



GOV. MSG. NO. 622

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

June 3, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 3, 2010, the following bill was signed into law:

SB2859 SD2 HD1 CD1

A BILL FOR AN ACT
RELATING TO THE MOTOR VEHICLE INDUSTRY
LICENSING ACT.
ACT 164 (10)

Sincerely,



LINDA LINGLE

Approved by the Governor

on JUN 3 2010

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

ACT 164
S.B. NO. 2859
S.D. 2
H.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 437, Hawaii Revised Statutes, is
2 amended by designating sections 437-1 through 437-42 as part I,
3 entitled "General Provisions".

4 SECTION 2. Chapter 437, Hawaii Revised Statutes, is
5 amended by adding a new part II with new sections to be
6 appropriately designated and to read as follows:

7 **"PART II. MANUFACTURER, DISTRIBUTOR, AND DEALER DISPUTES**

8 **§437-A Dispute resolution.** (a) In any dispute among a
9 manufacturer, distributor, or dealer on matters governed by this
10 part, the manufacturer, distributor, or dealer may seek a
11 hearing from the department of commerce and consumer affairs.

12 (b) The office of administrative hearings of the
13 department of commerce and consumer affairs shall accept no more
14 than thirty requests for hearing per fiscal year under this
15 section. The office of administrative hearings may reject a
16 request for a hearing if in the opinion of the hearings officer
17 the matter presented does not involve the interpretation or
18 enforcement of the provisions of this chapter. The director of



1 commerce and consumer affairs shall appoint a hearings officer
2 pursuant to section 26-9(f) who shall have jurisdiction to
3 review any request for hearing filed under this section. The
4 hearings officer shall have the power to issue subpoenas,
5 administer oaths, hear testimony, find facts, make conclusions
6 of law, and issue written decisions that shall be final and
7 conclusive, unless a party adversely affected by the decision
8 files an appeal in the circuit court under section 91-14. All
9 information so provided in and for the hearing shall be sealed
10 and not subject to public review or access. The information
11 shall also remain confidential and not subject to public access
12 or review on appeal pursuant to section 91-14.

13 (c) The party requesting the hearing shall file a petition
14 with the department of commerce and consumer affairs specifying
15 the specific provisions of this chapter that are in issue; the
16 interpretation or enforcement sought; the legal and factual
17 basis for the interpretation or enforcement sought; and the
18 remedy or remedies sought. The party requesting a hearing under
19 this section shall provide a copy of the petition to the board
20 at the time the petition is filed. Each adverse party shall
21 file a response with the department of commerce and consumer
22 affairs.



1 (d) Hearings under this section shall be conducted
2 pursuant to chapter 91 and rules adopted by the department of
3 commerce and consumer affairs. The burden of proof, including
4 the burden of producing the evidence and the burden of
5 persuasion, shall be upon the party initiating the proceeding,
6 unless otherwise specified in this chapter. The standard of
7 proof required shall be by a preponderance of the evidence.

8 (e) The hearings officer shall issue written findings of
9 fact, conclusions of law, and an order as expeditiously as
10 practicable after the hearing has been concluded.

11 (f) The prevailing party in any proceeding brought under
12 this section shall provide a copy of the hearings officer's
13 written findings of fact, conclusions of law, and order to the
14 board within ten days of receipt of the written findings of
15 fact, conclusions of law, and order.

16 (g) Each party to the hearing shall bear the party's own
17 costs, including attorney's fees. Both parties shall share
18 equally in the cost of the hearing, including any allocable
19 departmental overhead attributable to the hearing.

20 (h) Any party to a proceeding brought under this section
21 who is aggrieved by a final decision of a hearings officer may
22 apply for judicial review of that decision pursuant to section



1 91-14; provided that any party seeking judicial review pursuant
2 to section 91-14 shall be responsible for the costs of preparing
3 the record on appeal, including the cost of preparing the
4 transcript of the hearing. Any party aggrieved by a final
5 decision of a hearings officer who applies for judicial review
6 under this section shall provide a copy of the party's
7 application for judicial review to the board within ten days of
8 filing the application for judicial review.

9 (i) The department of commerce and consumer affairs may
10 adopt rules, pursuant to chapter 91, to effectuate the purpose
11 of this section and to implement its provisions, including fees
12 to recover the cost of hearings.

13 **§437-B Reciprocal rights and obligations among dealers,**
14 **manufacturers, and distributors of motor vehicles. A**
15 **manufacturer or distributor shall not:**

16 (1) Require any dealer in the State to enter into any
17 agreement with the manufacturer or distributor or any
18 other party that requires the law of another
19 jurisdiction to apply to any dispute between the
20 dealer and manufacturer or distributor, or requires
21 that the dealer bring an action against the
22 manufacturer or distributor in a venue outside of



1 Hawaii, or requires the dealer to agree to arbitration
2 or waive its rights to bring a cause of action against
3 the manufacturer or distributor, unless done in
4 connection with a settlement agreement to resolve a
5 matter or pending dispute between a manufacturer or
6 distributor, or officer, agent, or other
7 representative thereof, and the dealer; provided,
8 however, that such agreement has been entered
9 voluntarily for adequate and valuable consideration;
10 and provided further that the renewal or continuation
11 of a franchise agreement shall not by itself
12 constitute adequate and valuable consideration;

- 13 (2) Require any dealer in the State to enter into any
14 agreement with the manufacturer or distributor or any
15 other party, to prospectively assent to a release,
16 assignment, novation, waiver, or estoppel, which
17 instrument or document operates, or is intended by the
18 applicant or licensee to operate, to relieve any
19 person from any liability or obligation of this
20 chapter, unless done in connection with a settlement
21 agreement to resolve a matter or pending dispute
22 between a manufacturer or distributor, or officer,



1 agent, or other representative thereof, and the
2 dealer; provided, however, that such agreement has
3 been entered voluntarily for adequate and valuable
4 consideration; and provided further that the renewal
5 or continuation of a franchise agreement shall not by
6 itself constitute adequate and valuable consideration;

7 (3) Cancel or fail to renew the franchise agreement of any
8 dealer in the State without providing notice, and
9 without good cause and good faith, as provided in
10 section 437-H;

11 (4) Refuse or fail to offer an incentive program, bonus
12 payment, holdback margin, or any other mechanism that
13 effectively lowers the net cost of a vehicle to any
14 franchised dealer in the State if the incentive,
15 bonus, or holdback is made to one or more same line
16 make dealers in the State;

17 (5) Unreasonably prevent or refuse to approve the
18 relocation of a dealership to another site within the
19 dealer's relevant market area. The dealer shall
20 provide the manufacturer or distributor with notice of
21 the proposed address and a reasonable site plan of the
22 proposed location. The manufacturer or distributor



