



THE HAWAII LEMON LAW AND THE STATE CERTIFIED ARBITRATION PROGRAM

A Handbook for Motor Vehicle Manufacturers

Published by the
Department of Commerce and Consumer Affairs
State Certified Arbitration Program
235 S. Beretania Street, Ninth Floor
Honolulu, Hawaii 96813
(808) 587-3222

THE MOTOR VEHICLE MANUFACTURER DUTIES UNDER THE HAWAII LEMON LAW AND THE STATE CERTIFIED ARBITRATION PROGRAM (SCAP)

This handbook provides important information concerning Hawaii's Lemon Law and State Certified Arbitration Program (SCAP) to motor vehicle manufacturer representatives. You should read all of this handbook to fully understand your rights and responsibilities under the Lemon Law. You should also review the most current version of the Lemon Law itself, Chapter 481I, Hawaii Revised Statutes (H.R.S.), and the administrative rules which govern SCAP, Hawaii Administrative Rules (H.A.R.) Title 16, Chapter 181. If you need copies of these materials, please contact the SCAP Administrator, or you may print them out from our website at www.hawaii.gov/dcca/rico.

The State Certified Arbitration Program (SCAP)

The Department of Commerce and Consumer Affairs (DCCA) administers the State Certified Arbitration Program or SCAP. The Hawaii Lemon Law helps consumers who buy or lease new motor vehicles and have repeated problems in getting their vehicles repaired under the manufacturer's warranty. The Lemon Law authorizes the DCCA to provide consumers with an arbitration process to resolve warranty disputes with manufacturers. As the neutral administrator of the program, the DCCA's role is to provide information, oversee and monitor the process, and provide the forum to which consumers may apply for arbitration.

In Hawaii we run our own state program, and we do not certify any manufacturer's dispute resolution program. There is no prior resort requirement in the law. Please do not confuse SCAP with the BBB Autoline Program or any other dispute resolution or arbitration program.

Arbitrators who preside over SCAP proceedings are impartial volunteers interested in resolving consumer disputes. They do not have to be attorneys although many of them are. Arbitrators are entitled to a stipend, the amount of which is set by the Director of the DCCA, pursuant to H.A.R. § 16-181-6. All arbitrators are required to attend Lemon Law arbitration training sessions.

If you have any questions regarding the Hawaii Lemon Law or SCAP, you may contact:

Department of Commerce and Consumer Affairs
Regulated Industries Complaints Office
SCAP Case Administrator
235 S. Beretania Street, 9th Floor
Honolulu, Hawaii 96813
fax number: (808) 586-2670
phone number: (808) 586-2660

Manufacturer Representative Information

As the manufacturer of motor vehicles sold in Hawaii, you must inform SCAP in writing of the name, address, and telephone number of the person designated to receive notices under the program. The information shall be presumed correct unless updated by the manufacturer. Failure to update the information will result in notices being mailed to the manufacturer's last known address. (H.A.R. § 16-181-10)

Lemon Law Rights Statement

You must provide to the consumer at the time of purchase of a motor vehicle a written notice setting forth a Statement of Rights under the Lemon Law and the terms of SCAP. This Statement must contain the manufacturer's address in order for the consumer to send written notification of a nonconformity. Consumers who have not received this Statement at time of purchase are not required to provide written notice. Your authorized dealership should obtain the consumer's signature on the Statement at the time of purchase, give a copy to the consumer, and retain a copy for at least two years. You should make sure that your dealership is complying with this requirement. Failure to do so may adversely affect your rights under the Lemon Law. (H.R.S. § 4811-3(g) and H.A.R. § 16-181-33)

Lemon Law Rights Period and Filing Deadline

The "Lemon Law Rights Period" means the term of the manufacturer's warranty, the period ending two years after the date of delivery to the consumer or the first 24,000 miles of operation, whichever occurs first. Within that period the consumer must experience the nonconformity and take the vehicle in for repair following the presumptions for reasonable opportunity to repair provided in the law. The consumer has one year after the expiration of the lemon law rights period to file for SCAP arbitration. (H.R.S. § 4811-2)

