

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 21-0002151 CAF**

<b>SHANDA HEBERT, Complainant</b>	§ § § § § § § § §	<b>BEFORE THE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
<b>v.</b>		
<b>AMERICAN HONDA MOTOR COMPANY, INC., Respondent</b>		

**DECISION AND ORDER**

Shanda Hebert (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2018 Honda Pilot. Complainant asserts that the vehicle is defective because several of the vehicle’s warning lights and messages have illuminated on occasion while Complainant was driving the vehicle and because the vehicle’s power steering and brakes locked up on one occasion. American Honda Motor Company, Inc. (Respondent) argued that the vehicle has been repaired, is currently operating as designed, and that no relief is warranted. The hearings examiner concludes that the vehicle has been repaired and that Complainant is not entitled to repurchase or replacement relief.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing on the merits in this case convened via Microsoft Teams on May 21, 2021, before Hearings Examiner Edward Sandoval. Shanda Hebert, Complainant, represented herself at the hearing. Also present to offer testimony was her husband, Randall Hebert. American Honda Motors Company, Inc., Respondent, was represented by Abigail Mathews, attorney with FrancisMathews, PLLC. Present to testify for Respondent were Adrian Jordan, District Parts and Service Manager, and Douglas Toler, Field Technical Specialist. The hearing record closed on May 21, 2021.

**II. DISCUSSION**

**A. Applicable Law**

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.<sup>1</sup> Second, the defect or

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<sup>1</sup> Tex. Occ. Code § 2301.604(a).

condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.<sup>4</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>5</sup>

In addition to these conditions, a rebuttable presumption can be established that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the repair attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>6</sup>

If a vehicle is found to have a nonconformity that creates a serious safety hazard which continues to exist, the rebuttable presumption that a reasonable number of repair attempts have been performed can be established if the vehicle has been subject to repair two or more times by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>7</sup>

“Serious safety hazard” means a life-threatening malfunction or nonconformity that substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.<sup>8</sup>

Finally, a rebuttable presumption can be established that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist that substantially impairs the vehicle’s use or market value, the vehicle has been out of service for repair for a cumulative total of 30 or more days, and the repairs attempts were made before the earlier of: (A) the date the express warranty expires; or (B)

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>5</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>6</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

<sup>7</sup> Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

<sup>8</sup> Tex. Occ. Code § 2301.601(4).

24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>9</sup>

The 30 days out of service requirement described in Section 2301.605(a)(3) does not include any period during which the manufacturer or distributor lends the vehicle owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.<sup>10</sup>

## **B. Complainant's Evidence and Arguments**

### **1. Shanda Hebert's Testimony**

Complainant purchased a new 2018 Honda Pilot from Gillman Honda (Gillman) in Houston, Texas on July 18, 2018, with mileage of 12 at the time of delivery.<sup>11,12</sup> On the date of hearing the vehicle's mileage was 21,572.

Complainant stated on her Lemon Law complaint that she feels that the vehicle is defective because the vehicle's dash alarms were going off and because she "lost control" of the vehicle's power steering and brakes.<sup>13</sup>

Complainant testified that on April 30, 2020, she was driving the vehicle when several warning lights and messages appeared on the vehicle's dashboard. In addition, the vehicle's brakes and power steering locked up. She was able to steer the vehicle to the side of the road and turned it off. When she turned the vehicle back on, the lights and messages were not there. However, they soon reappeared as she was driving home. The brakes and power steering worked correctly on the rest of Complainant's drive home. Complainant took the vehicle to Twin City Motors (TCM) in Port Arthur, Texas for repair on May 1, 2020. TCM's service technician observed warning lights and messages for the vehicle's stability assist (VSA), hill start assist, trailer stability assist (TSA), Park light, electronic power steering (EPS), transmission, all-wheel drive (AWD) and auto start/stop illuminated.<sup>14</sup> In addition, the technician discovered two (2) malfunction codes stored on the vehicle's computers.<sup>15</sup> The technician cleared the codes and they did not return.<sup>16</sup> The technician took a test drive in the vehicle and none of the lights or warning messages

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<sup>9</sup> Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

<sup>10</sup> Tex. Occ. Code § 2301.605(c).

