

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

STATE OF MAINE
118TH LEGISLATURE

FIRST REGULAR SESSION
AND
FIRST SPECIAL SESSION

BILL SUMMARIES
JOINT STANDING COMMITTEE
ON
BUSINESS AND ECONOMIC DEVELOPMENT

JULY 1997

MEMBERS:

Sen. John T. Jenkins, Chair

Sen. Anne M. Rand

Sen. Bruce W. MacKinnon

Rep. Marc J. Vigue, Chair

Rep. Rosaire J. Sirois

Rep. Richard R. Farnsworth

Rep. Thomas P. Shannon

Rep. Thomas J. Wright

Rep. Robert A. Cameron

Rep. Thomas W. Murphy, Jr.

Rep. William E. Bodwell, II

Rep. Jay MacDougall

Rep. Adam Mack

Staff:

Carrie C. McFadden, Legislative Analyst

*Office of Policy and Legal Analysis
Room 101/107/135, 13 State House Station
Augusta, ME 04333
(207)287-1670*



Maine State Legislature

OFFICE OF POLICY AND LEGAL ANALYSIS

13 State House Station, Augusta, Maine 04333-0013
Telephone: (207) 287-1670
Fax: (207) 287-1275

**ONE HUNDRED EIGHTEENTH LEGISLATURE
FIRST REGULAR AND FIRST SPECIAL SESSIONS**

**Summary Of Legislation Before The Joint Standing Committees
August 1997**

We are pleased to provide this summary of bills that were considered by the 15 Joint Standing Committees of the Maine Legislature staffed by this office. The document is a compilation of bill summaries which describe each bill, committee amendments and other relevant amendments, as well as the final action taken on the bill. Also included are statistical summaries of bill activity this Session for the Legislature and each of its joint standing committees.

The document is organized for convenient reference to information on bills handled by the joint standing committees. It is organized alphabetically by committees and within committees by bill (LD) number. The committee report(s), prime sponsor for each bill and the lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are listed by paper number. Two indices, a subject index and a numerical index by LD number are provided for easy reference to bills. They are located at the back of the document. A separate publication, History and Final Disposition of Legislative Documents, may also be helpful in providing information on the disposition of bills. These bill summaries also are available at the Law and Legislative Reference Library and on the Internet (www.state.me.us/legis/opla).

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

- CARRIED OVER*.....*Bill carried over to Second Regular Session*
- CON RES XXX*.....*Chapter # of Constitutional Resolution passed by both Houses*
- CONF CMTE UNABLE TO AGREE*.....*Committee of Conference unable to agree; bill died*
- DIED BETWEEN BODIES*.....*House & Senate disagree; bill died*
- DIED IN CONCURRENCE*.....*One body accepts ONTP report; the other indefinitely postpones the bill*
- DIED ON ADJOURNMENT*.....*Action incomplete when session ended; bill died*
- EMERGENCY*.....*Enacted law takes effect sooner than 90 days*
- FAILED EMERGENCY ENACTMENT/FINAL PASSAGE*.....*Emergency bill failed to get 2/3 vote*
- FAILED ENACTMENT/FINAL PASSAGE*.....*Bill failed to get majority vote*
- FAILED MANDATE ENACTMENT*.....*Bill imposing local mandate failed to get 2/3 vote*
- INDEF PP*.....*Bill Indefinitely Postponed*
- ONTP*.....*Ought Not To Pass report accepted*
- OTP ND*.....*Committee report Ought To Pass In New Draft*
- OTP ND/NT*.....*Committee report Ought To Pass In New Draft/New Title*
- P&S XXX*.....*Chapter # of enacted Private & Special Law*
- PUBLIC XXX*.....*Chapter # of enacted Public Law*
- RESOLVE XXX*.....*Chapter # of finally passed Resolve*
- UNSIGNED*.....*Bill held by Governor*
- VETO SUSTAINED*.....*Legislature failed to override Governor's Veto*

Please note the effective date for all non-emergency legislation enacted in the First Regular Session (unless otherwise specified in a particular law) is June 26, 1997 and September 19, 1997 for the First Special Session.

