

# 10

## **CONSUMER RIGHTS CONCERNING ODOMETER TAMPERING AND YOUR VEHICLE TITLE**

### **§ 10. 1. Introduction**

This consumer rights chapter provides information to assist you when reading your vehicle's title and when you suspect your odometer has been tampered with. It contains the following sections:

#### **§ 10. 2. What Is Odometer Fraud?**

#### **§ 10. 3. How To Determine If Your Odometer Has Been Tampered With**

#### **§ 10. 4. Additional Ways To Protect Yourself From Odometer Fraud**

#### **§ 10. 5. How To Read Your Vehicle Title**

#### **§ 10. 6. When Odometer Fraud Is Discovered After Purchase**

#### **§ 10. 7. Proving Your Damages**

#### **§ 10. 8. What Can We Do to Stop Odometer Fraud?**

#### **§ 10. 9. Selected Statutes**

### **§ 10. 2. What Is Odometer Fraud?**

Odometer fraud occurs when the true mileage of a vehicle is intentionally hidden from the consumer. It is a Class D crime for a person or dealer to alter the odometer reading with the intent to deceive.<sup>1</sup>

In addition to state penalties, a dealer who misrepresents a car's odometer mileage can also violate the Federal Odometer Act.<sup>2</sup> Any dealer who intentionally violates the provisions of this Act "with the

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<sup>1</sup> 29-A M.R.S.A. § 2106. Violation of this statute can also be violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207. *See People ex. rel. v. Larance*, 434 N.E. 2d 5 (Ill. 1982) (seller misrepresentation of odometer mileage is a violation of state's deceptive practices act).

<sup>2</sup> 15 U.S.C. §§ 1988-89. A violation of this federal statute can also be a violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207. *See Washburn v. Vandiver*, 379 S.E.2d 65 (N.C. Ct.App. 1989) (award of damages under state deceptive practices act as well as under federal odometer act did not constitute double recovery as they are distinct causes of action).

intent to defraud” is liable for three times the actual damages or \$1,500, whichever is greater, plus costs and attorney fees. Any action must be commenced within two years from the date on which liability arises.<sup>3</sup>

Odometer fraud affects you in two ways. First, you may pay considerably more than the vehicle is worth. Second, you will believe that you have purchased a safe, low mileage vehicle when in fact the vehicle is high mileage and may not be safe at all, especially since you will service and maintain the vehicle as if it were a low mileage vehicle. Thus, your life, the lives of your family and the lives of others are placed in jeopardy by the odometer fraud criminal.

### **§ 10.3. How To Determine If Your Odometer Has Been Tampered With**

There is no completely effective method to determine an odometer alteration by an inspection of the vehicle. However, there are ways you can look for odometer fraud. If you observe any of these indications, be wary of purchasing the vehicle:

- A. Look for scratches and marks on the odometer. Be suspicious if the first digit hangs high or low or if a digit sticks.
- B. Check doorframes and the engine compartment for service stickers that show the mileage and dates various services were performed.
- C. Carefully examine the vehicle inside and out. Look for pitted paint and pitted windshields, as these indicate high mileage. Look for worn carpeting and worn seats especially on the driver’s side. If the driver’s seat is heavily worn, but the rest of the vehicle isn’t, this is a sign that a salesperson might have used the vehicle.
- D. Examine the brake and accelerator pedals for excessive wear.
- E. Examine the tires. If the odometer reading is less than 30,000 miles, the vehicle should have the original (radial) tires. All five tires should be the same brand and model. Check the last three digits of the DOT number on the tires. These three digits specify the week and year the tire was manufactured. For example, “271” indicates that the tire was manufactured the twenty-seventh week of 2001.
- F. Check the gaskets on the driver’s door and on the trunk. If there is considerable wear on these gaskets, this is an indication that sample cases and suitcases have been dragged in and out of the vehicle by salesmen.
- G. Always test drive the vehicle.
- H. Take the vehicle to a mechanic you trust for an opinion. Ask your mechanic to check for signs of major accident damage and for maintenance that would only be required on vehicles that had attained high mileage (i.e., have your mechanic remove the wheels and check the brakes for wear or replacement shoes).
- I. If a service contract or warranty has been voided, this is often an indication that the company has concluded that the odometer has been turned back.

