

THE HAWAII MOTOR VEHICLE LEMON LAW: A GUIDE FOR CONSUMERS

Q: What is the Hawaii Lemon Law?

A: The Hawaii Motor Vehicle “Lemon Law” is designed to help consumers whose new motor vehicles develop substantial warranty-related defects which are not corrected after a reasonable number of attempts.

Q: What is the Hawaii State Certified Arbitration Program?

A: The Hawaii State Certified Arbitration Program (“SCAP”) was established to assist consumers who have substantial continuing warranty-covered problems with their motor vehicles. Under this program, consumers may request an arbitration hearing. At the hearing, the arbitrator will decide if the manufacturer must replace or repurchase the vehicle.

Q: Which Motor Vehicles are covered by the Lemon Law?

A: The law covers motor vehicles which are (1) primarily designed for the transportation of persons or property over public streets and highways; and (2) used primarily for personal, family, or household purposes. Such purposes include, for example, using the car for household errands or to drive to and from work.

Individually registered motor vehicles used for an individual’s business purposes and for personal, family, or household purposes are also included. A vehicle owned or leased by a sole proprietorship which has purchased or leased no more than one vehicle per year, used for household, individual, or personal use in addition to business use, is also covered.

Motorcycles, mopeds and motor scooters are not covered by the law, nor are vehicles whose gross weight exceeds 10,000 pounds. “Demonstrators” (i.e. vehicles assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model or type) and dealer-owned vehicles are included.

Q: What is the Manufacturer’s Duty to Repair?

A: A manufacturer, or its agent, must repair any defect covered by a manufacturer’s express warranty, if the consumer notifies the manufacturer or its authorized agent, distributor or authorized dealer of such defect.

Q: What are my Rights if the Manufacturer does not meet its Duty to Repair?

A: If the manufacturer is not able to conform the motor vehicle to the express warranty by repairing it or correcting any defect which substantially impairs the use, safety, or market value of the motor vehicle, after a reasonable number of documented attempts, then the manufacturer may be required to replace the vehicle or refund the purchase price of the vehicle.

Q: Are there any Exceptions to the Manufacturer's Duty to Refund or Replace?

A: Yes. The manufacturer does not have a duty to make a refund or provide a replacement of the vehicle if it is established that either: (1) the problem does not substantially impair the use, market value or safety of the vehicle; (2) the problem is a result of abuse, neglect or unauthorized modifications or alterations of the vehicle by a consumer; or (3) the problem no longer exists.

Q: What Constitutes a Reasonable Number of Repair Attempts?

A: It is presumed that a reasonable number of attempts has occurred if either:

- (1) the same problem has been subject to examination or repair three or more times and the problem continues to exist; or
- (2) the problem has been subject to examination or repair at least once, but continues to be a problem which is likely to cause death or serious bodily injury if the vehicle is driven;
- (3) the motor vehicle is out of service by reason of repair for one or more problems for a cumulative total of 30 or more business days during the Lemon Law rights period;

At the arbitration hearing, the arbitrator will ask you which of the above criteria applies to your vehicles. You can claim one or more of the criteria listed above as long as you can prove to the arbitrator that they apply to defect(s) in your vehicle.

Q: What Constitutes a Substantial Impairment of Use, Safety or Market Value?

A: The answer to this depends upon the facts of the case. Generally, the complaint must be a serious problem that significantly impairs the value, safety, or use of the vehicle. It is also possible that the cumulative effect of numerous small defects may add up to constitute a substantial impairment.

Q: Must I provide Written Notice to the Manufacturer of my Vehicle's Defect? What should this Notice Include?

A: Yes. Before proceeding with the SCAP, you must report the nonconformity in writing to the manufacturer to make sure that the manufacturer is aware of the problem, and is given a reasonable opportunity to repair the vehicle.

The written request to the manufacturer should include:

- your name, address, phone number;
- make, model, year, style and vehicle identification number;
- an explanation of the problem(s);
- name(s) of dealership(s) where repair attempts have been made, including dates of attempts;
- a request for replacement or repurchase of the motor vehicle.

Although not required, it is reasonable to allow the manufacturer at least 10 - 14 days from the date you report the defect to it, to cure the problem.

