

ACT 314

H.B. NO. 3032

A Bill for an Act Relating to Motor Vehicle Warranties.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
MOTOR VEHICLE EXPRESS WARRANTY ENFORCEMENT
(LEMON LAW)”**

§ -1 **Legislative intent.** The legislature recognizes that a motor vehicle is a major consumer purchase and that a defective motor vehicle creates a hardship for the consumer. The legislature further recognizes that a duly franchised motor vehicle dealer is an authorized service agent of the manufacturer. It is the intent of the legislature that a good faith motor vehicle warranty complaint by a consumer be resolved by the manufacturer within a specified period of time. It is further the intent of the legislature to provide statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which is not brought into conformity with the applicable express warranties, as provided in this chapter. Finally, it is the intent of the legislature to ensure that consumers are made aware of their rights under this chapter and are not refused the information, documents, or service necessary to exercise their rights.

Nothing in this chapter shall in any way limit or expand the rights or remedies which are otherwise available to a consumer under any other law.

§ -2 **Definitions.** When used in this section¹ unless the context otherwise requires:

“Business day” means any day during which the service departments of authorized dealers of the manufacturer of the motor vehicle are normally open for business.

“Collateral charges” means those additional charges to a consumer wholly incurred as a result of the acquisition of the motor vehicle. For the purposes of this chapter, collateral charges include, but are not limited to, manufacturer-installed or agent-installed items, general excise tax, license and registration fees, title charges, and similar government charges.

“Consumer” means the purchaser, other than for purposes of resale, or the lessee of a motor vehicle, any person to whom the motor vehicle is transferred during the duration of the express warranty applicable to the motor vehicle, and any other person entitled to enforce the obligations of the express warranty.

“Express warranty” means any written warranty issued by the manufacturer, or any affirmation of fact or promise made by the manufacturer, excluding statements made by the dealer, in connection with the sale or lease of a motor vehicle to a consumer, which relates to the nature of the material or workmanship and affirms or promises that the motor vehicle shall conform to the affirmation, promise, or description or that the material or workmanship is free of defects or will meet a specified level of performance.

“Incidental charges” means those reasonable costs incurred by the consumer, including, but not limited to, towing charges and the costs of obtaining

alternative transportation which are directly caused by the nonconformity or non-conformities which are the subject of the claim, but shall not include loss of use, loss of income, or personal injury claims.

"Lemon law rights period" means the term of the manufacturer's express warranty, the period ending two years after the date of the original delivery of a motor vehicle to a consumer, or the first 24,000 miles of operation, whichever occurs first.

"Lessee" means any consumer who leases a motor vehicle for one year or more pursuant to a written lease agreement which provides that the lessee is responsible for repairs to such motor vehicle, or any consumer who leases a motor vehicle pursuant to a lease-purchase agreement.

"Motor vehicle" means a self-propelled vehicle primarily designed for the transportation of persons or property over public streets and highways which is used primarily for personal, family, or household purposes. For purposes of this definition, a "motor vehicle" also includes a "demonstrator", which means a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model or type, but does not include mopeds, motorcycles, or motor scooters, as those terms are defined in chapter 286, or vehicles over 10,000 pounds, gross vehicle weight rating. For purposes of this definition, a "motor vehicle" also includes (1) an individually registered vehicle used for an individual's business purposes and for personal, family, or household purposes; and (2) a vehicle owned or leased by a sole proprietorship, corporation or partnership which has purchased or leased no more than one vehicle per year, used for household, individual, or personal use in addition to business use.

"Nonconformity" means a defect, malfunction, or condition that fails to conform to the motor vehicle's applicable express warranty and that substantially impairs the use, market value, or safety of a motor vehicle, but does not include a defect, malfunction, or condition that results from an accident, abuse, neglect, modification, or alteration of the motor vehicle by persons other than the manufacturer, its agent, distributor, or authorized dealer.

"Purchase price" means the cash price appearing in the sales agreement or contract and paid for the motor vehicle, including any net allowance for a trade-in vehicle. Where the consumer is a second or subsequent purchaser and the arbitration award is for a refund of the motor vehicle, "purchase price" means the purchase price of the second or subsequent purchase not to exceed the purchase price paid by the original purchaser.

"Reasonable offset" for use means the number of miles attributable to a consumer up to the date of the third repair attempt of the same nonconformity which is the subject of the claim, the date of the first repair attempt of a nonconformity that is likely to cause death or serious bodily injury, or the date of the thirtieth (30th) cumulative business day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first. The reasonable offset for use shall be equal to one percent of the purchase price for every thousand miles of use.

"Replacement motor vehicle" means a motor vehicle which is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of original acquisition, including any service contract, undercoating, rustproofing, and factory or dealer installed options. A reasonable offset shall be made for the use of the motor vehicle and an additional offset may be made for loss to the fair market value of the vehicle resulting from damage beyond normal wear and tear, unless the damage resulted from the non-conformity.

“Substantially impairs” means to render the motor vehicle unfit, unreliable, or unsafe for warranted or normal use, or to significantly diminish the value of the motor vehicle.

§ -3 Motor vehicle: express warranties, return. (a) If a motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity in writing to the manufacturer, its agent, distributor, or its authorized dealer during the term of the lemon law rights period, then the manufacturer, or, at its option, 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, distributors, 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, market value, or safety of the motor vehicle after a reasonable number of documented attempts, then the manufacturer shall provide the consumer with a replacement 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 and incidental charges, excluding finance and interest charges, and less a reasonable offset for the consumer’s use of the motor vehicle.