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<sup>3</sup> But remember the statute of limitations for a private Maine unfair trade practices action is 6 years (see § 3.2 in this Guide). The best available discussion of this area is the National Consumer Law Center’s *Automobile Fraud*.

## § 10.4. Additional Ways To Protect Yourself From Odometer Fraud

In Maine, all vehicles (except motorcycles under 300 cc, vehicles with a model year prior to 1984, or trailers under 3,000 pounds unladen weight) must have proof of ownership known as a certificate of title. *The Maine dealer must have this proof of ownership before he can sell the vehicle.*<sup>4</sup> Before you purchase the vehicle, ask to examine these documents and do the following:

- A. Examine the title and supporting documentation for erasures and alterations, especially in the areas that contain odometer information.<sup>5</sup> Be especially wary of rubber-stamping that covers the odometer information.
- B. The face of the prior title shows the name of the prior owner. If the prior owner is a leasing company, rental company, commercial enterprise, police or municipality, or automobile dealership, be wary and closely examine the vehicle before you buy it. National studies from the “National Highway Traffic Safety Administration” have found that *over 50%* of the new cars sold to leasing companies end up on car lots with reset odometers. Fleet leasing companies almost always wait until a vehicle has 70,000 miles before selling it. So, be very suspicious of a vehicle’s first title after it comes off the fleet lease shows approximately 30,000 miles.
- C. If the prior owner is an individual, talk to the person if you possibly can.
- D. Ask to see the Federal Odometer Statement signed by the prior owner. If the dealer refuses or states that he does not have it, be wary. Federal law<sup>6</sup> requires a dealer to complete and keep a copy of the Federal Odometer Statement for five years. This requirement applies no matter how the dealer acquires the vehicle, even if he purchased it from another dealer.
- E. Almost all odometer fraud involves a device called “laundering” whereby a title issued in another state is transferred through several car dealers in several states before being sold in a different state than originally titled. The purpose is to make it difficult to determine who is responsible for the odometer fraud. Accordingly, you should be very careful of a vehicle previously titled in another state. Be very, very careful of a vehicle that has been transferred through many dealers and several states. So you should view with suspicion a title history (easily obtained from Carfax, [www.carfax.com](http://www.carfax.com)) that shows several new titles over a short period of time, particularly if the titles are from different states.
- F. If the dealer refuses to show you the prior title and documentation or says that he or she does not have it, do not purchase that vehicle until you are shown the documentation and are satisfied with the mileage shown.
- G. Be realistic: some deals are too good to be true. For example, a four-year-old vehicle with 17,500 miles is a possible “rollback.” Only by checking with the prior owner and determining his/her driving habits can you be sure that the prior owner isn’t the “little old lady who only drove to church on Sunday.”
- H. Know the car dealer you do business with. Check with the Better Business Bureau or the Attorney General’s Consumer Protection Division to see if there are any complaints and/or judgments against this dealer for unethical practices or shoddy service after the sale.
- I. Check a Carfax title report ([www.carfax.com](http://www.carfax.com)). If the mileage went down from one owner to the next, you can be sure the odometer has been spun.

<sup>4</sup> 29-A M.R.S.A. § 664.

<sup>5</sup> See 29-A M.R.S.A. § 752, Odometers; transfer.

<sup>6</sup> Truth in Mileage Act of 1986, 15 U.S.C.A. § 1988.

- J. Usually only retail dealers obtain new titles. If you find that a wholesaler has taken the trouble to get a new title, the odometer might have been rolled back.
- K. Be suspicious of a car imported from Canada. Canadian titles are not as complete as U.S. titles and it is easy to rollback the odometer when adjusting kilometers to miles.
- L. The federal Odometer Act also allows you to challenge *oral* misrepresentations. Here is advice from the National Consumer Law Center:

An often overlooked but powerful application of the federal Odometer Act is to challenge oral mileage misrepresentations or written mileage misrepresentations that are not contained in the actual “federal odometer statement.” This can lead to federal court jurisdiction and recoveries of attorney fees plus the greater of \$1,500 minimum statutory damages or treble damages.

