



THE HAWAII LEMON LAW AND THE STATE CERTIFIED ARBITRATION PROGRAM

A Consumer Handbook

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

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Forms

- Letter to the Manufacturer
- Demand for Arbitration
- Election of Consumer

INTRODUCTION

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 can help a consumer get a refund of the vehicle purchase price or a replacement vehicle from the manufacturer. The State Certified Arbitration Program (SCAP) provides the consumer with a self-help arbitration process to resolve a warranty dispute with a manufacturer. This Program gives the consumer a less complicated and less expensive option than going to court.

The information in this handbook is a summary of the Lemon Law and the procedures involved in requesting and preparing for arbitration. The law itself is found in *Hawaii Revised Statutes* Chapter 481I. The administrative rules which govern the SCAP process are found in *Hawaii Administrative Rules* Title 16 Chapter 181. To obtain more information:

call:

Oahu	587-3222 and choose option #3
Kauai access number:	274-3141 then dial 73222, then the #sign.
Maui access number:	984-2400 then dial 73222, then the #sign.
Big Island access number:	974-4000 then dial 73222, then the #sign.
Lanai/Molokai:	1-800-468-4644 then dial 73222, then the #sign.

or write:

Department of Commerce and Consumer Affairs
Regulated Industries Complaints Office
Consumer Resource Center
235 S. Beretania Street, Ninth Floor
Honolulu, Hawaii 96813

For the Hawaii Lemon Law website, go to:

<http://www.hawaii.gov/dcca/rico>

*This printed material can be made available for individuals
with special needs in Braille, large print or audio tape.*

*Please submit your request to the
Complaints & Enforcement Officer at 586-2666.*

IS MY VEHICLE COVERED UNDER THE LEMON LAW?

Your vehicle may be covered if it is:

- a new car (includes a motorcycle and demonstrator model). This also includes a car transferred to a second purchaser while the manufacturer's written warranty is still in effect.
- used primarily for personal, family, or household purposes or

individually registered but used for business purposes **and** for personal, family, or household purposes or

owned or leased by a business which has purchased or leased no more than one car per year, used for household, individual, or personal use **in addition to** business use
- purchased, leased, or initially registered in Hawaii

Your vehicle is NOT covered if it is:

- a moped or motor scooter
- a vehicle over 10,000 pounds, gross vehicle weight rating (GVWR)¹

¹ GVWR is the maximum loaded weight of the vehicle as specified by the manufacturer. The GVWR can be found on the sticker that is placed on the driver side door jamb. The GVWR is NOT the weight of the vehicle as stated on your registration.

IS MY CAR A LEMON?

Your car may be declared a lemon after going through arbitration if it meets all of the following conditions:

- it has a nonconformity (a defect, malfunction, or condition)
- the nonconformity is covered by the manufacturer's express warranty
- the nonconformity SUBSTANTIALLY impairs the use, market value, or safety of the car
- the nonconformity is not the result of an accident, abuse, neglect, or alteration of the car by persons other than the manufacturer or its authorized dealer
- you tried to get the nonconformity repaired by the manufacturer's authorized dealer during the Lemon Law Rights Period
- you sent written notification (preferably by certified mail, return receipt requested) to the **manufacturer** (not the dealer) of the nonconformity during the Lemon Law Rights Period²
- you gave the manufacturer or its authorized dealer a reasonable opportunity to repair the nonconformity during the Lemon Law Rights Period
- you filed a request for arbitration with the State Certified Arbitration Program within one year after the Lemon Law Rights Period expired

² If you did not receive a Lemon Law Statement of Rights from the dealership when you purchased the vehicle, you are not required to write to the manufacturer although it is a good idea to do so anyway. If you did not receive a Lemon Law Statement of Rights, include that information when you submit your paperwork to this office.

WHEN DOES THE LEMON LAW RIGHTS PERIOD EXPIRE?

Assuming the express warranty³ is still in effect, the Lemon Law Rights Period expires two years after the date of the original delivery of the car to a consumer or the first 24,000 miles of operation, whichever occurs first.

IS MY CAR'S NONCONFORMITY A SUBSTANTIAL IMPAIRMENT?

The nonconformity you are alleging must substantially impair your car's use, safety, or value. "Substantially impairs" means to render the car unfit, unreliable, or unsafe for warranted or normal use or to significantly diminish the value of the car. You may be able to prove the car's use is impaired if one of its major systems is defective or if the defect prevents it from being used in a normal fashion. A car's value may be decreased by conditions that would lead a buyer to pay much less than the market price for a comparable car that does not have the defect. You have the burden of proving to the arbitrator that your car's problem constitutes a substantial impairment of use, safety, or value of the vehicle. You may need the help of a technical expert (licensed mechanic) to prove your case.

