

# 9

## **CONSUMER RIGHTS WHEN YOU BUY A USED VEHICLE**

### **§ 9. 1. Introduction**

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

### **§ 9. 2. Buying A Used Vehicle**

### **§ 9. 3. Immediate Rejection Of A Defective Used Vehicle**

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## § 9.2. Buying A Used Vehicle

Buying a used car often represents the best value for your money but sometimes can be a gamble. The State of Maine has passed the Used Car Information Act that requires all car dealers<sup>1</sup> to provide certain warranties (guarantees) and to post certain information on used cars offered for sale. As a buyer, if the dealer has not obeyed the law and refuses to repair your car, you may be able to force the dealer to take the car back and give you your money back. Further, if you go to court and win, the judge can also order the dealer to pay you liquidated damages of between \$100 and \$1,000 and your attorney's fees<sup>2</sup>. In Maine, a used car is one that has been registered with the State. If a car has never been registered, then it is new. This is why some demonstrators can meet the definition of a "new" car. Please note: Motorcycles are not considered cars under this law.

However, if the dealer has fully complied with the Used Car Information Act, offered no *express* warranties (verbal or written) and has properly disclaimed any *implied* warranties (used cars are the only consumer product where implied warranties can be disclaimed; *see* Chapter 4),<sup>3</sup> *then the car need only to pass State inspection!* If it can, and the dealer has not significantly misrepresented the condition of the car, the dealer is home free.

What this means is that for the above situation, if after several weeks of driving the engine fails, you may very well have no recourse against the dealer. An engine is not a State inspection item. You have gambled and lost. Therefore, if you buy a used car "as is," your only warranty is that it can pass State inspection.

To minimize your risk when buying a used car: (1) know your legal rights as described in this chapter, (2) make sure the dealer performs its legal responsibilities and (3) prior to purchase, have the car inspected by an independent mechanic to insure it will pass inspection and that the areas of the car not covered by the State inspection law are in good repair.

Remember, if you put down a deposit on a used car you probably have entered into a contract to buy the car. If you decide not to complete the purchase, you may not be able to get back your deposit. However a dealer must disclose to you in writing its policy on returning deposits and have you sign it.<sup>4</sup> Failure of the dealer to do so can be an Unfair Trade Practice Act violation.<sup>5</sup> *See also* § 5.11 in this Guide.

<sup>1</sup> 10 M.R.S.A. §§ 1471-1478. For the purposes of the Used Car Information Act, "dealer" includes used car dealers and finance companies and banks selling repossessed cars at retail sales. 10 M.R.S.A. § 1471(2). This law only applies to sales by dealers and does not apply to private, non-dealer sales. A motorcycle is not considered a "used car." *See* 10 M.R.S.A. § 1471(4). *See Tanguay v. Seacoast Tractor Sales*, 494 A.2d 1364 (Me. 1985) (Used Car Information Act will be interpreted liberally to carry out legislature's beneficent purpose of protecting purchasers of used cars).

<sup>2</sup> 10 M.R.S.A. § 1477(3). Dealers who violate this Act are also subject to civil penalties pursuant to 10 M.R.S.A. § 1477(2). *See State v. Sunshine Auto Brokers*, No. CV-88-42 (Me. Super. Ct., Kennebec Cty., July 14, 1989) (defendants were ordered to pay a civil penalty of \$10,700 and restitution to consumers of \$3,522 for violations of the Used Car Information Act and motor vehicle inspection laws).

<sup>3</sup> *See* 10 M.R.S.A. § 1473 and § 1475(2-A)(E). While dealers can disclaim implied warranties on used cars, manufacturers *cannot*. Thus, if you purchase a used car that is not yet 4 years old you may still have implied warranty rights against the manufacturer. *See* 11 M.R.S.A. § 2-318. (The older the car the less likely this would be; it is of course harder to prove a manufacturer's defect when the car is well traveled.) In the case of *Faulkingham v. Seacoast Subaru, Inc.*, 577 A.2d 772 (Me. 1990) the dealer failed to disclaim implied warranties when it sold a 1984 Chrysler Laser with 22,194 miles. The purchase price was \$6,495. The Maine Law Court found that there was "substantial evidence showing that the Laser failed to perform up to the level reasonably expected of a car of its age, mileage and purchase price." *Id.* at 744. The Court further found that there was no credible evidence suggesting that the Laser's engine problems originated after the purchaser took possession of the car.

<sup>4</sup> 10 M.R.S.A. § 1475 (2-A) (H).

<sup>5</sup> *See* Chapter 3 in this Guide, The Maine Unfair Trade Practices Act.

## § 9.3. Immediate Rejection Of A Defective Used Vehicle

Even if the dealer only warrants that your car can pass a State inspection, you still may be able to cancel the sale if the car immediately (within the first day or so) proves seriously defective. This is the Uniform Commercial Code (U.C.C.) right of “immediate rejection.”

If you discover a defect right after you buy a used car (with or without a warranty), and before any significant mileage<sup>6</sup> then pursuant to 11 M.R.S.A. § 2-602 of the U.C.C.:

- A. You can immediately “reject” the car (i.e., cancel the sale) and demand the return of the purchase price and damages, if any.<sup>7</sup> You should do this in writing and state your reasons for rejecting the car. Mail this notice (registered mail, return receipt) to the dealer and keep a copy for yourself. You should not use the car once you’ve notified the dealer.
- B. If the discovered defect is *minor*, then the dealer probably should have the right to repair (“cure”)<sup>8</sup> it. If the dealer cannot repair it within a reasonable time (e.g., a week or two), then you still have a right to reject the car.
- C. If the defect is *substantial*, then usually your remedy is replacement of the car or your money back, *not* repair. Nor must you settle for replacement of the defective component (e.g., a defective transmission) if the result is you will not have full confidence in the repaired vehicle.<sup>9</sup>

The same rejection law can apply if you buy a new or used car and the dealer does not deliver the exact car you purchased. For example, if you ordered a blue sedan for delivery by a certain date, you can reject the vehicle if the dealer misses the delivery date or the sedan is red instead of blue. You should ask for a full refund. Remember, before you try to reject a vehicle you should first consult with a lawyer. *See also* § 6.5 in this Guide.

## § 9.4. Your Warranty That Your Vehicle Can Pass State Inspection

A warranty is a guarantee. Used car dealers must always guarantee that a used car sold for transportation can pass inspection.<sup>10</sup> (A “used” car means a car that either has been once registered or

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<sup>6</sup> If you only occasionally use the product, there may be more time to reject. For example, if you bought a boat for pleasure and only used it on weekend’s then the court might allow you additional days before you must either accept or reject the boat. *See, e.g., Don’s Marine, Inc. v. Halderman*, 23 U.C.C. Rep. 78 (Tex. Civ. App. 1977).

<sup>7</sup> Pursuant to the U.C.C., not only would you be eligible for the return of the purchase price but also for consequential and incidental damages, if any. 11 M.R.S.A. § 2-715.

<sup>8</sup> 11 M.R.S.A. § 2-508. If the defect is not minor but the dealer’s contract “time of performance” has not expired, then the dealer can still repair (“cure”) the defect. For example, if your contract for a used car requires the car to be delivered by October 15 and you discover a serious defect on October 10, the dealer still has 5 days to “cure” the problem. If the contract does not state a delivery date, most courts assume the “time of performance” date is the date the consumer actually received the item from the dealer. *See Schiavi Mobile Homes v. Gagne*, 510 A.2d 236, 238 (Me. 1986) (for a mobile home built to consumer’s specifications, “time for performance” is established by a “reasonableness” standard).

<sup>9</sup> 11 M.R.S.A. § 2-508. *See Zabriskie Chevrolet, Inc. v. Smith*, 240 A.2d 195 1205 (NJ 1968), (seller’s attempted replacement of a defective transmission in a new car with a transmission of unknown lineage was held an inadequate cure); *see also Bayne v. Nall Motors, Inc.*, 12 U.C.C. rep. 1137 (Iowa Dist. Ct. 1973) (differential on a four-day-old car that was driven only 400 miles locked up because of a lack of lubricant; the seller’s attempted replacement of the differential was held to be an inadequate cure when the seller failed to check for damage to the power train and other parts that was likely to have resulted from the lubrication problem).

