

ACT 123

H.B. NO. 2527

A Bill for an Act Relating to Motor Vehicles.

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

SECTION 1. Section 490:2-313.1, Hawaii Revised Statutes, is amended to read as follows:

**“§490:2-313.1 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 following: the full purchase price including, but not limited to, charges for undercoating, dealer preparation, transportation and installed options, and all collateral charges, including, but not limited to, towing charges, replacement car rental costs, general excise tax, license and registration fees, title charges, and similar government charges, excluding interest, and less a reasonable allowance for the consumer's use of the motor vehicle. Refunds made pursuant to this subsection shall be deemed to be refunds of the sales price and treated as such for purposes of section 237-3. 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 motor vehicle is not out of service by reason of repair. It shall be an affirmative defense to any claim under this section that: (1) an alleged nonconformity does not substantially impair the use and market value of the motor vehicle, or (2) 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 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 that procedure; provided that the manufacturer, its agents, distributors, or authorized dealers provide the consumer at the time of purchase of the motor vehicle a written notice setting forth the terms of the informal dispute settlement procedure and a statement of the rights of the consumer under this section in plain language, the form of which has been previously reviewed and approved by the department of commerce and consumer affairs for substantial compliance with title 16, Code of Federal Regulations, part 703, and the requirements of this section.

Where the informal dispute procedure is invoked by the consumer over a

new motor vehicle under express warranties, a decision resolving the dispute shall be rendered within forty-five days after the procedure is invoked. If no decision is rendered within forty-five days as required by this subsection, the dispute shall be submitted to the regulated industries complaint office, department of commerce and consumer affairs for investigation and hearing.

Any decision rendered resolving the dispute shall provide appropriate remedies including, but not limited to the following:

- (1) Repair of the motor vehicle; or
- (2) Replacement of the motor vehicle with a comparable motor vehicle; or
- (3) Acceptance of the motor vehicle from the consumer and refund of the full purchase price, including all collateral charges as specified in subsection (b).

The decision shall specify a date for performance and completion of all awarded remedies.

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

(g) No vehicle transferred to a dealer or manufacturer by a buyer or a lessee under subsection (b) may be sold or leased by any person unless:

- (1) The nature of the defect experienced by the original buyer or lessee is clearly and conspicuously disclosed;
- (2) The defect is corrected; and
- (3) The manufacturer warrants to the new buyer or lessee, in writing, for a period of one year, that if the defect reappears, it will be corrected at the dealer's expense."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 27, 1988.)