Under the section of this booklet entitled “Appendix”, there is a sample of a letter which may be sent to the manufacturer, informing the manufacturer about the defect. This may be filled in and sent to the manufacturer or used as an example in drafting your own letter.

You should send the letter to the manufacturer by certified mail/return receipt requested. This will verify the date that the manufacturer received your letter. Keep a copy of your letter and your return receipt in your records.

Q: How can I get the Manufacturer’s Present Address?

A: The manufacturer’s address should be listed in the warranty booklet you received at the time that you purchased your vehicle. If not, refer to the dealer from whom you purchased your car or call the American Arbitration Association (531-0541).

Q: Shouldn’t I have been Informed of my Lemon Law Rights at the Time I Purchased my new Car?

A: Yes. You must be provided (at the time of purchase of your motor vehicle) with a written notice setting forth the terms of the SCAP and a statement of your rights under the Lemon Law. If you never received these documents, you should call the Regulated Industries Complaints Office (587-3222) to register a complaint.

Q: I purchased a used car from a private owner, which is still under warranty. Is this vehicle eligible under the Lemon Law?

A: Yes. You do not have to be the original owner to request arbitration. Later owners of a vehicle may request an arbitration if the vehicle is eligible and within the Lemon Law Rights Period.

Q: What is the Lemon Law Rights Period?

A: To determine whether you have a claim under the Lemon Law, you will have to determine whether a repair attempt occurred within the “Lemon Law Rights Period.” It is important to note that, for the purposes of arbitration, the “Lemon Law Rights Period” may be different from the actual manufacturer’s warranty. Under the law, the “Lemon Law Rights Period” is the period covered by the manufacturer’s warranty and within 2 years or 24,000 miles (whichever occurs first).

Q: Can I Learn what the Manufacturer’s Case will be Prior to the Hearing?

A: After your Demand for Arbitration is accepted, you will be sent a copy of a “Manufacturer’s Statement”, which states the manufacturer’s reasons why they should not be required to replace or repurchase your vehicle. The manufacturer must submit this statement within 10 days after being notified that your claim has been accepted for arbitration.

This statement is useful when you prepare your presentation, testimony and evidence for the hearing. You will want to be prepared to respond to the specific points that the manufacturer raises. The statement will also inform you whether the manufacturer will be represented by an attorney.

Q: Do I have to Give the Manufacturer a Chance to View my Motor Vehicle?

A: Yes. After a claim is accepted for arbitration, the manufacturer has the right to request a viewing of your vehicle. That request must be made in the “Manufacturer’s Statement.” You must be present while the viewing takes place, unless you request otherwise in writing. The manufacturer and you should try to make arrangements for a mutually convenient time, date, and location to view the vehicle.

During the inspection, the manufacturer’s agent can test drive the vehicle or conduct tests with diagnostic equipment, but they cannot make any repairs. You have the right, upon request, to review any reports of the tests before the hearing date.

Q: How can I Prove I Have a “Lemon”?

A: You must be able to document your repair attempts. It is therefore important to keep complete records of all complaints and copies of all work orders, repair bills and correspondence. The dealer must provide you with a copy of a legible and accurate written work order, upon your request, each time the vehicle is presented for repair.

Q: Who are the Arbitrators?

A: The arbitrators are selected by the American Arbitration Association and have been trained in both arbitration procedures and the Lemon Law by the AAA and the Department of Commerce and Consumer Affairs.

Q: I live on a Neighbor Island. Do I have to come to Oahu for the Arbitration Hearing?

A: No. Arrangements may be made so that the arbitration proceeding takes place on the island where you reside. You should tell the AAA where you wish the arbitration hearing to be held.

Q: How do I Obtain Documents about the Performance of my Vehicle or Vehicles of Like Models?

A: Each time you take your vehicle to a dealership for warranty service, you have the right to receive a fully itemized and legible repair order showing the diagnosis made and all work performed on the vehicle, including the problem(s) you are experiencing with your vehicle, the in and out mileage on the vehicle, the parts and labor supplied, and the dates the vehicle was in the repair shop.

Upon your request, the manufacturer or dealer must provide a copy of any report or computer reading regarding the inspection, diagnosis, or test-drive of your vehicle, and must provide a copy of any technical service bulletin related to the nonconformity issued by the manufacturer regarding the year and model of your vehicle as it pertains to any material, feature, component, or its performance.