1 shall approve or deny the request in writing no later
2 than sixty days after receipt of the request. Failure
3 to deny the request within sixty days constitutes
4 approval;

5 (6) Require a dealer to construct, renovate, or make
6 substantial alterations to the dealer's facilities
7 unless the manufacturer or distributor can demonstrate
8 that such construction, renovation, or alteration
9 requirements are reasonable and justifiable based on
10 reasonable business consideration, including current
11 and reasonably foreseeable projections of economic
12 conditions existing in the automotive industry at the
13 time such action would be required of the dealer, and
14 agrees to make a good faith effort to make available,
15 at the dealer's option, a reasonable quantity and mix
16 of new motor vehicles, which, after a reasonable
17 analysis of market conditions, are projected to meet
18 the sales level necessary to support the increased
19 overhead incurred by the dealer as a result of the
20 required construction, renovation, or alteration;
21 provided, however, that a dealer may be required by a
22 manufacturer or distributor to make reasonable



1 facility improvements and technological upgrades
2 necessary to support the technology of the
3 manufacturer's or distributor's vehicles. If the
4 dealer chooses not to make such facility improvements
5 or technological upgrades, the manufacturer or
6 distributor shall not be obligated to provide the
7 dealer with the vehicles which require the
8 improvements or upgrades;

9 (7) Require the dealer to establish or maintain an
10 exclusive showroom or facility unless justified by
11 current and reasonably expected future economic
12 conditions existing in the dealer's market and the
13 automobile industry at the time the request for an
14 exclusive showroom or facility is made; provided that
15 the foregoing shall not restrict the terms and
16 conditions of any agreement for which the dealer has
17 voluntarily accepted separate and valuable
18 consideration;

19 (8) Condition the award of an additional franchise on the
20 dealer entering a site control agreement or the dealer
21 waiving its rights to protest the manufacturer's or
22 distributor's award of an additional franchise within



1 the dealer's relevant market area; provided that the
2 foregoing shall not restrict the terms and conditions
3 of any agreement for which the dealer has voluntarily
4 accepted separate and valuable consideration;

5 (9) Require a dealer or the dealer's employees to attend a
6 training program that does not relate directly to the
7 sales or service of a new motor vehicle in the line
8 make of that sold or serviced, or both, by the dealer;

9 (10) Require a dealer to pay all or part of the cost of an
10 advertising campaign or contest, or purchase any
11 promotional materials, showroom, or other display
12 decorations or materials at the expense of the dealer
13 without the consent of the dealer, which consent shall
14 not be unreasonably withheld;

15 (11) Implement or establish a customer satisfaction index
16 or other system measuring a customer's degree of
17 satisfaction with a dealer as a sale or service
18 provider unless any such system is designed and
19 implemented in such a way that is fair and equitable
20 to both the manufacturer and the dealer. In any
21 dispute between a manufacturer, distributor, and a
22 dealer, the party claiming the benefit of the system



1 as justification for acts in relation to the franchise
2 shall have the burden of demonstrating the fairness
3 and equity of the system both in design and
4 implementation in relation to the pending dispute.

5 Upon request of any dealer, a manufacturer or
6 distributor shall disclose in writing to such dealer a
7 description of how that system is designed and applied
8 to such dealer;

9 (12) Implement or establish an unreasonable, arbitrary, or
10 unfair sales or other performance standard in
11 determining a dealer's compliance with a franchise
12 agreement; or

13 (13) Implement or establish a system of motor vehicle
14 allocation or distribution to one or more of its
15 dealers that is unfair, inequitable, or unreasonably
16 discriminatory. As used in this paragraph, "unfair"
17 includes without limitation, requiring a dealer to
18 accept new vehicles not ordered by the dealer or the
19 refusal or failure to offer to any dealer all models
20 offered to its other same line make dealers in the
21 State. The failure to deliver any motor vehicle shall
22 not be considered a violation of this section if such



1 failure is due to an act of God, work stoppage, or
 2 delay caused by a strike or labor difficulty, shortage
 3 of products or materials, freight delays, embargo, or
 4 other causes of which the motor vehicle franchisor
 5 shall have no control. Notwithstanding the foregoing,
 6 a dealer may be required by a manufacturer or
 7 distributor to make reasonable facility improvements
 8 and technological upgrades necessary to support the
 9 technology of the manufacturer's or distributor's
 10 vehicles. If the dealer chooses not to make such
 11 facility improvements or technological upgrades, the
 12 manufacturer or distributor shall not be obligated to
 13 provide the dealer with the vehicles which require the
 14 improvements or upgrades.

15 **§437-C Sale, assignment, or transfer of franchise to**
 16 **qualified purchaser.** (a) A manufacturer or distributor shall
 17 not unreasonably withhold consent to the sale, assignment, or
 18 transfer of the franchise to a qualified purchaser capable of
 19 being licensed as a dealer.

20 (b) The dealer shall notify the manufacturer or
 21 distributor, in writing, of its desire to sell, assign, or
 22 transfer its franchise and identify the proposed transferee's



1 name, address, financial qualifications, and business
2 experience. Along with such notice, the dealer shall also
3 provide the manufacturer or distributor with completed
4 application forms and related information generally used by the
5 manufacturer or distributor to conduct its review of such a
6 proposal, and a copy of all agreements regarding the proposed
7 sale, assignment, or transfer. The manufacturer or distributor
8 shall, within thirty days of receipt of the application and all
9 supporting documentation as specified therein, review the
10 application and identify in writing the additional information,
11 data, or documents, if any, needed by the manufacturer or
12 distributor to complete its review. If the manufacturer or
13 distributor does not reject the application within sixty days of
14 receipt of the completed application and all supporting
15 documentation or within sixty days of receipt of any additional
16 information, data, or documents timely requested by the
17 manufacturer or distributor, the application shall be considered
18 approved, unless the sixty-day deadline is extended by mutual
19 agreement of the manufacturer or distributor and the dealer.

20 (c) If a manufacturer or distributor denies a dealer's
21 proposed sale, assignment, or transfer of the franchise, the
22 dealer may file a petition in the manner prescribed in section



1 437-A, within sixty days of the notice of denial. The
2 manufacturer or distributor shall have the burden of proof to
3 demonstrate at a hearing pursuant to a timely filed complaint
4 that the proposed transferee is not of good moral character or
5 does not meet the written, reasonable, and uniformly applied
6 business standards or qualifications of the manufacturer
7 relating to the financial qualifications of the transferee and
8 business experience of the transferee or the transferee's
9 executive management.

