

MAINE STATE LEGISLATURE

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STATE OF MAINE

ONE HUNDRED AND NINTH LEGISLATURE

COMMITTEE ON BUSINESS LEGISLATION

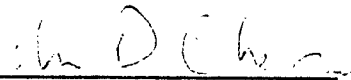
January 25, 1980

The Honorable Richard H. Pierce, Chairman
Legislative Council
State House
Augusta, Maine 04333


Dear Chairman Pierce:

We enclose the final report of the Joint Standing
Committee on Business Legislation on its study of H.P. 1459.

Very truly yours,



John D. Chapman
Senate Chairman



Robert S. Howe
House Chairman

BF/lk

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SUMMARY

H.P. 1459 directed the Committee on Business Legislation to study the general subject of motor vehicles in the context of business regulation. The committee held several meetings and has unanimously proposed legislation dealing with 3 matters -- manufacturer reimbursement of dealers for express warranty repairs, implied warranties in sales of used cars, and abuse in auto repair.

The committee recommends that automakers be required to reimburse dealers at their ordinary retail rate for labor they perform in doing express warranty repairs. Automakers have used their economic advantage to compel dealers to accept reimbursement at rates far below what dealers charge retail customers for non-warranty repairs. This is unfair to dealers, and it very possibly results in non-warranty customers subsidizing the automakers through inflated labor charges. Several states have already acted to remedy this situation, and Maine should do the same.

The committee also recommends that used car dealers no longer be permitted to disclaim or exclude implied warranties. The Uniform Commercial Code imposes implied warranties in merchant sales of all customer goods. These warranties may not be disclaimed or excluded except in the case of used cars. Maine appears to be the only state which makes this exception. With used cars becoming an increasingly common and costly means of personal transportation, Maine citizens should be afforded the same

implied warranty protection enjoyed by used car buyers in every other state.

Finally, the committee recommends that auto repair customers be given some basic statutory rights. Abuse in auto repair is a serious problem in this State and around the country. Repairs that are unnecessary, incompetently done, or not done at all are annoying and expensive and constitute a safety hazard. It is hoped that programs which the State's new car dealers and AAA have promised to establish will correct many of the abuses. If, within a reasonable period of time, these voluntary programs do not seem to be working very well, then the Legislature should consider stronger action. In the meantime, customers should at least have a legal right to specify, before repairs are begun, a maximum charge in excess of which they will not be liable unless they specifically agree. Further, customers should have a legal right to inspect any replaced parts before they have to pay their bill. In addition, no repair facility should be allowed to install used parts without a customer's specific, prior consent. Lastly, every repair facility should be required to post a short, conspicuous notice disclosing its labor rates and informing customers of their statutory rights.

INTRODUCTION

Several bills were introduced in the 1st Regular Session of the 109th Legislature dealing with motor vehicles in the context of business regulation. All of them were referred to the Committee on Business Legislation. The sponsors of some were eventually given leave to withdraw, while, for various reasons, the other bills received ought not to pass reports. Nevertheless, the committee felt that, collectively, these bills raised issues significant enough to warrant further study. Therefore, H.P. 1459 (Appendix A) was introduced and later approved by the Legislative Council.

A special 4-member subcommittee was appointed to conduct the study. The subcommittee held an organizational meeting and 2 public work sessions. It heard testimony and received information and assistance from representatives of interested federal and state agencies, consumer groups, business concerns, and trade associations.

After careful consideration, the subcommittee unanimously concluded that the issues raised by 3 of the bills introduced last year deserve serious attention in the 2nd Regular Session. Accordingly, the full committee has proposed specific legislation (Appendix B) and strongly recommends favorable action on it by the Legislature.

FINDINGS AND RECOMMENDATIONS

I. Express Warranty Reimbursement

The franchise agreement between an automaker and a new car dealer usually requires the dealer to do warranty repairs on motor vehicles manufactured by the automaker. The dealer, of course, is reimbursed by the automaker for doing these repairs. For many years, however, the automakers' superior bargaining power has enabled them to coerce dealers into accepting reimbursement at a rate significantly below what dealers routinely charge ordinary retail customers for non-warranty repairs. The result, it has been asserted, is that retail customers pay inflated labor rates for non-warranty repairs and thereby subsidize the automakers, who have refused to compensate dealers fairly for repairs made necessary when their motor vehicles fail to meet warranty standards.