49 U.S.C. §32705(a)(2) requires dealers to provide buyers with an odometer disclosure statement as specified by National Highway Transportation Safety Administration (NHTSA) regulations, and prohibits the dealer from giving “a false statement to the transferee in making the disclosure required by such regulation.” Both the Fourth and Eighth Circuits have interpreted this provision as providing an Odometer Act cause of action not just for errors in the odometer disclosure statement, but also for oral misrepresentations or written misrepresentations found elsewhere in the transfer documents.<sup>7</sup>

One important limitation on this or any other cause of action under the Act is that the consumer must show intent to defraud. Odometer Act cases have inferred intent to defraud where the dealer recklessly or carelessly disregarded indications of a mileage representation’s falseness, or reasonably should have known that the mileage was inaccurate. Dealers have a special duty to inspect a vehicle for indications of mileage alterations.

## § 10. 5. How To Read Your Vehicle Title

Maine law prohibits dealers from transferring a vehicle to any person unless the dealer has a properly assigned certificate of title in the dealer’s possession. If the certificate of title is in the possession of the dealer, you can immediately find out if the car has been declared salvage, rebuilt, or any of many “brands” (see below paragraph B). If the dealer is awaiting the certificate from a lien holder, wait until the dealer has the document before you purchase.

Here is how to read the title of a used car:

- A. Ask to see the title and review it carefully. Don’t buy a car without first examining the title, and don’t accept explanations from sellers who say they can’t show it to you.

In a private party sale, the name on the title should be the same as the seller’s. If it is not, ask why, and determine whether the seller is authorized to sell the vehicle.

At the dealership, the name on the title could be the previous owner’s or the dealer’s. If the title is in the dealer’s name, ask why. For example, the dealer may have bought the car at an auction and is likely to know little about its history. Also cars from auctions often don’t get scrutinized carefully when dealers buy them.

- B. Check the title for stamps or codes (called “brands”) recorded in many states indicating:

<sup>7</sup> *Hughes v. Box*, 814 F.2d 498 (8th Cir. 1987); *Ryan v. Edwards*, 592 F.2d 756, (4th Cir.1979).

- (1) damaged or salvaged vehicles (e.g., “Rebuilt Vehicle” or “Rebuilt Salvage”);
  - (2) stolen and recovered vehicles;
  - (3) vehicles in which the mileage driven exceeds the mechanical limits of the odometer; or
  - (4) Vehicles with inaccurate odometer mileage.
- C. When examining the title, jot down important information such as the mileage, vehicle identification number (VIN), date of issue, and owner’s name and address. Also:
- (1) Make sure all the numbers—including the mileage—are clear and easy to read.
  - (2) See if any erasures, stray marks, alterations or staples conceal important information.
  - (3) When buying from a dealer, confirm that the odometer reading the previous owner wrote on the title or mileage disclosure is close to the mileage reading on the car.
  - (4) Be suspicious of titles listing owners with post office boxes, out-of-state addresses, or names of auction companies.
  - (5) Check the vehicle identification number (VIN number) of the car against the number on the Title. The VIN number is engraved on a metal plate, visible through the windshield on the driver’s side.
  - (6) Make sure there are no liens against the car recorded on the title. In other words, the seller should not owe money on the car.
  - (7) Make sure the title’s date of issue agrees with the seller’s statement about how long the seller has owned the car.
  - (8) Check whether the title was recently issued for a car that’s several years old. This could indicate that the mileage reading has been altered.
- D. What if the vehicle had been titled in another state and you want to check with the prior owner? If you have no luck with the address shown on the prior title, you may contact that state’s Bureau of Motor Vehicles. You may have to make your request in writing and pay a fee depending on the procedures followed by the state involved. The Maine Bureau of Motor Vehicles, Title and Anti-Theft Section (207-624-9000) extension 52138 can provide you with a complete address and telephone number for the 50 states.

