

1 of 5

Testimony in STRONG OPPOSITION to HB1856  
RELATING TO USED MOTOR VEHICLE SALES

Presented by the Hawaii Automobile Dealers Association  
Hawaii's franchised new car dealers  
For the hearing by the Committee on Consumer Protection & Commerce  
And the Committee on the Judiciary  
2 p.m. Wednesday, January 27, 2010  
in Conference Room 325, Hawaii State Capitol

Chairs Herkes and Karamatsu and members of the committees:

As longtime auto dealer Joe Nicolai says, "auto dealers want to disclose...the problem is we can't disclose what we don't know."

This bill, in effect, puts dealers in the untenable position of having to prove NO knowledge of something someone at some later time considers to be a "material fact" relating to a used vehicle.

The members of the Hawaii Automobile Dealers Association are in STRONG OPPOSITION to HB1856 because the bill is so open-ended in its requirements of dealers.

The bill requires a dealer to disclose knowledge of a "material fact" which includes "any fact" that would measurably affect the value.

This is wide open to interpretation.

If a fact, like prior rental car, is somewhere in the vehicle's history, and a person, through an attorney alleges that such a material fact affects the value of the vehicle, a dealer would be obliged to prove NO KNOWLEDGE, if such were the case. Further, even with knowledge, a dealer may believe that such is not a material fact relating to the value.

In the first case, this would be like proving that you don't know something.

In the second instance of "knowledge" it is common practice for a dealer to evaluate a trade-in vehicle or a vehicle at auction is a matter of 30-50 seconds. The dealer or a representative of the dealership, like the used car manager, will evaluate a vehicle's value based on three areas:

- 1) vehicle mileage
- 2) vehicle age, and
- 3) vehicle condition

HADA dealers helped in creating and passing Hawaii's Used Car Lemon Law to protect customers in the event their qualifying used vehicles are found to have qualifying defects.

Used car buyers receive the Federal "USED CAR BUYERS GUIDE" at the time of each purchase. Such is required to be displayed on the vehicle. (See attached)

1/5

Further, HRS481J-4 requires that dealers inform the consumer in writing at time of purchase that one of following two applies to the used vehicle:

\_\_\_1. An inspection was NOT conducted on the vehicle to discover defects or damage

OR,

\_\_\_2. An inspection WAS conducted on the vehicle to discover defects or damage

Also, 481-J4 requires that "Written notice to the prospective consumer of any material mechanical defect in the motor vehicle and any damage sustained by the motor vehicle due to fire, water, collision or other causes for which the cost of repairs exceeds \$1,000 for parts and labor, when the defect or damage is known to the dealer.

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

The bill adds the requirement for disclosure of material facts, as well as material mechanical defects.

Parts covered under the term Material Mechanical Defects are well-defined in the USED CAR LEMON LAW and are published on the Hawaii version of the FTC's USED CAR BUYER'S GUIDE.

These include:

ENGINE—including all lubricated parts, water pump, fuel pump, manifolds, engine block, cylinder head, rotary engine housings, flywheel, gaskets and seals;

TRANSMISSION—including the transmission case, internal parts, torque converter, gaskets and seals, except four-wheel drive vehicles are excluded from the coverage as provided in this paragraph;

DRIVE AXLE—including front and rear drive axle housings and internal parts, axle shafts, propeller shafts, and universal joints, except four-wheel drive vehicles are excluded from coverage as provided in this paragraph;

BRAKES—including master cylinder, vacuum assist booster, wheel cylinders, hydraulic lines, and fittings, and disc brake calipers;

RADIATOR

STEERING—including the steering gear housing and all internal parts, power steering pump, valve body, piston and rack; and

ALTERNATOR, generator, starter, and ignition system, excluding the battery.

Cars with mileage of between 12,000-24,999.....90 days or 5,000 miles whichever first

Cars with mileage of between 25,000-49,999.....60 days or 3,000 miles whichever first

Cars with mileage of between 50,000-74,999.....30 days or 1,000 miles whichever first

Covered vehicles must be: 1) less than 5 years old; 2) cost more than \$1,500 3) between 12,000 and 75,000 miles; 4) purchased by a consumer; 5) not custom built or modified to for show purposes or racing; and/or 6) inoperable or deemed a "total loss."

2/5

"Material defects" are well-covered by the law...and well understood. The proposed "Material facts," on the other hand, are NOT clearly defined in the law...and would lead to unfair charges against dealers-- who would be unfairly expected to KNOW EVERYTHING about a vehicle.

The Federal USED CAR BUYERS GUIDE does NOT require disclosure of material facts (any facts) relating to the VALUE of the vehicle.

VALUE is a term that relates to the market...and in effect, the term that relates of a purchaser.

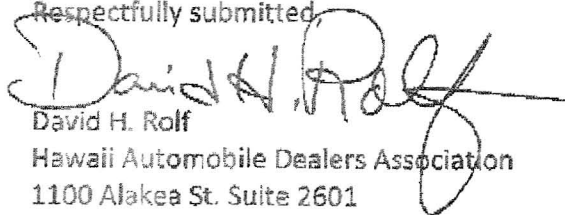
Our current laws insure that dealers will repair mechanical defects in conforming to the USED CAR LEMON LAW. It's a clear law. It works.