³ "Express warranty" means any written warranty issued by the manufacturer, or any affirmation of fact or promise made by the manufacturer (not the dealer) which relates to the material or workmanship and affirms or promises that the vehicle shall conform to the affirmation or promise. An extended service contract is not the manufacturer's warranty under most circumstances and generally will not extend your rights through the Lemon Law, since the Lemon Law deals only with your rights against the manufacturer.

HOW MANY REPAIR ATTEMPTS DO I HAVE TO ALLOW?

One or more of the following presumptions should apply to your car:

Three times presumption

- you took your car in for repair for the same nonconformity **at least** three times within the Lemon Law Rights Period but
- the nonconformity **continued to exist after the third repair**

One time "serious nonconformity" presumption

- you took your car in for repair at least once for a serious nonconformity within the Lemon Law Rights Period but
- the nonconformity continued to exist after the first repair and is likely to cause death or serious bodily injury if the car is driven

30 days presumption

- you took your car in for repair for one or more nonconformities within the Lemon Law Rights Period and the total number of **business** days which the car was subject to examination or repair adds up to 30 or more days

The more presumptions that apply to your car the better -- usually it means you have a stronger case. Make sure you claim each applicable presumption on your Demand for Arbitration form.

IMPORTANT: The presumptions in the law are just guidelines and are rebuttable. This means, for example, that the manufacturer may argue and present evidence to show that it was not given a reasonable opportunity to repair despite the fact that you brought the car in for repair 3 times.

WHAT SHOULD I DO IF I THINK I QUALIFY FOR ARBITRATION?

1. Letter to manufacturer. Send a letter by certified mail, return receipt requested to the manufacturer within the Lemon Law Rights Period. Send it to the address given for the manufacturer in the Lemon Law Statement of Rights form which should have been given to you when you purchased your car. You may use the sample letter provided to you in this handbook. Do not send the letter to the dealership.
2. Allow time. Although not required, it is reasonable to allow the manufacturer 10-14 days from the date it receives your notification, to cure the problem.
3. Make payments. Continue to make your monthly payments on your financed or leased car. Failure to do so may result in a repossession which may adversely affect your Lemon Law rights.
4. Allow inspection. The manufacturer has a right to inspect your car after you have submitted a demand for arbitration and a case has been initiated. The manufacturer should arrange a mutually convenient time, date, and location with you. During the inspection, the car may be test driven and tests with diagnostic equipment may be done. However, unless you authorize it, the manufacturer should not make another repair attempt. You have the right to request to review any test results before the arbitration.
5. Keep records. Keep a complete record of all your dealings with the manufacturer and dealer, including copies of repair orders, letters, and records of phone calls or conversations. If it would help to prove the existence of the nonconformity, take photographs (for example, of a water leak problem) or make a video recording (for example, of an intermittent noise).
6. Decide if you want an attorney. Most consumers present their own cases. Manufacturers usually send a local representative or participate in the arbitration by telephone. However, if a manufacturer has an attorney or you feel uncomfortable without one, you may want to be represented by an attorney. If you so choose, you must notify the SCAP Administrator well in advance of the arbitration date. The SCAP Administrator is NOT your representative and will NOT be present with you at your arbitration.

7. Decide if you need an expert witness. You may need an expert witness such as a mechanic to testify that the problem is one that is a serious safety defect or to testify that the problem constitutes a substantial impairment of the use, safety, or value of the car.
8. Fill out the form and enclose your documents and check. Use the demand for arbitration form provided in this booklet. In this form, you are making your formal legal claims against the manufacturer so you must fill it out clearly and completely. If your demand form is unclear or incomplete, it will be returned to you. Attach extra sheets of paper, if necessary, to include all the information on the different problems and dates of repairs.

Enclose 3 copies of all the documents requested. You must also send a \$50 filing fee with your request. If your case goes through arbitration and the final decision is in your favor, your \$50 will be refunded to you. Your request for arbitration will not be processed until it is filled out completely and accurately and all requested documents are provided. Do not send back the rest of this booklet because it contains information you need to prepare for your arbitration hearing.

9. Wait for notification of initiation of case. The SCAP Administrator will notify you by letter when your case is initiated. After your case is initiated, the arbitration will be scheduled and the arbitrator's decision will be due within 45 days.

