

JAN 27 2010

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. Section 437-1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§437-1 Legislative findings and declaration. The
4 legislature finds that:

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

9 (2) Manufacturers of motor vehicles whose physical
10 manufacturing facilities are not located within the
11 State, and motor vehicle distributors, are doing
12 business in the State through their control over, and
13 relationships and transactions with their dealers,
14 branches, and representatives; and

15 (3) The geographical location of Hawaii makes it necessary
16 to ensure the availability of motor vehicles and parts
17 and dependable service therefor within the State to



1 protect and preserve the transportation system and the
2 investments of its residents.

3 The legislature declares, on the basis of the foregoing
4 findings, that it is necessary to regulate and to license motor
5 vehicle manufacturers, distributors, dealers, salespersons, and
6 auctions in the State, to prevent frauds, impositions, and other
7 abuses against its residents, and to protect and preserve the
8 economy and the transportation system of the State. In order to
9 further this intent, the legislature finds that all the
10 provisions of sections 437-1 to 437-41 as amended from time to
11 time are remedial and apply to all franchise and ancillary
12 agreements existing as of the date of enactment."

13 SECTION 2. Section 437-1.1, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By adding two new definitions to be appropriately
16 inserted and to read as follows:

17 "Ancillary agreement" means any written agreement between
18 the dealer and manufacturer or distributor, other than the
19 franchise agreement, which directly relates to the dealer's new
20 motor vehicle operations such as dealership facilities, site
21 control, CSI requirements, sales performance, or similar
22 agreements.



1 "Relevant market area" means the following:

2 (1) In a county with a population of less than 500,000
3 according to the most recent data of the United States
4 Census Bureau or the data of the department of
5 business, economic development, and tourism the
6 relevant market area shall be the county in which the
7 dealer is located; or

8 (2) In a county with a population of more than 500,000
9 according to the most recent data of the United States
10 Census Bureau or the data of the department of
11 business, economic development, and tourism the
12 relevant market area shall be a radius of 10 miles
13 from the dealership location."

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

16 ""Dealer" includes "auction" as defined in this section or
17 any person or entity not expressly excluded by this chapter who
18 sells three or more vehicles within a calendar year, or who is
19 engaged in the business of selling, soliciting, offering, or
20 attempting to negotiate sales, purchases, or exchanges of motor
21 vehicles or any interest therein, including options to purchase



1 motor vehicles. The term "dealer" excludes a person who sells
2 or purchases motor vehicles in the capacity of:

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

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

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

9 (4) An insurance company, finance company, bank, or other
10 financial institution selling or offering for sale
11 motor vehicles repossessed or foreclosed by it under
12 the terms of a credit sale contract or security
13 agreement;

14 (5) A person not engaged in the business of selling or
15 purchasing motor vehicles when acquiring or disposing
16 of motor vehicles for the person's own personal,
17 family, or business use; provided that the vehicles
18 are acquired or disposed of for the person's use in
19 good faith and not for the purpose of evading any
20 provision of this chapter;

21 (6) A consumer consultant who is not engaged in the
22 business of selling, soliciting, offering, or



1 attempting to negotiate sales or exchanges of motor
2 vehicles or any interest therein for any dealer, and
3 who for a fee provides specialized information and
4 expertise in motor vehicle sales transactions to
5 consumers wishing to purchase or lease motor vehicles.

6 The consumer consultant shall register and pay a fee
7 to the board prior to offering consultant services; or

8 (7) A Hawaii bank or its affiliate selling or offering for
9 sale motor vehicles surrendered or redelivered to it
10 under the terms of a lease, or sold by it pursuant to
11 a purchase option contained in a lease.

12 "Franchise" or "franchise agreement" means any contract or
13 agreement between a dealer and a manufacturer or distributor
14 that authorizes the dealer to engage in the business of selling
15 or purchasing any particular make or makes of new motor vehicles
16 or parts therefor manufactured or distributed by such
17 manufacturer or distributor.

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

21 SECTION 3. Section 437-28, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:



1 "(a) In addition to any other actions authorized by law,
2 the board, after notice and hearing as provided in chapter 91,
3 and subject to appeal to the circuit court of the circuit in
4 which the board has jurisdiction under the procedure and rules
5 prescribed by the laws of the State or the applicable rules of
6 the courts pertaining to appeals to circuit courts, may suspend,
7 revoke, fine, or deny the renewal of any license, or prior to
8 notice and hearing deny the issuance of any license for any
9 cause authorized by law, including but not limited to
10 circumstances where the board finds that the applicant or
11 holder, or any officer, director, general manager, trustee,
12 partner, or stockholder owning more than ten per cent interest
13 of the applicant or holder:

14 (1) Has intentionally made a false statement of a material
15 fact in the application for a license or in any other
16 statement required by this chapter or has obtained or
17 attempted to obtain a license by fraud or
18 misrepresentation;

19 (2) Has failed to comply with, observe, or adhere to any
20 provision of this chapter or any other law relating to
21 the sale, taxing, or licensing of motor vehicles or
22 any rule or order made pursuant to this chapter;