Also, when you provide your written notification to the manufacturer, the manufacturer must inform you of any technical service bulletin or report relating to the nonconformity, and must advise you of your right to obtain a copy of that report or technical service bulletin.

Q: How Should I Prepare for the Arbitration Hearing?

A: You should keep a copy of your “Demand for Arbitration” form to use as a guideline in preparing for the hearing. In addition, you should:

1. Gather documents. Bring to the hearing all records pertaining to the purchase and the problem, including a copy of the purchase contract (original invoice), all correspondence, work orders, applicable technical service bulletins, and the warranty provided by the manufacturer.
2. Organize records. Keep records in chronological order. This will serve as a guide in presenting the history of the problem.
3. Prepare an outline. This will help you to present and remember relevant information.

4. Prepare questions to ask the manufacturer's representative. This will assure that no important question is omitted.
5. Arrange for witnesses. The presence of witnesses, especially auto mechanics, or their sworn statements may be helpful to document the problem. If it is not possible for your witness to come to the hearing, you should bring their telephone number and advise them to stand by on the day of the hearing. You may be asked to call them so that the arbitrator and/or the manufacturer's representative may ask them questions. If such an arrangement is impossible, you should so inform the arbitrator at the time of the hearing.

Q: What if I do not have all the Necessary Documents?

A: Upon payment of the filing fee and prior to the hearing, you may make a written request to the arbitrator, through the AAA, to direct the manufacturer to provide any necessary documents or other information. You may also request the arbitrator to subpoena documents or witnesses to appear at the hearing.

Q: What is the Difference Between "Binding" and "Non-Binding" Arbitration? Who Decides which Arbitration will be used?

A: You will be asked to decide whether you wish the arbitration to be "binding" or "non-binding" in nature. Before making this important decision, you should carefully review the leaflet on this subject, which details all possible consequences depending upon which type of arbitration you choose.

Under binding arbitration, the decision of the arbitrator is final and conclusive. Neither you or the manufacturer may request a court trial on the same issues if dissatisfied with the arbitrator's decision.

Under non-binding arbitration, either party (i.e. you or the manufacturer) may request a court trial if dissatisfied with the arbitrator's decision.

Q: What Happens if Non-Binding Arbitration is Elected, but Neither Party Requests a Trial de Nova Before the 30 Day Deadline?

A: If neither party requests a trial de nova, the non-binding arbitration decision will become final and conclusive.

Q: What if the Manufacturer's Representative Refuses to Sign the Binding/Non-binding Election Form Provided?

A: It will not matter. The manufacturer is still required to honor your decision as to whether the arbitration will be binding or non-binding.

Q: How Should I Present my Case at the Hearing?

- A. At the hearing, you should attempt to present your case as clearly, concisely and in as organized a manner as possible.

The following outline may serve as a guideline for presentation of your case.

1. State the specific nature of the problem.
2. State any relevant conversations with the representatives for either the dealer or the manufacturer.
3. Describe and document each repair attempt.
4. Describe and document any new developments which may have occurred since the “Demand for Arbitration” form was submitted.
5. Offer proof of each point, especially those the manufacturer may dispute.
6. State the relief requested.
7. At the end of the presentation, briefly summarize the facts discussed.

Q: English is not my First Language. How Can I Effectively Communicate my Case?

A: You should inform the AAA office of this as soon as possible. They may have information regarding the services of a translator.

Q: If I agree to Settle the Case with the Manufacturer before the Hearing, what should I do?

A: You may wish to settle the case prior to the hearing and if you do so, you should contact the AAA immediately. Please complete and return the Settlement/Withdrawal form provided. It is wise to get complete settlement terms in writing from the manufacturer before withdrawing from the arbitration process.

Q: If I Settle my Case with the Manufacturer Before the Arbitration Hearing, will I be Reimbursed my \$50.00 Filing Fee?

A: No. Your filing fee helps defray the administrative costs for the program. Accordingly, once the case is processed (i.e. assigned a file number) the filing fee will not be refunded.

Q: When will I Receive a Decision from the Arbitrator?