<sup>10</sup> 10 M.R.S.A. § 1474(1) (2). *See Thurber v. Bill Martin Chevrolet, Inc.*, 487 A.2d 631 (Me. 1985) (when a car was sold for transportation in violation of the Used Car Information Act, the consumer received back his purchase price, a civil

is not covered by a manufacturer's new car warranty. Therefore, a "demonstration" model is technically a *new* car and carries the added benefits afforded to new cars.)<sup>11</sup> *Dealers must give you this guarantee in writing.*<sup>12</sup> This law applies even if you are sold the car "as is." If your car violates this warranty, the dealer must repair it, free of charge, so it can pass state inspection. It is *not* enough that an inspection sticker is on the car. Your car must really meet the state standards. That means that the inspection sticker must have been put on your car within *60 days* of the date of purchase. Further, the following parts of your car (**but not the engine!**)<sup>13</sup> must be able to pass inspection:<sup>14</sup>

- A. Body components (including bumpers, fenders, doors, chassis frame);
- B. Brakes (including transmission forward and reverse gears as well as park position);
- C. Glazing (including windshield, side and rear windows);
- D. Exhaust system (including muffler);
- E. Horn;
- F. Lights and directional signals, (includes wiring and switches);
- G. Rearview Mirrors;
- H. Reflectors;
- I. Running gear (e.g., suspension system, air bag);
- J. Steering mechanism;
- K. Safety belts on 1966 and subsequent models;
- L. Tires;
- M. Windshield wipers;
- N. Catalytic converters on 1983 and subsequent models; and
- O. Filler neck restriction on 1983 and subsequent models;

## § 9.5. Unsafe Motor Vehicles

The *only time* this State inspection guarantee does not apply is if the dealer is selling the car for purposes other than transportation. Then it must have on it a large yellow "UNSAFE MOTOR VEHICLE" sticker. This sticker will clearly list what parts of your car cannot pass inspection. *You will be required to tow this car off the dealer's lot.* The dealer must also have you sign a copy of this disclosure sticker and must then give you a copy of this signed document.<sup>15</sup> See § 9.14 for a copy of the Unsafe Motor Vehicle sticker.

If your car is not an "unsafe motor vehicle," you should have it inspected thoroughly by an independent inspection station prior to purchase or, if this is not possible, immediately after purchase. If it cannot pass inspection, you can return the car immediately to the used car dealer and require the

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penalty and his attorney's fees, even though the contract specifically stated that the car was sold "as is /no state inspection /no warranty").

<sup>11</sup> Even though a demonstrator is technically a "new" car, it is illegal for a dealer to sell you a demonstrator as a new car without disclosing its history. See 10 M.R.S.A. § 1174(4)(B).

<sup>12</sup> 10 M.R.S.A. § 1474(3).

<sup>13</sup> The engine is not an inspection item. However, if the transmission's forward and reverse gears do not work, the car will fail the brake inspection.

<sup>14</sup> Section 29-A M.R.S.A. § 1751(2). In order to pass inspection the part must be "in good working order" and not pose a hazard to occupants or the public. See 29-A M.R.S.A. § 1756(1).

<sup>15</sup> 10 M.R.S.A. § 1474(4).

dealer to repair it free of charge. If the dealer refuses to repair your car free of charge, you can sue him and may be able to get all or most of your money back. The court can also order him to pay you a civil penalty for not complying with the law and your attorney fees.<sup>16</sup> See § 9.10, Your Legal Remedies. You should also notify the State Police, as the dealer then risks fines and the loss of a State inspection license.

If the car's defect is serious and you feel you cannot trust the dealer, you should consider immediately returning the car and demanding your money back (*see* § 9.3, Immediate Rejection of A Defective Used Car).

## **§ 9.6. You Have A Right To A Written Disclosure Of The Vehicle's History And Warranties**

In February 1987, the Secretary of State promulgated Used Car Information Act Rules, which require dealers to place the Used Car Information Act window sticker on all used cars being sold for transportation. This new sticker combines the requirement of the Federal and State window stickers.

A dealer *cannot* offer to sell you a used car unless he posts on the vehicle the required sticker.<sup>17</sup> Included in this information must be:

- A. The car's make, model, year and its identification number;
- B. A statement that the dealer must disclose the name and address of the previous owner of the motor vehicle, if you ask for the information;
- C. The principal use to which the vehicle was put by its previous owner (e.g., taxi, personal car);
- D. The type of sale by which the dealer acquired the car (e.g., auction, trade-in, repossession);
- E. A statement identifying any and all mechanical defects if known to the dealer at the time of sale;<sup>18</sup>
- F. A statement identifying any substantial damage<sup>19</sup> to the body or engine that the car had sustained, such as collision damage, fire, or water damage (this disclosure, and the disclosure dealing with mechanical defects (paragraph E) should be made even if

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<sup>16</sup> Even though the basic remedy provided in the Used Car Information Act is repair of any defects, if you have been sold a seriously defective car, then you can argue that the dealer has also violated the Maine Unfair Trade Practices Act (5 M.R.S.A. §§ 207, 213) and that you are entitled to the return of your money (*see* Chapter 3 in this Guide, Unfair Trade Practices In Maine).

<sup>17</sup> 10 M.R.S.A. § 1475; *see also* §§ 9.13-9.14 for annotated samples of these window stickers. This is true even when the dealer is selling a car through an auction. *See* 9 M.R.S.A. § 367(1).

<sup>18</sup> You should also carefully examine the title. It can reveal whether the car has been damaged or salvaged. *See* § 10.5 in this Guide, How to Read Your Vehicle's Title. This means that buyers should immediately be informed whether the vehicle has ever been salvaged or rebuilt. Dealers must also disclose if the vehicle had been accepted for Lemon Law arbitration and subsequently purchased back by the manufacturer (*see* 10 M.R.S.A. § 1475(4)).

<sup>19</sup> By statute (10 M.R.S.A. § 1475(3)), "substantial collision damage" which must be disclosed is damage that costs \$2,000 or more to repair. Other damage or defects must be disclosed if they are so substantial that, if the buyer knew about them, the buyer would pay less for the car or not buy it at all. On July 21, 1992, the Attorney General entered into a UTPA Consent Decree with North River Road Auto Sales of Auburn, which prohibited it from failing to affix Used Car Buyers Guides and disclosing substantial collision damage. North River Road paid a civil penalty of \$3,400 and restitution to injured consumers of \$7,500.

the dealer has fully repaired the damage or defect.<sup>20</sup>

- G. A full written description of any express warranty the dealer may have provided you.
- H. A statement excluding or modifying the implied warranty, if the dealer desires to do so. NOTE: You are not required to sign away this right. Negotiate with the dealer! The worst that can happen is that the dealer will refuse to sell you the car unless you agree to waive this implied warranty right. See §§ 4.5 - 4.7 in this Guide for a description of your implied warranty rights and § 9.17 for an estimate of the average life of car parts.
- I. The dealer's policy on returning deposits to consumers. See 10 M.R.S.A. §§ 1174 (4) (D) and §1475 (2-A) (H).

Again, if the dealer fails to post this sticker and the car proves defective over time, you should be able to return the car and receive free repairs or your money back (see § 9.10, Your Legal Remedies). Why should the dealer know the information on the window sticker? Because the law requires him to obtain it in writing (signed and dated) from the person who sold him the car and keep this record for two years.<sup>21</sup> There are two exceptions to this rule. The dealer does not have to obtain this information if the vehicle had been repossessed and was bought by the dealer at a dealers-only auction or if the vehicle was bought at an out-of-state dealers-only auction.

The dealer *must* give you a completed copy of this window sticker when you purchase the car. Further, any statements or promises written into the window sticker *override* any contrary statements the dealer may put into the written contract.<sup>22</sup> Finally, the Secretary of State's Used Car Sale Rules prohibit the dealer from making any statements, oral *or* written or taking other actions, which alter or contradict the disclosures made on the window sticker. See § 9.13 for a guide to a properly completed Used Car Information Act sticker and § 9.15 for a copy of the Used Car Information Act Rules.

## § 9.7. You Have A Right To Adequate And Timely Repair

Let's assume the dealer adequately filled out the Used Car Information Act sticker and gave you all the written warranties described above but then failed to repair your car or took too long doing it. Again, you should be able to return the car to the dealer and receive all your money back.