Dealership Notification to Manufacturer

Upon a second notice of the nonconformity or if the vehicle has been out of service by reason of repair in excess of 20 days, the authorized dealership must notify the manufacturer. You should make sure that your dealership is complying with this requirement so that you may make the appropriate determinations regarding the consumer's potential claim in a timely manner. (H.R.S. § 4811-3(d))

Complete Repair Orders

Each time a vehicle is returned from being diagnosed or repaired, a fully itemized, legible repair order indicating any diagnosis made and all work performed

must be provided to the consumer. The repair order should include: a general description of the reported problem, identification of the defect or problem, parts and labor supplied, the date and odometer reading when the vehicle was submitted for repair, and the date when the vehicle was made available to the consumer. The consumer should sign and receive a copy. Failure of your dealership to comply with this requirement may be held against you in an arbitration hearing. (H.R.S. § 481I-3(e))

Technical Service Bulletins

Upon receipt of a consumer's written notification of a nonconformity, you or your authorized dealership must inform the consumer of any technical service bulletin or report relating to the nonconformity and advise the consumer of the consumer's right to obtain a copy. (H.R.S. § 481I-3(f))

You or your authorized dealership must provide a copy of any report or computer reading regarding inspection, diagnosis, or test-drive of the vehicle and any technical service bulletin related to the nonconformity. (H.R.S. § 481I-3(f))

Initial Screening of Consumer's Demand for Arbitration

SCAP Demand for Arbitration forms are initially screened to make sure that they are filled out completely and legibly, that all required documents are attached, that the filing fee is paid, and that the filing deadline has been met. Our screeners do not make any judgment calls on the type of defect being claimed or the quality of the evidence being submitted. Those kinds of issues are properly given to the arbitrator to evaluate and decide upon. (H.R.S. § 16-181-7)

Filing Fee

Upon notification by SCAP that a demand form has been processed, the manufacturer must pay the \$200.00 filing fee no later than 10 days from the date of receipt of the notification. Failure to timely remit the fee shall be considered a default. (H.A.R. § 16-181-8(e))

Settlement Negotiations

Should you desire to settle with the consumer, contact the consumer directly. If there is a settlement before the arbitration, inform SCAP by telephone and then in writing. (H.A.R. § 16-181-19) Note that if the consumer does not confirm the settlement, the arbitration will be scheduled. If you have questions regarding what should be included in a consumer's refund or what the mileage offset should be pursuant to the Lemon Law, please call the SCAP Case Administrator. See the last

two pages of this handbook for sample refund calculations.

Manufacturer's Statement and Documents

After a case is initiated, SCAP mails the manufacturer a copy of the consumer's demand for arbitration and attachments and a manufacturer's statement form. The manufacturer's statement form can be found at the end of this handbook before the sample calculations. You must submit 3 copies of the completed statement form within 10 days. You must also submit 3 copies of requested documents that include the service history of the vehicle. If you fail to provide documents in a timely manner, the arbitrator may not allow you to present your own evidence. (H.A.R. §§ 16-181-9 and 16-181-20(c))

Please note that if you argue a certain defense at the arbitration but did not provide notice of that defense on the manufacturer's statement, the arbitrator may not allow you to present the argument because the consumer did not have proper notice. Or, your failure to provide notification will cause the proceeding to be continued to allow the consumer an opportunity to obtain rebuttal evidence.

Subpoenas

If you need to subpoena witnesses, ask the SCAP Administrator for forms and instructions.