- 1 (3) Has committed a fraudulent act in selling, purchasing,
2 or otherwise dealing in motor vehicles or has
3 misrepresented the terms and conditions of a sale,
4 purchase, or contract for sale or purchase of a motor
5 vehicle or any interest therein including an option to
6 purchase motor vehicles;
- 7 (4) Has engaged in business under a past or present
8 license issued pursuant to this chapter, in a manner
9 as to cause injury to the public or to those with whom
10 one is dealing;
- 11 (5) Has failed to comply with, observe, or adhere to any
12 law in any other respect on account whereof the board
13 may deem the applicant or holder to be an unfit or
14 improper person to hold a license;
- 15 (6) Has failed to meet or maintain the conditions and
16 requirements necessary to qualify for the issuance of
17 a license;
- 18 (7) Is insolvent or has filed or is the subject of
19 petition for bankruptcy, wage earner's plan, or
20 financial reorganization plan; or has made or proposes
21 to make an assignment for benefit of creditors;

- 1 (8) In the case of an individual applicant or holder of a
2 license, if the applicant or holder is not at least
3 eighteen years of age; in the case of a partnership
4 applicant or holder of a license, if any general or
5 limited partner thereof is not at least eighteen years
6 of age;
- 7 (9) Has charged more than the legal rate of interest on
8 the sale or purchase or attempted sale or purchase or
9 in arranging the sale or purchase of a motor vehicle
10 or any interest therein including an option to
11 purchase;
- 12 (10) Has violated any of the laws pertaining to false
13 advertising or to credit sales in the offering,
14 soliciting, selling, or purchasing, or arranging to
15 sell or purchase a motor vehicle or any interest
16 therein;
- 17 (11) Has wilfully failed or refused to perform any
18 unequivocal and indisputable obligation under any
19 written agreement involving the sale or purchase of a
20 motor vehicle or any interest therein including an
21 option to purchase;



1 (12) Has been denied the issuance of a license under this
2 chapter for substantial culpable cause or for having
3 had a license issued under this chapter suspended,
4 revoked, or the renewal thereof denied for substantial
5 culpable cause;

6 (13) Has entered or has attempted to enter or proposes to
7 enter into any contract or agreement contrary to this
8 chapter or any rule adopted thereunder;

9 (14) Has been or is engaged or proposes to engage in the
10 business of selling new motor vehicles as a dealer or
11 auction without a proper franchise therefor;

12 (15) Has at any time employed or utilized or attempted or
13 proposed to employ or utilize any person not licensed
14 under this chapter who is required to be so licensed;

15 (16) Has entered or attempted to enter any one-payment
16 contract, where the contract is required to be signed
17 by the purchaser prior to removal of the motor vehicle
18 for test driving from the seller's premises;

19 (17) Being a salesperson or dealer:

20 (A) Has required a purchaser of motor vehicles as a
21 condition of sale and delivery thereof to
22 purchase special features, appliances,



1 accessories, or equipment not desired or
2 requested by the purchaser; provided that this
3 prohibition shall not apply as to special
4 features, appliances, accessories, or equipment
5 which are ordinarily installed on the vehicle
6 when received or acquired by the dealer;

7 (B) Has represented and sold as an unused motor
8 vehicle any motor vehicle which has been operated
9 as a demonstrator, leased, or U-drive motor
10 vehicle;

11 (C) Has sold a new motor vehicle without providing or
12 securing for the purchaser the standard factory
13 new car warranty for the vehicle, unless the
14 dealer or salesperson clearly notes in writing on
15 the sales contract that the new motor vehicle is
16 sold without the standard factory warranty;

17 (D) Has sold a new motor vehicle covered by a
18 standard factory warranty without informing the
19 purchaser in writing that any repairs or other
20 work necessary on any accessories which were not
21 installed by the manufacturer of the vehicle may
22 not be obtainable in a geographic location other



1 than where the purchase occurred; provided that
2 the notice required by this section shall conform
3 to the plain language requirements of section
4 487A-1, regardless of the dollar amount of the
5 transaction;

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

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



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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 an applicant or holder of a dealer's license:
- 7 (A) Has sold or proposed to sell new motor vehicles
8 without providing for the maintenance of a
9 reasonable inventory of parts for new vehicles or
10 without providing and maintaining adequate repair
11 facilities and personnel for new vehicles at
12 either the main licensed premises or at any
13 branch location;
- 14 (B) Has employed or proposed to employ any
15 salesperson who is not duly licensed under this
16 chapter; or
- 17 (C) Has sold or proposed to sell new motor vehicles
18 without being franchised therefor;
- 19 (19) Being an applicant or holder of an auction's license
20 has sold or proposed to sell new motor vehicles
21 without being franchised therefor;
- 22 (20) Being an applicant for a salesperson's license:



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- 1 (A) Does not intend to be employed as a salesperson
- 2 for a licensed motor vehicle dealer; or
- 3 (B) Intends to be employed as a salesperson for more
- 4 than one dealer; or
- 5 (21) [Being] Notwithstanding the terms of a franchise
- 6 agreement or any ancillary agreement, being a
- 7 manufacturer or distributor[÷] that:
- 8 (A) Has attempted to [~~coerce~~] require or has
- 9 [~~coerced~~] required any dealer in the State to
- 10 enter into any agreement with the manufacturer or
- 11 distributor or any other party, to perform any
- 12 act not required by or to refrain from performing
- 13 any act not contrary to the reasonable
- 14 requirements of the franchise agreement with the
- 15 dealer, by threatening to cancel the franchise
- 16 agreement or by threatening to refuse, at the
- 17 expiration of the current franchise agreement, to
- 18 enter into a new franchise agreement with the
- 19 dealer;
- 20 (B) Has attempted to require or has required any
- 21 dealer in the State to enter into any agreement
- 22 with the manufacturer or distributor or any other



