

# 11

## CONSUMER RIGHTS WHEN REPAIRING YOUR VEHICLE

### § 11. 1. Introduction

This consumer rights chapter provides information on how you can protect yourself when repairing your motor vehicle. It contains the following sections:

- § 11. 2. **Basic Vehicle Repair Rights**
- § 11. 3. **You Have The Right To Set a Maximum Amount You Will Pay For Repair**
- § 11. 4. **You Have The Right To Inspect Replaced Parts**
- § 11. 5. **You Have The Right To Know Whether The Parts Being Installed Are New Or Used**
- § 11. 6. **You Have The Right To Know How Much The Repair Shop Charges For Work**
- § 11. 7. **Picking Up Your Repaired Vehicle**
- § 11. 8. **Inadequate Or Unfair Repairs**
- § 11. 9. **Complaint Route**
- § 11. 10. **Unfair Trade Practices**
- § 11. 11. **Repair Notice That Must Be Posted**
- § 11. 12. **Repair Issues You Should Consider**

### § 11. 2. Basic Vehicle Repair Rights

Maine's Motor Vehicle Repair Law<sup>1</sup> gives car repair customers some specific rights you should use to your advantage. Briefly, these are your rights:

- A. You have the right to establish a ceiling on the cost of repairs. This ceiling cannot be exceeded without your prior permission. *You must do this in writing.* If this amount is exceeded, you *do not* have to pay the excess.
- B. You can inspect all replaced parts.

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<sup>1</sup> 29A M.R.S.A. §§ 1801-1851.

- C. You can keep all replaced parts if you want, with the exception of those that must be returned to the manufacturer under a warranty program.
- D. Used, rebuilt or reconditioned parts cannot be installed in your car unless you agree in advance.<sup>2</sup>
- E. All repair shops must post a sign informing you of these rights.
- F. The sign must also state the hourly rate charged by the shop.

The law is primarily designed to protect you from the “5 o’clock surprise”—when you return to pick up your car from the garage and find the repair bill is much higher than you expected. To prevent this from happening, leave a *signed* note with your car establishing a written ceiling on the cost of repair. This can be easily done by writing in a limit on the repair contract, many repair shops have you sign when you drop off your car. If repairs will end up costing more than the limit set forth in your note, the shop must first get your approval (*e.g.*, call you by phone) before going ahead. If the shop does not, and the final bill is higher than the figure you agreed to, you do not have to pay the excess. As long as you pay the amount specified in your written note, the repair shop must release your car.

Remember that a repair shop’s estimate of repair costs is normally not a contract to do the work at that price—it is only an estimate.<sup>3</sup> To use the Motor Vehicle Repair Law to your advantage, you must leave a written note stating your limits.

Any violations of the Motor Vehicle Repair Law are also unfair trade practices under 5 M.R.S.A. §§ 205-A-214<sup>4</sup>. The Unfair Trade Practices Act gives you the right to go to Small Claims Court (if the damage is \$4,500 or less), District Court, or Superior Court to get your damages or your money back. The court can also order the repair shop to pay your reasonable attorney fees, if there are any, and the cost of filing the suit.

The rights you have under the Motor Vehicle Repair Law and consequently the Maine Unfair Trade Practices Act cannot be waived or modified. Any waiver or modification is void and unenforceable.

If you have any problem exercising your rights, give this chapter to your mechanic. If you cannot settle the dispute with your mechanic, you may wish to take the matter to Small Claims Court where you can present your case without hiring an attorney.

