

## CHAPTER 203-A

### MANUFACTURER WARRANTIES ON MOTOR VEHICLES

#### §1161. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [PL 1983, c. 145 (NEW).]

**1. Consumer.** "Consumer" means the purchaser, other than for purposes of resale, or the lessee, of a motor vehicle, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle and any other person entitled by the terms of the warranty to enforce the obligations of the warranty, except that the term "consumer" shall not include any governmental entity, or any business or commercial enterprise which registers 3 or more motor vehicles.

[PL 1987, c. 359, §1 (AMD).]

**2. Manufacturer.** "Manufacturer" means manufacturer, importer, distributor or anyone who is named as the warrantor on an express written warranty on a motor vehicle.

[PL 1983, c. 145 (NEW).]

**3. Motor vehicle.** "Motor vehicle" means any motor driven vehicle, designed for the conveyance of passengers or property on the public highways that is sold or leased in this State, except that the term "motor vehicle" does not include any vehicle used primarily for commercial purposes with a gross vehicle weight of 8,500 pounds or more.

[PL 2003, c. 337, §2 (AMD).]

**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.

[PL 2003, c. 337, §3 (AMD).]

**5. State-certified arbitration.** "State-certified arbitration" means the informal dispute settlement procedure administered by the Department of the Attorney General which arbitrates consumer complaints dealing with new motor vehicles that may be so defective as to qualify for equitable relief under the Maine lemon laws.

[PL 1989, c. 570, §1 (NEW).]

#### SECTION HISTORY

PL 1983, c. 145 (NEW). PL 1985, c. 220, §1 (AMD). PL 1987, c. 359, §§1,2 (AMD). PL 1989, c. 570, §1 (AMD). PL 1999, c. 212, §1 (AMD). PL 2003, c. 337, §§2,3 (AMD). PL 2003, c. 337, §3 (AMD).

#### §1161-A. Short title

This chapter may be known and cited as "the Maine Lemon Law." [PL 2003, c. 337, §4 (NEW).]

#### SECTION HISTORY

PL 2003, c. 337, §4 (NEW).

#### §1162. Scope; construction

**1. Consumer rights.** Nothing in this chapter in any way limits the rights or remedies which are otherwise available to a consumer under any other law.

[PL 1983, c. 145 (NEW).]

**2. Manufacturers, distributors, agents and dealers.** Nothing in this chapter in any way limits the rights or remedies of franchisees under chapter 204 or other applicable law.

[PL 1983, c. 145 (NEW).]

**3. Waivers void.** Any agreement entered into by a consumer which waives, limits or disclaims the rights set forth in this chapter shall be void as contrary to public policy.

[PL 1985, c. 220, §2 (NEW).]

#### SECTION HISTORY

PL 1983, c. 145 (NEW). PL 1985, c. 220, §2 (AMD).

#### §1163. Rights and duties

**1. Repair of nonconformities.** If a 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 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 occurs earliest. This obligation exists notwithstanding the fact that the repairs are made after the expiration of the appropriate time period.

A. [PL 1989, c. 570, §2 (RP).]

B. [PL 1989, c. 570, §2 (RP).]

[PL 2003, c. 337, §5 (AMD).]

**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 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 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 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; [PL 1991, c. 64 (AMD).]

B. All collateral charges, including, but not limited to, sales tax, registration fees and similar government charges; and [PL 2003, c. 337, §5 (AMD).]

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. [PL 1999, c. 212, §2 (AMD).]

The provisions of this section 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 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 motor vehicle having a defect or condition is not able to be replaced with a corresponding security interest on a motor vehicle accepted by the consumer, the consumer is entitled to a refund. Refunds required under this section 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 must be made as their interests exist at the time the refund is to be made.

[PL 2003, c. 337, §5 (AMD).]

**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 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 occurs earliest, and the nonconformity continues to exist; [PL 2003, c. 337, §5 (AMD).]

A-1. [PL 1989, c. 570, §3 (RP).]

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 [PL 2003, c. 337, §5 (NEW).]

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 occurs earlier. [PL 2003, c. 337, §5 (AMD).]

[PL 2003, c. 337, §5 (AMD).]