A: A decision will be issued by the arbitrator within forty-five (45) days from the date upon which you initiate your case with the AAA by filing a “Demand for Arbitration.”

Q: If the Arbitrator Awards a Refund, what may be included?

A: The refund may include the full purchase price of the car, including charges for undercoating, dealer preparation, transportation and installed options.

The refund may also include all collateral charges and incidental expenses, including towing charges, replacement car rental costs, general excise tax, license and registration fees, and title charges, less any lawful deductions.

Q: If the Arbitrator decides in my Favor, when will the Manufacturer Comply with the Award?

A: The decision will set out the deadline for the manufacturer's compliance with the award. Generally, the deadline for compliance is within thirty (30) days from issuance of the award. Usually, the manufacturer's representative will contact you to arrange for the return of your vehicle in exchange for a replacement vehicle or a refund (depending on what is awarded). If you do not hear from the manufacturer within a few weeks, you may wish to call the manufacturer's representative to make arrangements.

Q: Is the Refund Amount Different if I Financed my Motor Vehicle when it was Purchased?

A: The refund by the manufacturer is the cash price of the motor vehicle, regardless of whether the vehicle was financed. However, when the car is financed, instead of the entire refund going to you, the refund will be divided between you and the lender (the bank or finance company). Generally, the lender will calculate how much is still owed and will apply the refund to that amount. The balance of the refund will then go to you.

Q: If I Receive an Award for a Refund, will there be any Deductions for my Use of the Automobile? If so, will this Include a Deduction for my Use of the Vehicle During the time that it was Defective?

A: The arbitrator may deduct a reasonable amount for use which will be that amount directly attributable to your use of the vehicle up to: (a) the date of the first repair attempt of a defect that is likely to cause death or serious bodily injury; (b) the date of the 30th cumulative business day when the vehicle is out of service; or (c) the date of the third repair attempt, whichever occurs first.

In addition, a reasonable deduction may be taken for excessive wear and tear or damage not related to the defect that is the subject of your arbitration.

Q: How is the "Reasonable Use" Deduction Calculated?

A: The reasonable allowance is equal to one percent of the purchase price for every thousand miles of use.

Q: If I Receive an Arbitrator's Decision which is Unsatisfactory to me, may I then File a Lawsuit against the Manufacturer?

A: If your requested non-binding arbitration, you may request a trial de novo if you are dissatisfied with the Arbitrator's decision. A request for trial de novo must be demanded, in writing, within thirty (30) days after you have received the arbitrator's award.

Note: Careful consideration should be given to the filing of a trial de nova, since the court will order that all reasonable costs of trial, as well as attorney's fees, will be paid for by the party who demanded a trial de novo, if that party does not improve its position by at least twenty-five (25) percent at the trial.

Q: What Happens if the Manufacturer Fails to Comply with the Arbitrator's Award?

A: If you have elected non-binding arbitration, the manufacturer may choose not to comply with the arbitrator's award and instead, bring an action for trial de novo in circuit court. If this occurs and the manufacturer does not improve its position by at least 25%, you may be reimbursed all reasonable costs of trial, consultation and attorney's fees.

Q: If the Manufacturer Demands Trial de Novo, when will this Occur and how will I Know?

A: The manufacturer must submit its demand for trial de novo within 30 days of its receipt of the arbitrator's decision. If this occurs, you will be provided with papers from the manufacturer.

Q: May I seek Modification of the Arbitrator's Decision?

A: Only if both parties to the arbitration stipulate to reinstate the Arbitrator's jurisdiction so that a modification can be made. Assuming that such stipulation is provided, a request for modification (by either party) must be made within 20 days from receipt of the Arbitrator's award. The opposing party will then be given the opportunity to object to the modification. The arbitrator must rule on all such requests within 30 days after the request is received.

Q: Under what Circumstances can an Arbitrator's Decision be Modified?

A: There are very limited grounds for modification of the Arbitrator's award. Generally, awards may only be modified to correct miscalculations or technical errors in the award (e.g. improper formula to calculate mileage deduction; omission of the filing fee from the refund).

Q: May I Contact the Arbitrator Directly?

A: No. Any and all communication with the arbitrator (other than when both you and the manufacturer's representative are proceeding through the arbitration) must be conducted through the American Arbitration Association office.