Scheduling the Arbitration

After a case is initiated, by statute, SCAP must provide a decision to the consumer within 45 days. Thus, the arbitration is usually scheduled about two weeks before the deadline date to give the arbitrator enough time to issue a timely decision. If you do not promptly respond to phone calls or emails regarding the scheduling of the arbitration, it will be scheduled without your input. If you cannot provide a representative during this timeframe, SCAP will ask the consumer to extend or waive the 45-day deadline; however, if the consumer refuses to agree, you will need to take necessary action to be properly represented. (H.R.S. § 4811-3(i))

Appearing by Telephone

If you will be presenting your case by telephone, provide written notice to SCAP at the time you file your manufacturer's statement. You must pay any long distance charges. (H.A.R. § 16-181-12(f))

Arranging Pre-Arbitration Inspections

You have the right to inspect the vehicle to prepare your case. You should arrange directly with the consumer a mutually agreeable time and location for the inspection. No repair procedures shall be conducted unless the consumer authorizes such. You may perform limited diagnostic examinations such as test-driving the vehicle or attaching a testing device. The results of any diagnostic procedures or data gathered should be made available no later than 3 business days before the date of the arbitration. If you have problems scheduling the inspection with the consumer, you may ask the Administrator for assistance. (H.A.R. § 16-181-14)

Providing Evidence in the Arbitration

You should fully understand the law and the defenses you are presenting to the arbitrator. Make sure you bring all the information and evidence you need to prove your points. If issues important to you are not brought up at the arbitration, you need to bring them up yourself. You will not be allowed to bring up additional issues or evidence after the hearing is closed.

Reasonable Opportunity to Repair Guidelines

With the "one time serious safety" presumption, the consumer has to prove that the vehicle has a serious safety nonconformity and was subject to examination or repair at least once and the nonconformity continued to exist after that examination or repair. With the "three times" presumption, the consumer has to prove that the vehicle was subject to examination or repair at least three times for the same nonconformity, but the nonconformity continued to exist after the third repair. With the "30 days" presumption, the consumer has to prove that the vehicle was out of service by reason of repair for one or more nonconformities for a cumulative total of 30 or more business days. All of the presumptions are guidelines and are rebuttable. (H.R.S. § 4811-3(d))

The Hawaii Lemon Law does not provide that the manufacturer must be given an additional repair attempt after receiving notice from a consumer about a nonconformity if the statutory presumption of "reasonable opportunity to repair" has already been met. Although some state lemon laws do specifically provide for a final repair attempt, Hawaii's lemon law does not. While we routinely encourage consumers to wait a period of time to give a manufacturer an opportunity to cure, we cannot advise consumers that the law requires them to authorize an additional repair attempt.

Affirmative Defense

A manufacturer may argue the affirmative defense that a nonconformity is the result of abuse, neglect, or unauthorized modification or alterations of a motor vehicle

by a consumer. If you argue this, note that "affirmative defense" means you have the burden of proving by a preponderance of the evidence that this applies to the consumer's claims. (H.R.S. § 4811-3(c))

Test Rides and Inspections

Whether an arbitrator conducts a test-ride or test-drive depends on the facts of the case and the issues involved. It is at the discretion of the arbitrator to determine if a test ride or drive is necessary for an arbitrator to make his/her decision. If credible testimonial or documentary evidence shows a test ride or drive is not needed, would not be useful, or is not relevant to the issues at hand, an arbitrator may decide it is not necessary. (H.A.R. § 16-181-21(a)(4) Regarding inspections, manufacturers have the right to inspect (and test-drive) the vehicle before the arbitration. Manufacturers could even videotape a test-drive and present that as evidence. If you forego doing a pre-arbitration inspection and there is no opportunity to inspect the vehicle on the day of the hearing, you may be waiving any claim that the vehicle is subject to a damage offset (damage above normal wear and tear).

Complying with SCAP Decisions

Your failure to timely comply with an arbitration decision is considered prima facie evidence of an unfair or deceptive act or practice. This is so unless you can prove that you attempted in "good faith" to comply, or that failure was beyond your control, the result of a written agreement with the consumer, or based on an appeal filed under H.R.S. Chapter 658A. (H.R.S. § 4811-4(f)) Note that the consumer who obtains a court judgment against you for an unfair or deceptive practice may collect treble damages.

If an arbitrator's decision awards a consumer refund, you should not be requiring the consumer to sign additional, unnecessary documents when he or she turns in the vehicle. If you use your dealership to arrange for the exchange of a refund check for the vehicle, make sure the transaction is being handled properly. The consumer should not be required to sign "settlement documents" such as "releases", "secrecy agreements", or "acceptances of offers". An arbitrator's decision is an order -- it is not a settlement of a case.

