

ACT 188

H.B. NO. 2037

A Bill for an Act Relating to New Motor Vehicle Warranties.

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. As used in this section, the term “nonconformity” means any specific or generic defect or malfunction, or any concurrent combination of such defects or malfunctions that substantially impairs the use, market value, or safety of a motor vehicle.

(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[,] and incidental expenses, including, but not limited to, towing charges, replacement care¹ 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. 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. The reasonable allowance shall be equal to one per cent of the purchase price for every thousand miles of use. 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. Upon a second notice of the nonconformity, or if the vehicle has been out of service by reason of repair for in excess of twenty business days, the dealer shall notify the manufacturer of the nonconformity. 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] Any manufacturer, its agents, distributors, or authorized dealers shall 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] a state certified arbitration program 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] as may be modified by the requirements of [this section.] section 490:2-

Where the [informal dispute procedure] state certified arbitration program 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] complaints 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] taxes, and 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) For the purposes of this section "new motor vehicle" means a new

motor vehicle which is used or bought for use primarily for personal, family, or household purposes. "New motor vehicle" includes a dealer-owned vehicle and a "demonstrator" or other motor vehicle sold with a manufacturer's new car warranty but does not include a motor vehicle whose gross weight exceeds 10,000 pounds. A "demonstrator" means a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.

(h) The manufacturer shall provide written notice of the provisions of this section directly to the consumer."

SECTION 2. Chapter 490, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§490:2- Arbitration mechanism. (a) The department of commerce and consumer affairs shall establish and monitor a state certified arbitration program which is in substantial compliance with title 16, Code of Federal Regulations, part 703, as may be modified by this section, and shall adopt appropriate rules governing its operation.

(b) The director of commerce and consumer affairs may contract with an independent arbitration organization for annual term appointments to screen, hear, and resolve consumer complaints which have been initiated pursuant to section 490:2-313.1. The following criteria shall be considered in evaluating the suitability of independent arbitration mechanisms: capability, objectivity, experience, nonaffiliation with manufacturers of or dealers in new motor vehicles, reliability, financial stability, and fee structure.

(c) If a consumer agrees to participate in, and be bound by, the operation and decision of the state certified arbitration program, then all parties shall also participate in, and be bound by, the operation and decision of the state certified arbitration program. The prevailing party of an arbitration decision made pursuant to this section may be allowed reasonable attorney's fees.

(d) The submission of any dispute to arbitration shall not limit the right¹ any party to a subsequent trial de novo upon written demand made within thirty days after service of the arbitration award, and the award shall not be admissible as evidence at that trial. If the party demanding a trial de novo does not improve its position as a result of the trial by at least twenty-five percent, then the court shall order that all of the reasonable costs of trial, consultation, and attorney's fees be paid for by the party making the demand.

(e) Funding of the state certified arbitration program shall be provided through an initial filing fee of \$200 to be paid by the manufacturer and \$50 to be paid by the consumer upon initiating a case for arbitration under this section. Every final decision in favor of the consumer issued by the independent arbitration mechanism shall include within its relief the return of the \$50 filing fee to the consumer."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 4. This Act shall take effect ninety days after its approval.

(Approved June 7, 1988.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.