### **§ 11. 3. You Have The Right To Set A Maximum Amount You Will Pay For Repair**

Under Maine’s Motor Vehicle Repair Law enacted in 1980, you have the right to set a ceiling on the amount you are willing to pay for any motor vehicle repair.<sup>5</sup>

Ask the repair shop for an estimate on the cost of repairs and then set your ceiling in writing. If you set a \$250 limit on the work order (or write a note in which you set a ceiling of \$250) for a major

<sup>2</sup> On December 3, 1985, the Maine Attorney General and Colony Cadillac Oldsmobile, Inc. entered into a Superior Court Unfair Trade Practices Consent Decree in which Colony was enjoined from misrepresenting that new parts were being used in its car repairs and from making repairs not authorized by the customer. Colony also was ordered to pay \$69,000 in restitution to injured consumers. *See State v. Colony Cadillac and Oldsmobile, Inc.*, CV-85-576 (Me. Sup. Ct., Kenn. Cty, 1985).

<sup>3</sup> A “firm” estimate can result in a binding, oral contract (*e.g.*, “I can fix this car for \$250”). But remember a contract for \$500 or more of goods (*e.g.*, car parts) should be in writing to be enforceable in court. *See* 11 M.R.S.A. § 2-201.

<sup>4</sup> 29A M.R.S.A. § 1807.

<sup>5</sup> 29A M.R.S.A. § 1802.

transmission repair and the mechanic makes \$150 worth of additional repairs without consulting you, he is not entitled to payment for such additional repairs—nor are you legally responsible for the extra \$150. Remember that you *must* sign this repair limit in order for it to be legally binding. Your written notice can be this simple:

To: [Name of repair shop]

I will not pay more than \$ \_\_\_\_\_ for repairs to my  
[*year and name of vehicle*], unless I later specifically agree to pay a greater  
amount.

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Consumer's Signature and Date

Or you can simply write equivalent language on the repair contract many garages have you sign when you drop off your car.

## **§ 11. 4. You Have The Right To Inspect Replaced Parts**

By law, you have the right to examine the parts that were replaced in your car before you pay your bill and, unless the repair shop has to return the parts to the distributor or manufacturer, the mechanic has to return them to you if you want them.<sup>6</sup> If the repair shop refuses, it is committing an unfair trade practice. If you want the parts, say so when you take the car in. Otherwise, the mechanic might throw them away.

## **§ 11. 5. You Have The Right To Know Whether The Parts Being Installed Are New Or Used**

The mechanic must have your approval before installing any parts that are used, reconditioned or rebuilt.<sup>7</sup> Of course, such parts should cost you less. It can be an unfair trade practice for the mechanic to misrepresent the condition of the parts or whether they are new or used.<sup>8</sup>

## **§ 11. 6. You Have The Right To Know How Much The Repair Shop Charges For Work**

Maine law requires the repair shop to post the hourly rate it charges for labor and the nearest fraction of the hour it rounds off when figuring the bill. The notice must be posted in a conspicuous place and must also tell you if the shop charges flat rate for certain repairs.<sup>9</sup> Sometimes dealers charge according to a “flat rate” book that estimates how long a particular repair should take. Be sure to ask your repair shop the basis for the estimate. Be cautious if a repair shop charges by a flat rate manual. **Consumer Reports** state that “flat rate manual” charging can lead to repair shop abuse (e.g., when the

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<sup>6</sup> 29A M.R.S.A. § 1803.

<sup>7</sup> 29A M.R.S.A. § 1804.

<sup>8</sup> F.T.C. Guide for “Rebuilt, Reconditioned And Other Used Automobile Parts, 16 CFR §§ 20.0-20.3; *see also* Chapter 3 of this Guide for a discussion of your remedies for a violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. §207.

<sup>9</sup> 29A M.R.S.A. § 1805.

manual allocates more hours for a repair than is typically needed).<sup>10</sup> **Consumer Reports** recommends you find a repair shop that charges by the number of hours actually spent working on the car and which charges an up-front diagnostic fee.