A consumer who already has title to the vehicle is required to sign the certificate of title and indicate the odometer reading at the time of transfer. Federal law requires the consumer to sign a power of attorney only if a third-party lien holder holds the title. In some cases, the manufacturer is required to sign a power of attorney. A manufacturer who does not have an authorized representative in Hawaii who can sign the certificate of title should fill out and sign a power of

attorney form. The power of attorney form designates the individual in Hawaii who is authorized to sign on the manufacturer's behalf so that the change of title can be completed. For more information, please contact the Department of Motor Vehicles in Honolulu. The manufacturer should ensure title transfer is done promptly.

Providing Disclosures

Should you be ordered to repurchase a vehicle and then you resell the vehicle, you must comply with the Lemon Law's disclosure requirements. The disclosure requirements also apply when you settle a case with a consumer. You may not resell, lease or auction the vehicle unless:

- (1) The nature of the defect experienced by the original buyer or lessee is clearly and conspicuously disclosed on a separate document that must be signed by the manufacturer and the purchaser and must be in ten point, capitalized type, in substantially the following form: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE A DEFECT(S) COVERED BY THE MANUFACTURER'S EXPRESS WARRANTY WAS NOT REPAIRED WITHIN A REASONABLE TIME AS PROVIDED BY LAW.";
- (2) The defect is corrected; and
- (3) The manufacturer warrants to the new buyer or lessee, in writing, that if the defect reappears within one year or 12,000 miles after the date of the resale, whichever occurs first, it will be corrected at no expense to the consumer.

A violation of these requirements shall constitute prima facie evidence of an unfair or deceptive act or practice. (H.R.S. § 481I-3(k))

The SCAP Administrator tracks buyback vehicles that go through the program to ensure compliance with the law. If the vehicle is resold, you may send a copy of the disclosure notice signed by the second purchaser to the Administrator. If you do not automatically send a copy upon the resale of the vehicle, you can expect that the Administrator will subsequently be requesting a copy from you.

Consumer's Name: _____ SCAP Case No: _____

Manufacturer Rep's Name: _____ Phone: _____
Fax: _____
Email: _____

MANUFACTURER'S STATEMENT

Pursuant to H.A.R. §§ 16-181-8 and -9, you must submit this completed statement, the requested documents, and the \$200 filing fee within 10 days from the date of your receipt of the demand for arbitration. This statement may be submitted by fax to (808) 586-2670.

1. The manufacturer did/did not receive notice of the defect from the consumer before the Lemon Law rights period expired.
2. The manufacturer does/does not wish to inspect the motor vehicle before the arbitration hearing.
3. The manufacturer will/will not be represented by an attorney at the arbitration hearing.
4. The manufacturer will participate in person/by telephone at the arbitration hearing.
5. The manufacturer will call the following witnesses to testify at the arbitration hearing:

6. The manufacturer denies the consumer's claim that the motor vehicle qualifies for relief under the Lemon Law for the following reason(s):
 - a. Insufficient opportunity to repair;
 - b. Inadequate notice to the manufacturer;
 - c. Defect does not constitute "substantial impairment" of use, safety, or market value;
 - d. Defect is not likely to cause death or serious bodily injury if the vehicle is driven;
 - e. Vehicle was not out of service by reason of repair for one or more defects for a cumulative total of 30 or more business days during the Lemon Law rights period;
 - f. Defect has been corrected;
 - g. Complaint does not fall within Lemon Law rights period;
 - h. Demand for arbitration was not filed within one (1) year from expiration of Lemon Law rights period;
 - i. Defect is the result of consumer's abuse, neglect, or unauthorized modifications or alterations of the motor vehicle;
 - j. Other (please explain): _____

7. List relevant technical service bulletins or reports and attach copies:

NOTE: Pursuant to H.A.R. § 16-181-20(a), if you fail to appear at the arbitration hearing, fail to pay the filing fee, or fail to submit your response, you will be considered in default.