1 party, that requires the law of another
2 jurisdiction to apply to any dispute between the
3 dealer and manufacturer or distributor or
4 requires that the dealer bring an action against
5 the manufacturer or distributor in a venue
6 outside of Hawaii or requires the dealer to agree
7 to arbitration or waive its rights to bring a
8 cause of action against the manufacturer or
9 distributor;

10 (C) Has attempted to require or has required any
11 dealer in the State to enter into any agreement
12 with the manufacturer or distributor or any other
13 party, to prospectively assent to a release,
14 assignment, novation, waiver, or estoppel, which
15 instrument or document operates, or is intended
16 by the applicant or licensee to operate, to
17 relieve any person from any liability or
18 obligation of this chapter;

19 [+B>] (D) Has attempted to [eereee] require or has
20 [eereeed] required any dealer in the State to
21 enter into any agreement with the manufacturer or
22 distributor or any other party, to perform any



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

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

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

18 ~~(i) Compensate the dealer at the fair market~~
19 ~~going business value for the dealer's~~
20 ~~capital investment, which shall include but~~
21 ~~not be limited to the going business value~~
22 ~~of the business, goodwill, property, and~~



1 ~~improvement owned or leased by the dealer~~
2 ~~for the purpose of the franchise, inventory~~
3 ~~of parts, and motor vehicles possessed by~~
4 ~~the dealer in connection with the franchise,~~
5 ~~plus reasonable attorney's fees incurred in~~
6 ~~collecting compensation; provided that the~~
7 ~~investment shall have been made with~~
8 ~~reasonable and prudent judgment for the~~
9 ~~purpose of the franchise agreement; or~~

10 ~~(ii) Compensate the dealer for damages including~~
11 ~~attorney's fees as aforesaid, resulting from~~
12 ~~the cancellation or failure to renew the~~
13 ~~franchise agreement.~~

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

18 A manufacturer or distributor shall give written
19 notice to the dealer and the board of the
20 manufacturer's intent to terminate, discontinue,
21 cancel, or fail to renew a franchise agreement at
22 least ninety (90) days before the effective date



1 thereof, and state with specificity the grounds
2 being relied upon for such discontinuation,
3 cancellation, termination, or failure to renew.

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

9 (i) In the event that the manufacturer's or
10 distributor's notice of intent to terminate,
11 discontinue, cancel, or fail to renew is
12 based upon the dealer's alleged failure to
13 comply with sales and/or service performance
14 obligations, the dealer must first be
15 provided with notice of the alleged sales
16 and/or service deficiencies and afforded at
17 least 180 days to correct any alleged
18 failure before the manufacturer or
19 distributor may send its notice of intent to
20 terminate, discontinue, cancel, or fail to
21 renew. Good cause will not exist if a
22 dealer substantially complies with the



1 manufacturer's or distributor's reasonable
2 performance provisions within the 180 day
3 cure period, or if the failure to
4 demonstrate substantial compliance was due
5 to factors which were beyond the control of
6 the dealer;

7 (ii) A dealer who receives a notice of intent to
8 terminate, discontinue, cancel, or fail to
9 renew may, within the 90-day notice period,
10 file a petition or complaint with the board
11 for a determination of whether such action
12 is unfair or prohibited. The manufacturer
13 or distributor shall have the burden of
14 proof that such action is fair and not
15 prohibited; and

16 (iii) In an action commenced pursuant to clause
17 (ii) of this subparagraph, good cause shall
18 not exist absent a breach of a material and
19 substantial term of the franchise agreement,
20 or upon the change in ownership of a
21 manufacturer or distributor or upon the
22 cancellation of a line make;



- 1 (iv) Upon the filing of an action pursuant to
2 clause (ii), the franchise agreement shall
3 remain in effect until a final judgment is
4 entered after all appeals are exhausted, and
5 during that time the dealer shall retain all
6 rights and remedies pursuant to the
7 franchise agreement including, but not
8 limited to, the right to sell or transfer
9 the franchise; and
- 10 (v) Upon the termination, discontinuation,
11 cancellation or failure to renew the
12 franchise agreement, regardless of which
13 party terminates the agreement, the
14 manufacturer or distributor shall compensate
15 the dealer at the fair market value for all
16 new, unused, and undamaged parts, all
17 special tools or equipment in working
18 condition required by the manufacturer or
19 distributor within the three years prior to
20 the termination, all signage required by the
21 manufacturer or distributor, and all current
22 model year new motor vehicles acquired



1 within the past 12 months possessed by the
2 dealer in connection with the franchise,
3 plus reasonable attorney's fees incurred in
4 collecting compensation. The compensation
5 shall be paid to the dealer no later than
6 90 days from the date of the franchise
7 termination, discontinuation, cancellation,
8 or failure to renew.

9 For the purposes of this clause, "fair
10 market value" means the dealer's net cost to
11 acquire the parts, special tools, equipment,
12 and motor vehicles;

13 (vi) In addition to the compensation set forth in
14 clause (v), upon the termination,
15 discontinuation, cancellation or failure to
16 renew the franchise agreement by a
17 manufacturer or distributor without good
18 cause, the manufacturer or distributor shall
19 compensate the dealer at the fair market
20 value for the dealer's capital investment,
21 which shall include but not be limited to
22 the fair market value of the business,



1 property, and improvement owned or leased by
2 the dealer for the purpose of the franchise.
3 The compensation shall be paid to the dealer
4 no later than 90 days from the date of the
5 franchise termination, discontinuation,
6 cancellation, or failure to renew.