The Used Car Information Act is explicit as to the standards the dealer must meet in repairing your car under either a warranty of inspectability or an additional warranty or guarantee the dealer made to you.<sup>23</sup> A dealer violates the warranty if:

- A. The dealer sells you a car that cannot pass a State inspection; or
- B. As long as you have not mistreated the car, the dealer fails to repair or replace parts that were guaranteed (under either the warranty of inspectability or the dealer's own

<sup>20</sup> Maine Used Car Information Act Rule 1(C), Consumer Sales-Buyer's Guide Window Form; see *State v. Rowe Ford Sales* (February 13, 1991 Consent Decree settled State charges, with Rowe denying any wrongdoing, that Rowe Ford failed to disclose to at least two shoppers over \$2,000 in collision damage).

<sup>21</sup> 10 M.R.S.A. § 1475(3). If the previous owner of the car you are buying failed to tell the dealer about serious defects, do you have any legal remedies? Not against the dealer, unless you can prove he knew about the defects but did not disclose them. You may have a property damage tort action against the seller who deceived the dealer.

<sup>22</sup> Nor can a dealer make verbal representations about the quality of the car and then, if the car proves defective, point to a "merger" clause in the contract, which states that only the contract's written terms matter and not any verbal promises or representations. See *DeLong v. Hilltop Lincoln-Mercury, Inc.*, 812 S.W.2d 834 (Mo.App. 1991).

<sup>23</sup> See 10 M.R.S.A. § 1476; see also § 9.9, Your Legal Remedies.

warranty) within.<sup>24</sup>

- (1) 5 calendar days, not counting weekends or holidays, after the car is delivered to the dealer; or
- (2) 35 days after delivery if the necessary parts are not available to the dealer (longer if the parts are unavoidably delayed); or

C. The dealer fails to provide you with a loaner car at no cost (except for oil and gas) if your car is still not repaired after the above times have expired.

If any of these standards are not met by the dealer, then you may be able to return the car and receive all or most of your money back or obtain damages equal to your losses in your car's value. Remember, if you complained about a particular defect before the warranty expired, a dealer cannot wait for the warranty to expire, and then charge you for the repair. By complaining before the warranty runs out, you "freeze" your repair rights as to that defect.

If the dealer fails to perform his express or implied warranty obligations, you must give the dealer written notice of this failure before you can bring a court action under the Used Car Information Act. This notice must be sent by registered or certified mail.<sup>25</sup>

## § 9. 8. Transfer Of Warranties

Manufacturers are now offering quite lengthy express warranties. If you purchase a late model used car, the manufacturer's express warranty may still apply to you.<sup>26</sup> Also, you may have implied warranty protection from the manufacturer for any serious defects that were present when the car was first sold.<sup>27</sup> While state law allows used car dealers to disclaim implied warranties, manufacturers cannot.<sup>28</sup>

## § 9. 9. Service Contracts

Car dealers will often attempt to sell service contracts to used car buyers. Service contracts are *not* warranties (which are included in the cost of the item), but, rather, a promise to reimburse you for covered repairs over and above a deductible. Make sure you understand who is liable either to perform or pay for repairs under the terms of the auto service contract. It may be the manufacturer, the dealership, or an independent company.

Many service contracts sold by dealers are actually handled by independent companies, called administrators. These administrators act as claims adjusters, authorizing the payment of claims to any dealers under the contract. Therefore, if you have a dispute over whether or not a claim should be paid, you should deal with the administrator.

Are service contracts worth the money? Certainly they can bring a measure of peace of mind. But they are often extremely high priced and do not always cover the problem you need repaired. Furthermore, the service contract company might go out of business which would most likely result in

<sup>24</sup> See *Faulkingham v. Seacoast Subaru, Inc.*, 577 A.2d (Me. 1990) (buyer left car with the dealer for purpose of revoking acceptance, rather than repair, and thus did not trigger five day repair period).

<sup>25</sup> See 10 M.R.S.A § 1476. In addition to your Used Car Information Act remedies, you may also have the U.C.C. remedy of "revocation" of ownership. See 11 M.R.S.A. § 2-608 and §§ 6.6-6.7 in this Guide.

<sup>26</sup> See 11 M.R.S.A. § 2-318. A still existent express or implied warranty passes to the buyer of a used car if the buyer is "a person whom the manufacturer, seller or supplier might reasonably have expected to use, consume or be affected by the goods."

<sup>27</sup> See § 4.10 in this Guide.

<sup>28</sup> See 10 M.R.S.A. § 1473.

your losing the price of the service contracted.<sup>29</sup> Please note that the Magnusson-Moss Warranty Act prohibits the dealer from disclaiming your implied warranty rights if the dealer sells you a service contract within 90 days of your purchasing the car.<sup>30</sup> Also keep in mind that many service contracts have escape clauses that state that the vehicle is already covered under warranty, then the buyer must first seek repair under the warranty (e.g., the dealer or the manufacturer) rather than repair under the service contract. Thus, if you purchase a used car that is a few years old and which still carries the manufacturer's warranty, also purchasing a service contract may not be necessary.

The National Consumer Law Center in its 1997 Deceptive Practices and Warranties Report has the following advice about Service Contracts:

[An] automobile dealer rip-off is the sale of a service contract or extended warranty at a price several times the actual cost of this contract to the dealer. Even if the manufacturer or other service contract company sets a suggested retail price, the dealer will sell the contract for whatever it can get away with. The dealer pockets the difference between what the consumer pays and what is sent to the service contract company.

This practice is a clear Unfair Trade Practice violation, particularly if the dealer misrepresents the charge. For example, the dealer's sales agreement or loan forms may state that the total service contract price is "an amount paid on your behalf" or "an amount paid to another." This is clearly false since part of the charge is kept by the dealer. Similarly, oral representations by the dealer that this is the lowest it is allowed to charge for the service contract, that the price is set by the manufacturer, or that the price is a good deal are deceptive where the price in fact is higher than the suggested retail price. Moreover, it may also be deceptive to fail to disclose the pricing arrangement.

Truth in Lending is another approach to dealer over charges on service contracts.... Judge Posner provides a forceful explanation of the consumer injury implicit in the practice:

The consumer would have a greater incentive to shop around for an extended warranty, rather than take the one offered by the dealer, if he realized that the dealer was charging what the defendant's lawyer described as a "commission," and apparently a very sizeable one, for its efforts in procuring the warranty from a third party. Or the consumer might be more prone to haggle than if he thought that the entire fee had been levied by a third party and so was outside the dealer's direct control. Or he might go to another dealer in search of lower mark-ups on third-party charges.

*See Gibson v. Bob Watson Chevrolet-GEO, Inc.*, 112F.3d 283 (7th Cir. 1997).

Even if your express warranty has expired, the dealer has disclaimed your implied warranties, and

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<sup>29</sup> If the administrator goes out of business, the dealership may still be obligated to perform under the contract. The reverse also may be true. If the dealer goes out of business, the administrator may be required to fulfill the terms of the contract. Whether you have recourse depends on your contract's terms. You can also check with the Maine Bureau of Insurance (1-800-300-5000 or 207-624-8457) to see if your service contract qualifies as "insurance." If so, you may have additional remedies. Another remedy is available where the service contract was sold in conjunction with the sale of the vehicle and where the purchase was financed by a lender related to the seller within the terms of the FTC Holder Rule. In such cases buyers can assert claims arising out of the sale of the service contract against the lender. The buyer can demand that the lender credit his account in the amount of the claim. This remedy is especially useful where the service contractor or seller goes out of business or fails to make a repair covered by the contract.

<sup>30</sup> 15 U.S.C. § 2308(b)(2).



you did not purchase a Service Contract, there may still be hope. The manufacturer may have issued a Technical Service Bulletin (TSB) that will provide free fixes of defects discovered after the warranty has expired. You can find out if such “secret” warranties exist by checking the following sources:

1. National Highway Traffic Safety Administration  
400 7th St. SW,  
Washington, D.C. 20590.  
Telephone: 1-888-327-4236. Web site: [www.nhtsa.dot.gov/](http://www.nhtsa.dot.gov/)
2. Center for Auto Safety,  
1825 Connecticut Ave, NW, Suite 330,  
Washington, DC 20009-5708  
Telephone: (202) 328-7700 Web site: [www.autosafety.org/](http://www.autosafety.org/)
3. ALLDATA LLC,  
9412 Big Horn Blvd.,  
Elk Grove, CA 95758.  
Telephone: 1-800-829-8727  
  
Alldata’s automotive-service Web site: [www.alldata.com](http://www.alldata.com)  
Fax: (916) 684-5225 Email: [info@alldata.com](mailto:info@alldata.com)

Search for Technical Service Bulletins (TSB) for your particular make and model vehicle.