**3-A. Final opportunity to repair.** If the manufacturer or 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 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 has a final opportunity to correct or repair any nonconformities. This final repair effort must be at a repair facility that is reasonably accessible to the consumer. This repair effort does not stay the time period within which the manufacturer must provide an arbitration hearing pursuant to section 1165.

[PL 2003, c. 337, §5 (AMD).]

**4. Time limit; extension.** The term of an express warranty, the 18,000 mileage term, the 3-year period following delivery and the 15-day period provided in subsection 3, paragraph B, 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.

[PL 2003, c. 337, §5 (AMD).]

**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.

[PL 1983, c. 145 (NEW).]

**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.

[PL 1987, c. 395, §6 (AMD).]

**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. [PL 1987, c. 359, §7 (NEW).]

**7. Disclosure at time of resale for failure to make effective repair.** A motor vehicle 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; [PL 1985, c. 220, §3 (NEW).]

B. That the motor vehicle did not conform to the manufacturer's express warranties; and [PL 1985, c. 220, §3 (NEW).]

C. The ways in which the motor vehicle did not conform to the manufacturer's express warranties. [PL 1985, c. 220, §3 (NEW).]

The certificate of title of a vehicle subject to the disclosure requirements of this subsection is subject to the branding requirements of Title 29-A, section 670. [PL 2007, c. 383, §1 (AMD).]

**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. [PL 2003, c. 337, §5 (NEW).]

#### SECTION HISTORY

PL 1983, c. 145 (NEW). PL 1985, c. 220, §3 (AMD). PL 1987, c. 359, §§3-7 (AMD). PL 1989, c. 570, §§2,3 (AMD). PL 1991, c. 64 (AMD). PL 1999, c. 212, §2 (AMD). PL 2003, c. 337, §5 (AMD). PL 2007, c. 383, §1 (AMD).

#### §1164. Affirmative defense

It is an affirmative defense to any claim under this chapter that: [PL 1983, c. 145 (NEW).]

**1. Lack of impairment.** An alleged nonconformity does not substantially impair the use, safety or value of the motor vehicle; or [PL 1985, c. 220, §4 (AMD).]

**2. Abuse.** A nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle by anyone other than the manufacturer, its agents or authorized dealers since delivery to the consumer. [PL 1983, c. 145 (NEW).]

#### SECTION HISTORY

PL 1983, c. 145 (NEW). PL 1985, c. 220, §4 (AMD).

#### §1165. Informal dispute settlement

If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of 16 Code of Federal Regulations, Part 703, as from time to time amended, the provisions of section 1163, subsection 2, concerning refunds or replacement shall not apply to any consumer who has not first resorted to that procedure or to state-certified arbitration. This requirement shall be satisfied 40 days after notification to the informal dispute settlement procedure of the dispute

or when the procedure's duties under 16 Code of Federal Regulations, Part 703.5 (d), are completed, whichever occurs sooner. [PL 1989, c. 570, §4 (AMD).]

#### SECTION HISTORY

PL 1983, c. 145 (NEW). PL 1985, c. 220, §5 (AMD). PL 1989, c. 570, §4 (AMD).

#### **§1166. Unfair or deceptive trade practice**

A violation of any of the provisions of this chapter shall be considered prima facie evidence of an unfair or deceptive trade practice under Title 5, chapter 10. [PL 1985, c. 220, §6 (NEW).]

#### SECTION HISTORY

PL 1985, c. 220, §6 (NEW).

#### **§1167. Attorney's fees**

In the case of a consumer's successful action to enforce any liability under this chapter, a court may award reasonable attorney's fees and costs incurred in connection with the action. [PL 1985, c. 220, §7 (NEW).]

#### SECTION HISTORY

PL 1985, c. 220, §7 (NEW).

#### **§1168. New car leases**

For the purposes of this chapter only, the following apply to leases of new motor vehicles. [PL 1987, c. 359, §8 (NEW).]

**1. Warranties.** If express warranties are regularly furnished to purchasers of substantially the same kind of motor vehicles:

A. Those warranties are deemed to apply to the leased motor vehicles; and [PL 2003, c. 337, §6 (AMD).]

B. The consumer lessee 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. [PL 2003, c. 337, §6 (AMD).]

[PL 2003, c. 337, §6 (AMD).]