## § 11. 7. Picking Up Your Repaired Vehicle

When you pick up your car:

- A. Examine the car, the bill and the replaced parts.
- B. Be sure the car was not damaged while it was in for repairs. You do not want to drive away with extra dents and scratches.
- C. Check the itemized bill that is part of the work order form. Check totals for parts, labor, gas and oil, and shop supplies. Make sure nothing has been added to what you wanted done without your approval. Question any items on the bill that are not clear to you.
- D. Ask for all replaced parts listed on the itemized bill. At least examine all parts. If it is unclear to you what is wrong with a part, ask.
- E. Make sure you receive *new* (not used or rebuilt) parts whenever the repair estimate called for new parts.
- F. Keep a copy of the bill.

## § 11. 8. Inadequate Or Unfair Repairs

A contract to repair is like any other contract. If the work is poorly done, the repair shop may have breached your contract.<sup>11</sup> One possible remedy is to go to Small Claims Court and sue for damages—up to \$4,500 (*e.g.*, your cost to have the car properly repaired). Under Maine law, your repairs come with an implied warranty of good workmanship.<sup>12</sup> Also, be wary of 50/50 repair warranties, which give the customer little control over the prices charged for the repair. Further, such warranties may violate the Magnuson-Moss Warranty Act, which prohibits warranties that require customers to purchase a specific item or service.<sup>13</sup>

## § 11. 9. Complaint Route

If you refuse to pay a repair bill you dispute, you may be in for a mighty bumpy ride. The shop owner has both a common law<sup>14</sup> and statutory *mechanic's lien* on your car and may refuse to deliver it to you until you pay<sup>15</sup>. The lien is only for the amount that was *authorized* to be done, but since that is

<sup>10</sup> See Arthur Glickman, *Avoiding Auto Repair Rip-offs* (Consumer Reports Books, 1995)(hereinafter referred to as “Auto Repair Rip-Offs”).

<sup>11</sup> See *Marcus v. Lee S. Wilbur & Co.*, 588 A.2d 757, 759 (Me. 1991)(an implied term of every repair contract is undertaking to perform in a reasonably skillful and workmanlike manner); *Cannan v. Bob Chambers Ford*, 432 A.2d 387, 389 (Me. 1978) (“There is implied in every contract for worker services a duty to perform skillfully, diligently, and in a workmanlike manner.”).

<sup>12</sup> See 11 M.R.S.A. § 2-316(5)(a); *Joseph v. Hendrix* 536 So. 2d 448, 450(La.App.1 Cir.1998) (garage’s failure to perform work that had been requested and attempt to double charge customer constituted deceptive and unfair practice).

<sup>13</sup> See 64 Fed. Reg. 19700 § B (1)(d)(Apr.22,1999), interpreting 15 U.S.C. § 2302( c ).

<sup>14</sup> See *General Motors Acceptance Corporation v. Colwell Diesel Service and Garage, Inc.*, 302 A.2d 595, 597 (Me. 1973) (common law mechanic’s lien not waived by prosecution of statutory mechanic’s lien).

<sup>15</sup> 10 M.R.S.A. §§ 3801-3802. This statutory lien must be filed in the Secretary of State’s office within 90 days after the labor was performed or else it expires. 10 M.R.S.A. §3802. See *General Motors Acceptance Corporation v. Colwell Diesel Service & Garage, Inc.*, 302 A.2d 595 (Me.1973). However, even if the statutory lien expires the shop may still possess a common law lien, which can be enforced by retaining possession of the repaired vehicle.

what is in dispute, your car will still be kept from you until your bill is paid. The lien is, in effect, a claim to partial ownership of the car. You will not have a clear title to your car until you pay the bill or until the claim is settled in court, assuming it is settled in your favor.

If you disagree with the repair bill, it is normally advisable to pay it first in order to get the car back. Then you can pursue your complaint. If you simply leave the car with the dealer and refuse to pay, you run the risk that the car can be found to be “abandoned” and the repair shop named the owner. If possible, pay by credit card, so that if necessary you can later dispute the charge (see §26.3 in this Guide).<sup>16</sup> A commonly suggested tactic of paying the bill by check and then stopping payment on the check should *never* be used. If the repair shop complained to the District Attorney, you could be charged with “theft of services,” a criminal offense under Maine law.<sup>17</sup> It may be wiser to pay the bill in dispute and file a claim against the repair shop in Small Claims Court for the amount at issue.