## **§ 9. 10. Your Legal Remedies**

### ***A. Introduction***

If in the first day or so you discover a serious defect, you should consider immediately rejecting a used car and demanding back your money. See § 9.3. The Used Car Information Act provides customers with additional legal remedies. In general, if you are beyond the immediate rejection stage you should first give the dealer an opportunity to repair any problem that is covered by warranty or causes the vehicle to fail the State’s inspection. Any violation by the dealer of the above duties means the dealer has probably also violated the Maine Unfair Trade Practices Act, which provides consumers with additional legal remedies. If your car could not pass State inspection when it was sold to you, then you are entitled to free repairs. If free repairs are refused, then the Unfair Trade Practices Act can require return of your money.

Your first step should be to meet with the dealer and try to resolve your dispute. Show the dealer this summary of the law. Carefully consider any compromise offer. If you cannot reach an agreement and still feel you have been treated unfairly, you can consider going to court. Small Claims Court does not require that you hire an attorney and you can give the judge this Chapter to help explain your position. You can sue in Small Claims Court if your damages do not exceed \$4,500.<sup>31</sup> If your claim is for more (i.e. damages or a civil penalty of more than \$4,500), you should talk to an attorney first.

### ***B. The Used Car Information Act Remedies<sup>32</sup>***

The specific legal remedies provided by this Act could be enforced in Small Claims Court or District Court.

<sup>31</sup> See also Chapter 27 of this Guide, A Consumer’s Guide to Small Claims Court.

<sup>32</sup> See 10 M.R.S.A. §§ 1476-1477.

- (1) If the dealer refuses to make express warranty repairs or to repair the car so it can pass inspection (*see above*, § 9.4), then you can:
  - (a) Return the car and get all your money back, less the value of any damage caused by your mistreatment of the vehicle; or, if you've had the car for 30 days or more, you can return the car and get your money back less the amount of money your car's fair market value has decreased due to normal use by you; or
  - (b) In the alternative, you can keep your car and sue for damages equal to the decrease in value of the car caused by the dealer's failure to meet his warranties (e.g., the cost of repairs).
- (2) In addition to any other remedy, if the dealer fails to post the history of the vehicle on the car or otherwise comply with the requirements of the Used Car Information Law, the court will order the dealer to pay you a civil penalty of between \$100 and \$1,000, plus costs and attorneys fees,<sup>33</sup> unless the dealer can show the violation was unintentional. This suit must be filed within 2 years of the date on which the problem arose.

Please note: Before suing for breach of warranty, you must notify the dealer by registered or certified mail to his business address, to notify him that he has failed to perform his warranty obligations. Again, if you win, the court can award you your reasonable attorney fees.<sup>34</sup>

### ***C. Unfair Trade Practices Act Remedies.***

If you are buying the car for personal, family, or household use (not business), then under 10 M.R.S.A. § 1477 any violation of the duties described above is a *per se* (automatic) unfair trade practice. Under 5 M.R.S.A. § 213, you have the right to go to Small Claims Court if the damage is \$4,500 or less, District Court, or Superior Court to sue for damages or restitution (your money back). The court can also order the dealer to pay your reasonable attorney fees and the cost of filing the suit.<sup>35</sup> It can also be an Unfair Trade Practice if the dealer makes any significant oral or written (e.g., in an advertisement) misrepresentations. This is true even if the sales contract warns the buyer that the dealer is not responsible for the oral statement of its sales person and that the written contract terms are final. Why? Because an Unfair Trade Practices Act claim is not based on the written contract but rather is based on dealer deceptive practices.

## **§ 9. 11. Odometer Fraud**

It is a crime for anyone to alter the odometer reading with the intent to deceive. If you believe your odometer was tampered with, contact the Bureau of Motor Vehicles, Title and Anti-Theft Section: (207-624-9000 extension 52138). *See also* Chapter 10 of this Guide, Consumer Rights When You Suspect Odometer Tampering.

It is a crime for anyone to alter the odometer reading with the intent to deceive<sup>36</sup>. If you believe your odometer was tampered with, contact the Bureau of Motor Vehicles, Title and Anti-Theft

<sup>33</sup> 10 M.R.S.A. § 1477(3), liquidated damages; 10 M.R.S.A. § 1476(4). *See James v. Witham*, 573 A.2d 793 (Me. 1990) (buyer who brought action against used car dealer to rescind contract for a defective truck entitled to attorney fees incurred in defending dealers appeals to Superior Court and the Supreme Judicial Court).

<sup>34</sup> *See Thurber v. Bill Martin Chevrolet, Inc.*, 487 A.2d 631 (Me. 1985) (when a car was sold for transportation in violation of the Used Car Information Act, the consumer received back his purchase price, a civil penalty and his attorney's fees — even though the contract specifically stated that the car was sold “as is/no state inspection/no warranty”).

<sup>35</sup> *See e.g., Wendi Arno v. Eddington Auto Sales*, No.BAN-CV-97-437 (Me. District CT., Penobscot Cty, Nov.3, 1999) (Defendants misrepresented vehicle in violation of the Unfair Trade Practices Act and Used Car Information Act; the court awarded the consumer the choice of either restitution or damages, and attorney fees); *Hale v. Basin Motor Co.* 795 P.2d 1006 (N.M. 1990) (unfair trade practice for a dealer to alter a vehicle without informing the buyer).

<sup>36</sup> 29-A M.R.S.A. § 2106.

Section: (207-624-9000 Extension 52138). *See also* Chapter 10 of this Guide, Consumer Rights When You Suspect Odometer Tampering.

## § 9. 12. Summary Of Your Used Vehicle Rights

- A. No more than 60 days prior to sale to a consumer, the used car dealer must have had a new inspection sticker put on the car.
- B. Any used car sold must be able to pass inspection. The only exception to this rule is a car, which is being sold for parts or reconstruction and has been labeled an “UNSAFE MOTOR VEHICLE.” *See* § 9.14. These cars must be towed from the dealer’s lot. If your used car cannot pass inspection, then the dealer must repair it for you at no charge or you may be able to demand your money back.
- C. On the other hand, if your car *can* pass inspection but the *motor* (which is not a state inspection item) fails, then you may very well have gambled and lost. Purchasing a used car is not always an exact science. Unless the dealer made material misrepresentations about the car’s quality (*e.g.*, “the car’s engine is in excellent shape”), no law has been broken. This assumes the dealer has properly disclaimed the consumer’s right to implied warranty protection. If not, the consumer may be able to argue that his implied warranty rights have been violated.<sup>37</sup> The exception to this rule is if you discover a serious defect immediately after purchase (*e.g.*, within a day or so and before you’ve put on significant mileage). If this happens you may be able to immediately reject the car, cancel the contract and recover your purchase price. *See* § 9.3.
- D. Each car must have a Used Vehicle Buyer’s Guide Window Sticker (*see* the description in § 9.13) on its window detailing background information about the car (*e.g.*, collision damage) and alerting the consumer to the fact that he can ask for the name and address of the past owner. A dealer disclaimer of implied warranty rights, if any must also appear on this sticker. These used car rights do not apply to *private* sales between individuals.
- E. If a consumer purchases a car for his personal use and not for business use, then a violation of the rights described above in paragraphs A, B and D constitutes a *per se* violation of the Maine Unfair Trade Practices Act.<sup>38</sup>
- F. Purchasers of used (and new) cars are in general protected by 5 M.R.S.A. § 207 from unfair and deceptive trade practices. Further, pursuant to 10 M.R.S.A. § 1174 dealers are prohibited from the following practices:
  - (1) Engaging in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to consumers;
  - (2) Requiring a purchaser of a new motor vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, equipment, parts or accessories not desired or requested by the purchaser; provided, however, that this prohibition does not apply as to special features, appliances, equipment, parts or accessories that are already installed on the car when received by the dealer; provided further, that the

<sup>37</sup> To prove an implied warranty violation you must show (1) that the car suffers from a serious manufacturer’s defect, (2) that the car is still within its “useful life,” and (3) that the problem is not caused by abuse by you or an earlier owner. For a guide to the implied warranty law and the “useful life” of different automobile components; *see* Chapter 4, § 4.3, Implied Warranty of Merchantability. *See also* *Suminski v. Maine Appliance Warehouse, Inc.*, 602 A.2d 1173 (Me. 1992) (an unmarketable battery may not render an entire vehicle unmerchantable).

