

JAN 20 2010

A BILL FOR AN ACT

RELATING TO USED MOTOR VEHICLE SALES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 481J, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§481J- Good faith and due care in preparing the
5 disclosure notice. (a) A dealer shall prepare the disclosure
6 statement required under section 481J-4 in good faith and with
7 due care. A consumer shall have no cause of action against a
8 dealer for, arising out of, or relating to the providing of a
9 disclosure notice when the disclosure notice is prepared in good
10 faith and with due care. For purposes of this section, "in good
11 faith and with due care" means honesty in fact in the
12 investigation, research, and preparation of the disclosure
13 notice. The disclosure may include information on the
14 following:

- 15 (1) Facts based on only the dealer's personal knowledge;
16 (2) Facts provided to the dealer by governmental agencies
17 and departments; and



1 (3) Existing reports prepared for the dealer by third-
2 party consultants dealing with matters within the
3 scope of the third-party consultant's expertise for
4 the purpose of the disclosure notice.

5 Notwithstanding this subsection, a dealer shall be under no
6 obligation to engage the services of any person in the
7 investigation, research, or preparation of the disclosure
8 notice. The failure to engage the services of any person for
9 this purpose shall not be deemed an absence of good faith or due
10 care by the dealer in the investigation, research, or
11 preparation of the disclosure notice.

12 (b) The representations contained in the disclosure notice
13 shall be construed to be made only to, and for the benefit of,
14 the consumer and shall be deemed accurate only as of the time
15 when made."

16 SECTION 2. Section 481J-1, Hawaii Revised Statutes, is
17 amended by adding two new definitions to be appropriately
18 inserted and to read as follows:

19 ""Disclosure notice" means a written statement prepared by
20 the dealer, or at the dealer's direction, that purports to fully
21 and accurately disclose all material facts, including any
22 material mechanical defect, relating to the used motor vehicle



1 being offered for sale that are within the knowledge of the
2 dealer.

3 "Material fact" means any fact, defect, or condition, past
4 or present that would be expected to measurably affect the value
5 to a reasonable person of the used motor vehicle being offered
6 for sale. The disclosure notice shall not be construed as a
7 substitute for any expert inspection, professional advice, or
8 warranty that the consumer may wish to obtain."

9 SECTION 3. Section 481J-4, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending subsection (a) to read:

12 "(a) No dealer may offer for sale any used motor vehicle
13 without first providing:

14 (1) Written notice to the prospective consumer of any
15 material fact, including any material mechanical
16 defect in the motor vehicle and any damage sustained
17 by the motor vehicle due to fire, water, collision, or
18 other causes for which the cost of repairs exceeds
19 \$1,000 for parts and labor, when the material fact,
20 including a defect or damage, is known to the dealer;
21 and



1 (2) Written notice to the prospective consumer whether the
2 dealer has conducted any inspection of the motor
3 vehicle to determine any material facts, including any
4 known defects or damage.

5 2. By amending subsection (c) to read:

6 "(c) For purposes of this section:

7 "Known" means that a dealer or the dealer's agent or
8 employee has obtained facts or information about the condition
9 of a motor vehicle which would lead a reasonable person in
10 similar circumstances to believe that the motor vehicle
11 contained one or more material facts, including any material
12 mechanical defects. The term "known" encompasses knowledge
13 obtained through an inspection, from a previous owner, from the
14 salesperson at an auction or another dealer, or through other
15 means.

16 "Material mechanical defect" means any defect or
17 malfunction which renders the motor vehicle mechanically unsound
18 or inoperable."

19 SECTION 4. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.

22 SECTION 5. New statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval.

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Report Title:

Used Motor Vehicle Sales; Disclosure

Description:

Requires dealers to disclose material facts, as well as material mechanical defects, to consumers of used motor vehicles.

Requires dealers to use good faith and due care in preparing disclosure notice to consumers of used motor vehicles.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