**2. Lessee's rights.** The lessee of a motor vehicle has the same rights under this chapter against the manufacturer and any person making express warranties that the lessee would have under this chapter if the vehicle had been purchased by the lessee. The manufacturer and any person making express warranties have the same duties and obligations under this chapter with respect to the vehicle that the manufacturer and other person would have under this chapter if the goods had been sold to the lessee.

[PL 1987, c. 359, §8 (NEW).]

**3. Termination of lease and obligations.** The lessee's lease agreement with the motor vehicle lessor and all contractual obligations terminate upon a decision that the vehicle does not conform to the vehicle's express warranty and the return of the vehicle to the lessor. The lessee may not be liable to the manufacturer or motor vehicle lessor for any further costs or charges under the lease agreement. The motor vehicle lessor shall release the motor vehicle title to the manufacturer upon payment by the manufacturer under this chapter.

[PL 1999, c. 212, §3 (NEW).]

#### SECTION HISTORY

PL 1987, c. 359, §8 (NEW). PL 1999, c. 212, §3 (AMD). PL 2003, c. 337, §6 (AMD).

#### **§1169. State motor vehicle dispute arbitration and mediation**

**1. Neutral motor vehicle arbitration.** All manufacturers shall submit to state-certified motor vehicle arbitration if arbitration is requested by the consumer within 3 years from the date of original delivery to the consumer of a 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.

[PL 2003, c. 337, §7 (AMD).]

**2. Written findings.** Each arbitration results in a written finding of whether the motor vehicle in dispute meets the standards set forth by this chapter for vehicles that are required to be replaced or refunded. This finding must be issued within 45 days of receipt by the Department of the Attorney General of a properly completed written request by a consumer for state-certified arbitration under this section. All findings of fact issuing from a state-certified arbitration must be taken as admissible evidence of whether the standards set forth in this chapter for vehicles required to be refunded or replaced have been met in any subsequent action brought by either party ensuing from the matter considered in the arbitration. The finding reporting date may be extended by 5 days if the arbitrator seeks an independent evaluation of the motor vehicle. In addition to the other remedies provided by this chapter, the arbitrator may award a consumer whose motor vehicle is required to be replaced or refunded reasonable witness fees for a professional motor vehicle mechanic or engineer who prepared a notarized report on the condition of the vehicle or who testified at the arbitration hearing on behalf of the consumer.

[PL 1999, c. 212, §4 (AMD).]

**3. Administered by Attorney General.** The Department of the Attorney General shall promulgate rules governing the proceedings of state-certified arbitration which shall promote fairness and efficiency. These rules shall include, but are not limited to, a requirement of the personal objectivity of each arbitrator in the results of the dispute that that arbitrator will hear, and the protection of the right of each party to present its case and to be in attendance during any presentation made by the other party.

[PL 1989, c. 570, §5 (NEW).]

**4. Consumer arbitration relief.** If a motor vehicle is found by state-certified arbitration to have met the standards set forth in section 1163, subsection 2, for vehicles required to be replaced or refunded, and if the manufacturer of the motor vehicle is found to have failed to provide the refund or replacement as required, the manufacturer shall, within 21 days from the receipt of a finding, deliver the refund or replacement, including the costs and collateral charges set forth in section 1163, subsection 2, or appeal the finding in Superior Court. For good cause, a manufacturer may seek from the Department of the Attorney General an extension of the time within which it must deliver to the consumer a replacement vehicle.

[PL 1989, c. 570, §5 (NEW).]

**5. Appeal of arbitration decision.** An appeal by a manufacturer or the consumer of the arbitrator's findings may not be heard unless the petition for appeal is filed with the Superior Court of the county in which the sale occurred, within 21 days of issuance of the finding of the state-certified arbitration. The appeal must be a trial de novo. The arbitrator and the Department of the Attorney General may not be parties in any such appeal and may not be called as witnesses. The Department of the Attorney General may submit an amicus curiae brief.

In the event that any state-certified arbitration resulting in an award of a refund or replacement is upheld by the court, recovery by the consumer may include continuing damages up to the amount of \$25 per day for each day subsequent to the day the motor vehicle was returned to the manufacturer, pursuant to

section 1163, that the vehicle was out of use as a direct result of any nonconformity not issuing from owner negligence, accident, vandalism or any attempt to repair or substantially modify the vehicle by a person other than the manufacturer, its agent or authorized dealer, provided that the manufacturer did not make a comparable vehicle available to the consumer free of charge.