7 For the purposes of this clause, "fair
8 market value" means the value of the
9 business at the time the franchise agreement
10 is terminated, cancelled, or not renewed or
11 the value of the business 12 months prior,
12 whichever is greater;

13 (vii) A dealer shall be immediately entitled to
14 and a manufacturer or distributor shall
15 within thirty (30) days compensate the
16 dealer for the "fair market value" of the
17 franchise according to the formula set forth
18 in clauses (v) and (vi) whenever a
19 manufacturer publicly announces its plans to
20 terminate, cancel, or discontinue a line
21 make regardless of whether the termination,
22 cancellation, or nonrenewal is effective



1 immediately. The manufacturer's or
2 distributor's compensation pursuant to this
3 section is in exchange for the dealer's
4 cessation of the subject line make franchise
5 operations and the dealer's return of the
6 franchise to the manufacturer;

7 ~~(D)~~ (F) Has delayed delivery of or refused to deliver
8 without cause, any new motor vehicle to a dealer,
9 franchised to sell the new motor vehicle, within
10 a reasonable time after receipt of a written
11 order for the vehicle from the dealer. The
12 delivery to another dealer of a motor vehicle of
13 the same model and similarly equipped as the
14 vehicle ordered by a dealer who has not received
15 delivery thereof, but who had placed the written
16 order for the vehicle prior to the order of the
17 dealer receiving the vehicle, shall be prima
18 facie evidence of a delayed delivery of, or
19 refusal to deliver, a new motor vehicle without
20 cause. The nondelivery of a new motor vehicle to
21 a dealer within sixty days after receipt of a
22 written order for the vehicle from a dealer shall



1 also be prima facie evidence of delayed delivery
2 of, or refusal to deliver, a new motor vehicle
3 without cause; provided that the delayed delivery
4 of, or refusal to deliver, a motor vehicle shall
5 be deemed with cause if the manufacturer
6 establishes that the delay or refusal to deliver
7 is due to a shortage or curtailment of material,
8 labor, transportation, utility service, labor or
9 production difficulty, or other similar cause
10 beyond the reasonable control of the
11 manufacturer;

12 [~~(E)~~] (G) Has discriminated against any of their franchised
13 dealers in the State by directly or indirectly
14 charging the dealer more for a new motor vehicle
15 or services, parts, or accessories or a higher
16 rate of transportation for transporting the
17 vehicle from the manufacturing or assembly plant
18 to the dealer or any portion of the distance,
19 than is charged to any other of their franchised
20 dealers in the State for the same make, model,
21 and year of a new motor vehicle or for the same
22 devices, parts, or accessories for the similar



1 transportation for the vehicle during the same
2 period. A manufacturer or distributor who
3 provides or causes to be provided greater
4 transportation benefits for a new motor vehicle
5 as aforesaid to any of their franchised dealers
6 in the State than is provided to any of their
7 competing franchised dealers in the State for the
8 same or lesser price or charge than that imposed
9 upon the franchised dealer in the State during
10 the same period is deemed to have so
11 discriminated against the competing franchised
12 dealer in the State. Evidence of similar
13 discriminatory practice against franchised
14 dealers in other states shall not constitute a
15 defense to or justification of the commission of
16 the discriminatory act against the franchised
17 dealer in the State. The intent and purpose of
18 this subparagraph is to eliminate inequitable
19 pricing policies set by manufacturers or
20 distributors which result in higher prices of new
21 motor vehicles to the consumer in the State.

22 This subparagraph shall be liberally interpreted



1 to effect its intent and purpose and in the
2 application thereof, the substance and effect and
3 not the form of the acts and transactions shall
4 be primarily considered in determining whether a
5 discriminatory act has been committed. Nothing
6 contained in this subparagraph shall prohibit
7 establishing delivered prices or destination
8 charges to dealers in the State which reasonably
9 reflect the seller's total transportation costs
10 incurred in the manufacture or delivery of
11 products to the dealers, including costs that are
12 related to the geographical distances and modes
13 of transportation involved in shipments to this
14 State, or which meet those lower prices
15 established by competitors;

16 (H) Refuses or fails to offer an incentive
17 program(s), bonus payment(s), hold back
18 margin(s), or any other mechanism that
19 effectively lowers the net cost of a vehicle to
20 any franchised dealer in the State unless the
21 incentive, bonus, or holdback is reasonably and
22 practically available to all same line make



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1 dealers in the State. A manufacturer or
2 distributor may offer a bonus, rebate, incentive,
3 or other benefit program to its dealers in this
4 State which is calculated or paid on a per
5 vehicle basis and is related to a dealer's
6 facility or the expansion, improvement,
7 remodeling, alteration, or renovation of a
8 dealer's facility. Any dealer who does not
9 comply with the facility criteria or eligibility
10 requirements of such program is entitled to
11 receive a reasonable percentage of the bonus,
12 incentive, rebate, or other benefit offered by
13 the manufacturer or distributor under that
14 program subject to the dealer's compliance with
15 all other reasonable requirements of the
16 franchise;