David E. Boulter, Director

Offices Located in the State House, Rooms 101/107/135

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
LAWRENCE VIGUE	OTP-AM	H-730 VIGUE S-330

LD 1747 proposed to amend several provisions of the motor vehicle dealer franchise laws to address the changing business environment among motor vehicle dealers, distributors and manufacturers.

The bill proposed to do the following:

1. It clarified several definitions;
2. It precluded a manufacturer from using a factory finance branch to engage in conduct that would otherwise be illegal;
3. It licensed manufacturers, established registration and fee requirements and authorized rules by the Secretary of State;
4. It clarified provisions concerning damages and remedies;
5. It encouraged nonbinding arbitration and mediation and confirmed the right of a dealer to bring an action in Superior Court;
6. It clarified that a franchised dealer was entitled to receive all makes and models of vehicles that the manufacturer produces for that particular franchise;
7. It included a provision that to cancel or to modify or replace a franchise agreement with a succeeding franchise agreement is unfair or coercive conduct;
8. It prohibited discriminatory conduct or threats to terminate a franchise based solely on the results of manufacturer surveys;
9. It amended the prohibition against mandatory participation in manufacturer advertisement schemes to include associations of dealers;
10. It established the standards that apply when a manufacturer exercises a right of first refusal in the transfer of a franchise to ensure that the actual agreement being assumed in the right of first refusal is the identical underlying agreement that had been made with a proposed transferee. It also provided basic protections for the proposed transferee;
11. It clarified that a manufacturer shall distribute or make available its vehicles only through dealers who have a franchise with that manufacturer;
12. It protected the rights of dealers to dual franchises and establishes criteria if a manufacturer imposes exclusive facilities requirements on a franchisee;
13. It established that it is not good cause for termination to rely exclusively on manufacturer surveys;

14. It clarified that a dealer must disclose in the course of selling a vehicle that that vehicle had been operated for demonstration purposes;
15. It included long-standing dealership general managers in survivorship rights in transfer of a dealership to a successor in interest;
16. It amended the warranty reimbursement provisions of the franchise laws. The bill clarified the standards and applied a clear formula as one method of calculating appropriate reimbursement rates. The bill also established that warranty repair may be conducted only by franchised dealers;
17. It established standards to be applied in manufacturer audits; and
18. It clarified that the public policy of the State is the protection of the transportation system, the public safety and the financial interests of the citizens in relation to the automobile industry. The bill also provided direction to the Judiciary in response to the comments of the First Circuit in Acadia Motors, Inc. v. Ford Motor Credit Company, 44 F.3d 1050 C.A. 1st, 1995, that the legislative purpose behind the elements of the law was unclear.

Committee Amendment "A" (S-330) replaced the bill. In addition to provisions of the original bill that remain, the amendment proposed to do the following.

1. It authorized the Secretary of State to conduct hearings and impose civil penalties in appropriate circumstances. The civil penalty section clarified that violations involving similar transactions that occur on a repeating basis within a 60-day period constitute a single violation. License fees authorized in the bill would be deposited in the Highway Fund.
2. It authorized mandatory nonbinding mediation as an initial step in dispute resolution.
3. It confirmed the right of a dealer to bring an action in Superior Court.
4. It clarified that a manufacturer must establish a just and equitable system for allocation of its vehicles and that that system must consider the rural environment of this State and the needs of rural dealers in this State.
5. It clarified that for a new vehicle the manufacturer may require a dealer to obtain certain tools, parts and inventory, among other things, and that any materials required to be purchased by the manufacturer may be returned by the dealer for a full refund if these materials have not been used within a two-year period.
6. It provided a process for a dealer to provide notice and to appeal the proposed modification or replacement of a franchise agreement when a manufacturer modified or replaced the franchise agreement. The manufacturer has the burden of proving that it had good cause for the modification or replacement.
7. It allowed sales or recognition program that is not tied to vehicle allocation systems or the cost of vehicles, parts or accessories.
8. It established that if a dealer is involuntarily terminated, canceled or not renewed, then the manufacturer would pay a sum equivalent to the rent for the unexpired term of the lease or for one year, whichever is less. If the dealer had more than one franchise at the dealership, the manufacturer would pay a prorated amount of rent or rental value based on the volume of sales of each franchise in that dealership.