In addition to any other recovery, any prevailing consumer must be awarded reasonable attorney's fees and costs. If the court finds that the manufacturer did not have any reasonable basis for its appeal or that the appeal was frivolous, the court shall double the amount of the total award to the consumer. [PL 1999, c. 212, §4 (AMD).]

**6. Consumer's rights if arbitrator denies relief.** The provisions of this chapter shall not be construed to limit or restrict in any way the rights or remedies provided to consumers under this chapter or any other state law. In addition, if any consumer is dissatisfied with any finding of state-certified arbitration, the consumer shall have the right to apply to the manufacturer's informal dispute settlement procedure, if the consumer has not already done so, or may appeal that finding to the Superior Court of the county in which the sale occurred, within 21 days of the decision. [PL 1989, c. 570, §5 (NEW).]

**7. Disclosure of consumer lemon law rights.** A clear and conspicuous disclosure of the rights of the consumer under this chapter shall be provided by the manufacturer to the consumer along with ownership manual materials. The form and manner of these notices shall be prescribed by rule of the Department of the Attorney General. The notice disclosures shall not include window stickers. [PL 1989, c. 570, §5 (NEW).]

**8. Manufacturer's failure to abide by arbitrator's decision.** The failure of a manufacturer either to abide by the decision of state-certified arbitration or to file a timely appeal shall entitle any prevailing consumer who has brought an action to enforce this chapter to an award of no less than 2 times the actual award, unless the manufacturer can prove that the failure was beyond the manufacturer's control or can show it was the result of a written agreement with the consumer. [PL 1989, c. 570, §5 (NEW).]

**9. Consumer request for information.** Upon request from the consumer, the manufacturer or dealer shall provide a copy of all repair records for the consumer's motor vehicle and all reports relating to that motor vehicle, including reports by the dealer or manufacturer concerning inspection, diagnosis or test-drives of that vehicle and any technical reports, bulletins or notices issued by the manufacturer regarding the specific make and model of the consumer's new motor vehicle as it pertains to any material, feature, component or the performance of the motor vehicle. [PL 1989, c. 570, §5 (NEW).]

**10. Penalties.** It shall be prima facie evidence of an unfair trade practice under Title 5, chapter 10, for a manufacturer, within 21 days of receipt of any finding in favor of the consumer in state-certified arbitration, to fail to appeal the finding and not deliver a refund or replacement vehicle or not receive from the Department of the Attorney General an extension of time for delivery of the replacement vehicle. [PL 1989, c. 570, §5 (NEW).]

**11. Arbitration and mediation account.** To defray the costs incurred by the Department of the Attorney General in resolving consumer new and used motor vehicle disputes through the lemon law arbitration program and, for vehicles that do not qualify for arbitration, the consumer mediation service, the following fees are imposed.

A. A \$1 lemon law arbitration program fee must be collected by the authorized new car dealer from the purchaser as part of each new motor vehicle sale agreement. [PL 1993, c. 415, Pt. K, §2 (NEW).]

B. A \$1 consumer mediation service fee must be collected by the used car dealer from the purchaser as part of each used motor vehicle sale agreement. [PL 1993, c. 415, Pt. K, §2 (NEW).]

The Secretary of State shall adopt rules to implement this subsection. The rules must provide that the fees imposed by this subsection must be forwarded annually by the dealer or its successor to the Secretary of State and deposited in the General Fund. At the end of each fiscal year, the Department of the Attorney General shall prepare a report listing the money generated by these fees during the fiscal year and the expenses incurred in administering its consumer dispute resolution programs.

[PL 1993, c. 415, Pt. K, §2 (RPR).]

#### SECTION HISTORY

PL 1989, c. 570, §5 (NEW). PL 1991, c. 622, §PP1 (AMD). PL 1991, c. 624, §§2,3 (AFF). PL 1993, c. 415, §K1 (AMD). PL 1993, c. 415, §K2 (AMD). PL 1999, c. 212, §4 (AMD). PL 2003, c. 337, §7 (AMD).

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