17 ~~(F)~~ (I) Has required a dealer of new motor vehicles in
18 the State as a condition of sale and delivery of
19 new motor vehicles to purchase special features,
20 appliances, accessories, or equipment not desired
21 or requested by the dealer; provided that this
22 prohibition shall not apply to special features,



1 appliances, accessories, or equipment, except
2 heaters, that are regularly installed on that
3 particular model or new motor vehicles as
4 "standard" equipment or to special features,
5 appliances, accessories, or equipment that are an
6 integral part of the new motor vehicles and
7 cannot be removed therefrom without substantial
8 expense. Nothing in this subparagraph shall make
9 it unlawful for a dealer to sell a vehicle that
10 includes a heater that has been installed as
11 standard equipment;

12 ~~[(G)]~~ (J) Has failed to adequately and fairly compensate
13 its dealers for labor, parts, and other expenses
14 incurred by the dealer to perform under and
15 comply with manufacturer's warranty agreements.
16 In no event shall any manufacturer or distributor
17 pay its dealers a markup on parts or a labor rate
18 per hour for warranty work that is less than that
19 charged by the dealer to the retail customers of
20 the dealer [~~nor shall the rates be more than the~~
21 ~~retail rates.~~]:



1 (i) For parts reimbursement, the mark up charged
2 by the dealer will be established by
3 submitting to the manufacturer or
4 distributor a sufficient quantity of
5 numerically consecutive repair orders from
6 the most recent months to provide fifty (50)
7 qualifying customer paid repair orders. For
8 a dealer unable to provide fifty (50)
9 qualifying customer paid repair orders out
10 of all numerically consecutive repair orders
11 within the two (2) month period prior to the
12 submission, the dealer will submit customer
13 service repair orders of all types including
14 customer pay, warranty and internal for that
15 two (2) month period. The repair orders
16 must contain the price and percentage mark
17 up. Dealers also must declare in their
18 submission the average mark up the dealer is
19 declaring as its new parts reimbursement
20 rate. The declared parts reimbursement mark
21 up shall go into effect thirty (30) days
22 after initial submission to the manufacturer



1 or distributor and shall be presumed to be
2 fair and reasonable. However, the
3 manufacturer or distributor may make
4 reasonable requests for additional
5 information supporting the submission. The
6 thirty (30) day timeframe in which the
7 manufacturer or distributor has to make the
8 declared parts reimbursement markup
9 effective shall commence following receipt
10 from the dealer of any reasonably requested
11 supporting information. The dealer shall
12 not request a change in the parts
13 reimbursement mark up more often than once
14 every twelve (12) months;

15 (ii) To establish the labor rate, the dealer
16 shall submit to the manufacturer or
17 distributor all qualifying nonwarranty
18 customer paid service repair orders covering
19 repairs made during any one full month out
20 of the three months prior to submission of
21 the labor rate and dividing the amount of
22 the dealer's total labor sales by the number



1 of total labor hours that generated those
2 sales. The declared labor rate shall go
3 into effect thirty (30) days after
4 submission to the manufacturer or
5 distributor and shall be presumed to be fair
6 and reasonable. However, the manufacturer
7 or distributor may make reasonable requests
8 for additional information supporting the
9 submission. The thirty (30) day timeframe
10 in which the manufacturer or distributor has
11 to make the declared labor rate effective
12 shall commence following receipt from the
13 dealer of any reasonably requested
14 supporting information. The dealer shall
15 not request a change in the labor rate more
16 often than once every twelve (12) months;

17 (iii) In determining qualifying repair orders for
18 parts and labor, the following work shall
19 not be included: repairs for manufacturer
20 or distributor special events, specials or
21 promotional discounts for retail customer
22 repairs; parts sold at wholesale or repairs



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1 performed at wholesale, which shall include
2 any sale or service to a fleet of vehicles;
3 engine assemblies and transmission
4 assemblies; routine maintenance not covered
5 under any retail customer warranty, such as
6 fluids, filters and belts not provided in
7 the course of repairs; nuts, bolts,
8 fasteners, and similar items that do not
9 have an individual part number; tires; and
10 vehicle reconditioning;
11 (iv) The manufacturer or distributor may rebut
12 the presumption that the declared parts mark
13 up or labor rate is appropriate by showing
14 that the dealer did not follow the
15 requirements set forth in this section. The
16 manufacturer or distributor shall not
17 require the dealer to submit any
18 documentation or methodology other than the
19 repair orders listed above and the declared
20 rate in order to establish the reimbursement
21 rate;



1 (v) A manufacturer or distributor may not
2 otherwise recover its costs from dealers
3 within this State, including an increase in
4 the wholesale price of a vehicle or
5 surcharge imposed on a dealer solely
6 intended to recover the cost of reimbursing
7 a dealer for parts and labor pursuant to
8 this subparagraph, provided a manufacturer
9 or distributor shall not be prohibited from
10 increasing prices for vehicles or parts in
11 the normal course of business;

12 (vi) Dealers have, at a minimum, thirty days
13 after the repair work is completed to submit
14 a claim for approval. All claims made by
15 the dealers for compensation for delivery,
16 preparation, and warranty work shall be
17 ~~[paid within thirty days after approval and~~
18 ~~shall be approved or disapproved within~~
19 ~~thirty days after receipt.]~~ approved or
20 disapproved and if approved, paid, within
21 thirty days after receipt by a manufacturer
22 or distributor of a properly completed