## **§ 10. 6. When Odometer Fraud Is Discovered After Purchase**

If the prior title or documentation is altered, the Title and Anti-Theft Section will not issue a title to you. An altered title is void and cannot be used to transfer ownership. If, due to this false odometer statement, the Secretary of State refuses to issue to you a Certificate of Title<sup>8</sup> then the used car dealer

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<sup>8</sup> 29-A M.R.S.A. § 660 (2).

should either (A) accept back the car and refund all your purchase price<sup>9</sup> (B) pay all your damages, or (C) *with your consent*, provide a surety bond on the vehicle which will protect you from the consequences of purchasing a vehicle without proper proof of ownership.<sup>10</sup>

If the title is not altered (several states do not show odometer readings on their titles) and you are a victim of odometer fraud, you may make a formal complaint with the Title and Anti-Theft Section. This applies only to vehicles purchased from Maine dealers.

If the vehicle was purchased out of state or in a private sale, your recourse is through the courts in a civil action.

If you are a victim of odometer tampering, you should consider consulting an attorney about the advisability of suing for civil damages. If you win the suit, the court will award you \$1,500, or three times the amount of damages, whichever is greater, plus court costs and reasonable attorney's fees.<sup>11</sup> But you must be able to prove:

- A. The odometer mileage was misrepresented;
- B. Who was responsible for the misrepresentation;
- C. There was intent to defraud.<sup>12</sup>

## § 10. 7. Proving Your Damages

There are several legal theories under which a consumer can seek damages when sold a car with an inaccurate odometer:

- A. The Federal Odometer Act, which awards “three times the amount of actual damages sustained or \$1,500, whichever is greater,<sup>13</sup> if the consumer can prove an intent to defraud.
- B. The Maine Unfair Trade Practices Act,<sup>14</sup> which can award damages and attorney fees, without the necessity of proving intent.
- C. Breach of Contract, for which you can receive, under the Maine U.C.C., actual damages as well as incidental and consequential damages.<sup>15</sup>

The basic approach to computing actual damages for an altered odometer is to calculate the difference between the purchase price and the fair market value of the vehicle with its actual mileage.<sup>16</sup> Then you should add in any incidental or consequential damages.

The National Consumer Law Center reports that some courts have determined the following are additional “incidental” damages:<sup>17</sup>

<sup>9</sup> This restitution remedy is based on the theory that it is an unfair trade practice (5 M.R.S.A. § 207) to sell a consumer a used car for which the consumer cannot receive title.

<sup>10</sup> 29-A M.R.S.A. § 659.

<sup>11</sup> See 15 U.S.C. § 1989(a).

<sup>12</sup> See *Ryan v. Edwards*, 592 F.2d 756, 762 (1979) (constructive knowledge, recklessness, or even gross negligence in determining and disclosing the actual mileage traveled by a vehicle will support a finding of “intent to defraud”); *DeLong v. Hilltop Lincoln-Mercury, Inc.*, 812 S.W.2d 834 (Mo.App.1991) (consumer awarded \$3,000 damages due to odometer tampering after relying on salesman’s representation that the car was a trade-in).

<sup>13</sup> See 18 U.S.C. § 1989(a)(1).

<sup>14</sup> See 5 M.R.S.A. § 213(1-A). This assumes the odometer law violation is so unfair or deceptive as to be an illegal unfair trade practice. See Chapter 3, §§ 3.3 - 3.4 in this Guide.

<sup>15</sup> See 11 M.R.S.A. §§ 2-714 to 2-715.

<sup>16</sup> See *Haluschak v. Dodge City of Wauwatosa, Inc.*, 909 F.2d 254 (5th Cir. 1991) (jury awarded \$7,500 in damages after subtracting the residual value of the car, which was still owned by the plaintiff).

<sup>17</sup> National Consumer Law Center, *Odometer Law* 101 (1992).

- A. The cost of any repairs during the period in which the vehicle was in the hands of the plaintiff;<sup>18</sup>
- B. The interest paid in financing the purchase of the vehicle;
- C. The amount of the trade-in allowance;
- D. The cost of vehicle insurance and property taxes;
- E. The cost of extra oil attributable to the car's higher mileage; and
- F. The cost of car rentals.

Finally, "consequential" damages might include reimbursement for time off from work or emotional distress (if the violation is serious enough).