Intervention by the State in the contractual affairs of commercial parties is normally neither advisable nor justified. Under the circumstances, however, we think that the only equitable method of express warranty reimbursement is reimbursement at regular retail rates. Further, no automaker ought to be permitted to pressure its dealers into accepting less. Therefore, we think that the manner of reimbursement should be prescribed by statute, as several other states have done.

We propose very simply that an automaker be required to reimburse a dealer for labor at the retail rate customarily charged by the dealer for non-warranty repairs. Our only

concern need be that that rate is legitimate. There is only one condition that needs to be imposed to ensure that the dealer's rate is bona fide -- it should be routinely posted in a conspicuous place. The rate itself should be determined through competition in the marketplace.

II. Implied Warranties

The Uniform Commercial Code, which is the general law of sales in this State, imposes certain implied warranties on goods sold by merchants, as distinct from private sellers. By far the most common type of implied warranty is the so-called warranty of "merchantability" -- basically, that the article sold is fit to be used in the manner in which such articles are ordinarily used.

Implied warranties such as the warranty of merchantability exist apart from and in addition to any express warranties which are created by agreement between a manufacturer or retailer and a buyer. Implied warranties are created by statute instead. By nature, they are more indefinite and less specific than express warranties. They do not, for example, guarantee a particular part or assembly for a fixed period of time or distance, as do express warranties. Nevertheless, implied warranties constitute a very important part of a buyer's bundle of rights, precisely because they are not as explicitly limited as express warranties.

The Uniform Commercial Code permits merchants to disclaim or exclude implied warranties if they wish. This is usually accomplished by selling an item "as is" or "with all faults." Significantly, however, merchants may not legally disclaim or exclude implied warranties in sales of consumer goods. This

prohibition applies to sales of all consumer goods, new and used, with one notable exception -- used cars. We are not aware of any other state which makes this singular exception. Thus, uniquely in Maine, a consumer who buys a used car from a dealer is without the fundamental protection which the law affords the buyer of any other new or used consumer item. We believe that this situation should be remedied by eliminating the exception for used cars.

Maine does have a law called the Used Car Information Act, which, among other things, imposes a special, limited warranty on any used car sold by a dealer. This warranty provides that the used car is in a condition meeting state inspection standards and that it has in fact been inspected. The Act also provides for disclosure to prospective buyers of a used car's general history.

Some used car dealers have argued that the Used Car Information Act should be substantially amended or even repealed if the exception for implied warranties on used cars is eliminated, as we urge. Essentially, they maintain that Maine consumers do not need both the Act and implied warranties. We firmly disagree.

There is every reason to expect that, as new car prices and the cost of maintenance, fuel, and repair continue to skyrocket, more and more Maine citizens will buy used rather than new cars to satisfy their personal transportation needs. And increasingly, the purchase of a used car involves a significant financial investment. Most important, with the purchase of any motor vehicle, buyers entrust their own physical welfare and that of others to an instrument which, if unsafe, poses an extremely

serious threat to life and limb. Under all these circumstances, we think that used car buyers ought to be given as much protection under the law as reasonably possible.

Eliminating the exception for implied warranties on used cars is a reasonable and proper step. The Used Car Information Act provides a basic, minimum level of protection. The implied warranty of merchantability -- a guarantee that a given used car will operate as well as the average car of similar age, description, and apparent condition -- will be an invaluable supplement to the essential protection already afforded by the Act.

We will no doubt be warned again that giving used car buyers this additional protection will inevitably drive up used car prices. The subcommittee carefully considered this particular point but found no evidence whatever to support it. In fact, there was testimony indicating that the prices of used cars in other New England states, where implied warranties do apply to used car sales, are comparatively lower than they are in Maine! Therefore, we cannot accord much weight or credence to this prediction.