1 claim. All sales incentive claims shall be
2 approved or disapproved and if approved,
3 paid, within sixty (60) days after receipt
4 by a manufacturer or distributor of a
5 properly completed claim. When any claim is
6 disapproved, the dealer shall be notified in
7 writing of the grounds for disapproval[?].
8 Failure to disapprove a claim within the
9 required timeframe constitutes approval of
10 the claim;

11 (K) No manufacturer or distributor shall conduct a
12 warranty or incentive audit on previously paid
13 claims or chargeback any warranty or incentive
14 payment previously made more than one year after
15 the date the manufacturer or distributor made the
16 payment to the dealer. No manufacturer or
17 distributor shall conduct more than one warranty
18 or incentive audit every 12 months unless the
19 dealer has committed fraud in submission of
20 claims within that twelve (12) month period. No
21 manufacturer or distributor shall impose any
22 warranty or incentive chargeback pursuant to the



1 results of an audit unless the manufacturer,
2 distributor or a representative has met with the
3 dealer or its representative in person, or by
4 telephone, and explained the basis for each
5 proposed chargeback in detail and given the
6 dealer or its representative a reasonable
7 opportunity to respond during the meeting or
8 within thirty (30) days thereafter. The
9 manufacturer shall also provide the dealer with a
10 written statement detailing the basis or
11 methodology upon which the dealer was selected
12 for review:

13 (i) A manufacturer or distributor shall not
14 chargeback a dealer for sales or warranty
15 payments unless the manufacturer or
16 distributor can satisfy its burden of proof
17 that the dealer's claim was fraudulent or
18 that the dealer did not make a good faith
19 effort to comply with the reasonable written
20 procedures of the manufacturer or
21 distributor;



1 (ii) A manufacturer or distributor shall not
2 utilize the method of extrapolation in
3 levying a chargeback against a dealer; and

4 (iii) After all internal dispute resolution
5 processes provided by the manufacturer or
6 distributor have been concluded, the
7 manufacturer or distributor shall give
8 notice to the dealer of the final proposed
9 chargeback amount. The dealer may file an
10 action with the board protesting the
11 proposed chargeback amount within forty five
12 (45) days of receipt of this notice. In the
13 event a protest is filed, the proposed
14 chargeback shall be stayed during the
15 entirety of the action and until a final
16 judgment has been rendered;

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



1 ~~(I)~~ (M) Has wilfully defaced, or removed the vehicle
2 bumper impact notice required by section 437-
3 4.5(a) prior to delivery of the vehicle to which
4 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)~~ (N) 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 for each make or line
14 of new motor vehicle, remains in compliance with
15 reasonable facilities and other franchise
16 requirements of the manufacturer or distributor,
17 and makes no unauthorized change in the principal
18 management of the dealer~~(-)~~;
19 (O) Unreasonably prevents or refuses to approve the
20 relocation of a dealership to another site within
21 the dealer's relevant market area. The dealer
22 must provide the manufacturer or distributor with



1 notice of the proposed address and a reasonable
2 site plan of the proposed location. The
3 manufacturer or distributor shall approve or deny
4 the request in writing no later than sixty days
5 after receipt of the request. Failure to deny
6 the request within 60 days constitutes approval.
7 It shall not be considered an unreasonable denial
8 of a relocation request if the relocation fails
9 to meet the manufacturer or distributor's
10 reasonable and uniformly applied minimum
11 standards for a relocation;

12 (P) Requires or attempts to require a dealer to
13 construct, renovate or make substantial
14 alterations to the dealer's facilities unless the
15 manufacturer or distributor can demonstrate that
16 such construction, renovation or alteration
17 requirements are reasonable and justifiable in
18 light of current and reasonably foreseeable
19 projections of economic conditions existing in
20 the automotive industry at the time such action
21 would be required of the dealer and agrees to
22 make a good faith effort to make available, at



1 the dealer's option, a reasonable quantity and
2 mix of new motor vehicles, which after a
3 reasonable analysis of market conditions, are
4 projected to meet the sales level necessary to
5 support the increased overhead incurred by the
6 dealer as a result of the required construction,
7 renovation, or alteration;

8 (Q) Requires or attempts to require the dealer to
9 establish or maintain an exclusive showroom or
10 facility unless the manufacturer or distributor
11 can establish that the dealer's current facility
12 is inadequate to meet the reasonably expected
13 sales and/or service demand in the dealer's
14 market, based on the current and reasonably
15 expected future economic conditions existing in
16 the dealer's market and the automobile industry
17 at the time the request for an exclusive showroom
18 or facility is made;

19 (R) Conditions the award of an additional franchise
20 on the dealer entering a site control agreement
21 or the dealer waiving its rights pursuant to
22 paragraph (21) to protest the manufacturer's or



1 distributor's award of an additional franchise
2 within the dealer's relevant market area;
3 (S) Establishes or relocates a franchise within the
4 relevant market area of an existing franchise
5 dealer unless the manufacturer or distributor
6 provides notice to the board and all affected
7 dealers. For the purposes of this subparagraph,
8 an "affected dealer" is a dealer that operates a
9 same line make franchise in a relevant market
10 area wherein the manufacturer or distributor is
11 proposing to add or relocate a franchise or which
12 makes twenty percent (20%) of its retail sales of
13 new motor vehicles, within the 12 month period
14 prior to the notice, to persons whose registered
15 household addresses were located within a radius
16 of 10 miles of the location of the proposed
17 additional or relocated franchise. The
18 manufacturer's or distributor's notice must state
19 the location of the proposed dealership, the date
20 on or after which the franchise intends to be
21 engaged in business, the names and addresses of
22 the dealer-operator and the principal investors