## § 10. 8. What Can We Do To Stop Odometer Fraud?

A lot! First of all, you take the profit incentive away from the odometer fraud criminal by being a careful consumer and avoiding those vehicles that are candidates for odometer fraud. Secondly, when you trade your vehicle in, don't release ownership (sign the title over) until all information, including odometer information, has been completed. This includes the Federal Odometer Statement. On the federal level, you can be held culpable for signing an incorrect Federal Odometer Statement. Never sign a blank form. It is to your advantage to be doubly sure that *all* information is complete and accurate before signing anything. It is also a good idea to enter "N.A." for "Not Applicable" in spaces where appropriate.

Please note: this information is provided by Maine Bureau of Motor Vehicles, Division of Enforcement and Regulation.

## § 10. 9. Selected Statutes

### A. 29-A M.R.S.A. § 752, Odometers; transfer

1. *Information on transfer.* At the time of transfer of a motor vehicle, each transferor shall furnish to the transferee the information required by this subsection in accordance with the federal Truth in Mileage Act of 1986, Public Law 99-579, and the rules promulgated under 49 Code of Federal Regulations, Part 580. The information shall be on the reverse of any title or manufacturer's certificate of origin, which complies with the federal Truth in Mileage Act of 1986 and rules. If the reverse of the title or manufacturer's certificate of origin is filled or is not in compliance, the disclosure shall be on a transfer form prescribed by the Secretary of State. The information required by this subsection shall also be provided on any other forms prescribed by:
  - A. The date of the transfer;
  - B. The odometer reading at the time of transfer, not to include 1/10<sup>th</sup> of miles;
  - C. The transferor's printed name and current address;
  - D. The transferee's printed name and current address;

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<sup>18</sup> See *Oettinger v. Lakeview Motors, Inc.*, 675 F. Supp. 1488 (E.D.Va. 1988) (\$764.40 in repairs allowed, other repairs disallowed as not attributable to car's extra mileage).

- E. The identity of the vehicle being transferred, including its make, model, year and body type and its vehicle identification number if on a form other than a title; and
- F. In addition to the information in paragraphs A to E, the transferor's certification that:
  - (1) To the best of the transferor's knowledge, the odometer reading reflects the actual mileage;
  - (2) The odometer reading reflects the amount of mileage in excess of its mechanical limit; or
  - (3) The odometer reading is not the actual mileage. If the odometer reading is not the actual mileage, the transferor shall give reasons for the discrepancy on a form prescribed by the Secretary of State.
  - (4) Signatures. The transferor shall sign the title or transfer document to certify the odometer information required by subsection 1. The transferee shall sign the title or transfer document to acknowledge the transferor's odometer disclosure only after the required information is completed and the transferor has signed. No person may sign as both transferor and transferee in the same transaction.
  - (5) Violation. Any person, corporation, organization or other legal entity that knowingly violates this section commits a Class D crime. A violation of this section is a violation of Title 5, chapter 10.

**B. 29-A M.R.S.A. § 2106, Tampering with Odometer**

1. *Odometer.* A person is guilty of a Class D offense if that person:
  - A. Disconnects, changes or tampers with the odometer of a motor vehicle with the intent to misrepresent or change the number of miles indicated on the odometer; or
  - B. When the odometer reading differs from the number of miles a vehicle has been driven, knowingly offers for sale that motor vehicle without disclosing that the actual mileage is unknown or is known to be different than the odometer reading.
2. *Service and Repair.* Nothing in this section prevents the repair or replacement of an odometer, as long as the odometer mileage remains the same after the service, repair or replacement. If the odometer is incapable of registering the same mileage after the repair or replacement, the odometer must be adjusted to read zero and a notice provided by the Secretary of State must be attached to the left door frame of the vehicle by the owner or the owner's agent or by an authorized agent of the Secretary of State.<sup>19</sup> The notice must specify the mileage prior to repair or replacement of the odometer and the date of repair or replacement.
3. *Violation.* A person commits a Class D crime if that person fails to attach a notice as required under subsection 2 or removes or alters a notice.
4. *Unfair Trade Practice.* A violation of this section constitutes an unfair trade practice under Title 5, chapter 10.

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<sup>19</sup> If the vehicle is still under the manufacturer's warranty, an acceptable sticker can be issued by the manufacturer showing date of repair or replacement and the mileage.