III. Auto repair.

Abuse in the auto repair business is too well-documented to require extensive comment on our part. Suffice it to say that numerous studies and surveys have been conducted by federal and state agencies, congressional and legislative committees, and private consumer groups. Many of these studies and surveys were available to the subcommittee. Virtually all of which we

are aware reach the same general conclusions -- that Americans annually waste tens of billions of dollars on auto repairs that are incompetently performed, unnecessary, or simply not made at all; that abuse in auto repair is the leading cause of consumer complaints in this country; and that the reasons for abuse are varied and range from the innocent to the criminal (e.g., consumer ignorance, mechanics' lack of training and incompetence, the complexity of motor vehicle design and the increasing susceptibility of motor vehicles to malfunction, the prevalent use of the "flat rate" system of compensation, and deliberately fraudulent practices). There is no reason to believe that these conclusions do not apply equally well to auto repair in Maine. In fact, there are strong, affirmative indications -- a multitude of individual "horror" stories cited to the subcommittee, reports of the Attorney General and various consumer advocates, and occasional spot-checks by the media -- that abuse is as common and serious here as anywhere else.

What the many studies and surveys do not agree on is what, if anything, government ought to do to correct abuse in auto repair. The Congress, which is the only body truly capable of mandating improvements in motor vehicle design, has done practically nothing except to mandate the redesign of bumpers. The responsibility for taking legislative action, therefore, has been left largely to the states. Many states have enacted so-called "disclosure" laws, which are usually centered on the requirement that a customer receive a written estimate before repairs are begun. Ordinarily, a repair facility may not exceed an estimate given pursuant to these laws unless the customer is contacted and specifically agrees. Some states have added the

licensing of mechanics and repair facilities to these disclosure requirements in order to force compliance by facilities and to upgrade mechanics' training and skills. A few states have even established a special agency to investigate, mediate, arbitrate, and prosecute auto repair complaints.

Some segments of the auto repair industry itself have acknowledged the existence of problems in their business. In fact, several private alternatives to government regulation are being developed in various pilot programs around the country. Some have already been widely implemented. To date, these programs have received mixed reviews.

The National Institute for Automotive Service Excellence (NIASE), for example, is an industry-sponsored organization which tests and certifies mechanics on a voluntary basis. It has been criticized for giving only written examinations and for spotty participation.

The National Automobile Dealers Association (NADA), for another, has formed Automotive Consumer Action Panels (AUTOCAPS) in a number of states. Most AUTOCAPS are composed of consumers and dealers who mediate any dispute that is not resolved informally between a customer and a participating new car dealer. AUTOCAPS have come under fire in many places for being weighted in favor of dealers and for being unable to force compliance by an uncooperative dealer when the AUTOCAPS's decision does favor the customer.

Individual corporations are taking some initiative too. One major oil company, for instance, now requires its service

stations to meet certain personnel and equipment standards, to offer written estimates, and to guarantee their repair work. And a leading automaker is currently experimenting with a mediation program similar to NADA's AUTOCAPS, except that the mediator's decision is binding on the automaker and the dealer.

Various consumer and business groups, including auto clubs, have established auto repair programs as well. Some local groups around the country, for example, offer mediation services, rate repair facilities, educate consumers, and generally monitor local repair practices. The American Automobile Association (AAA) has instituted a test project, called the Approved Auto Repair Services Program (AARS), which is considered very successful. Any facility that wins AARS approval must meet strict personnel and equipment standards. In addition, it must offer written estimates and guarantee its repair work to AAA members. Finally, the facility must abide by AAA's decision in the event of a dispute.

A spokesperson for AAA's Maine Chapter advised the subcommittee that AAA will begin operating an AARS program in the southern half of the State in 1981. Although the actual benefits will continue to be limited to AAA members, the program has an excellent reputation which we expect will serve as an incentive toward general improvement in the auto repair business. Of course, AARS facility approval ratings will be useful to everyone.