10 **§437-D Transfer of franchise to successor who is not a**
11 **qualified purchaser.** (a) A manufacturer or distributor shall
12 not refuse or fail to give effect, unless it has good cause, to
13 the dealer's designated successor, whether designated by will,
14 other estate planning document, or written notice to the
15 manufacturer or distributor either while the dealer was living
16 or within ninety days of the dealer's death or incapacity.

17 (b) In determining whether good cause exists for the
18 manufacturer's or distributor's refusal to honor the succession,
19 the manufacturer or distributor shall have the burden to prove
20 that the successor is not of good moral character, is not
21 willing to be bound by the terms of the franchise agreement, and
22 is either not qualified to operate the dealership or fails to



1 demonstrate that the dealership will be operated by a qualified
2 executive manager.

3 (c) The designated successor shall furnish written notice
4 to the manufacturer or distributor including all necessary
5 application forms and related information customarily required
6 by the manufacturer or distributor of the successor's intention
7 to succeed to the ownership of the new motor vehicle dealership
8 within sixty days prior to the designee's actual proposed
9 succession to dealership ownership for the manufacturer or
10 distributor to determine whether the proposed successor meets
11 the normal, reasonable, and uniformly applied standards for the
12 grant of an application as a new motor vehicle dealer.

13 (d) The manufacturer or distributor shall notify the
14 proposed successor of its belief that good cause exists to
15 refuse to honor the succession within sixty days after receipt
16 of the notice of the proposed successor's intent to succeed the
17 franchise, and the manufacturer or distributor shall detail its
18 reasons why it believes good cause exists to deny the
19 succession.

20 (e) A proposed successor may file a petition in the manner
21 prescribed in section 437-A within sixty days after receipt of
22 the manufacturer's or distributor's notice of refusal to honor



1 the succession. The franchise shall continue, and the
2 manufacturer or distributor is prohibited from any action to the
3 contrary, until a final judgment has been rendered on the
4 proposed succession.

5 **§437-E Establishment or relocation of franchise within**
6 **relevant market area.** (a) When a manufacturer or distributor
7 establishes or relocates a franchise within the relevant market
8 area of an existing dealer with a franchise for the same line
9 make, the manufacturer or distributor shall provide a notice to
10 such existing dealers, hereinafter "affected dealers". For the
11 purposes of this section, "affected dealer" means a dealer that
12 operates a same line make franchise in a relevant market area
13 wherein the manufacturer or distributor is proposing to add or
14 relocate a franchise. The manufacturer's or distributor's
15 notice shall state the location of the proposed dealership and
16 the date on or after which the franchise intends to be engaged
17 in business.

18 (b) An affected dealer may file a petition in the manner
19 prescribed in section 437-A within thirty days of receipt of the
20 manufacturer's or distributor's notice for determination of
21 whether the manufacturer or distributor has good cause to
22 establish or relocate an additional franchise within the



1 dealer's relevant market area. When such a petition is filed,
2 the manufacturer or distributor shall not establish or relocate
3 the proposed franchise until a hearing has been held and a
4 determination made whether good cause exists for the proposed
5 addition or relocation. The determination of a petition filed
6 under this subsection shall be made no later than one hundred
7 eighty days from receipt of notice of the petition except for
8 good cause. The manufacturer or distributor shall have the
9 burden of proof to demonstrate good cause exists for the
10 addition or relocation of an additional franchise within the
11 affected dealer's relevant market area.

12 (c) In determining whether the manufacturer or distributor
13 has good cause to add or relocate the franchise into an affected
14 dealer's relevant market area the hearings officer under section
15 437-A shall consider and make findings upon evidence including
16 the permanency and size of investment made and the reasonable
17 obligations incurred by the existing new motor vehicle dealers
18 in the relevant market area; the growth or decline in population
19 and new car registrations in the relevant market area; the
20 effect on the consuming public in the relevant market area;
21 whether it is injurious or beneficial to the public welfare for
22 a new dealer to be established; whether the new motor vehicle



1 dealers of the same line make in that area are providing
2 adequate competition and convenient customer care for the motor
3 vehicles of the same line make including the adequacy of motor
4 vehicle sales and service facilities, equipment, supply of motor
5 vehicle parts, and qualified service personnel; whether the
6 establishment or relocation of the proposed dealership appears
7 to be warranted and justified based on economic and marketing
8 conditions pertinent to dealers competing in the community or
9 territory, including anticipating future changes; the effect on
10 the relocating dealer of a denial of its relocation into the
11 relevant market area; and the reasonably expected market
12 penetration of the line make motor vehicle for the community or
13 territory involved, after consideration of all factors which may
14 affect such penetration, including demographic factors such as
15 age, income, education, size class preference, product
16 popularity, retail lease transactions, or other factors
17 affecting sales to consumers of the community or territory.

18 (d) This section shall not apply to the relocation of an
19 existing dealer within two miles of the dealer's existing
20 dealership location; the appointment of a successor dealer at
21 the same location as its predecessor or within a two-mile radius
22 from any boundary of the predecessor's former location within



1 one year from the date on which the predecessor ceased
2 operations or was terminated, whichever occurred later; or the
3 relocation of a dealer to a site that is farther away from the
4 protesting affected dealer than the existing location.

5 **§437-F Reimbursement for parts.** (a) In no event shall
6 any manufacturer or distributor pay its dealers a markup on
7 parts for warranty work that is less than that charged by the
8 dealer to the retail customers of the dealer; provided that such
9 dealer's retail parts markup is not unreasonable when compared
10 with that of same line make authorized franchise dealers of the
11 manufacturer or distributor for identical merchandise or
12 services in the State.

13 (b) The retail markup charged by the dealer shall be
14 established by submitting to the manufacturer or distributor a
15 sufficient quantity of numerically consecutive repair orders
16 from the most recent months to provide one hundred qualifying
17 customer-paid repair orders. For a dealer unable to provide one
18 hundred qualifying customer-paid repair orders out of all
19 numerically consecutive repair orders within the two-month
20 period prior to the submission, the dealer shall submit customer
21 service repair orders of all types, including customer pay,
22 warranty, and internal, for that two-month period. The repair



1 orders shall contain the price and percentage markup. Dealers
2 shall declare in their submission the average markup the dealer
3 is declaring as its new parts reimbursement rate. The declared
4 parts reimbursement markup shall take effect within ninety days
5 after initial submission to the manufacturer or distributor and
6 shall be presumed to be fair and reasonable. However, the
7 manufacturer or distributor may make reasonable requests for
8 additional information supporting the submission. The ninety-
9 day timeframe in which the manufacturer or distributor shall
10 make the declared parts reimbursement markup effective shall
11 commence following receipt from the dealer of any reasonably
12 requested supporting information. The dealer shall not request
13 a change in the parts reimbursement markup more than once every
14 twelve months.