9. It clarified that new vehicles may be distributed only to franchised new car dealers and may be sold to the public only by franchised new car dealers.
10. It required disclosure of certain damages to a new motor vehicle when that damage exceeds five percent of the manufacturer's suggested retail price.
11. It included general managers and long-standing employees with significant experience in survivorship rights in the transfer of a dealership to a successor in interest.
12. It established an 18-month time limitation on audits.
13. It specifically did not address warranty reimbursement of parts and labor in the Maine Revised Statutes, Title 10, section 1176. The Legislature is aware of the case of Acadia Motors, Inc. v. Ford Motor Credit Company, 44 F.3rd 1050 (1st Cir. 1995) and other cases currently pending in the United States District Court for the District of Maine, the Maine Superior Court and the Maine District Court. The Legislature refrained from addressing warranty reimbursement provisions and warranty audit provisions of Title 10, section 1176 in light of this pending litigation. No inference should be drawn from this inaction, and this enactment should not be construed as expressing any view of the statutory language of Title 10, section 1176 or any decisions issued by courts in this State or federal courts on Title 10, section 1176. Title 10, section 1176 was amended to clarify that manufacturers may not establish warranty repair centers in this State except in certain limited situations.
14. It clarified that the public policy of this State is the protection of the transportation system, the public safety and the financial interests of its citizens in relation to the automobile industry. The Legislature does not intend that the Maine Revised Statutes, Title 10, section 1182 be utilized by the federal court or courts of this State in construing legislative intent with regard to the currently pending litigation regarding Title 10, section 1176.

House Amendment "B" to Committee Amendment "A" (H-730) corrected a typographical error and clarified that a manufacturer may not exercise a right of first refusal as a way to influence the underlying transaction subject to the right of first refusal.

Enacted law summary

Public Law 1997, chapter 521 amends several provisions of the motor vehicle dealer franchise laws to address the changing business environment among motor vehicle dealers, distributors and manufacturers. Public Law 1997, chapter 521 does the following.

1. It enacts a new definition of the term "broker" and clarifies several definitions.
2. It precludes a manufacturer from using a factory finance branch or other corporate affiliate to engage in conduct that would otherwise be illegal.
3. It licenses manufacturers, establishes registration and fee requirements, authorizes rulemaking by the Secretary of State and authorizes the Secretary of State to conduct hearings and impose civil penalties in appropriate circumstances. The civil penalty section clarifies that violations involving similar transactions that occur on a repeating basis within a 60-day period constitute a single violation. License fees collected will be deposited in the Highway Fund. Manufacturer licenses issued under the Maine Revised Statutes, Title 10, section 1171-B are subject to that section and rules adopted pursuant to that section in effect throughout the term of the license.