The Maine Automobile Dealers Association informed the subcommittee that it intends to form an AUTOCAP for at least part of the State by February 1 of this year. While AUTOCAPS

have been much criticized in the past, we are hopeful that recommendations recently made in a special NADA study will help avert any problems with AUTOCAPS here in Maine.

The subcommittee was shown data indicating that there are several hundred NIASE-certified mechanics working in Maine. Although most are employed by new car dealers, we trust that less well-organized segments of the industry such as used car dealers, service stations, and independent garages will soon begin to encourage more of their employees to become certified.

We do not anticipate that these prospects, however promising, will "solve" all the problems with auto repair in this State. However, we are anxious that these private alternatives be given an opportunity to work before stronger action on our part becomes necessary. This does not mean that we don't think legislative action is desirable at this time. On the contrary, we believe that every auto repair customer -- whether or not they are an AAA member and whether or not their motor vehicle is being repaired by a new car dealer or an AARS-approved facility -- should have some basic statutory rights.

Specifically, we think that customers should have a right to specify in writing, before repairs are begun, an amount in excess of which they will not be liable unless they explicitly agree otherwise. This simple mechanism could virtually eliminate one of the most common auto repair complaints -- the so-called "5 o'clock surprise" (when the customer discovers too late that the initial estimate or quote has been grossly exceeded). Further, customers should be given an opportunity to inspect any replaced parts before they are asked to pay

their bill. Customers should also have the right to take replaced parts with them if they wish, unless the parts must be returned under an agreement between the dealer and the manufacturer. In addition, a repair facility should not be allowed to install used or rebuilt parts without the customer's specific consent in advance. Finally, a repair facility should post a brief notice informing customers of their rights under the law and of the facility's labor rates.

This proposal will not be unduly burdensome to repair facilities. It will not, for example, mandate a lot of paperwork or put the facilities to significant extra expense. On the other hand, we think that it will be very beneficial to consumers. For example, the customer's right to specify a conditional maximum charge will help forestall a good deal of the misunderstanding that so frequently arises. The opportunity to inspect replaced parts will, among other things, probably reduce the number of parts replaced unnecessarily. The requirement that a customer must authorize used parts in advance of their installation will help prevent the deceptive practice of installing used parts but charging for new ones. Lastly, the posting of labor rates and the customer's statutory rights will enhance customers' bargaining power and foster greater competition.

In House

Whereas, various legislation has been proposed pertaining to the relationships among and between consumers, automobile dealers and repair facilities and between automobile dealers and automobile manufacturers, distributors and franchisors; and

Whereas, that proposed legislation involves, more specifically, the economic and legal relationships between consumers, retailers and manufacturers with regard to sales, warranties, repairs, disclosures, and franchise agreements and obligations; and

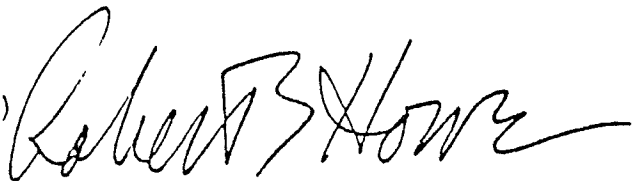
Whereas, any of that legislation may significantly alter the legal relationships presently existing between those parties under Maine law; now, therefore, be it

Ordered, the Senate concurring, subject to the Legislative Council's review and determinations hereinafter provided, that the Joint Standing Committee on Business Legislation shall study the nature of the existing and proposed relationships including, but not limited to, those set forth in the Used Car Information law, ^{Maine Revised Statutes,} Title 10, Chapter 217, the Regulation of Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers law, ^{Maine Revised Statutes,} Title 10, Chapter 204, and all other pertinent statutory provisions governing commercial transactions involving motor vehicles; and be it further

Ordered, that the committee report its findings and recommendations, together with all necessary implementing legislation in accordance with the Joint Rules, to the Legislative Council for submission in final form at the ^{Second} regular session of the 109th Legislature; and be it further

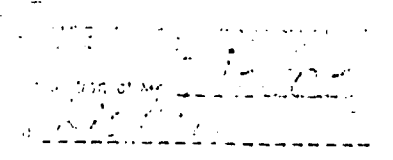
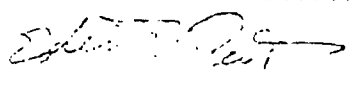
Ordered, that the Legislative Council, before implementing this study and determining an appropriate level of funding, shall first ensure that this directive can be accomplished within the limits of available resources, that it is combined with other initiatives similar in scope to avoid duplication and that its purpose is within the best interests of the State; and be it further

Ordered, upon passage in concurrence, that a suitable copy of this Order shall be forwarded to members of the committee.