<sup>11</sup> Complainant Ex. 3, Motor Vehicle Retail Installment Sales Contract dated July 18, 2020.

<sup>12</sup> Complainant Ex. 2, Odometer Disclosure Statement dated July 18, 2018.

<sup>13</sup> Complainant Ex. 1, Lemon Law Complaint dated October 16, 2020.

<sup>14</sup> Complainant Ex. 4, Repair Order dated May 1, 2020.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

appeared and the codes did not return.<sup>17</sup> The vehicle's mileage on this occasion was 17,335.<sup>18</sup> The vehicle was in TCM's possession for a few hours during this repair visit. Complainant was not provided a loaner vehicle while her vehicle was being repaired.

Complainant stated that the lights and warning messages reappeared on May 11, 2020, as she was driving home from a trip out of town. She pulled the vehicle over to the side of the road and turned it off and then turned it back on and the lights and messages turned off. However, they returned a few minutes later while Complainant continued her drive home. Complainant returned the vehicle to TCM for repair for the issue on May 11, 2020. TCM's service technician found two (2) malfunction codes stored on the vehicle's computers.<sup>19</sup> The technician was unable to determine how to correct the issue, so he contacted Respondent's technical assist line which recommended that one of Respondent's field representatives look at the vehicle.<sup>20</sup> TCM's technician replaced the vehicle's VSA modulator and right side engine harness in attempt to resolve the issue with the warning lights, but the problem persisted.<sup>21</sup> Respondent's representative determined that the EPS control unit shorted internally and needed to be replaced.<sup>22</sup> The dealer technician replaced the vehicle's EPS control unit and sub harness in order to resolve the issue with the warning lights and messages illuminating.<sup>23</sup> The mileage on the vehicle at the time was 17,546.<sup>24</sup> The vehicle was in TCM's possession until November 19, 2020; however, the repair was completed on or about July 10, 2020. Complainant refused to pick up the vehicle until November of 2020. Complainant was provided a loaner vehicle for the 30 days prior to July 10, 2020. Complainant testified that the warning lights and messages were still present on July 10, 2020, which is why she refused to pick up the vehicle at that time.

On October 13, 2020, Complainant mailed written notice of her dissatisfaction with the vehicle to Respondent.<sup>25</sup> Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles on October 16, 2020.<sup>26</sup>

After Complainant filed the Lemon Law complaint, Respondent asked for a final opportunity to inspect and repair the vehicle. Complainant granted the request. The inspection and repair were performed on or about November 3, 2020, at TCM. TCM's service technician replaced the vehicle's left engine harness in order to resolve the issue with the warning lights and messages

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Complainant Ex. 5, Repair Order dated May 11, 2020.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Complainant Ex. 9, Letter to American Honda Motor Company, Inc. dated October 13, 2020.

<sup>26</sup> Complainant Ex. 1, Lemon Law Complaint dated October 16, 2020.

illuminating.<sup>27</sup> The vehicle's mileage on this occasion was 17,561.<sup>28</sup> The vehicle was in TCM's possession until November 19, 2020. Complainant was provided a loaner vehicle while her vehicle was being repaired.

Complainant testified that the warning lights and messages have not illuminated since November of 2020. In addition, the vehicle's brakes and power steering have worked normally since the incident on April 30, 2020. However, Complainant stated that she still sees a warning message periodically that states: Shifting to Park: Apply Brake Pedal. She stated that the message appears about every three (3) to four (4) weeks.

## 2. Randall Hebert's Testimony

Randall Hebert, Complainant's husband, testified in the hearing. He stated that Complainant is the primary driver of the vehicle. Mr. Hebert drives the vehicle about three (3) to four (4) times per week.