<sup>38</sup> 10 M.R.S.A. § 1477.

motor vehicle dealer prior to the consummation of the purchase reveals to the purchaser the substance of this paragraph;

- (3) Representing and selling as a new motor vehicle, without disclosure, any motor vehicle that has been used and operated for demonstration purposes or is otherwise a used motor vehicle;
- (4) Resorting to or using any false or misleading advertisement in connection with business as a motor vehicle dealer;
- (5) Failing to disclose conspicuously in writing the motor vehicle dealer's policy in relation to the return of deposits received from any person. A dealer shall require that a person making a deposit sign the form on which the disclosure appears; or
- (6) Failing to disclose in writing to a purchaser of a new motor vehicle before entering into a sales contract that the new motor vehicle has been damaged and repaired if the dealer has knowledge of the damage or repair or if the damage calculated at the retail cost of repair to the new motor vehicle exceeds 5% of the manufacturer's suggested retail price, except that a new motor vehicle dealer is not required to disclose to a purchaser that any glass, bumpers, audio system, instrument panel, communication system or tires were damaged at any time if the glass, bumpers, audio system, instrument panel, communication system or tires have been replaced with original or comparable equipment.

## **§ 9. 13. Guide To The Used Car Information Window Sticker**

On the following pages is an annotated sample (reduced in size) of the Used Car Information window sticker, which is called the Used Vehicle Buyer's Guide. Here are some important points to remember:

- A. Used car dealers must *complete and post* the Used Vehicle Buyer's Guide window sticker on *every* used car being offered for sale. The only exception is an "Unsafe Motor Vehicle" being sold for parts. *See* § 9.14.
- B. If you buy a used car the dealer *must* give you a copy of the filled-out window sticker. Make sure you get your copy.
- C. Information or promises on this window sticker *override* any contrary provisions the dealer puts in your written contract.
- D. If you find that your car could not have passed the state inspection when it was sold to you, then the dealer must make the necessary repairs without charge or you can demand your money back.
- E. It is illegal for the dealer to misrepresent on this window sticker the car's *mechanical condition* or any *warranty terms* he may be offering.
- F. If you see a used car being offered for sale without this window sticker, contact the Attorney General's Consumer Protection Division (207-626-8849, 800-436-2131, [consumer.mediation@maine.gov](mailto:consumer.mediation@maine.gov)).

USED CAR INFORMATION ACT WINDOW STICKERS (Front Side)

USED VEHICLE BUYER'S GUIDE

IMPORTANT:

Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

Table with 4 columns: Chevrolet, Caprice, 1998, C11W33JK23433W9. Headers: Vehicle Make, Model, Year, Vin Number. Value: GHI 8902345SS890

Dealer Stock Number (Optional)

PRIOR USE: [ ] PERSONAL: [x] OTHER: RENTAL

HOW ACQUIRED: [ ] TRADE IN: [x] OTHER: AUCTION

MECHANICAL DEFECTS IF ANY KNOWN: NEW CLUTCH INSTALLED 1/12/2001

PRIOR SUBSTANTIAL DAMAGE TO BODY OR ENGINE IF ANY KNOWN: NONE KNOWN

Important: these are the only problems known to the dealer. Ask if you may get an independent inspection before purchase.

[x] WARRANTY OF INSPECTABILITY

STATE LAW REQUIRES THAT THIS VEHICLE MEETS STATE INSPECTION STANDARDS AND HAS A VALID INSPECTION STICKER ISSUED WITHIN 60 DAYS OF THE SALE OF THIS VEHICLE.

[ ] NO EXPRESS WARRANTY EXCEPT THAT VEHICLE MEETS STATE INSPECTION STANDARDS

You will pay all costs for any repairs not related to meeting state inspections standards. Regardless of any oral statements about the vehicle, the dealer accepts no responsibility for repairs except those necessary to pass state inspection.

[ ] DEALER EXPRESS WARRANTY

[ ] FULL [x] LIMITED WARRANTY: The dealer will pay 100% of the labor and 100% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under Maine law, "implied warranties" may give you even more rights and cannot be limited by the dealer while this express warranty is still in effect. For each repair the buyer will pay a deductible of \$\_\_\_\_\_

SYSTEMS COVERED:

DURATION:

MANUAL TRANSMISSION 1 MONTH ( 30 DAYS ) OR 1,000 MILES, WHICHEVER OCCURS FIRST

[ ] SERVICE CONTRACT: A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale Maine "implied warranties" cannot be limited by the dealer and may give you additional rights.

IMPLIED WARRANTY

[ ] YES [ ] NO [x] LIMITED TO DURATION OF EXPRESS WARRANTY

Maine's implied warranty law may give you additional rights. If the vehicle is still within its useful life and has not been abused, you may have the right to have the dealer repair defects in materials or workmanship that were not apparent when you bought the vehicle. Or you may be able to return the car if the dealer promised you it was fit for a particular use and it was not.

IMPORTANT INFORMATION

\* PRIOR OWNER'S NAME AND ADDRESS IS AVAILABLE FROM THE DEALER UPON REQUEST. \*\* SEE THE BACK OF THIS FORM FOR ADDITIONAL INFORMATION, INCLUDING A LIST OF SOME MAJOR DEFECTS THAT MAY OCCUR IN USED MOTOR VEHICLES.

Dealers must disclose this information even if they have fully repaired the damage.

"Substantial collision damage" must be disclosed if it cost \$2,000 or more to repair; non-collision damages or defects must be disclosed if they were so significant they would cause the buyer to not purchase the vehicle or pay less.

Your best protection in buying a used car: have an independent evaluation!

Cars sold for transportation must be able to pass state inspection. And they must have new inspection stickers not more than 60 days old.

Remember: state inspection standards do not cover engine problems. Consider bargaining with the dealer for an express warranty that provides protection if the engine breaks down.

If the dealer provides you with a limited Express Warranty, then the dealer must also provide you with an Implied Warranty that lasts as long as the Express Warranty.

### USED CAR INFORMATION ACT WINDOW STICKERS

(Back Side)

Below is a list of some major defects that may occur in used motor vehicles.

- Frame & Body**  
Frame-cracks, corrective welds, or rusted through  
Dogtracks – bent or twisted frame.
- Engine**  
Oil leakage, excluding normal seepage  
Cracked block or head  
Belts missing or inoperable  
Knocks or misses related to camshaft lifters and push rods  
Abnormal exhaust discharge
- Transmission & Drive Shaft**  
Improper fluid level or leakage, excluding normal seepage  
Cracked or damaged case which is visible  
Abnormal noise or vibration caused by faulty transmission or drive shaft  
Improper shifting or functioning in any gear  
Manual clutch slips or chatters
- Differential**  
Improper fluid level or leakage excluding normal seepage  
Cracked or damaged housing which is visible  
Abnormal noise or vibration caused by faulty differential
- Cooling System**  
Leakage including radiator  
Improperly functioning water pump
- Electrical System**  
Battery leakage  
Improperly functioning alternator, generator, battery or starter
- Fuel System**  
Visible leakage
- Inoperable Accessories**  
Gauges or warning devices  
Air conditioner  
Heater or Defroster

- Brake System**  
Failure warning light broken  
Pedal not worn under pressure (DOT spec.)  
Not enough pedal reserve (DOT spec.)  
Does not stop vehicle in straight (DOT spec.)  
Hoses damaged  
Drum or rotors too thin (Mrgr. Specs.)  
Lining or pad thickness less than 1/32 inch  
Power units not operating or leaking  
Structural or mechanical parts damaged
- Steering System**  
Too much free play at steering wheel (DOT specs.)  
Free play in linkage more than ¼ inch  
Steering gear binds or jams  
Front wheels aligned improperly (DOT specs.)  
Power unit belts cracked or slipping  
Power unit fluid level improper
- Suspension System**  
Ball joint seals damaged  
Structural parts bent or damaged  
Stabilizer bar disconnected  
Spring broken  
Shock absorber leaking or functioning improperly
- Tires**  
Tread depth less than 2/32 inch  
Sizes mismatched  
Visible damage
- Wheels**  
Visible cracks, damage or repairs  
Mounting bolts loose or missing
- Exhaust System**  
Leakage

This sticker must be posted on all used cars for sale (even vehicles with an "Unsafe Motor Vehicle" sticker) and a copy must be given to the buyer.

