

MAINE STATE LEGISLATURE

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**STATE OF MAINE
114TH LEGISLATURE
FIRST REGULAR SESSION**



**BILL SUMMARY
JOINT STANDING COMMITTEE
ON
BUSINESS LEGISLATION**

JULY 1989

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ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

JOINT STANDING COMMITTEE
BILL SUMMARIES
AUGUST 1989

This document is a compilation of the bill summaries prepared by this office for the Joint Standing Committees and Joint Select Committees of the Maine Legislature. The summaries are arranged by LD number for each committee.

All Adopted Amendments are listed, by paper number (e.g., H-584 or S-222), together with the sponsor for floor amendments. Final action is listed to the right of the title. If final House and Senate action differ, both are listed. Committee Reports and Floor Action are abbreviated as follows:

OTP	Ought to Pass
OTP-ND	Ought to Pass in New Draft
OTP-ND-NT	Ought to Pass in New Draft, New Title
OTP-A	Ought to Pass as Amended
ONTP	Ought Not to Pass
LVWD	Leave to Withdraw
INDEF PP	Indefinitely Postponed

Each individual summary was prepared by the analyst assigned, as noted for each committee. But, this document was produced by the efforts of all the office staff, including Research Assistant Barbara McGinn, and secretaries: Charlene Brann, and Valarie Parlin, and especially Laurette Knox who coordinated preparation of the overall document.

Please give us your suggestions and comments on these summaries and tell us of any inaccuracies.

SPONSOR(S)

COMMITTEE REPORT

AMENDMENTS ADOPTED

MICHAUD
PERKINS
DEXTER
JACQUES

LV/WD

SUMMARY

This bill requires that a person be licensed by the State based on an experience qualification in order to engage in the business of water well drilling. This bill establishes the Maine Water Well Drilling Commission, comprised of both public officials and private individuals, to promulgate and enforce standards of practice for water well drillers in the State.

LD 1413 An Act to Establish a State Arbitration Program for Lemon Motor Vehicles

PUBLIC 570

SPONSOR(S)

COMMITTEE REPORT

AMENDMENTS ADOPTED

BRANNIGAN
ALLEN
CONSTANTINE
TITCOMB

OTP-AM

H-500 ALLEN
S-222

SUMMARY

Most states, including this State, have enacted automobile lemon laws, which statutorily define when a car is so defective as to be considered a lemon. However, in order to take advantage of the statutory remedies, lemon owners are required to first utilize the manufacturer's arbitration program, if the program meets federal standards.

This bill adopts a state-administered lemon law arbitration program which would be available to any Maine consumer who has purchased a seriously defective new motor vehicle. State arbitration would be limited to the issue of whether a motor vehicle was so defective as to be eligible for a refund or replacement by the manufacturer under the Maine lemon law.

The Attorney General's Consumer and Antitrust Division would process all potential lemon complaints and then assign, by bid, the actual arbitration to a neutral arbitrator.

Unlike the arbitration boards established by the manufacturers, the state arbitrator program is required to order a refund or replacement, rather than further repairs, whenever the consumer's vehicle meets the statutory definition of a lemon.

This arbitration program would be financed by a \$1 fee collected by the dealer at the completion of the sale and deposited in the General Fund.

In addition to establishing a state-administered lemon law arbitration program, this bill revises the Maine lemon law in the following ways:

1. Defines when a lemon motor vehicle is in nonconformity with express or implied warranties;
2. Allows consumers to apply lemon law remedies to breaches of not only express warranties but also implied warranties;

3. Makes clear that it is the consumer's choice whether to accept a refund or replacement for a lemon vehicle;
4. Ensures that owners of lemon vehicles will be reimbursed for incidental costs related to owning the lemon vehicle;
5. Further limits the dealer's, as opposed to the manufacturer's, liability for selling a lemon motor vehicle;
6. Clarifies that the Maine lemon law provides equitable remedies to injured consumers; and
7. Requires the new car manufacturers to provide the Department of the Attorney General with information concerning its settlements of consumer complaints.

Committee Amendment "A" does the following:

1. Eliminates the following from the bill:
 - a. The right of the consumer to apply lemon law remedies to implied warranties.
 - b. The right of the consumer to choose a refund or a replacement.
 - c. The right of a consumer to be reimbursed for incidental costs.
 - d. The additional limitation of the dealer's liability for selling a lemon motor vehicle.
 - e. The requirement that a consumer resort to State arbitration before applying for a refund or replacement.
 - f. The requirement that manufacturers provide the Attorney General with information on the settlement of complaints.
 - g. The requirement that the manufacturer put up a bond whenever it appeals an arbitrator's decision.
2. Makes the following major changes to the bill:
 - a. Each party to an arbitration is allowed one opportunity to object to the assigned arbitrator.
 - b. The findings of a state arbitrator are no longer prima facie evidence in any subsequent actions; rather, they are simply admissible evidence in any subsequent actions.
 - c. If the manufacturer appeals the decision of the state arbitrator and then loses that appeal, it is no longer mandatory that the court award \$25 per day damages to the consumer.
 - d. Instead of a \$5,000 per day fine if the manufacturer refuses to honor the decision of the state arbitrator, such a failure is declared to be prima facie evidence of an unfair trade practice.
 - e. The Attorney General will publish each year an accounting of the money generated and the expenses incurred in administering this arbitration program. The \$1 arbitration fee will be collected from all new car purchases, but not leases, and will be forwarded to the Secretary of State and then deposited in the General Fund.

f. The notice provided consumers shall not include window stickers.

House Amendment "A" to Committee Amendment "A" provides an appeals procedure for consumers who are denied relief by the arbitrator.

LD 1435 An Act to Prohibit Possession of Improperly Labeled Beverage Containers

ONTP

SPONSOR(S)
MCGOWAN
DIPIETRO
JACQUES
PRAY

COMMITTEE REPORT

AMENDMENTS ADOPTED

SUMMARY

This bill makes it unlawful for a person to possess a nonrefundable beverage container in Maine which would be refundable if properly labeled.

This bill was rereferred to the Energy and Natural Resources Committee.

LD 1490 An Act to Amend the Real Estate Brokerage License Laws

PUBLIC 471
EMERGENCY

SPONSOR(S)
MILLS
JACKSON
TWITCHELL
ERWIN E

COMMITTEE REPORT
OTP-AM

AMENDMENTS ADOPTED
H-421

SUMMARY

Currently the employee of an owner of real estate is exempted from needing a real estate license in order to sell this real estate, if such a sale is "incident to his usual duties." Prior to 1987 the employee was exempt if the sale was "in the regular course of or incident to his usual duties." The committee was told that the board's rules do not include "in the regular course of" and were, therefore, in conflict with the old law. The effect of the 1987 change was that employees of golf courses or skiing facilities that sell condominiums owned by these businesses as their major duty were required to have a real estate license. This bill returns the law to its status prior to 1987.

There are 2 important items of background to this bill:

1. In the abstract, an argument could be made that the definition of "incident to" would include "in the regular course of". However, this argument would be hampered by the legislative history, in that the prior use of the term "in the regular course" would tend to indicate that the Legislature defined them differently.
2. The committee was told that it was not the intent of the Legislature in 1987 to eliminate the term "in the regular course." This elimination was apparently made in preparation of the report, with the explanation that the deleter considered the change technical not substantive.

Committee Amendment "A" allows employees of owners of condominiums to sell these condominiums without being a licensed real estate broker. It adds a public member to the Real Estate Commission.