1 in the proposed additional or relocated
2 franchise, and the identity of all same line make
3 franchise dealers in the relevant market area
4 where the proposed addition or relocation would
5 be located:

6 (i) An affected dealer may file a protest with
7 the board within thirty (30) days of receipt
8 of the manufacturer's or distributor's
9 notice for determination of whether the
10 manufacturer or distributor has good cause
11 to establish or relocate an additional
12 franchise within the dealer's relevant
13 market area. When such a protest is filed,
14 the manufacturer or distributor shall not
15 establish or relocate the proposed franchise
16 until a hearing has been held and a
17 determination made whether good cause exists
18 for the proposed addition or relocation.
19 The board must make its determination no
20 later than 180 days from receipt of notice
21 of the protest except for good cause. The
22 manufacturer or distributor has the burden



1 of proof to demonstrate good cause exists
2 for the addition or relocation of an
3 additional franchise within the affected
4 dealer's relevant market area;

5 (ii) In determining whether the manufacturer or
6 distributor has good cause to add or
7 relocate the franchise into an affected
8 dealer's relevant market area the board
9 shall consider and make findings upon
10 evidence including but not limited to: the
11 permanency and size of investment made and
12 the reasonable obligations incurred by the
13 existing new motor vehicle dealers in the
14 relevant market area; the growth or decline
15 in population and new car registrations in
16 the relevant market area; the effect on the
17 consuming public in the relevant market
18 area; whether it is injurious or beneficial
19 to the public welfare for a new dealer to be
20 established; whether the new motor vehicle
21 dealers of the same line make in that area
22 are providing adequate competition and



S.B. NO. 2859

1 convenient customer care for the motor
2 vehicles of the same line make including the
3 adequacy of motor vehicle sales and service
4 facilities, equipment, supply of motor
5 vehicle parts, and qualified service
6 personnel; whether the establishment or
7 relocation of the proposed dealership
8 appears to be warranted and justified based
9 on economic and marketing conditions
10 pertinent to dealers competing in the
11 community or territory, including
12 anticipating future changes; any attempts by
13 the manufacturer or distributor to coerce
14 the existing dealer or dealers into
15 consenting to additional or relocated
16 franchises of the same line make in the
17 relevant market area; the effect on the
18 relocating dealer of a denial of its
19 relocation into the relevant market area;
20 and the reasonably expected market
21 penetration of the line-make motor vehicle
22 for the community or territory involved,



S.B. NO. 2859

1 after consideration of all factors which may
2 affect said penetration, including, but not
3 limited to, demographic factors such as age,
4 income, education, size class preference,
5 product popularity, retail lease
6 transactions, or other factors affecting
7 sales to consumers of the community or
8 territory; and

9 (iv) This subparagraph shall not apply to the
10 relocation of an existing dealer within two
11 (2) miles of the dealer's existing
12 dealership location;

13 (T) Unreasonably withholds consent to the sale,
14 transfer or exchange of the franchise to a
15 qualified buyer capable of being licensed as a
16 dealer:

17 (i) The dealer shall notify the manufacturer or
18 distributor, in writing, of its desire to
19 sell, assign, transfer, or dispose of its
20 franchise and identify the proposed
21 transferee's name, address, financial
22 qualifications, and general business



1 experience in the past five years. A
2 manufacturer or distributor must approve or
3 disapprove the transaction within 60 days
4 following receipt of the dealer's notice.
5 Failure of the manufacturer or distributor
6 to disapprove the transaction within the 60
7 day period constitutes approval of the
8 transfer;

9 (ii) In the event that a manufacturer or
10 distributor denies a dealer's proposed sale,
11 transfer, or exchange of the franchise, the
12 dealer may file a complaint or protest with
13 the board within 60 days of the notice of
14 denial. The manufacturer or distributor has
15 the burden of proof to demonstrate at a
16 hearing pursuant to a timely filed
17 complaint, that the proposed transferee is
18 not of good moral character or does not meet
19 the written, reasonable, and uniformly
20 applied business standards or qualifications
21 of the manufacturer relating to the
22 financial qualifications of the transferee



1 and general business experience of the
2 transferee or the transferee's executive
3 management. The manufacturer or distributor
4 must respond to the dealer's complaint
5 within thirty (30) days from the date it was
6 filed. Failure to respond within thirty
7 (30) days constitutes approval of the
8 transfer. The hearing pursuant to a timely
9 filed complaint under this section must take
10 place within ninety (90) days from the date
11 the complaint is filed;

12 (U) Refuses or fails to give effect, unless it has
13 good cause, to the dealer's designated successor,
14 whether designated by will, other estate planning
15 document, or written notice to the manufacturer
16 or distributor either while the dealer was living
17 or within ninety (90) days of the dealer's death
18 or incapacity:

19 (i) In determining whether good cause exists for
20 the manufacturer's or distributor's refusal
21 to honor the succession, the manufacturer
22 has the burden to prove that the successor