If this car was rejected by the original consumer because it was seriously defective then it must be disclosed on the sticker (see Chapter 7, The Maine Lemon Law and State Arbitration

**Vehicle Returned to Manufacturer.**

This vehicle has \_\_\_\_\_ has not \_\_\_\_\_ been returned to the manufacturer, its agent or authorized dealer, for its non-conformity with express warranties. These non-conformities were:

\_\_\_\_\_

**Notice of Breach of Warranty.**

If a dealer fails to perform his obligation under the warranty, the purchaser shall give the dealer written notice of such failure before the purchaser initiates a civil action in accordance with 10 M.R.S.A. § 1476. This notice must be sent by registered or certified mail to the dealer's last know address.

Dealer: \_\_\_\_\_

Address: \_\_\_\_\_

If you have a complaint about this vehicle contact the following representative of the dealer.

Name: \_\_\_\_\_

Title: \_\_\_\_\_ Phone: \_\_\_\_\_

**I HAVE READ AND RECEIVED A COPY OF THE BUYER'S GUIDE ON THIS VEHICLE**

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

Remember to give written notice to the dealer if you are claiming he breached either the Warranty of Inspectability or the Dealer Express Warranty

Remember: The Buyer must sign and date the disclosure statement and save a copy of it. The Dealer must keep a copy for three years.

# § 9. 14. Guide To The Unsafe Motor Vehicle Sticker

This is a copy (reduced in size) of the Unsafe Motor Vehicle sticker. On the car this is bright yellow. Here are some important points to remember:

- A. The dealer must complete this sticker by disclosing exactly why the vehicle cannot pass inspection. Any written comments are voluntary.
- B. If the consumer drives the vehicle off the dealer’s lot, a court could conclude that the dealer is actually selling the car for transportation and not as an “Unsafe Motor Vehicle.”

**UNSAFE MOTOR VEHICLE**

**THIS CAR DOES NOT MEET MAINE’S INSPECTION LAWS AND IS UNSAFE TO DRIVE ON THE ROAD. THIS CAR WILL NEED TO BE REBUILT OR REPAIRED IN ORDER TO MEET MAINE’S INSPECTION LAWS AND BE SAFELY DRIVEN ON THE ROAD.**

The following inspection report should be reviewed carefully before purchasing this vehicle:

Make: CHEVROLET	Year: 1994
Model: LUMINA	VIN: 12045XK11Z1

	PASS	FAIL	COMMENT*
<input type="checkbox"/> A. Body components		X	RUST
<input type="checkbox"/> B. Brakes	X		
<input type="checkbox"/> C. Exhaust system	X		
<input type="checkbox"/> D. Glazing	X		
<input type="checkbox"/> E. Horn	X		
<input type="checkbox"/> F. Lights and directional signals	X		
<input type="checkbox"/> G. Rearview mirrors	X		
<input type="checkbox"/> H. Reflectors	X		
<input type="checkbox"/> I. Running gear	X		
<input type="checkbox"/> J. Safety seat belts		X	REAR BELTS BROKEN
<input type="checkbox"/> K. Steering mechanism	X		
<input type="checkbox"/> L. Tires		X	BALD
<input type="checkbox"/> M. Windshield wipers	X		
<input type="checkbox"/> N. Catalytic Converter	X		
<input type="checkbox"/> O. Fuel filler neck restriction	X		

<u>Jack Smith</u> Inspection Mechanic	<u>93,527</u> Mileage	<u>John Doe</u> Buyer’s Signature
<u># 78</u> Inspection Station #	<u>5/1/2001</u> Date of Inspection	<u>6/20/2001</u> Date of Sale

**THIS VEHICLE MUST BE TOWED FROM THIS LOCATION**

Voluntary comments by the inspecting mechanic

Check One:                      Owner’s Copy                          Dealer’s Copy

This is a copy (reduced in size) of the Unsafe Motor Vehicle Sticker. On the car, this is bright yellow.

The dealer **MUST** complete this sticker by disclosing exactly **WHY** the vehicle cannot pass inspection. Any written comments are voluntary.

If the consumer drives the vehicle off the dealer’s lot, a court could conclude that the dealer is actually selling the car for transportation and not as an “Unsafe Motor Vehicle.”

## § 9. 15. Maine Secretary Of State Used Car Information Act Rules

(February, 1987)

### Section 1. General Duties of a Used Car Dealer

#### A. DEFINITIONS

1. “Consumer” means any person, who is not a used vehicle dealer, and a person defined as a “purchaser” at 10 M.R.S.A. § 1471, sub-§ 6.
2. “Dealer” means any person or legal entity which meets the Used Car Information Act definition of a “dealer” at 10 M.R.S.A. § 1471, sub-§ 2.
3. “Implied warranty” means any implied warranty arising under the Maine Uniform Commercial Code, 11 M.R.S.A. § 2-314 (as modified by the Magnuson-Moss Act) in connection with the sale by a dealer of a used vehicle.
4. “Mechanical defect” means any defect, failure or malfunction of the mechanical system of a motor vehicle, including, but not limited to, the motor and transmission, electrical, hydraulic or suspension system, and any defect, damage, failure or malfunction that significantly affects the safety or normal use of a motor vehicle.
5. “Motor vehicle” means any vehicle which meets the Used Car Information Act definition of “motor vehicle” at 10 M.R.S.A. § 1471, sub-§ 4.
6. “Service contract” means a contract in writing for any period of time or any specific mileage to refund, repair, replace or maintain a used vehicle and provided at an extra charge beyond the price of the used vehicle.
7. “Substantial damage” means damage to the motor vehicle so substantial that, if known to the consumer, it would affect the consumer’s decision to purchase the car or the price the consumer would be willing to pay.<sup>39</sup>
8. “Used vehicle” means any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer, including “demonstrators” (or company cars), but does not include any vehicle sold only for scrap or parts (title documents surrendered to the state and a salvage certificate issued). Also included in this term is any vehicle which meets the definition of a “reconstructible motor vehicle” at 10 M.R.S.A. § 1471, sub-§ 6-A.
9. “Warranty” means any undertaking in writing, in connection with the sale by a dealer of a used vehicle, to refund, repair, replace, maintain or take other action with respect to such used vehicle and provided at no extra charge beyond the price of the used vehicle. Also included in this Used Car Information Act definition of “warranty” at 10 M.R.S.A. § 1471, sub-§ 8.
10. “You” means any dealer, or any agent or employee of a dealer, except where the term appears on the window form required by this rule.

#### B. USED CAR INFORMATION ACT VIOLATIONS

- (1) *Misrepresentations*. It is a violation of the Maine Used Car Information Act, 10 M.R.S.A. § 1475:
  - (a) To misrepresent in writing<sup>40</sup> the mechanical condition of a used vehicle;
  - (b) To misrepresent in writing the terms of any warranty offered in connection with the sale of a used vehicle; and
  - (c) To misrepresent in writing that a used vehicle is sold with a warranty when the vehicle is sold without any warranty.
- (2) *Failure to Disclose*. It is a violation of the Maine Used Car Information Act, 10 M.R.S.A. § 1475:
  - (a) To fail to disclose in writing, prior to sale, that a used vehicle is sold without any warranty; and
  - (b) To fail to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle.

<sup>39</sup> Since these Rules were issued, the Maine Legislature has enacted legislation which states dealers do not have to disclose collision damage that costs less than \$2,000 to repair. See §§ 9.6 (F); 10 M.R.S.A. § 1475(3).

<sup>40</sup> Verbal misrepresentations may be in violation of common law or statutory law, such as the Maine Unfair Trade Practices Act or the Maine Uniform Commercial Code.