**HAWAII STATE CERTIFIED ARBITRATION PROGRAM
SAMPLE REFUND CALCULATION FOR PURCHASED (Vehicle Not Paid Off) OR LEASED
VEHICLE**

| | | |
|----|--|-------------|
| 1. | Down Payment | \$ 1,500.00 |
| 2. | Net Trade-in | \$ 2,500.00 |
| 3. | Monthly payments made as of the date of the hearing (includes payments toward collateral charges enumerated on sales/lease contract) | \$ 5,872.00 |
| 4. | Additional Collateral charges (e.g., tinting) | \$ 800.00 |
| 5. | Incidental charges (e.g., towing cost) | \$ 30.00 |
| 6. | Subtotal (sum of lines 1 – 5) | \$10,702.00 |
| 7. | Mileage deduction (“reasonable offset”) | \$ 2,808.00 |
| 8. | Damage offset (above normal wear and tear) if any | \$ ----- |
| 9. | Consumer Refund: (line 6 <u>less</u> lines 7 & 8) | \$ 7,894.00 |

MILEAGE DEDUCTION CALCULATION

Basis:

| | | |
|--|----------------------|-----------|
| Purchase price (or lease price)* | \$27,995.00 | |
| 1% of purchase price (or lease price) | | \$ 279.95 |
| Total mileage at 3rd repair** | 10,041 - 14 = 10,027 | |
| (Mileage at repair less mileage at purchase) | | |
| Mileage at 3rd repair ÷ 1,000 = | | 10.03 |

Calculation:

$$\$279.95 \times 10.03 = \quad \quad \quad \$ 2,808.00$$

*The “purchase price” of a leased car is the lessor’s actual purchase cost of the vehicle. If unable to obtain this information, the agreed-upon value as shown on the lease contract will be used.

**Mileage on the 3rd repair order is normally used, however, if the defect was one likely to cause death or serious bodily injury, mileage at the 1st repair attempt will be used, or if the 30-day presumption applies, the mileage on the repair order at the 30th day will be used, whichever occurs first.

LIENHOLDER REFUND: The Manufacturer shall refund to the lienholder or lessor the balance owed or payoff on the loan/lease to release the title. If this is a lease, the lease is terminated. No early termination penalties under the lease should be assessed.

**HAWAII STATE CERTIFIED ARBITRATION PROGRAM
SAMPLE REFUND CALCULATION FOR PURCHASED VEHICLE
(Vehicle Paid Off)**

| | | |
|----|--|--------------|
| 1. | Down Payment | \$ 1,000.00 |
| 2. | Net Trade-in | \$ 0.00 |
| 3. | Monthly payments and final payoff (includes payments toward collateral charges enumerated on sales contract) | \$ 21,887.00 |
| 4. | Additional Collateral charges (e.g., tinting) | \$ 800.00 |
| 5. | Incidental charges (e.g., towing cost) | \$ 30.00 |
| 6. | Subtotal (sum of lines 1 – 5) | \$ 23,717.00 |
| 7. | Mileage deduction (“reasonable offset”) | \$ 2,808.00 |
| 8. | Damage offset (above normal wear and tear) if any | \$ ----- |
| 9. | Refund: (line 6 <u>less</u> lines 7 & 8) | \$ 20,909.00 |

MILEAGE DEDUCTION CALCULATION

Basis:

| | |
|---|-------------|
| Purchase price | \$27,995.00 |
| 1% of purchase price | \$ 279.95 |
| Total mileage at 3rd repair* 10,041 - 14 = 10,027 (Mileage at repair less mileage at purchase) | |
| Mileage at 3rd repair ÷ 1,000 = | 10.03 |

Calculation:

$$\$279.95 \times 10.03 = \$ 2,808.00$$

*Mileage on the 3rd repair order is normally used, however, if the defect was one likely to cause death or serious bodily injury, mileage at the 1st repair attempt will be used, or if the 30-day presumption applies, the mileage on the repair order at the 30th day will be used, whichever occurs first.