4. It clarifies provisions concerning damages and remedies.
5. It authorizes mandatory nonbinding mediation as an initial step in dispute resolution.
6. It confirms the right of a dealer to bring an action in Superior Court.
7. It clarifies that a manufacturer must establish a just and equitable system for allocation of its vehicles and that that system must consider the rural environment of this State and the needs of rural dealers in this State.
8. It clarifies that a franchised dealer is entitled to receive all makes and models of vehicles that the manufacturer produces for that particular franchise, that for a new vehicle the manufacturer may require a dealer to obtain certain tools, parts and inventory, among other things, and that any materials required to be purchased by the manufacturer may be returned by the dealer for a full refund if these materials have not been used within a two-year period.
9. It provides a process for a dealer to provide notice and to appeal the proposed modification or replacement of a franchise agreement when a manufacturer modifies or replaces the franchise agreement. The manufacturer has the burden of proving that it had good cause for the modification or replacement.
10. It prohibits discriminatory conduct or threats to terminate a franchise based solely on the results of manufacturer surveys. A sales or recognition program that is not tied to vehicle allocation systems or the cost of vehicles, parts or accessories is allowed. It establishes that it is not good cause for termination for a manufacturer to rely exclusively on manufacturer surveys. A survey may be used to ensure the performance of a dealer.
11. It amends the prohibition against mandatory participation in manufacturer advertisement schemes to include associations of dealers.
12. It establishes the standards that apply when a manufacturer exercises a right of first refusal in the transfer of a franchise to ensure that the actual agreement being assumed in the right of first refusal is the identical underlying agreement that had been made with a proposed transferee. It also provides basic protections for the proposed transferee.
13. It protects the rights of dealers to dual franchises and establishes criteria if a manufacturer imposes exclusive facility requirements on a franchisee.
14. It establishes that if a dealer is involuntarily terminated, canceled or not renewed, then the manufacturer shall pay a sum equivalent to the rent for the unexpired term of the lease or for one year, whichever is less. If the dealer has more than one franchise at the dealership, the manufacturer shall pay a prorated amount of rent or rental value based on the volume of sales of each franchise in that dealership.
15. It clarifies that new vehicles may be distributed only to franchised new car dealers and may be sold to the public only by franchised new car dealers.
16. It clarifies that a dealer must disclose in the course of selling a vehicle that the vehicle has been operated for demonstrator purposes and requires disclosure of certain damages to a new motor vehicle when that damage exceeds five percent of the manufacturer's suggested retail price.

17. It includes general managers and long-standing employees with significant experience in survivorship rights in the transfer of a dealership to a successor in interest.
18. It establishes an 18-month time limitation on audits.
19. It specifically does not address warranty reimbursement of parts and labor in the Maine Revised Statutes, Title 10, section 1176. The Legislature is aware of the case of Acadia Motors, Inc. v. Ford Motor Credit Company, 44 F.3rd 1050 (1st Cir. 1995) and other cases currently pending in the United States District Court for the District of Maine, the Maine Superior Court and the Maine District Court. The Legislature has refrained from addressing warranty reimbursement provisions and warranty audit provisions of Title 10, section 1176 in light of this pending litigation. No inference should be drawn from this inaction, and this enactment should not be construed as expressing any view of the statutory language of Title 10, section 1176 or any decisions issued by courts in this State or federal courts on Title 10, section 1176. Title 10, section 1176 is amended to clarify that manufacturers may not establish warranty repair centers in this State except in certain limited situations.
20. It clarifies that the public policy of this State is the protection of the transportation system, the public safety and the financial interests of its citizens in relation to the automobile industry. The Legislature does not intend that the Maine Revised Statutes, Title 10, section 1182 be utilized by the federal court or courts of this State in construing legislative intent with regard to the currently pending litigation regarding Title 10, section 1176.

LD 1751

An Act to Amend the Licensure Act for Speech Pathologists and Audiologists

PUBLIC 379

<u>Sponsor(s)</u> FARNSWORTH	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> H-506
---------------------------------	-----------------------------------	------------------------------------

LD 1751 proposed to change all references from "speech" to "speech-language" in the Maine Revised Statutes, Title 32, chapter 77. It created the definition for "speech-language pathology assistant," and the necessary qualifications that allow a person to practice as a speech-language pathologist and audiologist, which included a two-year associates degree. It required that a person holding this credential work under the direct supervision of a licensee and register with the board. It terminated the "speech-language pathology aide" credential by 2005. It clarified the qualifications and scope of practice for speech-language pathologists and audiologists. It also established the Board of Examiners on Speech-language Pathology and Audiology's authority to adopt rules to refine these scopes of practice within the parameters of statutory provisions.

Committee Amendment "A" (H-506) proposed to strike the provision that a person may not apply for the credential of "speech-language pathology aide" after December 31, 1997. The amendment required that a person applying for that credential after October 1, 1997 must demonstrate two years of post-secondary education and submit a training plan endorsed by a licensed speech-language pathologist. The amendment also added language that required all speech-language pathology aides to meet the eligibility requirements for a speech-language pathology assistant by January 1, 2005 in order to continue their practice of speech-language pathology. The amendment also changed the rules that pertain to the speech-language pathology assistant credential from major substantive rules to routine technical rules.

Enacted law summary