15 (c) In determining qualifying repair orders for parts, the
16 following work shall not be included: repairs for manufacturer
17 or distributor special events; repairs covered by any insurance
18 or service contract; federal, state, or local government
19 legislated vehicle emission or safety inspections; parts sold at
20 wholesale or repairs performed at wholesale, which shall include
21 any sale or service to a fleet of vehicles; engine assemblies
22 and transmission assemblies; routine maintenance not covered



1 under any retail customer warranty, such as fluids, filters, and
2 belts not provided in the course of repairs; nuts, bolts,
3 fasteners, and similar items that do not have an individual part
4 number; tires; and vehicle reconditioning.

5 (d) Dealers shall have at least thirty days after the
6 repair work is completed to submit a claim for approval. All
7 claims made by the dealers for compensation for delivery,
8 preparation, and warranty work shall be approved or disapproved
9 and if approved, paid within forty-five days after receipt by a
10 manufacturer or distributor of a properly completed claim. All
11 sale incentive claims shall be approved or disapproved and if
12 approved, paid within sixty days after receipt by a manufacturer
13 or distributor of a properly completed claim. When any claim is
14 disapproved, the dealer shall be notified in writing of the
15 grounds for disapproval. Failure to disapprove a claim within
16 the required timeframe constitutes approval of the claim.

17 **§437-G Warranty and incentive audits.** (a) No
18 manufacturer or distributor shall conduct a warranty or
19 incentive audit on previously paid claims or chargeback any
20 warranty or incentive payment previously made more than one year
21 after the date the manufacturer or distributor made the payment



1 to the dealer. This section shall not apply to fraudulent
2 claims.

3 (b) A manufacturer or distributor shall not chargeback a
4 dealer for sales or warranty payments unless the manufacturer or
5 distributor can satisfy its burden of proof that the dealer's
6 claim was fraudulent or that the dealer did not substantially
7 comply with the reasonable written procedures of the
8 manufacturer or distributor.

9 (c) The manufacturer or distributor shall provide the
10 dealer a written notice thirty days before imposing a proposed
11 chargeback. The dealer may protest the imposition of a proposed
12 chargeback prior to the imposition of a proposed chargeback.
13 The dealer, manufacturer, or distributor shall conduct any
14 internal dispute resolution process in accordance with the
15 franchise agreement. After the internal dispute resolution
16 process is concluded, the dealer may file a petition in the
17 manner prescribed in section 437-A protesting the proposed
18 chargeback amount. If a petition is filed, the proposed
19 chargeback shall be stayed during the entirety of the action and
20 until a final judgment has been rendered.

21 **§437-H Cancellation or failure to renew franchise**

22 **agreement.** (a) A manufacturer or distributor shall give



1 written notice to the dealer and the board of the manufacturer's
2 intent to terminate, discontinue, cancel, or fail to renew a
3 franchise agreement at least sixty days before the effective
4 date thereof, and state with specificity the grounds being
5 relied upon for such discontinuation, cancellation, termination,
6 or failure to renew; provided that the manufacturer or
7 distributor may provide the notice fifteen days before the
8 effective date of termination, discontinuation, cancellation, or
9 non-renewal in the following circumstances:

- 10 (1) The dealer has filed a voluntary petition in
11 bankruptcy or has had an involuntary petition in
12 bankruptcy filed against it which has not been
13 discharged within thirty days after the filing, there
14 has been a closeout or sale of a substantial part of
15 the dealer's assets related to the business, or there
16 has been a commencement of dissolution or liquidation
17 of the dealer;
- 18 (2) The dealer has failed to operate in the normal course
19 of business for seven consecutive days or has
20 otherwise abandoned the business;



1 (3) The dealer has pleaded guilty to or has been convicted
2 of a felony affecting the relationship between the
3 dealer and the manufacturer or distributor;

4 (4) The dealer has engaged in conduct that is injurious or
5 detrimental to the dealer's customers or to the public
6 welfare;

7 (5) There has been a change, without the prior written
8 approval of the manufacturer or distributor, in the
9 location of the dealer's principal place of business
10 under the dealership agreement; or

11 (6) Misrepresentation or fraud upon the manufacturer by
12 the dealer.

13 (b) A dealer who receives notice of intent to terminate,
14 discontinue, cancel, or fail to renew may, within the sixty-day
15 notice period, file a petition in the manner prescribed in
16 section 437-A for a determination of whether such action is
17 taken in good faith and supported by good cause. The
18 manufacturer or distributor shall have the burden of proof that
19 such action is taken in good faith and supported by good cause.

20 (c) If the manufacturer's or distributor's notice of
21 intent to terminate, discontinue, cancel, or fail to renew is
22 based upon the dealer's alleged failure to comply with sales or



1 service performance obligations, the dealer shall first be
2 provided with notice of the alleged sales or service
3 deficiencies and afforded at least one hundred eighty days to
4 correct any alleged failure before the manufacturer or
5 distributor may send its notice of intent to terminate,
6 discontinue, cancel, or fail to renew. Good cause shall not be
7 deemed to exist if a dealer substantially complies with the
8 manufacturer's or distributor's reasonable performance
9 provisions within the one hundred eighty-day cure period, or if
10 the failure to demonstrate substantial compliance was due to
11 factors that were beyond the control of the dealer.

12 (d) Good cause shall not exist absent a breach of a
13 material and substantial term of the franchise agreement. The
14 existence of one or more circumstances enumerated in subsection
15 (a) (1) through (6) above shall be presumed to be good cause, and
16 the dealer shall have the burden of proof to show that the
17 action was not taken in good faith and supported by good cause.

18 (e) Except in the circumstances enumerated in subsection
19 (a) (1) through (6) above, the franchise agreement shall remain
20 in effect until a final judgment is entered after all appeals
21 are exhausted, and during that time the dealer shall retain all



1 rights and remedies pursuant to the franchise agreement,
2 including the right to sell or transfer the franchise.

