

ACT 197

S.B. NO. 2822

A Bill for an Act Relating to Lemon Law Disclosure Compliance.

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

SECTION 1. Section 481I-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Settlement” means an agreement for repurchase or replacement of a motor vehicle entered into between a manufacturer and a consumer that occurs after a dispute is submitted to an informal dispute resolution procedure or arbitration program or after a dispute is approved for arbitration under section 481I-4. “Settle-

ment” does not include an agreement for a motor vehicle to be repurchased pursuant to a guaranteed repurchase or satisfaction program advertised by the manufacturer in which the vehicle was not alleged or found to have a nonconformity as defined in this section.”

SECTION 2. Section 481I-2, Hawaii Revised Statutes, is amended by amending the definition of “replacement motor vehicle” to read as follows:

““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 nonconformity.]”

SECTION 3. Section 481I-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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. If a replacement motor vehicle is awarded, 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 nonconformity. When the manufacturer supplies a replacement motor vehicle, the manufacturer shall be responsible for the general excise tax, and license and registration fees. 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.”

SECTION 4. Section 481I-3, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(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.] However, the failure of an arbitrator to render a decision within forty-five days because of unforeseen circumstances shall not void any subsequent decision.

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

- (1) Provision of a replacement motor vehicle; or
- (2) Acceptance of the motor vehicle from the consumer, 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.”

SECTION 5. Section 481I-3, Hawaii Revised Statutes, is amended by amending subsection (k) to read as follows:

“(k) No vehicle transferred to a dealer or manufacturer by a buyer or a lessee under [subsection (b)] this chapter or by judgment, settlement, or arbitration award in this State or in another state may be sold [or], leased, or auctioned 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: “IMPOR- TANT: THIS VEHICLE WAS RETURNED TO THE MANUFAC- Turer BECAUSE A DEFECT(S) COVERED BY THE MANU- FACTURER’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.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1998.

(Approved July 17, 1998.)