(Howe)
Name: 

Town: South Portland

HP1459


MAY 31 1979
Filed Pending


AN ACT Relating to Motor Vehicle Warranties and Repairs.

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

Sec. 1. 10 MRSA §1176, 1st paragraph, as enacted by PL 1975, c. 573, is repealed and the following enacted in its place:

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 and adequately and fairly compensate the franchisee for any parts so provided. Further, the franchisor shall reimburse the franchisee for any labor so performed in an amount equal to the retail price customarily charged by that franchisee for the same labor when not performed in satisfaction of a warranty; provided that the franchisee's rate for labor not performed in satisfaction of a warranty is routinely posted in a place conspicuous to its service customers. Any claim made by a franchisee for compensation for parts provided or for reimbursement for labor performed in satisfaction of a warranty shall be paid within 30 days of its approval. All such claims shall be either approved or disapproved within 30 days of their receipt. When any such claim is disapproved, the franchisee that submitted it shall be notified in writing of its disapproval within that period, together with the specific reasons for its disapproval. No franchisor may, by agreement, 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 good and

workmanlike manner or by providing parts required in accordance with generally accepted standards.

Sec. 2. 10 MRSA §1473, as enacted by PL 1975, c. 770, § 57, is amended to read:

§1473. Construction

The provisions of this chapter shall not be construed to limit or restrict in any way the rights or warranties provided to persons under any other Maine law, ~~except that Title 11, section 2316, subsection 5 shall not apply to transactions under this chapter.~~

Sec. 3. 10 MRSA §1474, sub-§3, 2nd sentence, as enacted by PL 1975, c. 770, §57, is amended to read:

Any other warranty, in addition to that required by subsection 1 but not including a warranty created under Title 11, sections 2-314 or 2-315, that may be extended or agreed to by the dealer must be set forth in this written statement in accordance with further requirements of this section.

Sec. 4. 29 MRSA c. 23 is enacted to read:

CHAPTER 23

MOTOR VEHICLE REPAIR

§2601. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. Customer. "Customer" means an individual, corporation or other legal entity, including an agent, who contracts with a repair facility for repair of a motor vehicle.

2. Flat rate. "Flat rate" means any method of calculating charges for labor that is not based upon the amount of time actually spent repairing a motor vehicle.

3. Motor vehicle. "Motor vehicle" means "motor vehicle" as defined in Title 29, section 1, subsection 7.

4. Repair. "Repair" means the examination, maintenance, servicing, adjustment, improvement, replacement, removal or installation of any part of a motor vehicle, including body work and painting and incidental services such as storage and towing, but excluding the sale of motor fuel.

5. Repair facility. "Repair facility" means an individual, corporation or other legal entity which repairs motor vehicles for the general public for compensation.

\$2602. Maximum charge for repair

1. Written designation by customer. Before a repair facility begins repairing a customer's motor vehicle, the facility shall specially give the customer an opportunity and the customer shall have a right to designate in writing a specific amount of charges for repair in excess of which the customer does not agree to be liable without further, specific agreement, either oral or written.

2. No liability without agreement. A customer shall not be liable for any charge for repair in excess of the specific amount designated in accordance with subsection 1 without further, specific agreement, either oral or written.

3. Retention of written designation. The repair facility shall retain the original of any designation written in accordance with subsection 1 and shall give the customer a copy at the time of designation.