3 (f) Upon the termination, discontinuation, cancellation,
4 or failure to renew the franchise agreement by the manufacturer
5 or distributor, the manufacturer or distributor shall compensate
6 the dealer for all new, unused, and undamaged parts listed in
7 the current parts catalog and still in the original, resalable
8 merchandising packages and in unbroken lots; provided that for
9 sheet metal, a comparable substitute may be used. Prices shall
10 be those in effect at the time the manufacturer or distributor
11 receives the parts, less applicable allowances; the fair market
12 value of all undamaged, unmodified special tools, equipment, and
13 signage required by the manufacturer or distributor and acquired
14 by the dealer within the three years prior to the termination;
15 all new, undamaged, and unsold vehicle inventory of the current
16 model year and one model year prior acquired from the
17 manufacturer or distributor or from another same line make
18 dealer in the ordinary course of business prior to the effective
19 date of termination or non-renewal; provided that the vehicle
20 has less than five hundred miles registered on the odometer.
21 The purchase price shall be the dealer's net acquisition cost.
22 The compensation shall be paid to the dealer no later than



1 ninety days from the date of the franchise termination,
2 discontinuation, cancellation, or failure to renew.

3 (g) In addition to the other compensation set forth in
4 this section, upon the termination, discontinuation,
5 cancellation, or failure to renew the franchise agreement by a
6 manufacturer or distributor without good cause and good faith;
7 or as a result of the discontinuation of a line make, the
8 manufacturer or distributor shall compensate the dealer at the
9 fair market value for the dealer's capital investment, which
10 shall include the going business value of the business,
11 goodwill, property, and improvement owned or leased by the
12 dealer for the purpose of the franchise as of the effective date
13 of the termination or one day prior to the date of the notice,
14 whichever is greater. The compensation shall be paid to the
15 dealer no later than ninety days from the date of the franchise
16 termination, discontinuation, cancellation, or failure to renew.

17 (h) As used in this section, "good faith" means the duty
18 of each party to any franchise agreement to fully comply with
19 that agreement, and to act in a fair and equitable manner
20 towards each other."

21 SECTION 3. Section 437-1, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§437-1 Legislative findings and declaration. The

2 legislature finds that:

3 (1) The manufacture, distribution, and sales of motor
4 vehicles in the State vitally affects the general
5 economy of the State and the public interest and
6 public welfare;

7 (2) Manufacturers of motor vehicles [~~whose~~] without
8 physical manufacturing facilities [~~are not located~~]
9 within the State[~~;~~] and motor vehicle distributors[~~;~~
10 ~~are doing~~] doing business in the State through their
11 control over, and relationships and transactions with
12 their dealers, branches, and representatives; and

13 (3) The geographical location of Hawaii makes it necessary
14 to ensure [~~the availability of~~] that motor vehicles
15 [and], parts and dependable service [~~therefor~~] are
16 available within the State to protect and preserve the
17 transportation system and the investments of its
18 residents.

19 The legislature declares, on the basis of the foregoing
20 findings, that it is necessary to regulate and to license motor
21 vehicle manufacturers, distributors, dealers, salespersons, and
22 auctions in the State[~~;~~] in order to prevent frauds,



1 impositions, and other abuses against its residents[7] and to
2 protect and preserve the economy and the transportation system
3 of the State. In order to further this intent, the legislature
4 finds that this chapter is remedial and shall apply to all
5 franchise agreements existing as of the date of enactment,
6 except to the extent that such application violates any
7 provision of the State or federal constitutions."

8 SECTION 4. Section 437-1.1, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By adding a new definition of "relevant market area" to
11 be appropriately inserted and to read:

12 "Relevant market area" means the following:

13 (1) In a county with a population of less than five
14 hundred thousand persons according to the most recent
15 data of the United States Census Bureau or the data of
16 the department of business, economic development, and
17 tourism, the relevant market area shall be the county
18 in which the dealer is located; or

19 (2) In a county with a population of more than five
20 hundred thousand persons according to the most recent
21 data of the United States Census Bureau or the data of
22 the department of business, economic development, and



1 tourism, the relevant market area shall be within a
2 radius of six miles from the dealership location."

3 2. By amending the definitions of "dealer", "franchise",
4 and "new motor vehicle dealer" to read:

5 ""Dealer" includes "auction" as defined in this section or
6 any person or entity not expressly excluded by this chapter who
7 sells three or more vehicles within a calendar year, or who is
8 engaged in the business of selling, soliciting, offering, or
9 attempting to negotiate sales, purchases, or exchanges of motor
10 vehicles or any interest therein, including options to purchase
11 motor vehicles. The term "dealer" excludes a person who sells
12 or purchases motor vehicles in the capacity of:

13 (1) A receiver, trustee, personal representative,
14 guardian, or any other person appointed by or acting
15 under a judgment or order of any court;

16 (2) A public officer while performing official duties;

17 (3) A holder of an auction license issued under this
18 chapter when acting within the scope of the license;

19 (4) An insurance company, finance company, bank, or other
20 financial institution [~~selling~~] that sells or
21 [~~offering~~] offers for sale motor vehicles repossessed



1 or foreclosed by it under the terms of a credit sale
2 contract or security agreement;

3 (5) A person not engaged in the business of selling or
4 purchasing motor vehicles [~~when acquiring~~] who
5 acquires or [~~disposing~~] disposes of motor vehicles for
6 the person's own personal, family, or business use;
7 provided that the vehicles are acquired or disposed of
8 for the person's use in good faith and not for the
9 purpose of evading any provision of this chapter;

10 (6) A consumer consultant who is not engaged in the
11 business of selling, soliciting, offering, or
12 attempting to negotiate sales or exchanges of motor
13 vehicles or any interest therein for any dealer, and
14 who for a fee provides specialized information and
15 expertise in motor vehicle sales transactions to
16 consumers [~~wishing~~] who wish to purchase or lease
17 motor vehicles [~~The~~]; provided that the consumer
18 consultant shall register and pay a fee to the board
19 prior to offering consultant services; or

20 (7) A Hawaii bank or its affiliate selling or offering for
21 sale motor vehicles surrendered or redelivered to it



1 under the terms of a lease [~~7~~] or sold by it pursuant
2 to a purchase option contained in a lease.

3 "Franchise" or "franchise agreement" means any contract or
4 agreement between a dealer and a manufacturer or distributor
5 that authorizes the dealer to engage in the business of selling
6 or purchasing any particular make or makes of new motor vehicles
7 or motor vehicle parts [~~therefor~~] manufactured or distributed by
8 [~~such~~] the manufacturer or distributor[-], or that establishes
9 rights or obligations, or both, relating to the dealer's new
10 motor vehicle operation, including agreements relating to
11 dealership facilities or site control.

12 "New motor vehicle dealer" means a dealer who engages in
13 the business of selling, at wholesale or retail, [~~or both,~~] new
14 motor vehicles or new and used motor vehicles."