Mr. Hebert testified that the warning lights and messages have never illuminated while he was driving the vehicle. However, he did observe the lights and messages at least once when Complainant was driving.

Mr. Hebert stated that he has observed the Shifting to Park: Apply Brake Pedal message appear on the vehicle's dashboard. He stated that the message appears when starting the vehicle. The message disappears after shifting the transmission out of park.

## C. Respondent's Evidence and Arguments

Douglas Toler, Field Technical Specialist, testified for Respondent. He has worked in the automotive industry since 1998. He first began work as a service technician at a dealership and worked for three (3) other dealerships until 2017, at which time he was hired by Respondent as a recall technical specialist. In 2019, Mr. Toler was moved to a field technical specialist position which is his current position. Mr. Toler is an Automotive Service Excellence (ASE) Certified Master Technician and a Honda Certified Master Technician.

Mr. Toler testified that he has inspected the vehicle on two (2) different occasions. He first saw the vehicle in July of 2020, when he was contacted by TCM's service technicians who asked for help in diagnosing the issues with the vehicle. Mr. Toler stated that he told the technicians to replace the vehicle's left engine wiring harness, but they actually replaced the right engine wiring

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<sup>27</sup> Complainant Ex. 6, Repair Order dated November 3, 2020.

harness at the time. Mr. Toler was then notified by Respondent's representatives in October of 2020 that he would have to inspect the vehicle as a final inspection and repair attempt pursuant to the Lemon Law complaint. After inspecting the vehicle in November of 2020, Mr. Toler advised TCM's technicians to replace the left engine wiring harness as he had suggested earlier. Mr. Toler stated that he did not see any warning lights illuminate on a test drive performed after the left engine wiring harness was replaced.

Mr. Toler also stated that the message currently seen by Complainant (*i.e.*, Shifting to Park: Apply Brake Pedal) is an informational message, not a warning message. Mr. Toler does not feel that there is any defect in the vehicle's brakes or power steering systems. He stated that he believes that the vehicle is repaired.

#### **D. Analysis**

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainant is entitled to have the vehicle repurchased or replaced.

##### **1. Brakes and Power Steering Issue**

The evidence presented at hearing indicates that the vehicle's brakes and power steering locked up on April 30, 2020. Complainant's testimony was that this has occurred only once since she's purchased the vehicle. Since repairs performed by Respondent's authorized dealers were performed after the incident occurred and the issue has not recurred, the hearings examiner must hold that the issue has been repaired and, as such, does not provide grounds to order repurchase or replacement relief for Complainant.

##### **2. Warning Lights Illuminating Issue**

The evidence taken at hearing indicates that several warning lights or messages have illuminated while Complainant was driving it. These warning lights and messages included the following:

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<sup>28</sup> *Id.*

vehicle stability assist (VSA), hill start assist, trailer stability assist (TSA), Park light, electronic power steering (EPS), transmission, all-wheel drive (AWD) and auto start/stop warning. Complainant purchased the vehicle on July 18, 2018 and presented the vehicle to Respondent's authorized dealer for repair for the issue of the warning lights and messages appearing on May 1, 2020; May 11, 2020, and November 3, 2020. On November 3, 2020, TCM's service technician replaced the vehicle's left engine wiring harness in order to address the issue of the lights and messages illuminating. The specific messages complained of have not reappeared since that final repair on November 3, 2020. However, a new message (Shifting to Park: Apply Brake Pedal) has appeared occasionally. Testimony established that this is not a warning message, but an informational message and does not indicate that there is any issue with the vehicle.

Occupations Code § 2301.603 provides that "a manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer's converter's or distributor's express warranty." Relief under the Lemon Law can only be granted if the manufacturer of a vehicle has been unable to conform a vehicle to the manufacturer's warranty. If a vehicle has been repaired, then no relief can be possible. A loss of confidence in the vehicle when a defect has been cured does not warrant relief under the Lemon Law. The Lemon Law requires that in order for a vehicle to be determined to be a "lemon" the "nonconformity continues to exist" after the manufacturer has made repeated repair attempts.<sup>29</sup> In the present case, the evidence reveals that the vehicle has been fully repaired and that it currently conforms to the manufacturer's warranty. Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired and, as such, repurchase or replacement relief for Complainant is not warranted.