1 is not of good moral character, not willing
2 to be bound by the terms of the franchise
3 agreement and either not qualified to
4 operate the dealership or fails to
5 demonstrate that the dealership will be
6 operated by a qualified executive manager;

7 (ii) The manufacturer or distributor must notify
8 the proposed successor of its belief that
9 good cause exists to refuse to honor the
10 succession within sixty (60) days after
11 receipt of the notice of the proposed
12 successor's intent to succeed the franchise,
13 and the manufacturer or distributor must
14 detail why it believes good cause exists to
15 deny the succession;

16 (iii) A proposed successor may file a protest with
17 the board within sixty (60) days after
18 receipt of the manufacturer's or
19 distributor's notice of refusal to honor the
20 succession. The hearing pursuant to a
21 timely filed complaint under this clause



1 must be conducted within ninety (90) days
2 from the date the complaint was filed; and
3 (iv) The franchise shall continue, and the
4 manufacturer or distributor is prohibited
5 from any action to the contrary, until a
6 final judgment has been rendered on the
7 proposed succession;

8 (V) Requires or attempts to require a dealer or the
9 dealer's employees to attend a training
10 program(s) that does not relate directly to the
11 sales or service of a new motor vehicle in the
12 line make of that sold and/or serviced by the
13 dealer;

14 (W) Requires or attempts to require a dealer to pay
15 all or part of the cost of an advertising
16 campaign or contest, or purchase any promotional
17 materials, showroom or other display decorations
18 or materials at the expense of the dealer without
19 the consent of the dealer;

20 (X) Implements or establishes a CSI (customer
21 satisfaction index) or other system measuring a
22 customer's degree of satisfaction with a dealer



1 as a sale or service provider unless any such
2 system is designed and implemented in such a way
3 that is fair and equitable to both the
4 manufacturer and the dealer. In any dispute
5 between a manufacturer, distributor and a dealer
6 the party claiming the benefit of the system as
7 justification for acts in relation to the
8 franchise shall have the burden of demonstrating
9 the fairness and equity of the system both in
10 design and implementation in relation to the
11 pending dispute. Upon request of any dealer, a
12 manufacturer or distributor shall disclose in
13 writing to such dealer a description of how that
14 system is designed and all relevant information
15 pertaining to such dealer used in the application
16 of that system to such dealer;

17 (Y) Implements or establishes an unreasonable,
18 arbitrary or unfair sales or other performance
19 standard in determining a dealer's compliance
20 with a franchise agreement. Before applying any
21 sales, service or other performance standard to a
22 dealer, a manufacturer or distributor shall



1 communicate the performance standard in writing
2 in a clear and concise manner; or
3 (Z) Implements or establishes a system of motor
4 vehicle allocation or distribution to one or more
5 of its dealers which is unfair, inequitable,
6 unreasonably discriminatory, or not supportable
7 by reason and good cause after considering the
8 equities of the affected dealer or dealers. As
9 used in this subparagraph, "unfair" includes
10 without limitation, requiring a dealer to accept
11 new vehicles not ordered by the dealer, the
12 refusal or failure to offer to any dealer an
13 equitable supply of new vehicles under its
14 franchise, by model, mix, or colors as the
15 manufacturer offers or allocates to its other
16 same line make dealers in the state or the
17 refusal or failure to ship monthly to any dealer,
18 if ordered by the dealer, the number of new
19 vehicles of each make, series, and model needed
20 by the dealer to receive a percentage of total
21 new vehicle sales of each make, series, and model
22 equitably related to the total new vehicle



1 production or importation currently being
2 achieved nationally by each make, series, and
3 model covered under the franchise. A
4 manufacturer and distributor shall maintain for 3
5 years records that describe its methods or
6 formula of allocation and distribution of its
7 motor vehicles and records of its actual
8 allocation and distribution of motor vehicles to
9 its dealers in this State. Upon the written
10 request of any dealer, the manufacturer or
11 distributor shall disclose to the dealer in
12 writing the basis upon which new motor vehicles
13 are allocated, scheduled, and delivered to the
14 dealers of the same line make by make, model,
15 color, and accessories."

16 SECTION 4. Section 437-28.5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "~~§~~437-28.5~~§~~ Procedures, protections, rights, and
19 remedies made available to licensees. (a) The same procedures,
20 protections, rights, and remedies provided to a dealer under
21 section 437-28(a)(21) and section 437-3.6 shall apply to a
22 distributor that is not a manufacturer; provided that for a



1 distributor that is not a manufacturer, the measure of
2 compensation under section 437-28(a)(21)(C) upon cancellation or
3 failure to renew a franchise agreement, without good cause and
4 good faith, shall include compensation related to that
5 distributor's dealer operations and franchise agreements with
6 other dealers.

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

17 (c) Any person that brings or defends against a civil
18 action under subsection (b) [~~shall~~] may be entitled to recover
19 reasonable attorneys' fees as a part of any damages or
20 injunction; provided that the person substantially prevails in
21 establishing or defending against a violation of section 437-
22 28(a)(21)."



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect upon its approval.
4

INTRODUCED BY: Randy K Baker

Will Gyo

Norman Sakamoto

Carole Fukunaga

David Y Ige

Dr. Dwayne

S. S. T. V.



Report Title:

Motor Vehicle Industry Licensing Act

Description:

Increases the grounds for license revocations.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