15 SECTION 5. Section 437-27, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§437-27 Change of status, notice.** If the status of any
18 licensee changes during the period for which the license is
19 issued [~~in respect to:~~] because of:

20 (1) Changes in officers, directors, or limited partners of
21 the licensee or termination of the employment of any
22 licensed salesperson;



1 (2) The transfer of more than ten per cent of the
2 ownership of the licensee to one person;

3 (3) The termination of a licensed premises by a dealer or
4 auction or the acquiring or termination of a
5 franchise; or

6 (4) The assignment of any part of the licensee's assets
7 for the benefit of creditors;

8 the licensee shall within fifteen days thereafter file with the
9 board notice of such change containing such information as may
10 be required by the board; provided that nothing contained in
11 this section shall limit the power of the board to suspend,
12 revoke, or deny the renewal of such license or impose any other
13 penalty authorized by this chapter. A manufacturer or
14 distributor shall give written notice to the board pursuant to
15 section 437-H, of its intent to terminate, discontinue, cancel,
16 or fail to renew a franchise agreement."

17 SECTION 6. Section 437-28, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) In addition to any other actions authorized by law,
20 the board, after notice and hearing as provided in chapter 91,
21 and subject to appeal to the circuit court of the circuit in
22 which the board has jurisdiction under the procedure and rules



1 prescribed by the laws of the State or the applicable rules of
2 the courts pertaining to appeals to circuit courts, may suspend,
3 revoke, fine, or deny the renewal of any license, or prior to
4 notice and hearing deny the issuance of any license for any
5 cause authorized by law, including but not limited to
6 circumstances where the board finds that the applicant or
7 holder, or any officer, director, general manager, trustee,
8 partner, or stockholder owning more than ten per cent interest
9 of the applicant or holder:

- 10 (1) Has intentionally made a false statement of a material
11 fact in the application for a license or in any other
12 statement required by this chapter or has obtained or
13 attempted to obtain a license by fraud or
14 misrepresentation;
- 15 (2) Has failed to comply with, observe, or adhere to any
16 provision of this chapter or any other law relating to
17 the sale, taxing, or licensing of motor vehicles or
18 any rule or order made pursuant to this chapter;
- 19 (3) Has committed a fraudulent act in selling, purchasing,
20 or otherwise dealing in motor vehicles or has
21 misrepresented the terms and conditions of a sale,
22 purchase, or contract for sale or purchase of a motor



- 1 vehicle or any interest therein including an option to
2 purchase motor vehicles;
- 3 (4) Has engaged in business under a past or present
4 license issued pursuant to this chapter, in a manner
5 as to cause injury to the public or to those with whom
6 one is dealing;
- 7 (5) Has failed to comply with, observe, or adhere to any
8 law in any other respect [~~on account whereof~~] so that
9 the board [~~may deem~~] deems the applicant or holder to
10 be an unfit or improper person to hold a license;
- 11 (6) Has failed to meet or maintain the conditions and
12 requirements necessary to qualify for the issuance of
13 a license;
- 14 (7) Is insolvent [~~or~~], has filed or is the subject of a
15 petition for bankruptcy, wage earner's plan, or
16 financial reorganization plan[+], or has made or
17 proposes to make an assignment for benefit of
18 creditors;
- 19 (8) [~~In the case of an individual applicant or holder of a~~
20 ~~license, if the applicant or holder is~~] Is not at
21 least eighteen years of age[+], or in the case of a
22 partnership applicant or holder of a license, if any



- 1 general or limited partner [~~thereof~~] is not at least
2 eighteen years of age;
- 3 (9) Has charged more than the legal rate of interest on
4 the sale [~~or~~], purchase, or attempted sale or
5 purchase, or in arranging the sale or purchase of a
6 motor vehicle or any interest therein including an
7 option to purchase;
- 8 (10) Has violated any [~~of the laws~~] law pertaining to false
9 advertising or to credit sales in the offering,
10 soliciting, selling, [~~or~~] purchasing, or arranging to
11 sell or purchase a motor vehicle or any interest
12 therein;
- 13 (11) Has wilfully failed or refused to perform any
14 unequivocal and indisputable obligation under any
15 written agreement involving the sale or purchase of a
16 motor vehicle or any interest therein, including an
17 option to purchase;
- 18 (12) Has been denied the issuance of a license under this
19 chapter for substantial culpable cause or [~~for having~~]
20 has had a license issued under this chapter suspended,
21 revoked, or the renewal thereof denied for substantial
22 culpable cause;



- 1 (13) Has entered [~~or~~], has attempted to enter, or proposes
2 to enter into any contract or agreement contrary to
3 this chapter or any rule adopted thereunder;
- 4 (14) Has been [~~or~~], is engaged, or proposes to engage in
5 the business of selling new motor vehicles as a dealer
6 or auction without a proper franchise therefor;
- 7 (15) Has at any time employed [~~or~~], utilized, or attempted
8 or proposed to employ or utilize any person not
9 licensed under this chapter who is required to be so
10 licensed;
- 11 (16) Has entered or attempted to enter any one-payment
12 contract [7] where the contract is required to be
13 signed by the purchaser prior to removal of the motor
14 vehicle for test driving from the seller's premises;
- 15 (17) [~~Being~~] Is a salesperson or dealer[-] and:
- 16 (A) Has required a purchaser of a motor [~~vehicles~~]
17 vehicle as a condition of sale and delivery
18 [~~thereof~~], to purchase special features,
19 appliances, accessories, or equipment not desired
20 or requested by the purchaser; provided that this
21 prohibition shall not apply as to special
22 features, appliances, accessories, or equipment



1 which are ordinarily installed on the vehicle
2 when received or acquired by the dealer;

3 (B) Has represented and sold as an unused motor
4 vehicle any motor vehicle which has been leased
5 or operated as a demonstrator [~~7~~ leased ~~7~~] or U-
6 drive motor vehicle;

7 (C) Has sold a new motor vehicle without providing or
8 securing for the purchaser the standard factory
9 new car warranty for the vehicle [~~7~~] unless the
10 dealer or salesperson clearly notes in writing on
11 the sales contract that the new motor vehicle is
12 sold without the standard factory warranty;

13 (D) Has sold a new motor vehicle covered by a
14 standard factory warranty without informing the
15 purchaser in writing that any repairs or other
16 work necessary on any accessories which were not
17 installed by the manufacturer of the vehicle may
18 not be obtainable in a geographic location other
19 than where the purchase occurred; provided that
20 the notice required by this section shall conform
21 to the plain language requirements of section



1 487A-1, regardless of the dollar amount of the
2 transaction;

3 (E) Has engaged in any improper business conduct,
4 including but not limited to employing,
5 contracting with, or compensating consumer
6 consultants; or

7 (F) Has sold or leased a new or used motor vehicle,
8 other than at auction, without written
9 documentation [~~that contains the following~~
10 ~~provision printed legibly in at least fourteen-~~
11 ~~point bold typeface print,~~] upon which the
12 salesperson or dealer shall appropriately
13 indicate the type of sale, [~~and upon~~] which both
14 the customer and salesperson or dealer shall
15 place their initials in the designated spaces[~~+~~]
16 prior to the signing of the contract of sale or
17 lease[~~+~~] and that contains the following
18 provision printed legibly in at least fourteen
19 point bold typeface:

20



1 "This (IS) (IS NOT) a door-to-door sale. There
2 (IS A) (IS NO) 3-DAY RIGHT TO CANCEL on this
3 purchase.