When you do pay a bill you feel is unfair, be sure to note on your check, on the bill, or on both, that you are paying the bill—or a portion of it—“under protest.”

## § 11. 10. Unfair Trade Practices

Violation of Maine’s Motor Vehicle Repair Law can also be a violation of the Maine Unfair Trade Practices Act. If you sue successfully under this Act, you can receive the money back you paid the repair garage and your attorney fees.<sup>18</sup> Even if the car repairman did not violate one of the specific provisions of the Maine Motor Vehicle Repair law, the repairman could still have behaved so unfairly or deceptively that the Maine Unfair Trade Practices Act was violated. For example, it can be an unfair trade practice to perform the wrong repair job, thus failing to correct a problem, and then insist that the job was done correctly and that there will be an additional charge to perform additional repairs.<sup>19</sup> Or it can be an unfair and deceptive “failure to state a material fact” if the dealer or repair shop knows your vehicle’s problem is covered by a manufacturer’s “secret warranty” yet fails to tell you.

## § 11. 11. Repair Notice That Must Be Posted

### A. 29A M.R.S.A. § 1805, Notices.

A repair shop must post the following notice in a place where it is reasonably likely to be seen by its repair customers. The notice must 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 put in writing the total amount you agree to pay for repairs. You will not have to pay anything over that amount unless you agree to it when we contact you later.

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.

<sup>16</sup> See 29 A.M.R.S.A. §§ 1851-1860, which sets forth the steps a repair shop can take to become the owner of an abandoned vehicle.

<sup>17</sup> See 17-A M.R.S.A. § 357.

<sup>18</sup> See 29A M.R.S.A. § 1807; 5 M.R.S.A. § 213. For a more detailed description of your rights under the Maine Unfair Trade Practices Act, see Chapter 3 of this Guide.

<sup>19</sup> See *Joseph v. Hendrix*, 536 So. 2d 448, 450 (La.App. 1988).

We cannot install any used or rebuilt parts unless you specifically agree in advance.

You cannot be charged any fee for exercising these rights.

WE CHARGE \$\_\_\_\_\_ PER HOUR FOR LABOR.

(We round off the time to the nearest \$\_\_\_\_\_.)”

The notice must also contain the following if it applies:

We may also charge for our repair services either by the flat rate or “menu price” method. Ask our service advisor to explain what method will be used in charging you and to show you how much it may cost you. A flat-rate charge may not match the time actually spent repairing your vehicle. PLEASE ASK US WHETHER WE WILL CHARGE YOU BY THE HOUR OR BY A FLAT RATE.

The notice must also contain the following:

The current edition of the National Automobile Dealer’s *Association Official Used Car Guide* (New England Edition) is available for your review upon request.

## § 11.12. Repair Issues You Should Consider

Here are some issues to consider before you agree to contract with a car repair shop:

- A. Car repairers are bound by “*firm*” estimates (e.g., “This job will not cost you more than \$150.”), but they are not bound by *open-ended estimates* (e.g., “This job might cost you \$150 but I won’t know until I open up your car and get a better look.”). The former will likely be a valid verbal contract and therefore binding (but remember contracts for \$500 or more must be in writing to be enforceable!).
- B. Car repair shops must have posted in a place where consumers are *reasonably likely to see it* a notice that they have a right to put a written limit on the amount of their repair bill. If this poster is not in place, its absence constitutes a *per se* violation of the Maine Unfair Trade Practices Act.
- C. Consumers must specifically approve the use of used parts in the repair of their car.
- D. Unless replaced parts are required to be returned to the manufacturer, the consumer can demand to keep them.
- E. Car repair facilities can charge for their costs of merely evaluating the engine so as to give a firm estimate, but this charge should be made clear from the start.