Q: What Role will the DCCA or the AAA Play if either I or the Manufacturer Challenge an Award in Court?

A: Neither the DCCA or the AAA is authorized to represent an individual consumer in such a case; this is solely the responsibility of the consumer's own attorney. In some cases, where the manufacturer raises constitutional issues or questions of general application regarding the Lemon Law, the DCCA or the Attorney General's office may seek to intervene in the case to present its position to the court. However, the AAA's role is purely administrative; its job is finished when the arbitrator's award is sent to the parties.

Q: I feel that my Car is quite Unsafe and that the Model should be Recalled. Where can I Report the Problem.?

A: You should contact the National Highway Traffic Safety Administration (NHTSA), which is part of the U.S. Department of Transportation. They have an "Auto Safety Hotline" which you can call toll-free at 800-424-9393. Although NHTSA cannot take direct action in resolving your complaint, your call may lead to a recall of the automobile, if enough consumers appear to be having the same problem.

You may also file a petition with NHTSA to either establish that a safety-related defect exists or establish a new safety rule. Their address is:

Administrator
National Highway Traffic Safety Administration
Washington, DC 20590

Q: How can I Discover if there was ever a Recall on my Car?

A: Again, call the Auto Safety Hotline. They will provide you with information about safety/defect/recall history of your vehicle.

Q: How can I Learn whether the Defect in my Car is Covered by a "Secret Warranty"?

When a part has a high failure rate, sometimes a car manufacturer will notify its dealers that it will pay for certain repairs even after the original warranty expires. But the manufacturer does not notify owners about these secret warranties. To learn whether a secret warranty is applicable to your car, you can write to the Center for Auto Safety, Suite 410, 2001 S. Street, N. W., Washington, D. C. 20009-1116. Send them a self addressed, double stamped business size envelope. Include a letter listing the make, model and year of your car and a brief description of the problem you are experiencing.

Q: How is a Used Car Buyer Protected when Purchasing a Car Previously Returned to the Manufacturer under the Lemon Law?

A: A vehicle transferred to a dealer or manufacturer by a buyer or lessee under the Lemon Law, may not be sold or leased to anyone else unless:

1. The nature of the defect experienced by the original buyer or lessee is clearly and conspicuously disclosed;
2. The defect is corrected; and
3. The manufacturer warrants to the new buyer or lessee, in writing, for a period of one year, that if the defect reappears, it will be corrected at the dealer's expense.

Q: I feel that the Dealer, Independent of the Manufacturer, Acted Unethically when Selling my Car to me? Where can I go to File a Complaint against the Dealership?

A: You should contact the Regulated Industries Complaints Office ("RICO"), a division of the Department of Commerce and Consumer Affairs, at 587-3222. They will provide you with a complaint form to initiate and investigation into the matter.

Q: Where can I go for Further Information and/or Assistance About the Lemon Law?

A: You may call the American Arbitration Association at 531-0541 or the Department of Commerce and Consumer Affairs. Regulated Industries Complaints Office at 587-3222.

Q: What can I do to make sure that other Consumers don't go through the "Runaround" I feel that I have gone through, or Report my Experiences with SCAP and the Manufacturer?

A: After you have completed your arbitration proceeding with SCAP, you will receive a survey from the Department of Commerce and Consumer Affairs. Please take the time to fill it out. Your answers will assist the Department in evaluating the program, pinpointing areas of improvement and assessing the manufacturer's compliance with the law. The Department uses the responses it receives in its annual report to the Legislature.¹

¹ Revised 7/94

Using the Hawaii State Certified Arbitration Program

Steps:

1. Proper Notification of Defect to Manufacturer within the Lemon Law Rights Period
2. Fill out Consumer's Demand for Arbitration Form and return to AAA with \$50.00 Filing Fee
3. Appointment of Arbitrator and Schedule of Hearing will be made and sent to you through AAA
4. Make Decision as to Binding vs. Non-Binding Arbitration
6. Arbitration Hearing
7. Decision – will be issued within 45 days from date you properly file demand with AAA
8. Compliance – generally within 30 days from issuance of Arbitrator's decision
9. Modification/Trial de Novo if appropriate