### C. CONSUMER SALES BUYER'S GUIDE WINDOW FORM

It is a violation of the Maine Used Car Information Act, 10 M.R.S.A. § 1475, for any dealer to fail to comply with the following requirements:

1. *General Duty.* Before you offer a used vehicle for transfer or sale to a consumer or another dealer, you must prepare, fill in as applicable and display on that vehicle a "Buyer's Guide" as required by this Rule.
  - (a) Use a side window to display the form so both sides of the form can be read, with the title "Buyer's Guide" facing to the outside. You may remove a form temporarily from the window during any test drive, but you must return it as soon as the test drive is over.
  - (b) The capitalization, punctuation and wording of all items, headings and text on the form must be exactly as required by this Rule. The entire form must be printed in 100% black ink on a white stock no smaller than 12 ½ inches high by 8 ½ inches wide in the type styles, sizes and format indicated in the sample form in Appendix D, with no additions or deletions.
2. *Directions for Filling Out Buyer's Guide.* When filling out this Buyer's Guide form, follow the directions in (a) through (m):
  - (a) *Make, Model, Year, VIN.* Put the vehicle's name (for example, "Chevrolet"), model (for example, "Vega"), model year and Vehicle Identification Number (VIN) in the spaces provided. You may write the dealer stock number in the space provided or you may leave this space blank.
  - (b) *Prior Use.* Put the principal use to which the vehicle was put by the former owner, such as personal transportation, police car, daily rental car, taxi or other descriptive term.
  - (c) *Mechanical Defects.* Put a statement identifying any and all mechanical defects known to you at the time of sale. *You must make this disclosure even if you have fully repaired the defect.*
  - (d) *How Acquired.* Put the type of sale by which you acquired the vehicle, such as trade-in, sheriff's sale, repossession, auction or other descriptive term.
  - (e) *Substantial Damage.* Put a statement identifying any and all substantial damage that the vehicle has sustained that is known to you, including damage to the body or engine from collision, fire, water or other causes. You must make this disclosure even if you have fully repaired the damage.
  - (f) *Warranty of Inspectability.* Except for reconstructed motor vehicles, clearly labeled as an "Unsafe Motor Vehicle," you cannot sell or transfer a vehicle unless it meets the State inspection standards and displays a valid inspection sticker issued during the last 30 days prior to the date of sale or transfer.<sup>41</sup> This box must be checked unless the vehicle is a reconstructed motor vehicle.
  - (g) *No Express Warranty Except That Vehicle Can Pass State Inspection.* If you offer the vehicle without any dealer express warranty, except the warranty that it can pass inspection, check this box. If you offer the vehicle with a dealer express warranty or with implied warranties, or with both, then check the appropriate boxes below this section of the Buyer's Guide.
  - (h) *Dealer Express Warranty.* If you offer the vehicle with an express warranty, briefly describe the warranty terms in the space provided. This description must include the following warranty information.
    - (i) Whether the warranty offered is "Full" or "Limited." Mark the box next to the appropriate designation.
    - (ii) Which of the specific systems are covered (for example, "engine, transmission, differential"). You cannot use shorthand, such as "drive train" or "power train" for covered systems.
    - (iii) The duration (for example, "30 days or 1,000 miles, whichever occurs first").
    - (iv) The percentage of the repair cost paid by you (for example, "The dealer will pay 100% of the labor and 100% of the parts.")
    - (v) If you charge the consumer a deductible for each repair, add the amount in the space provided here or list separate deductibles on the "Duration" line.

<sup>41</sup> Dealers are now allowed to display inspection stickers during the prior 60 days.

- (vi) If the vehicle is still under the manufacturer's original warranty, you may add the following paragraph below the "Full/Limited Warranty" disclosure: "MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service location, etc."
- (vii) If, following negotiations, you and the buyer agree to changes in the warranty coverage, mark the changes on the form, as appropriate. If you first offer the vehicle with a warranty, but then sell it without one, cross out the original warranty offer and mark the "No Express Warranty" box. If your express warranty required the consumer to pay a deductible, enter the amount and terms on the line provided.
- (i) *Service Contracts*. If you make a service contract available on the vehicle, you must mark the box provided below the warranty disclosure area.
- (j) *Implied Warranties*. In many cases you may disclaim the protection provided consumers by the Maine implied warranty laws. These laws include the Warranty of Merchantability (i.e., the vehicle is fit for the ordinary purposes for which such vehicles are used) and the Warranty of Fitness (i.e., you know the consumer is relying on your specific advice as to whether the car is fit for a particular purpose). Assuming the car is still within its useful life and has not been abused by its other owners, if you have not disclaimed implied warranties (by checking the "No" box), you may be responsible for:
  - (i) Repairing defects in materials or workmanship that were not apparent when you sold the vehicle; or
  - (ii) For accepting the car back if it is not fit for the specific purpose you advised it was suitable for.

However, pursuant to the Magnuson-Moss Warranty Act (15 U.S.C. § 2301 et seq.), under certain circumstances your right to limit implied warranties is not absolute. For example, if you offer a dealer express warranty, then you may only limit implied warranties to the duration of the express warranty and, if you wish to so limit them, you should check that box. Further, you may not disclaim or limit implied warranties at all if you sell the customer a service contract for the used car within 90 days of the sale of the car. For example, if you sell the purchaser a service contract, you cannot disclaim implied warranties and should not check the Implied Warranty "No" box.
- (k) *Important Information: Prior Owner's Name Is Available From the Dealer Upon Request*. Maine law requires the dealer to promptly disclose, upon request of any person, the name and address of the previous owner of the motor vehicle.
- (l) *Vehicle Returned to Manufacturer*. If a used vehicle has been returned to a manufacturer because of warranty defects, you must give consumers any details known to you.
- (m) *Complaints*. In the space provided under "Notice of Breach of Warranty" put the name, title and telephone number of the person who should be contacted if any complaints arise after sale. If warranty repairs are not to be performed at your dealership, you must put the name, address and other identifying information of each facility within a radius of 50 miles of the dealer's place of business to which the vehicle may be brought for repairs, replacement of parts and other service under the warranty

#### **D. WINDOW FORM GIVEN TO BUYER**

1. *Form given to buyer*. Give the buyer of a used vehicle sold by you the window form described above containing all of the disclosures required by the Rule and reflecting the warranty coverage agreed upon. If you prefer, you may give the buyer a copy of the original, so long as that copy accurately reflects all of the disclosures required by the Rule and the warranty coverage agreed upon.
2. *Incorporated into contract*. The information on the final version of the window form is incorporated into the contract of sale for each used vehicle you sell to a consumer. Information on the window form overrides any contrary provisions in the contract of sale. To inform the consumer of these facts, include the following language in 10 pt. bold caps in each consumer contract of sale. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.
3. *Contrary statements*. You may not make any statements, oral or written, or take other actions which alter or contradict the disclosure required above
4. *Warranty negotiations*. You may negotiate over warranty coverage, as long as the final warranty terms are described in the contract of sale and summarized on the copy of the window form you give to the buyer.

### ***E. UNFAIR TRADE PRACTICE***

Violations of any of these Rules is prima facie [presumptive] evidence of an unfair trade practice in violation of 5 M.R.S.A. § 207 (1979).

#### ***BASIS STATEMENT***

In P.L. 1985, c. 265, the Maine Legislature authorized the Division of Motor Vehicles to promulgate Rules relating to the Used Car Information Act, 10 M.R.S.A. § 1474 (1980 & Supp. 1985-86), Disclosure of Information. These Rules were primarily designed to establish uniform dealer disclosure forms and stickers for the sale of used cars and were to include information required by Maine statutes as well as information required by the U. S. Federal Trade Commission's Motor Vehicle Trade Regulation Rule, published in 16 Code of Federal Regulations, Part 455.

These Rules thus combine requirements of Maine and Federal disclosure requirements in the sale of used cars. The reason such disclosures are necessary is well summarized in the Federal Trade Commission's "Introduction" to its disclosure requirements, found at 49 Fed. Reg. 45692 (1984).

In recent years, more than ten million used cars have been sold annually by franchised and independent dealers. For many consumers, the purchase of a used car represents a substantial, necessary investment in a reliable means of transportation. Despite the significance of this investment and the relative unfamiliarity of most consumers with the mechanical operation of an automobile, many used car buyers currently receive little accurate warranty and mechanical condition information to assist them in their purchase. Consumers' ability to obtain this information has been hampered by various unfair and deceptive practices identified during the course of this rule making proceeding. The record establishes that these practices have resulted in substantial consumer injury in the used car market.