If either a replacement motor vehicle or a refund is awarded, an “offset” may be made for damage to the vehicle not attributable to normal wear and tear, if unrelated to the nonconformity. 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 on the records of ownership. If applicable, refunds shall be made to the lessor and lessee pursuant to rules adopted by the department of commerce and consumer affairs.

(c) It shall be an affirmative defense to any claim under this section that a nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by a consumer.

(d) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if, during the lemon law rights period, any of the following occurs:

- (1) The same nonconformity has been subject to examination or repair at least three times by the manufacturer, its agents, distributors, or authorized dealers, but such nonconformity continues to exist; or
- (2) The nonconformity has been subject to examination or repair at least once by the manufacturer, its agents, distributors, or authorized dealers, but continues to be a nonconformity which is likely to cause death or serious bodily injury if the vehicle is driven; or
- (3) The motor vehicle is out of service by reason of repair by the manufacturer, its agents, distributors, or authorized dealers for one or more nonconformities for a cumulative total of thirty or more business days during the lemon law rights period.

The term of the lemon law rights period 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 presumptions provided in this subsection shall not apply unless the manufacturer has received a written report of the nonconformity from the consumer and has had a reasonable opportunity to repair the nonconformity alleged.

Upon a second notice of the nonconformity, or, if the motor vehicle has been out of service by reason of repair in excess of twenty business days, the dealer shall notify the manufacturer of the nonconformity.

(e) During the lemon law rights period, the manufacturer or its agent, distributor, or authorized dealer shall provide to the consumer, each time the consumer's vehicle is returned from being diagnosed or repaired under the warranty, a fully itemized, legible statement or repair order indicating any diagnosis made and all work performed on the vehicle, including, but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor supplied, the date and the odometer reading when the vehicle was submitted for repair, and the date when the vehicle was made available to the consumer. The consumer shall sign and receive a copy of the statement or repair order.

(f) Upon request from the consumer, the manufacturer, or at its option its agent, distributor, or authorized dealer, shall provide a copy of any report or computer reading regarding inspection, diagnosis, or test-drive of the consumer's motor vehicle, and shall provide a copy of any technical service bulletin related to the nonconformity issued by the manufacturer regarding the year and model of the consumer's motor vehicle as it pertains to any material, feature, component, or the performance thereof.

Upon receipt of a consumer's written report of a nonconformity to the manufacturer, the manufacturer or, at its option, its agent, distributor, or authorized dealer, shall inform the consumer of any technical service bulletin or report relating to the nonconformity, and shall advise the consumer of the consumer's right to obtain a copy of such report or technical service bulletin.

(g) The manufacturer, its agent, distributor, or authorized dealer, shall provide the consumer at the time of purchase of the motor vehicle a written notice setting forth the terms of 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, as may be modified by the requirements of this chapter. The written notice must specify the requirement that written notification to the manufacturer of the motor vehicle nonconformity is required before the consumer is eligible for a refund or replacement of the motor vehicle. The notice must also include the name and address to which the consumer must send such written notification. The provision of this statement is the direct responsibility of the dealer, as that term is defined in chapter 437.

(h) The consumer shall be required to notify the manufacturer of the nonconformity only if the consumer has received a written notice setting forth the terms of the state certified arbitration program and a statement of the rights of the consumer as set out in subsection (g).

(i) Where the state certified arbitration program is invoked by the consumer of a 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 complaints office of the 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;
- (2) Provision of a replacement motor vehicle; or
- (3) Acceptance of the motor vehicle from the consumer and refund of the full purchase price and all collateral and incidental charges.

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

(j) Any action brought under this section must be initiated within one year following expiration of the lemon law rights period.

(k) 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 on a separate document that must be signed by the manufacturer and the purchaser and must be in ten point, capitalized type, in substantially the following form: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE A DEFECT(S) COVERED BY THE MANUFACTURER'S EXPRESS WARRANTY WAS NOT REPAIRED WITHIN A REASONABLE TIME AS PROVIDED BY HAWAII LAW.";
- (2) The defect is corrected; and
- (3) The manufacturer warrants to the new buyer or lessee, in writing, that if the defect reappears within one year or 12,000 miles after the date of resale, whichever occurs first, it will be corrected at no expense to the consumer.

(l) A violation of subsection (k) shall constitute prima facie evidence of an unfair or deceptive act or practice under chapter 480.

§ -4 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 -3. The following criteria shall be considered in evaluating the suitability of independent arbitration mechanisms: capability, objectivity, experience, nonaffiliation with manufacturers or of 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 in which the consumer elects nonbinding arbitration shall not limit the right of any party to a subsequent trial de novo upon written demand made upon the opposing party to the arbitration within thirty calendar 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.

If neither party to a nonbinding arbitration demands a trial de novo within thirty days after service of the arbitration award, the arbitrator's decision shall become binding on both parties upon the expiration of the thirty-day period.

(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.

(f) The failure of a manufacturer to timely comply with a binding decision of a state certified arbitration program shall be prima facie evidence of an unfair or deceptive act or practice under chapter 480 unless the manufacturer can prove that it attempted in "good faith" to comply, or that the failure was beyond the manufacturer's control, the result of a written agreement with the consumer, or based on an appeal filed under chapter 658."

SECTION 2. Section 490:2-313.1, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 490:2-313.2, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed.² New statutory material is underscored.

SECTION 5. This Act shall take effect on October 1, 1992.

(Approved June 30, 1992.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.