

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.



**Testimony in STRONG OPPOSITION to SB 2051
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 Commerce and Consumer Protection
9 a.m. Wednesday, January 27, 2010
in Conference Room 229, Hawaii State Capitol**

Chair Baker, Vice Chair Ige, and members of the committee:

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 SB 2051 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)

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."

"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.

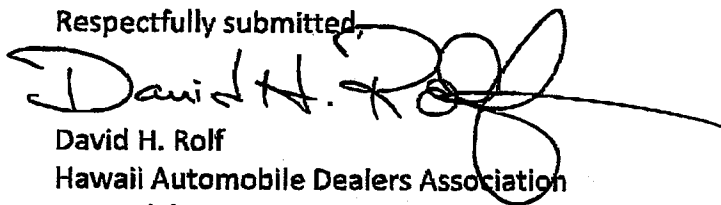
Our current laws insure that dealers will repair mechanical defects in conforming to the USED CAR LEMON LAW. It's a clear law. It works.

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,



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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
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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 fall 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, mainfolds, 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.

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