

ACT 224

H.B. NO. 3303

A Bill for an Act Relating to Used Motor Vehicles.

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
USED MOTOR VEHICLE SALES AND WARRANTIES**

§ **-1 Definitions.** When used in this chapter unless the context otherwise requires:

“Consumer” means the purchaser, other than for purposes of resale, of a used motor vehicle primarily used for personal, family, or household purposes and subject to a warranty, and the spouse or child of the purchaser if the motor vehicle is transferred to the spouse or child during the duration of any warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

“Dealer” is defined in section 437-1.1.

“Used motor vehicle” means a “motor vehicle” as that term is defined in section 4811-2, which has been purchased or transferred either after one year from the date of original delivery, or after twelve thousand miles of operation, whichever occurs first.

“Warranty” means any undertaking in connection with the sale by a dealer of a used motor vehicle to refund, repair, replace, maintain, or take other action with respect to that used motor vehicle and provided at no extra charge beyond the price of the used motor vehicle.

§ -2 Used motor vehicles: written warranty required, terms. (a)

No used motor vehicle shall be sold in this State by a dealer to a consumer unless accompanied by a written warranty covering the full cost of both parts and labor necessary to repair any defect or malfunction in a part covered under subsection (c) that impairs the used motor vehicle’s safety or use. Defects and malfunctions that affect only appearance shall not be deemed to impair safety or use for the purposes of this chapter.

(b) The written warranty shall apply for the following durations:

- (1) For a used motor vehicle which, at the time of sale, has been operated less than twenty-five thousand miles, the warranty shall be a minimum of ninety days or five thousand miles, whichever occurs first. This ninety days or five thousand mile warranty is in addition to any rights the consumer may have under chapter 4811;
- (2) For a used motor vehicle which, at the time of sale, has been operated twenty-five thousand miles or more, but less than fifty thousand miles, the warranty shall be a minimum of sixty days or three thousand miles, whichever occurs first; and
- (3) For a used motor vehicle which, at the time of sale, has fifty thousand miles or more but no more than seventy-five thousand miles, the warranty shall be a minimum of thirty days or one thousand miles, whichever occurs first.

(c) The written warranty shall require the dealer or its agent to repair or, at the election of the dealer, reimburse the consumer for the reasonable costs of repairing the failure of a covered part. Covered parts shall at least include the following items:

- (1) Engine, including all lubricated parts, water pump, fuel pump, manifolds, engine block, cylinder head, rotary engine housings, flywheel, gaskets, and seals;
- (2) Transmission, including the transmission case, internal parts, torque converter, gaskets, and seals, except four-wheel drive vehicles shall be excluded from coverage as provided for in this paragraph;
- (3) Drive axle, including front and rear drive axle housings and internal parts, axle shafts, propeller shafts, and universal joints, except four-wheel drive vehicles shall be excluded from coverage as provided in this paragraph;
- (4) Brakes, including master cylinder, vacuum assist booster, wheel cylinders, hydraulic lines and fittings, and disc brake calipers;
- (5) Radiator;
- (6) Steering, including the steering gear housing and all internal parts, power steering pump, valve body, piston, and rack; and
- (7) Alternator, generator, starter, and ignition system, excluding the battery.

(d) The written warranty may contain additional language excluding coverage:

- (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 vehicle'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 tuneup;
- (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.

(e) Nothing in this chapter diminishes the obligations of a manufacturer under a warranty issued by the manufacturer. The express warranties created by this section do not require a dealer to repair or replace a covered part if the repair or replacement is covered by a manufacturer's warranty, or the manufacturer otherwise agrees to repair or replace the part.

The terms of the dealer's warranty shall be tolled for any period of time the used motor vehicle is out of service by reason of repair under the manufacturer's warranty.

(f) A consumer shall return a vehicle for repair under this section by presenting it to the dealer prior to the expiration of the applicable warranty period and providing written notice to the dealer of the defect. The dealer shall immediately accept return of a vehicle when it is so presented. The used motor vehicle shall be deemed out of service commencing the day it is presented, notwithstanding any dealer's failure to accept its return on that day.

During the applicable warranty period and the return period, the dealer shall pay the reasonable costs of towing from the point of breakdown up to fifteen miles to obtain the required repairs or to return the vehicle to the dealer.

(g) The term of any warranty established by this section shall be extended by any time period during which:

- (1) The used motor vehicle is in the possession of the dealer or its duly authorized agent for the purpose of repairing the used motor vehicle under the terms and obligations of the warranty;
- (2) Repair services are not available to the consumer because of war, invasion or strike, fire, flood or other natural disaster; or

- (3) The consumer has notified the dealer that a used motor vehicle is inoperable, but cannot reasonably present the vehicle to the dealer and the dealer refuses to pay the charge to tow the vehicle.