#### ***AUTHORITY AND EFFECTIVE DATE***

The Division of Motor Vehicles is authorized to promulgate these rules pursuant to 10 M.R.S.A. § 1475(2)(G), Disclosure of Information, Used Car Information Act.

## **§ 9. 16. Emission Testing And Warranties**

Manufacturers are required by federal law to provide broad emission warranty coverage for vehicles that are less than 5 years old and have been operated for less than 50,000 miles. Manufacturers must offer a *Defect Warranty*, which covers emission control related parts which become defective, and a *Performance Warranty*, which covers repairs which are necessary because your vehicle failed the emission test.

If you feel you are entitled to free warranty repairs under this new law you should contact your dealer about the proper procedures for making an emission warranty claim against the manufacturer. If you are not satisfied with the manufacturer's response you can contact:

Warranty Complaint  
Enforcement and Compliance  
U.S. Environmental Protection Agency  
Washington, D C 20460  
202-566-1514  
[www.epa.gov/compliance/complaints.html](http://www.epa.gov/compliance/complaints.html)

## **§ 9. 17. An Estimate Of The Average Life Of Car Parts**

These estimates are based on the judgment of a Maine mechanic skilled in car repairs and on estimates in *Kiplinger's Personal Finance Magazine* 66-67 (August 1992) and *Consumer's Digest* 35 (September-October 1993).

Air-Conditioner Compressor .....	80,000-100,000 miles
Alternator .....	60,000-100,000 miles
Battery.....	40,000-80,000 miles; 3-5 years
Brakes, (Drum) .....	40,000-front; 75,000 rear
(Disc).....	30,000-40,000 miles
Catalytic Converter .....	75,000-100,000 miles
Engine .....	90,000-130,000 miles
Engine Assembly.....	150,000-300,000 miles
Engine Belts.....	40,000-60,000 miles
Engine Cooling System .....	100,000 miles; 5 years
Exhaust System (single) .....	50,000 miles; 5 years
(large car).....	25,000 miles
Front End* (small car) .....	50,000 –60,000 miles
(large car) .....	30,000 miles
Fuel Injector.....	100,000-150,000 miles
Fuel Pump.....	70,000-90,000 miles
Manual Clutch Disc .....	60,000-75,000 miles
Master Cylinder .....	80,000-100,000 miles
Muffler and Pipes .....	50,000-80,000 miles
Pistons.....	150,000 miles
Power Window Motor .....	100,000 miles
PVC.....	12,000-50,000 miles
Radiator.....	100,000-150,000 miles
Radiator Hoses.....	40,000-60,000 miles
Rear End .....	Life of the Vehicle
Rear Shock Absorbers .....	50,000 miles
Rear Spring Absorbers.....	50,000 miles
Shocks* .....	25,000-40,000 miles
Springs* (small car).....	Life of the Vehicle
(large car).....	30,000-40,000 miles
Starter Motor.....	75,000-100,000 miles
Thermostat .....	40,000-60,000 miles
Tires* .....	30,000-50,000 miles
Transmission (automatic) .....	50,000-100,000 miles
(manual) .....	50,000-120,000 miles

Tune-up.....	15,000-25,000 miles
Valves .....	75,000-100,000 miles
Windshield Washer Pump .....	70,000-90,000 miles
Water Pump .....	60,000-80,000 miles
Wheel Bearing .....	50,000 (repacked every 25,000 miles)
Windshield Wiper Motor.....	70,000-90,000 miles

*\*depends on road conditions*

**§ 9. 18. 50/50 Written Warranties**

Whenever a dealer offers an express warranty that includes a deductible or requires the consumer to pay a certain percentage of the repair cost, (a 50/50 warranty), the dealer cannot disclaim the Maine Implied Warranty law during the term of the express warranty (*see* Magnuson-Moss Warranty Act, § 6.13 in this Guide). Therefore, if you purchase a vehicle that is in such bad condition that it violates the Maine Implied Warranty law (e.g., the engine needs major repairs), then the Dealer cannot force you to pay a deductible or a percentage of the cost of repair. Also you should be careful that the Dealer does not inflate its labor or parts costs so that you actually are paying more than your legal share of the repair. Such deception can be an unfair trade practice.

**§ 9. 19. “Spot Delivery” Sales**

A “spot delivery” sale is when the dealer allows the buyer to take the vehicle home, even though the final financing has not been arranged. This allows the dealer to “close” the sale even though the dealer is not certain it can obtain financing at the agreed upon rate. “Spot sales” may be so unfair or deceptive as to violate the Maine Unfair Trade Practices Act or Maine’s motor vehicle title laws. Here is what the National Consumer Law Center has to say about such sale techniques:

One of the most widespread abuses in the sale of motor vehicles today is the dealer practice of “spot delivery.” The consumer signs all the sale and loan papers and goes home with the vehicle. But, in the dealers’ mind, the deal is not final if the dealer is not happy with its ability to sell the consumer’s car loan to another lender.

“Spot delivery” by a dealer can be an unfair sales technique to close a deal even though the dealer is not sure it can obtain financing. The dealer does not want the consumer to re-think the deal while financing is arranged, so it turns over the car on the spot, not disclosing that the deal, from the dealer’s point of view, is not final. In order to protect consumers from unfair “spot” deliveries, Maine law<sup>42</sup> now requires a dealer who has made a “spot” delivery and who then later informs the consumer that the agreed upon financing could not be obtained to return to the consumer the following:

- A. Reimbursement of the entire vehicle purchase price or, if a leased vehicle, the lease payments made to date, including any paid finance charges on the purchased or leased vehicle;
- B. Reimbursement of all charges pertinent to the contract, including, but not limited to, sales tax, license and registration fees and similar government charges;

<sup>42</sup> 10 M.R.S.A. § 1194. Violation of this statute is *prima facie* (presumptive) evidence of an unfair trade practice, 5 M.R.S.A. § 217.

- C. The vehicle traded in or, if the vehicle is not available, the trade-in value of the vehicle established in the contract.

Further, if the dealer did not inform the consumer of these reimbursement rights, the dealer is prohibited from canceling the sale.

## **§ 9. 20. Interest Rate Kickbacks And Dealer Deception**

Unknown to most consumers, when a dealer arranges new or used car financing for a consumer with a bank or other credit provider, the interest rate charged the consumer will often include a “kickback” to the dealer of several percentage points. For example, a dealer might arrange financing for a customer with a local bank at 10% when in fact if the customer had approached the bank directly the bank would have provided financing at 7% (its normal “buy” rate). The bank and dealer then share the proceeds from the additional 3% interest. In fact, if the Dealer had requested financing from the bank at the bank’s normal buy rate at 7%, the bank would have agreed. Therefore, if the dealer misrepresents its “kickback” (e.g., tells the consumer that 10% is the best interest rate the dealer can arrange with the bank), this can be an unfair trade practice.

Here is what the National Consumer Law Center says of this widespread practice:

[I]f the dealer convinces the consumer to accept financing at a rate higher than the “buy rate,” this difference is called the “the yield spread premium.” This premium is split between the dealer and lender pursuant to a written agreement. One typical example is where the lender keeps 25% of the difference and kicks back 75% to the dealer. In some cases, 100% of the yield spread is kicked back to the dealer.

For example, consider a car purchased for \$21,456.17 for a term of 72 months. If the lender is willing to purchase the loan at a 10.5% buy rate, but the dealer convinces the consumer to sign up for 16.5% financing, there is a \$4,926.65 yield spread premium. If the dealer agreement calls for a 75%-25% split, then the dealer would keep \$3,694.99 as its kickback and the lender gets an extra \$1,231.66.

The “buy rate” is never disclosed to the consumer, nor the fact that the dealer is making a profit on the financing. Quite the opposite is true - the dealer gives the impression that the *interest rate it quotes and that is specified on the retail installment contract is mandated by the lender, that the consumer’s full monthly payment will go to the lender.* The consumer is unaware that the dealer is quoting an interest rate that will maximize profit for the dealer, and is not the lowest rate that the lender is willing to offer to that consumer.