4 _____ Customer's Initials _____ Salesperson's
5 or Dealer's Initials";

6 (18) [~~Being~~] Is an applicant or holder of a dealer's
7 license[+] and:

8 (A) Has sold or proposed to sell new motor vehicles
9 without providing for the maintenance of a
10 reasonable inventory of parts for new vehicles or
11 without providing and maintaining adequate repair
12 facilities and personnel for new vehicles at
13 either the main licensed premises or at any
14 branch location;

15 (B) Has employed or proposed to employ any
16 salesperson who is not duly licensed under this
17 chapter; or

18 (C) Has sold or proposed to sell new motor vehicles
19 without being franchised therefor;

20 (19) [~~Being~~] Is an applicant or holder of an auction's
21 license and has sold or proposed to sell new motor
22 vehicles without being franchised therefor; or



1 (20) [~~Being~~] Is an applicant for a salesperson's license[+]

2 and:

3 (A) Does not intend to be employed as a salesperson
4 for a licensed motor vehicle dealer; or

5 (B) Intends to be employed as a salesperson for more
6 than one dealer; [~~or~~]

7 (21) Being a manufacturer or distributor:

8 (A) Has [~~attempted to coerce or has coerced~~] required
9 any dealer in the State to enter into any
10 agreement with the manufacturer or distributor or
11 any other party, to perform any act not required
12 by or to refrain from performing any act not
13 contrary to the reasonable requirements of the
14 franchise agreement with the dealer, by
15 threatening to cancel the franchise agreement or
16 by threatening to refuse, at the expiration of
17 the current franchise agreement, to enter into a
18 new franchise agreement with the dealer;

19 (B) Has [~~attempted to coerce or has coerced~~] required
20 any dealer in the State to enter into any
21 agreement with the manufacturer or distributor or
22 any other party, to perform any act not required



1 by or to refrain from performing any act not
2 contrary to the reasonable requirements of the
3 franchise agreement with the dealer, by awarding
4 or threatening to award a franchise to another
5 person for the sale of the same make of any motor
6 vehicle in the [~~same sales area of responsibility~~
7 ~~covered by the existing franchise agreement of~~
8 ~~the dealer;~~] relevant market area of a dealer;

9 (C) Has [~~attempted to or has~~] canceled or failed to
10 renew the franchise agreement of any dealer in
11 the State without good faith, as defined herein.

12 [~~Upon such a cancellation or failure to renew the~~
13 ~~franchise agreement, the party canceling or~~
14 ~~failing to renew the franchise agreement, at the~~
15 ~~dealer's option, shall either:~~

16 ~~(i) Compensate the dealer at the fair market~~
17 ~~going business value for the dealer's~~
18 ~~capital investment, which shall include but~~
19 ~~not be limited to the going business value~~
20 ~~of the business, goodwill, property, and~~
21 ~~improvement owned or leased by the dealer~~
22 ~~for the purpose of the franchise, inventory~~



1 ~~of parts, and motor vehicles possessed by~~
2 ~~the dealer in connection with the franchise,~~
3 ~~plus reasonable attorney's fees incurred in~~
4 ~~collecting compensation; provided that the~~
5 ~~investment shall have been made with~~
6 ~~reasonable and prudent judgment for the~~
7 ~~purpose of the franchise agreement; or~~
8 (ii) ~~Compensate the dealer for damages including~~
9 ~~attorney's fees as aforesaid, resulting from~~
10 ~~the cancellation or failure to renew the~~
11 ~~franchise agreement.]~~

12 As used in this [paragraph,] subparagraph, "good
13 faith" means the duty of each party to any
14 franchise agreement to fully comply with that
15 agreement, or to act in a fair and equitable
16 manner towards each other;

17 (D) Has delayed delivery of or refused to deliver
18 without cause, any new motor vehicle to a dealer,
19 franchised to sell the new motor vehicle, within
20 a reasonable time after receipt of a written
21 order for the vehicle from the dealer. The
22 delivery to another dealer of a motor vehicle of



1 the same model and similarly equipped as the
2 vehicle ordered by a dealer who has not received
3 delivery thereof, but who had placed the written
4 order for the vehicle prior to the order of the
5 dealer receiving the vehicle, shall be prima
6 facie evidence of a delayed delivery of, or
7 refusal to deliver, a new motor vehicle without
8 cause. The nondelivery of a new motor vehicle to
9 a dealer within sixty days after receipt of a
10 written order for the vehicle from a dealer shall
11 also be prima facie evidence of delayed delivery
12 of, or refusal to deliver, a new motor vehicle
13 without cause; provided that the delayed delivery
14 of, or refusal to deliver, a motor vehicle shall
15 be deemed with cause if the manufacturer
16 establishes that the delay or refusal to deliver
17 is due to a shortage or curtailment of material,
18 labor, transportation, utility service, labor or
19 production difficulty, or other similar cause
20 beyond the reasonable control of the
21 manufacturer;



1 (E) Has discriminated against any of their franchised
2 dealers in the State by directly or indirectly
3 charging the dealer more for a new motor vehicle
4 or services, parts, or accessories or a higher
5 rate of transportation for transporting the
6 vehicle from the manufacturing or assembly plant
7 to the dealer or any portion of the distance,
8 than is charged to any other of their franchised
9 dealers in the State for the same make, model,
10 and year of a new motor vehicle or for the same
11 devices, parts, or accessories for the similar
12 transportation for the vehicle during the same
13 period. A manufacturer or distributor who
14 provides or causes to be provided greater
15 transportation benefits for a new motor vehicle
16 as aforesaid to any of their franchised dealers
17 in the State than is provided to any of their
18 competing franchised dealers in the State for the
19 same or lesser price or charge than that imposed
20 upon the franchised dealer in the State during
21 the same period is deemed to have so
22 discriminated against the competing franchised