(h) The applicable warranty period shall end thirty days from the date of completion of any repair required by this section as to the defect repaired if the warranty would otherwise have expired during this period.

(i) The 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 warranty repair receipt indicating any diagnosis made and all work performed on the vehicle, including, but not limited to:

- (1) The defect or malfunction complained of;
- (2) The work performed in an attempt to correct the defect or malfunction and the identity of the repairer if it is not the dealer;
- (3) The parts replaced in performing such work;
- (4) The date and odometer reading when the vehicle was submitted for repair; and
- (5) The date when the vehicle was made available to the consumer. The consumer shall sign a copy of the warranty repair receipt.

(j) A dealer may repair, within the meaning of this section, either by performing the repair itself or, if the dealer does not have a repair facility, by arranging and making payment for prompt repair by a motor vehicle repair dealer registered under chapter 437B.

(k) The dealer shall provide repair or reimbursement notwithstanding the fact that the warranty period has expired, provided that the consumer provides notification to the dealer of the failure of a covered part within the specified warranty period.

§ -3 Disclaimers void; authorized waivers; exemptions; "as is" sales. (a) Any agreement entered into by a consumer for the purchase of a used motor vehicle that waives, limits, or disclaims any of the rights set forth in section -2 shall be void as contrary to public policy. If a dealer fails to give the written warranty required by this chapter, the dealer nevertheless shall be deemed to have given the warranty as a matter of law.

(b) Notwithstanding subsection (a), the consumer may waive a warranty required pursuant to this chapter only as to a particular defect or malfunction which the dealer has disclosed to the consumer. No such waiver shall be effective unless such waiver:

- (1) Is in writing;
- (2) Is conspicuous and is in plain language;
- (3) Identifies the particular disclosed defect or malfunction in the used motor vehicle for which the warranty is to be waived;
- (4) States what warranty, if any, shall apply to the disclosed defect or malfunction; and
- (5) Is signed by both the consumer and the dealer prior to sale.

(c) This chapter shall not apply to:

- (1) Used motor vehicles sold for less than \$1,500;
- (2) Used motor vehicles with over seventy-five thousand miles at the time of sale if the mileage is indicated in writing at the time of sale;
- (3) Used motor vehicles that are five years of age or older, calculated from the first day in January of the designated model year of the vehicle;
- (4) Vehicles that have been custom-built or modified for show purposes or racing; or

- (5) Vehicles which are inoperable and a total loss. For the purpose of this paragraph, a vehicle is a "total loss" only if there is material damage to the vehicle's frame, unitized structure, or suspension system, and the projected cost of repairing the damage exceeds the market value of the vehicle at the time of the incident causing it to be declared a total loss.
- (d) A used motor vehicle may be sold "as is" by a dealer only if it falls within the exemptions set out in this section. No "as is" disclaimer by a dealer shall be enforceable unless all of the following conditions are met:
 - (1) A disclaimer shall appear on the front page of the contract of sale, which shall read as follows:

"AS IS"
 THIS VEHICLE IS SOLD "AS IS".
 YOU WILL HAVE TO PAY FOR ANY REPAIRS NEEDED
 AFTER SALE.
 IF WE HAVE MADE ANY PROMISES TO YOU, THE LAW
 SAYS WE MUST KEEP OUR PROMISES, EVEN IF WE SELL "AS IS".
 TO PROTECT YOURSELF, ASK US TO PUT ALL PROMISES IN WRITING.

- (2) The text of the disclaimer shall be printed in twelve-point boldface type, except the heading, which shall be in sixteen-point extra boldface type. The entire notice shall be boxed.
- (3) The consumer shall sign the consumer's name and the date within the box containing the disclaimer prior to sale. A copy of the signed disclaimer shall be kept by the dealer for a two-year period from the date of the consumer's signature.
- (e) An "as is" sale of a used motor vehicle waives implied warranties but shall not waive any express warranties, either oral or written, upon which the consumer relied in entering into the transaction.
- (f) In selling or offering to sell any used motor vehicle, and in providing the express warranty required by this chapter, a dealer shall comply in all respects with the Federal Trade Commission's "Used Motor Vehicle Trade Regulation Rule," 16 Code of Federal Regulations, part 455.

§ **-4 Disclosure of damages or defects in used motor vehicles.** (a) No dealer may offer for sale any used motor vehicle without first providing:

- (1) 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; and
 - (2) Written notice to the prospective consumer whether the dealer has conducted any inspection of the motor vehicle to determine known defects or damage.
- (b) If a dealer promises that any repairs will be made or any conditions corrected in connection with the purchase of a used motor vehicle, such promises shall be provided in writing and either attached or incorporated into the sales contract.
- (c) For purposes of this section:
- "Known" means that a dealer or the dealer's agent or employee has obtained facts or information about the condition of a motor vehicle which would

lead a reasonable person in similar circumstances to believe that the motor vehicle contained one or more material mechanical defects. The term "known" encompasses knowledge obtained through an inspection, from a previous owner, from the salesperson at an auction or another dealer, or through other means.

