

A Bill for an Act Relating to Motor Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 437, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§437- New motor vehicle; express warranties, return. (a) If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity in writing to the manufacturer, or at its option, its agent, distributor, or its authorized dealer during the term of such express warranties, then the manufacturer, its agent, distributor, or its authorized dealer shall make such repairs as are necessary to conform the

vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term.

(b) If the manufacturer, its agents, distributor, or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and market value of the motor vehicle to the consumer after a reasonable number of documented attempts, then the manufacturer shall replace the motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all collateral charges, excluding interest, and less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer, and lienholder, if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use by the consumer prior to the consumer's first report of the nonconformity to the manufacturer, agent, distributor, or dealer and during any subsequent period when the vehicle is not out of service by reason of repair. It shall be an affirmative defense to any claim under this section (1) that an alleged nonconformity does not substantially impair such use and market value, or (2) that a nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by a consumer.

(c) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if (1) the same nonconformity has been subject to repair three or more times by the manufacturer, its agents, distributor, or authorized dealers within the express warranty term but such nonconformity continues to exist, or (2) the vehicle is out of service by reason of repair for a cumulative total of thirty or more business days during such term. The term of an express warranty and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, fire, flood or other natural disaster. The presumption provided in this subsection shall not apply against a manufacturer if the manufacturer has not received a written report of the nonconformity from the consumer in accordance with subsection (a), its agent, distributor, or authorized dealer, or if the manufacturer has been denied a reasonable opportunity to repair the nonconformity alleged. During the term of the express warranty, any manufacturer, agent, distributor, or authorized dealer shall provide a written work order to a consumer who delivers a motor vehicle for repair. The consumer shall sign and receive a copy of the work order.

(d) Nothing in this section in any way shall limit the rights or remedies which are otherwise available to a consumer under any other law.

(e) If a manufacturer has established or participates in an informal dispute settlement procedure which substantially complies with title 16, Code of

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Federal Regulations, part 703, as from time to time amended, the provisions of subsection (b) concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure.

(f) Any action brought under this section shall be commenced within one year following expiration of the express warranty term.”

SECTION 2. Section 437-1.1, Hawaii Revised Statutes, is amended by amending the definition of “consumer” to read as follows:

“(5) “Consumer” means [a] any person who [intends to or actually drives or physically utilizes] purchases, other than for purposes of resale, a motor vehicle for [his] personal, family, household, or business use, [including the business of renting or leasing motor vehicles.] any person to whom such motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.”

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved May 26, 1984.)

Note

1. Edited pursuant to HRS §23G-16.5.