1 dealer in the State. Evidence of similar
2 discriminatory practice against franchised
3 dealers in other states shall not constitute a
4 defense to or justification of the commission of
5 the discriminatory act against the franchised
6 dealer in the State. The intent and purpose of
7 this subparagraph is to eliminate inequitable
8 pricing policies set by manufacturers or
9 distributors which result in higher prices of new
10 motor vehicles to the consumer in the State.
11 This subparagraph shall be liberally interpreted
12 to effect its intent and purpose and in the
13 application thereof, the substance and effect and
14 not the form of the acts and transactions shall
15 be primarily considered in determining whether a
16 discriminatory act has been committed. Nothing
17 contained in this subparagraph shall prohibit
18 establishing delivered prices or destination
19 charges to dealers in the State which reasonably
20 reflect the seller's total transportation costs
21 incurred in the manufacture or delivery of
22 products to the dealers, including costs that are



1 related to the geographical distances and modes
2 of transportation involved in shipments to this
3 State, or which meet those lower prices
4 established by competitors;

5 (F) Has required a dealer of new motor vehicles in
6 the State as a condition of sale and delivery of
7 new motor vehicles to purchase special features,
8 appliances, accessories, or equipment not desired
9 or requested by the dealer; provided that this
10 prohibition shall not apply to special features,
11 appliances, accessories, or equipment, except
12 heaters, that are regularly installed on that
13 particular model or new motor vehicles as
14 "standard" equipment or to special features,
15 appliances, accessories, or equipment that are an
16 integral part of the new motor vehicles and
17 cannot be removed therefrom without substantial
18 expense. Nothing in this subparagraph shall make
19 it unlawful for a dealer to sell a vehicle that
20 includes a heater that has been installed as
21 standard equipment;



1 (G) Has failed to adequately and fairly compensate
2 its dealers for labor [~~parts, and other~~
3 ~~expenses~~] incurred by the dealer to perform under
4 and comply with manufacturer's warranty
5 agreements. In no event shall any manufacturer or
6 distributor pay its dealers a labor rate per hour
7 for warranty work that is less than that charged
8 by the dealer to the retail customers of the
9 dealer nor shall the rates be more than the
10 retail rates. All claims made by the dealers for
11 compensation for delivery, preparation, and
12 warranty work shall be paid within thirty days
13 after approval and shall be approved or
14 disapproved within thirty days after receipt.
15 When any claim is disapproved, the dealer shall
16 be notified in writing of the grounds for
17 disapproval;

18 (H) Has wilfully failed to affix the vehicle bumper
19 impact notice pursuant to section 437-4.5(a), or
20 wilfully misstated any information in the
21 notice. Each failure or misstatement is a
22 separate offense;



1 (I) Has wilfully defaced, or removed the vehicle
2 bumper impact notice required by section
3 437-4.5(a) prior to delivery of the vehicle to
4 which the notice is required to be affixed to the
5 registered owner or lessee. Each wilful
6 defacement, alteration, or removal is a separate
7 offense; or

8 (J) Has required a dealer to refrain from
9 participation in the management of, investment
10 in, or the acquisition of, any other line of new
11 motor vehicle or related products; provided that
12 the new motor vehicle dealer maintains a
13 reasonable line of credit consistent with the
14 requirements of section 437-7(d)(1) for each make
15 or line of new motor vehicle, remains in
16 compliance with reasonable facilities and other
17 franchise requirements of the manufacturer or
18 distributor, and makes no unauthorized change in
19 the principal management of the dealer."

20 SECTION 7. Section 437-28.5, Hawaii Revised Statutes, is
21 amended to read as follows:



1 " [+]§437-28.5[+] Procedures, protections, rights, and
2 remedies made available to licensees. (a) The same procedures,
3 protections, rights, and remedies provided to a dealer under
4 section 437-28(a)(21) and section 437-3.6 shall apply to a
5 distributor that is not a manufacturer[~~;~~ ~~provided that for a~~
6 ~~distributor that is not a manufacturer, the measure of~~
7 ~~compensation under section 437-28(a)(21)(C) upon cancellation or~~
8 ~~failure to renew a franchise agreement shall include~~
9 ~~compensation related to [that] distributor's dealer operations~~
10 ~~and franchise agreements with other dealers].~~

11 (b) Notwithstanding the terms, provisions, or conditions
12 of any dealer or distributor agreement or franchise or the terms
13 or provisions of any waiver[~~;~~] and notwithstanding any other
14 legal or administrative remedies available, any person who is
15 licensed under this chapter and whose business or property is
16 injured by a violation of section 437-28(a)(21), may bring a
17 civil action in a court of competent jurisdiction in the State
18 to enjoin further violations and to recover any damages together
19 with the costs of the suit. Laws of the State of Hawaii shall
20 apply to any action initiated under this section.

21 (c) Any person that brings or defends against a civil
22 action under subsection (b) [~~shall~~] may be entitled to recover



1 reasonable attorneys' fees as a part of any damages or
2 injunction; provided that the person substantially prevails in
3 establishing or defending against a violation of section 437-
4 28(a)(21).

5 (d) Upon a cancellation or failure to renew a
6 distributorship agreement, the party canceling or failing to
7 renew the agreement, at the distributor's option, shall either:

8 (1) Compensate the distributor at the fair market value
9 for the distributor's capital investment, which shall
10 include but not be limited to the going business value
11 of the business, goodwill, property, and improvement
12 owned or leased by the distributor for the purpose of
13 the distributorship, inventory of parts, including
14 compensation related to distributor's dealer
15 operations and franchise agreements with other dealers
16 and motor vehicles possessed by the distributor in
17 connection with the distributorship, plus reasonable
18 attorney's fees incurred in collecting compensation;
19 provided that the investment shall have been made with
20 reasonable and prudent judgment for the purpose of the
21 distributorship agreement; or



1 (2) Compensate the distributor for damages including
2 attorney's fees as aforesaid, resulting from the
3 cancellation or failure to renew the distributorship
4 agreement.

5 As used in this paragraph, "good faith" means the duty
6 of each party to any franchise agreement to fully
7 comply with that agreement, or to act in a fair and
8 equitable manner towards each other."

9 SECTION 8. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 9. In codifying the new sections added by section
12 2 of this Act, the revisor of statutes shall substitute
13 appropriate section numbers for the letters used in designating
14 the new sections in this Act.

15 SECTION 10. If any provision of this Act, or the
16 application thereof to any person or circumstance is held
17 invalid, the invalidity does not affect other provisions or
18 applications of the Act, which can be given effect without the
19 invalid provision or application, and to this end the provisions
20 of this Act are severable.



1 SECTION 11. This Act shall take effect on July 1, 2010;
2 provided that section 437-A, Hawaii Revised Statutes, shall take
3 effect on January 1, 2011.

4

APPROVED this 3 day of JUN, 2010


GOVERNOR OF THE STATE OF HAWAII