CAN I SETTLE MY CASE WITHOUT GOING TO ARBITRATION?

Certainly, if the manufacturer offers you a settlement of your case, you are free to negotiate with the manufacturer regarding the terms of the settlement, and you are free to accept a settlement. In that situation, you will no longer need to go through the arbitration and risk losing your case. You will also get your remedy sooner because the manufacturer can start processing the paperwork for the settlement as soon as you agree to it. However, it is wise to get the terms in writing before withdrawing from the arbitration process. You should ask the SCAP Administrator to place your case on hold while the details of the settlement are being worked out. You must communicate directly with the manufacturer's representative to obtain concrete figures and information on all the terms of the settlement. If the terms are unclear to you, you should persist in clearing them up to your satisfaction. Make sure you provide any requested paperwork to the manufacturer on a timely basis to expedite the settlement process. As soon as you have confirmed the agreed-upon terms, you should contact the SCAP Administrator. Your \$50.00 will not be refunded as it defrays the administrative costs of the program.

Please note that if you have accepted a settlement offer and the manufacturer does not comply with the settlement, you may need to consult with an attorney to find out how to enforce the settlement agreement in court.

HOW SHOULD I PREPARE FOR THE ARBITRATION?

- Collect and organize your evidence. For example, arrange repair orders by date. If you are asking for collateral charges⁴ (such as tinting costs) or incidental charges⁵ (such as rental car costs), obtain proof of these expenses. Obtain a statement from your lender or your leasing company showing all your payments made to date and the payoff amount to release the title of the car. Your evidence may include repair orders, appraiser or used car dealer statements regarding the value of your vehicle, photographs, notarized statements or affidavits, diagrams, videotapes, or cassette recordings. You must inform the SCAP Administrator well in advance of the arbitration if you intend to present videotapes or other recordings so the proper equipment may be made available.
- Arrange for witnesses. Although notarized affidavits may be allowed by the arbitrator, more believable evidence is provided by live witnesses. You may also subpoena witnesses. Make sure your witnesses know when and where to be present, and tell them the arbitration may take all morning or afternoon. The arbitrator may employ the "witness exclusion rule". That means that your witness will only be in the room with you when it is his or her time to testify. Make sure you inform the SCAP Administrator of any witnesses who will be attending.
- Prepare an outline. Prepare an outline to help you present and remember relevant information.
- Prepare your response to the manufacturer's arguments. You will be sent a copy of the Manufacturer's Statement which says why it should not be required to replace or repurchase your car. Be prepared to respond to those arguments.
- Prepare questions for the manufacturer. Prepare questions for the manufacturer which may help to support your arguments or which may cast doubt on the manufacturer's arguments.

⁴ *Collateral charges* are those additional charges incurred as a result of the acquisition of the car. If manufacturer-installed or agent-installed items, taxes, government fees, etc. are included in your purchase contract, they are usually included as part of your refund if you win. You only have to provide additional proof of other charges that you paid separately.

⁵ *Incidental charges* means those reasonable costs incurred by a consumer such as towing charges and rental car costs, which are directly caused by the defects which are the subject of the claim. They do not include loss of use, loss of income, or personal injury claims.

- Get the car ready for inspection or test-drive by the arbitrator. The arbitrator may request to inspect or test-drive your car on the day of the arbitration. Make sure to bring evidence of current licensure and insurance.
- Arrange for an interpreter if needed. You may bring to the arbitration someone who can translate for you. Inform the SCAP Administrator in advance if you are going to do this.
- Decide if you want a binding or a non-binding arbitration. If you elect binding arbitration, neither party can ask for an appeal (called trial de novo) of the arbitrator's decision in court. Under non-binding arbitration, either party may ask for a trial de novo, but it must be done within 30 days after receipt of the decision. Careful consideration should be given to an appeal because the court will order that all reasonable costs of the trial as well as attorney's fees be paid by the party who demanded the trial de novo if that party does not improve its position by at least 25%. If neither party elects a trial de novo within 30 days, the arbitrator's decision becomes binding. Bring your completed "Election of Consumer" form (provided in this handbook) to the arbitration.
- Watch the SCAP video. Make arrangements with the SCAP Administrator to view the SCAP video well in advance of your arbitration or view the video provided on the SCAP website. The video will show you a mock arbitration and give you a better idea of what to expect at the arbitration and how best to prepare your case for presentation to the arbitrator.
- Internet research. Although the arbitrator may accept information from you regarding similar consumer complaints, take note that this information may not hold much weight because you may not be able to establish a direct relationship to your case. This is because the online complaint information does not usually include a determination as to the cause of the problems encountered, a technical assessment of the problems, whether the conditions were the same or similar, whether a combination of different malfunctions caused the problems, whether the problem is a design defect or an individual defect, or the results of the complaints. The vehicles complained about may also not be the exact same model and year as your vehicle. General complaint research will not have the same persuasive impact as live witnesses who can testify about similar complaints with your vehicle model and provide information on the repair attempts, tests, or inspections of the vehicles.