§2603. Replaced parts

Before payment of any charge is demanded, a repair facility shall specially give the customer an opportunity and the customer shall have a right to inspect any replaced parts. Further, a repair facility shall return and the customer shall have a right to the return of any replaced parts which the customer requests, unless the facility is required to return the parts to the manufacturer or distributor under a bona fide warranty or exchange arrangement.

§2604. Used parts

No repair facility may install a used, reconditioned, or rebuilt part unless the customer specifically agrees before that part is installed.

§2605. Notices

A repair facility shall post the following notice in a place where it is reasonably likely to be seen by its repair customers. The notice shall be completed with information on charges and printed so that it is conspicuous and can be read by the average person.

"NOTICE TO OUR CUSTOMERS
REQUIRED UNDER STATE LAW"

Before we begin making repairs, you have a right to specify in writing the maximum amount which you agree to pay without further, specific agreement. You will not be liable for any charge over that amount unless you specifically agree to it. You have a right to a copy of any written specification at the time you sign it.

Before you pay your bill, you have a right to inspect any replaced parts. You have a right to take with you any replaced parts, unless we are required to return the parts to our distributor or manufacturer.

We may not install any used or rebuilt parts without your specific agreement in advance.

You may not be charged any fee for exercising the above rights.

WE CHARGE \$ /HOUR FOR LABOR.

(We round off the time to the nearest .)"

The notice shall also contain the following if it applies:

"We also charge a flat rate for some repairs. Our service manager will explain what a flat rate is and show you how much it may cost you."

§2606. Fee prohibited.

No repair facility may, directly or indirectly, charge any fee for its performance of any obligation or for the exercise of any right in accordance with this chapter.

§2607. Unfair trade practice

A repair facility's failure to comply with this chapter shall constitute an unfair trade practice under Title 5, section 206 et seq..

§2608. Waiver prohibited

Unless specifically provided otherwise, the duties imposed by and rights created under this chapter may not be waived or otherwise modified. Any waiver or modification is contrary to public policy and shall be void and unenforceable.

§2609. Savings clause

This chapter shall be in addition to, and shall not be construed so as to limit or replace in any way, rights or procedures provided to customers either by statute or by common law.

STATEMENT OF FACT

The purpose of section 1 is to require automakers to reimburse auto dealers at the same rate for labor normally charged other customers when repairs are not covered by warranty. With their superior bargaining position, automakers have in the past forced dealers to accept reimbursement at a rate substantially lower than the dealers' usual retail rate. The net effect has been that, through an inflated labor rate, non-warranty customers have subsidized automakers who were unwilling to pay the fair and full price for repairs made necessary when their automobiles failed to meet warranty standards. This section prevents the recurrence of this problem and, to avoid any possible abuse, requires dealers to post their normal labor rate.

Under present law, used cars are the only type of consumer goods that may be sold with an exclusion or modification of the Uniform Commercial Code's implied warranties -- in other words, "as is." Section 2 eliminates this exception. Section 3 does not make a substantive change in the law but merely clarifies a point of possible confusion -- specifically, that implied warranties need not be set forth in writing, as are express warranties.

Section 4 helps protect the auto repair customer against common abuses and helps to eliminate misunderstanding between the customer and the repair shop. This new chapter accomplishes these purposes responsibly, without creating a massive licensing bureaucracy or a cumbersome regulatory scheme and without imposing unfair or unreasonable burdens on repair shops. The law would apply to auto repairs of all kinds, including mechanical and body work and to any repair shop doing business with the public for compensation. It would also cover any customer, whether consumer or commercial. The law would require a repair shop to give the customer a special opportunity to designate in writing a specific amount over which the customer will not be liable without further, specific agreement. The customer would have to be given a copy of the designation at the time it is made. Before the customer pays the final bill, the shop would have to give the customer a special opportunity to inspect any replaced parts and return any which the customer requests, unless the shop is required to return them to the manufacturer or distributor. Repair shops would be prohibited from installing rebuilt parts without the customer's consent in advance. The law would require every repair shop to post a conspicuous notice informing customers of their legal rights and the shop's rates. Finally, the law would authorize the Attorney General to enforce the law under the Unfair Trade Practices Act.