

STANDARDS OF THE HAWAII LEMON LAW

The following is a brief explanation of most relevant provisions of the Hawaii lemon law. The complete text of the lemon law can be found at Hawaii Rev. Stat. section 481I-1 *et seq.*

VEHICLES COVERED

The Hawaii lemon law covers a motor vehicle, defined as a self-propelled vehicle primarily designed for the transportation of persons or property over public streets and highways and used primarily for personal, family, or household purposes.

This includes:

1. A motorcycle purchased or leased on or after September 1, 2010;
2. A demonstrator vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model or type;
3. An individually registered vehicle used for an individual's business purposes and for personal, family, or household purposes; and
4. A vehicle owned or leased by a sole proprietorship, corporation or partnership that has purchased or leased no more than one vehicle per year, and used for household, individual, or personal use in addition to business use.

The lemon law covers used vehicles, but does not cover mopeds, motor scooters, or vehicles with a gross vehicle weight rating over 10,000 pounds.

CONSUMERS COVERED

The lemon law covers the following consumers:

1. The purchaser, for purposes other than resale;
2. The lessee of a motor vehicle who leases a motor vehicle for one year or more pursuant to a written lease agreement which provides that the lessee is responsible for repairs, or pursuant to a lease-purchase agreement;
3. Any person to whom the motor vehicle is transferred during the duration of the express warranty applicable to the motor vehicle; and
4. Any other person entitled to enforce the terms of the express warranty.

PROBLEMS COVERED

The lemon law covers any *nonconformity*, which it defines as a defect, malfunction or condition that:

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1. Fails to conform to the motor vehicle's applicable express warranty and
2. Substantially impairs the use, market value, or safety of a motor vehicle.
"Substantially impairs" is defined to mean rendering the motor vehicle unfit, unreliable, or unsafe for warranted or normal use, or significantly diminishing the value of the motor vehicle.

The lemon law does not cover a defect, malfunction, or condition that results from an accident, abuse, neglect, modification or alteration of the motor vehicle by anyone other than the manufacturer, its agent, distributor, or authorized dealer.

LEMON LAW RIGHTS PERIOD

The lemon law establishes a lemon law rights period, which it defines as the term of the manufacturer's express warranty, the period ending two years after the date of the motor vehicle's original deliver to a consumer, or the first 24,000 miles of operation, whichever occurs first.

MANUFACTURER'S DUTY TO REPAIR

If a motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent, distributor, or authorized dealer during the lemon law rights period, then the manufacturer, its agent, distributor, or authorized dealer must make the necessary repairs to conform the motor vehicle to the express warranty.

The necessary repairs must be made even if the lemon law rights period has expired.

MANUFACTURER'S DUTY TO REPURCHASE OR REPLACE A VEHICLE

If the manufacturer, its agent, distributor, or authorized dealer is unable to conform the motor vehicle to any applicable express warranty by repairing or correcting a nonconformity after a *reasonable number of documented attempts*, the manufacturer must either replace or repurchase the motor vehicle.

REASONABLE NUMBER OF REPAIR ATTEMPTS

The Hawaii lemon law establishes a *presumption* that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if, during the lemon law rights period, any of the following occurs:

1. The same nonconformity has been subject to examination or repair at least three times by the manufacturer, its agents, distributors, or authorized dealers but the nonconformity continues to exist;
2. A nonconformity that is likely to cause death or serious bodily injury if the vehicle is driven has been subject to examination or repair at least once by the manufacturer, its agents, distributors, or authorized dealers but the nonconformity continues to exist; or

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3. The motor vehicle is out of service for repair of one or more nonconformities by the manufacturer, its agents, distributors, or authorized dealers for a cumulative total of 30 or more *business days*.

The lemon law defines “business day” to mean any day during which the service departments of the manufacturer’s authorized dealers are normally open for business. The term of the lemon law rights period and the 30 day period are extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or other natural disaster.

NOTICE AND OPPORTUNITY TO REPAIR

The presumption that a reasonable number of repair attempts has occurred does not apply against a manufacturer unless the manufacturer has received a written report of the nonconformity from the consumer and has had a reasonable opportunity to repair the alleged defect. The consumer is required to notify the manufacturer only if the consumer was provided, at the time of purchase, with a written notice of the consumer’s rights under the lemon law and the terms of any state certified arbitration program.

TIME PERIOD FOR FILING CLAIMS

An action must be initiated within one year following expiration of the lemon law rights period (the term of the manufacturer’s express warranty, the period ending two years after the date of the motor vehicle’s original deliver to a consumer, or the first 24,000 miles of operation, whichever occurs first).

REMEDIES UNDER THE HAWAII LEMON LAW

REPURCHASE OF OWNED OR LEASED VEHICLE

The Hawaii lemon law sets out the following amounts that a manufacturer must pay when it repurchases a motor vehicle under the lemon law:

1. *Full purchase price*, meaning the cash price appearing in the sales agreement or contract and paid for the motor vehicle, including any net allowance for any trade-in vehicle. This will include but is not limited to charges for undercoating, dealer preparation, transportation and installed options;
2. *Collateral charges*, defined as those additional charges to a consumer wholly incurred as a result of the acquisition of the motor vehicle, including but not limited to finance and interest charges, manufacturer-installed or agent-installed items, general excise tax, license and registration fees, title charges, and similar government charges; and
3. *Incidental charges*, defined as those reasonable costs incurred by the consumer and directly caused by the nonconformity or nonconformities that are the subject of the claim, including but not limited to towing charges and the costs of obtaining alternative transportation, but excluding loss of use, loss of income, or personal injury claims;
4. Less a reasonable offset for the consumer's use of the motor vehicle.

Refunds must be made to the consumer and lienholder, if any, as their interests may appear on the records of ownership.

The reasonable offset for use is one percent of the purchase price for every thousand miles of use attributable to a consumer up to (1) the date of the third repair attempt of the same nonconformity which is the subject of the claim, (2) the date of the first repair attempt of a nonconformity that is likely to cause death or serious bodily injury, or (3) the date of the 30th cumulative business day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first.

An offset may also be made for damage to the vehicle not attributable to normal wear and tear, if unrelated to the nonconformity.

REPLACEMENT VEHICLE

The Hawaii lemon law defines a replacement vehicle as a motor vehicle that is identical or reasonably equivalent to the motor vehicle to be replaced as it existed at the time of original acquisition, including any service contract, undercoating, rustproofing, and factory- or dealer-installed options. The manufacturer is responsible for any general excise tax and license and registration fees for the replacement vehicle.

The Hawaii lemon law provides that a reasonable offset for the consumer's use of the motor vehicle be made. The reasonable offset for use is one percent of the purchase

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price for every thousand miles of use attributable to a consumer up to (1) the date of the third repair attempt of the same nonconformity which is the subject of the claim, (2) the date of the first repair attempt of a nonconformity that is likely to cause death or serious bodily injury, or (3) the date of the 30th cumulative business day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first.

An offset may also be made for loss to the fair market value of the vehicle resulting from damage beyond normal wear and tear, unless the damage resulted from the nonconformity.