MRSA §2450, as amended by PL 1997, c. 728, §24, is further amended to read:

§2450. Examinations by Department of Public Safety

The Commissioner of Public Safety shall adopt, in accordance with requirements of the Maine Administrative Procedure Act, a schedule of fees for the examination of all plans for construction, reconstruction or repairs submitted to the Department of Public Safety. ~~A fee charged pursuant to this section~~ The fee schedule for new construction or new use is 5¢ per square foot for occupied spaces and 2¢ per square foot for bulk storage occupancies, except that a fee for review of a plan for new construction by a public school may not exceed \$450. The fee schedule for reconstruction, repairs or renovations is based on the cost of the project and may not exceed \$450. The fees must be credited to a special revenue account to defray expenses in carrying out this section. Any balance of the fees may not lapse, but must be carried forward as a continuing account to be expended for the same purpose in the following fiscal years.

See title page for effective date.

CHAPTER 359

H.P. 1042 - L.D. 1423

An Act To Facilitate the Implementation, Maintenance and Operation of the E-9-1-1 Emergency System

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

Sec. 1. 25 MRSA §2921, sub-§2-A, as enacted by PL 1993, c. 566, §2, is amended to read:

2-A. Bureau. "Bureau" means the Emergency Services Communication Bureau ~~in~~ within the ~~Department of Public Safety~~ Public Utilities Commission, which is responsible for the statewide implementation and management of E-9-1-1.