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

§ **-5 Notices.** (a) The written warranty provided for in section -2 and the written notices provided for in sections -3 and -4 shall be delivered to the consumer at or before the time the consumer signs the sales contract for the used motor vehicle. The warranty and the notice may be set forth on one sheet or on separate sheets. They may be separate from, attached to, or a part of the sales contract. If they are part of the sales contract, they shall be separated from the other contract provisions and each headed by a conspicuous title.

(b) The director of commerce and consumer affairs may adopt rules pursuant to chapter 91 necessary to implement the notice provisions of this chapter. The rules may include the establishment of wording, format, placement, and distribution requirement for all notices specified in this chapter.

(c) The failure of a dealer to provide the warranty or notices required by this chapter or the provision of false or misleading notices or warranties shall constitute prima facie evidence of an unfair or deceptive act under chapter 480.

§ **-6 Failure to honor warranty.** (a) If the dealer or its agent fails to correct a defect or malfunction as required by the warranty specified in section -2 after a reasonable period of time, the dealer shall accept return of the used motor vehicle from the consumer and refund the full purchase price, including sales tax, less a reasonable allowance for any damage not attributable to normal wear or usage, and with an adjustment for any modifications which either increase or decrease the market value of the vehicle. A reasonable allowance for use shall be fifteen cents for each mile the used motor vehicle has been operated between its sale and its return.

(b) It shall be presumed that a dealer has had a reasonable opportunity to correct a defect or malfunction in a used motor vehicle if the dealer fails to repair the same defect or malfunction within three attempts, or if the used motor vehicle is out of service for more than a cumulative total of ten business days after the consumer has returned it to the dealer for repair.

(c) A used motor vehicle shall not be considered out of service for purposes of the ten-business-day period described in subsection (b) for any day in which a part necessary to repair a defect or malfunction complained of is not in the dealer's possession; provided that the dealer has ordered the part by reasonable means on the same day on which the dealer knew or should have known that the part was necessary, except that in no event shall a part's unavailability operate to toll the ten-business-day period for more than twenty-one days. The applicable warranty period shall be extended by the number of days a part is unavailable.

(d) In determining the purchase price to be refunded, the purchase price shall be deemed equal to the sum of the actual cash difference paid for the used motor vehicle, plus return of any vehicles traded in at the time of purchase. If the dealer elects to not return any vehicles traded in by the consumer, or is unable to return such vehicles in substantially the same condition as received from the consumer, the dealer shall pay the consumer the wholesale value of any such traded-in vehicles as listed in the National Automobile Dealers' Association Used Car Guide, or such other guide as may be specified in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, as adjusted for mileage,

improvements, and any major physical or mechanical defects in the vehicle at the time of trade-in.

(e) The dealer selling the used motor vehicle shall deliver to the consumer a written notice either attached to or within the contract of sale containing conspicuous language indicating that if the consumer should be entitled to a refund pursuant to this section, the value of any vehicle traded in by the consumer will be determined by the method described in subsection (d), rather than the value listed in the sales contract.

(f) Refunds shall be made to the consumer and lienholder, if any, as their interests may appear on the records of ownership kept by the county director of finance.

(g) Alternatively, the dealer may elect to offer to replace the used motor vehicle with a comparably priced vehicle, with such adjustment in price as the parties may agree to. The consumer shall not be obligated to accept a replacement vehicle, but may instead elect to receive the refund provided under this section.

§ -7 Civil and administrative actions for violations. (a) A consumer of a used motor vehicle shall have a private right of action against a dealer to enforce this section and recover costs, including reasonable attorney's fees, incurred in the civil action.

(b) It shall be an affirmative defense to any claim under this section that:

- (1) The alleged malfunction or defect does not substantially impair the use or safety of the used motor vehicle;
- (2) The alleged malfunction or defect is the result of abuse, neglect, or unreasonable modifications or alterations of the used motor vehicle;
- or
- (3) The alleged malfunction or defect was covered or warranted under an express warranty issued by the manufacturer of the used motor vehicle, and that such warranty issued by the manufacturer of the used motor vehicle was in effect during the warranty period established by this section.

(c) Any private civil action brought pursuant to this section shall be commenced within one year of the date of original delivery of the used motor vehicle to the consumer.

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

(e) A motor vehicle dealer's failure to comply with any of the provisions of this chapter may result in disciplinary action pursuant to chapter 437, which may result in sanctions, including, but not limited to, suspension or revocation of license, and the imposition of fines or restitution."

SECTION 2. This Act shall take effect on January 1, 1995.

(Approved June 22, 1994.)