Further, material facts, like the history of the car with regard to certain insurance claims, the state where the car was registered, salvage title, and other material facts may be obtained by customers through purchase from third-party entities like CARFAX and AUTOCHECK.

The burden of lack of clarity, this proposal, is one that is unfair to dealers. The bill will add more costs to consumers when unnecessary litigation develops over the ill-defined term "material facts" relating to the "value" of a vehicle.

Hawaii's new car dealers respectfully ask that you hold this bill.

Respectfully submitted,



David H. Rolf

Hawaii Automobile Dealers Association

1100 Alakea St. Suite 2601

Honolulu, Hawaii 96813

Tel: 808 593-0031 Cel: 808 223-6015 Fax: 808 593-0569

e-mail: [drolf@hawaiidealer.com](mailto:drolf@hawaiidealer.com)

website: [www.hawaiiautodealer.com](http://www.hawaiiautodealer.com)

3/5

# BUYERS GUIDE

**IMPORTANT:** Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE	MODEL	YEAR	VIN NUMBER
DEALER STOCK NUMBER (optional)			

## WARRANTIES FOR THIS VEHICLE:

**AS IS - NO WARRANTY**

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about this vehicle.

**WARRANTY**

FULL  **LIMITED WARRANTY.** The dealer will pay 100% of the labor and 100% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

### SYSTEMS COVERED

**ENGINE,** including all lubricated parts, water pump, fuel pump, manifolds, engine block, cylinder head, rotary engine housings, flywheel, gaskets, and seals;

**TRANSMISSION,** including the transmission case, internal parts, torque converter, gaskets and seals, except four-wheel drive vehicles are excluded from coverage as provided for in this paragraph;

**DRIVE AXLE,** including front and rear drive axle housings and internal parts, axle shafts, propeller shafts, and universal joints, except four-wheel drive vehicles are excluded from coverage as provided in this paragraph;

**BRAKES,** including master cylinder, vacuum assist booster, wheel cylinders, hydraulic lines, and fittings, and disc brake callipers;

### RADIATOR

**STEERING,** including the steering gear housing and all internal parts, power steering pump, valve body, piston and rack; and

**ALTERNATOR,** generator, starter, and ignition system, excluding the battery.

### DURATION

Cars with mileage of between 12,000-24,999  
90 days or 5,000 miles  
whichever occurs first.

Cars with mileage of between 25,000-49,999  
60 days or 3,000 miles  
whichever occurs first.

Cars with mileage of between 50,000-74,999  
30 days or 1,000 miles  
whichever occurs first.

Covered vehicles must be: 1) less than 5 years old; 2) cost more than \$1500; 3) between 12,000 and 75,000 miles; 4) purchased by a consumer; 5) not custom built or modified for show purposes or racing; and/or 6) inoperable or deemed a "total loss".

**SERVICE CONTRACT.** A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

**PRE PURCHASE INSPECTION:** ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

CONTACT YOUR DEALER for important additional information, including a list of some major defects that may occur in used motor vehicles.

TO REORDER CALL: 1-800-MIDPAC BUSINESS FORMS & SUPPLIES, LLC (808) 570-9907  
COPYRIGHT © 2007, 2008, 2009 MIDPAC PATENT NO. 468-75

AK

**WARRANTY EXCLUSIONS:**

- (1) For a defect or malfunction in a part caused by a lack of customary maintenance after the vehicle is sold;
- (2) For a defect or malfunction in a part caused by collision, abuse, negligence, theft, vandalism, fire, or other casualty, and for damage from the environment, including but not limited to windstorms, hurricanes, and lightning;
- (3) If the odometer has been stopped or altered such that the vehicles's actual mileage cannot be readily determined or a part has been altered in a manner which caused it to fail;
- (4) For a motor tune-up;
- (5) For maintenance services and the parts used in connection with such services such as seals, gaskets, oil, or grease unless required in connection with the repair of a covered part;
- (6) For a defect or malfunction in a part resulting from racing or other competition;
- (7) For a defect or malfunction in a part caused by towing a trailer or another vehicle unless the used motor vehicle is equipped for this as recommended by the manufacturer;
- (8) If the used motor vehicle is used to carry passengers for hire;
- (9) If the used motor vehicle is rented to someone other than the consumer;
- (10) For repair of valves and rings to correct low compression and oil consumption which are considered normal wear;
- (11) To the extent otherwise permitted by law, for property damage arising or allegedly arising out of the defect or malfunction in a part; and
- (12) To the extent otherwise permitted by law, for loss of the use of the used motor vehicle, loss of time, inconvenience, commercial loss, or consequential damages.

DEALER

ADDRESS

SEE FOR COMPLAINTS

**IMPORTANT:** The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

I HAVE READ, AGREED TO AND RECEIVED A COPY OF THE BUYERS GUIDE ON THIS VEHICLE AT THE CLOSING OF THIS SALE.

X

CUSTOMER'S SIGNATURE

DATE

5/3