Complainant's request for repurchase or replacement relief is denied.

### III. FINDINGS OF FACT

1. Shanda Hebert (Complainant) purchased a new 2018 Honda Pilot on July 18, 2018, from Gillman Honda (Gillman) in Houston, Texas with mileage of 12 at the time of delivery.
2. The manufacturer or distributor of the vehicle was American Honda Motor Company, Inc. (Respondent).
3. The vehicle's mileage on the date of the initial hearing was 21,572.
4. On April 30, 2020, Complainant experienced a situation where the vehicle stability assist (VSA), hill start assist, trailer stability assist (TSA), Park light, electronic power steering

- (EPS), transmission, all-wheel drive (AWD) and auto start/stop warning lights and/or messages illuminated and the vehicle's brakes and power steering locked up. Complainant had to turn the vehicle off and back on to get the brakes and power steering to work.
5. During the same drive as described in Findings of Fact #4, after restarting the vehicle, all the same warning lights and messages illuminated before Complainant arrived at her destination. However, the brakes and power steering operated normally.
  6. Prior to filing the Lemon Law complaint, Complainant took the vehicle to Respondent's authorized dealer, Twin Cities Motors (TCM) in Port Arthur, Texas, on the following dates to address her concerns regarding the warning lights and messages illuminating issue:
    - a. May 1, 2020, at 17,355 miles; and
    - b. May 11, 2020, at 17,546 miles.
  7. On May 1, 2020, TCM's service technician found two (2) trouble codes stored on the vehicle's computers and cleared them to resolve the issue of the vehicle's warning lights illuminating.
  8. On May 11, 2020, TCM's service technician found two (2) trouble codes stored on the vehicle's computers and replaced the vehicle's VSA modulator, right side engine harness, EPS control unit and EPS sub harness in order to resolve the issue of the warning lights illuminating.
  9. Complainant refused to pick up the vehicle from Twin Cities after the May 11, 2020 repair.
  10. On October 13, 2020, Complainant sent a letter to Respondent advising them of her dissatisfaction with the vehicle.
  11. On October 16, 2020, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
  12. On November 3, 2020, Complainant allowed Respondent's field service technician (FST) to perform a final inspection of the vehicle at TCM. The vehicle's mileage at the time was 17,561.

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<sup>29</sup> Tex. Occ. Code § 2301.605.

13. During the repair visit described in Findings of Fact #12, Respondent's FST had the vehicle's left engine harness replaced in order to resolve the issue of the warning lights illuminating.
14. Complainant has not observed the warning lights and messages described in Findings of Fact #4 reappear since the November 2020 repair to the vehicle.
15. Complainant has observed the Shifting to Park: Apply Brake Pedal message appear on the vehicle's dashboard a few times since the final repair in November of 2020.
16. The message described in Findings of Fact #15 is an informational message and not a warning message.
17. The vehicle's brakes and power steering have not locked up again since April 30, 2020.
18. On December 22, 2020, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
19. The hearing on the merits in this case convened via Microsoft Teams on May 21, 2021, before Hearings Examiner Edward Sandoval. Shanda Hebert, Complainant, represented herself at the hearing. Also present to offer testimony was her husband, Randall Hebert. American Honda Motors Company, Inc., Respondent, was represented by Abigail Mathews, attorney with FrancisMathews, PLLC. Present to testify for Respondent were Adrian Jordan, District Parts and Service Manager, and Douglas Toler, Field Technical Specialist. The hearing record closed on May 21, 2021.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.

3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

**SIGNED June 30, 2021.**

  
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**EDWARD SANDOVAL**  
**CHIEF HEARINGS EXAMINER**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**TEXAS DEPARTMENT OF MOTOR VEHICLES**