THE LEMON LAW ARBITRATION

- **Where do I go?** Hearings on Oahu are held at 235 S. Beretania Street, 9th Floor. Neighbor island hearings are held at various locations on those islands.
- **How long will it take?** Hearings may last from two to four hours depending on the complexities of the case and whether attorneys or witnesses are involved.
- **What happens at the arbitration?** The arbitrator will make introductory remarks. Then you will present your side of the story. The arbitrator and the manufacturer's representative may ask you questions. Next, the manufacturer's case is presented. Then, you and the arbitrator may ask questions. After all the evidence is received, an inspection and/or test drive may be done. At the conclusion of the hearing, each party may summarize and argue for a specific result. Unless the arbitrator orders you to turn in additional evidence, no further evidence is accepted after the hearing is completed.
- **How do I present my case?** The following is a guideline:
 1. State the specific nature of the problem.
 2. State any relevant conversations with the dealer or the manufacturer.
 3. Describe and document each repair attempt.
 4. Describe and document any new developments.
 5. Offer proof of each point, especially those in dispute.
 6. State what result you want. Briefly summarize the facts discussed.
- **What do I have to prove?** Depending on what is being disputed, you may need to prove to the arbitrator that:
 - your car had a defect covered by warranty, and you reported it in writing to the manufacturer during the Lemon Law Rights Period;
 - you gave the manufacturer or its authorized dealer a reasonable opportunity to repair during the Lemon Law Rights Period (see page 5) but the defect still continued;
 - the defect **SUBSTANTIALLY** impairs the use, value, or safety of the car, or the defect is so serious it is **LIKELY** to cause death or serious bodily injury if the vehicle is driven.

WHAT HAPPENS AFTER THE ARBITRATION?

- Receive decision by certified mail. The arbitrator's decision⁶ must be issued within 45 days after initiation of your case by the Administrator (unless an extension of time was agreed upon by both parties.) It will be mailed to you by certified mail. If you chose non-binding arbitration and lost, you must decide whether you will appeal. You may need to consult an attorney.
- If you get a refund, it may include any collateral or incidental charges which you presented to the arbitrator. However, **a reasonable mileage offset will be deducted using the formula provided by law**⁷. See the following sample refund calculation.
- If you get a replacement car, this is supposed to be a "comparable" car -- a car identical or reasonably equivalent to the car to be replaced, as it existed at the time of original acquisition. **You must pay the reasonable mileage offset as provided by law and you must arrange for comparable financing with your lender.** At times, a comparable replacement car cannot be agreed upon. If this is so, your arbitrator may award you a refund instead of a replacement car.
- Deadline for compliance. Generally, the deadline for compliance is within thirty (30) days from receipt of the decision. Usually, the manufacturer will contact you to arrange for the return of your car in exchange for the refund or replacement car (depending on what is awarded). If the manufacturer does not comply on a timely basis, you may need to consult with an attorney to find out how to enforce compliance with the decision in court.
- Under some circumstances, a party may file a request for clarification or request for technical correction with the Administrator after the decision has been issued. Details will be provided to you with the issuance of the decision.
- Under very limited circumstances, a party may file a Motion to Correct or Motion to Vacate with Circuit Court. You would need to consult with your attorney about this procedure.

⁶ All final decisions rendered in the State Certified Arbitration Program are public documents pursuant to Section 92F-12, Hawaii Revised Statutes.

⁷ *Reasonable offset* for use means the number of miles attributable to the consumer up to the date of the third repair attempt or the date of the first repair attempt for a serious safety defect, or the date of the 30th cumulative business day when the car is out of service by reason of repair, whichever occurs first. The reasonable offset for use is one percent of the purchase price for every thousand miles of use.

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	\$ 5,872.00
4.	Collateral charges (tinting)	\$ 800.00
5.	Incidental charges (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:

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

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

**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.

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	\$ 21,887.00
4.	Collateral charges (tinting)	\$ 800.00
5.	Incidental charges (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 (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 x 10.03 =	\$ 2,808.00
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**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.