
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 adding two new sections to be appropriately
3 designated and to read as follows:

4 "§437- Dispute resolution. (a) In any dispute among a
5 manufacturer, distributor, and dealer on matters governed by
6 this chapter, the manufacturer, distributor, or dealer may seek
7 a hearing from the department of commerce and consumer affairs.

8 (b) For purposes of this section, the office of
9 administrative hearings of the department of commerce and
10 consumer affairs shall accept no more than thirty requests for
11 hearing per fiscal year under this section. The office of
12 administrative hearings may reject a request for a hearing if in
13 the opinion of the hearings officer the matter presented does
14 not involve the interpretation or enforcement of the provisions
15 of chapter 437. The director of commerce and consumer affairs
16 shall appoint a hearing officer pursuant to section 26-9(f) who
17 shall have jurisdiction to review any request for hearing filed
18 under section 437- . The hearing officer shall have the power



1 to issue subpoenas, administer oaths, hear testimony, find
2 facts, make conclusions of law, and issue written decisions that
3 shall be final and conclusive, unless a party adversely affected
4 by the decision files an appeal in the circuit court under
5 section 91-14. All information so provided in and for the
6 hearing shall be sealed and not subject to public review or
7 access. The information shall also remain confidential and not
8 subject to public access or review on appeal pursuant to section
9 91-14.

10 (c) The party requesting the hearing shall file a petition
11 with the department of commerce and consumer affairs specifying
12 the specific provisions of chapter 437 that are in issue; the
13 interpretation or enforcement sought; the legal and factual
14 basis for the interpretation or enforcement sought; and the
15 remedy or remedies sought. Each adverse party shall file a
16 response with the department of commerce and consumer affairs
17 within the time periods established in section 437- .

18 (d) Hearings under this section shall be conducted
19 pursuant to chapter 91 and rules adopted by the department of
20 commerce and consumer affairs. The burden of proof, including
21 the burden of producing the evidence and the burden of
22 persuasion, shall be upon the party initiating the proceeding,



1 unless otherwise specified in chapter 437. The standard of
2 proof required shall be a preponderance of the evidence.

3 (e) The hearing officer shall issue written findings of
4 fact, conclusions of law, and an order as expeditiously as
5 practicable after the hearing has been concluded.

6 (f) Each party to the hearing shall bear the party's own
7 costs, including attorney's fees. Both parties shall share
8 equally in the cost of the hearing, including any allocable
9 departmental overhead attributable to the hearing.

10 (g) Any party to a proceeding brought under section 437-
11 who is aggrieved by a final decision of a hearings officer may
12 apply for judicial review of that decision pursuant to section
13 91-14; provided that any party seeking judicial review pursuant
14 to section 91-14 shall be responsible for the costs of preparing
15 the record on appeal, including the cost of preparing the
16 transcript of the hearing.

17 (h) The department of commerce and consumer affairs may
18 adopt rules and forms, pursuant to chapter 91, to effectuate the
19 purpose of this section and to implement its provisions,
20 including fees to recover the cost of hearings.

21 §437- Reciprocal rights and obligations among dealers,
22 manufacturers and distributors of motor vehicles. (a) In



1 addition to any other actions authorized by law, the
2 restrictions and procedures contained in this section shall
3 apply, notwithstanding the terms of a franchise agreement, where
4 a manufacturer or distributor:

- 5 (1) Has coerced any dealer in the State to enter into any
6 agreement with the manufacturer or distributor or any
7 other party, to perform any act not required by or to
8 refrain from performing any act not contrary to the
9 reasonable requirements of the franchise agreement
10 with the dealer, by threatening to cancel the
11 franchise agreement or by threatening to refuse, at
12 the expiration of the current franchise agreement, to
13 enter into a new franchise agreement with the dealer;
- 14 (2) Has required any dealer in the State to enter into any
15 agreement with the manufacturer, distributor, or any
16 other party that applies the law of another
17 jurisdiction to any dispute between the dealer and
18 manufacturer or distributor, that requires that the
19 dealer bring an action against the manufacturer or
20 distributor in a venue outside of Hawaii, or that
21 requires the dealer to agree to arbitration or waive



1 its rights to bring a cause of action against the
2 manufacturer or distributor;

3 (3) Has required any dealer in the State to enter into any
4 agreement with the manufacturer, distributor, or any
5 other party to prospectively assent to a release,
6 assignment, novation, waiver, or estoppel which
7 operates or is intended by the applicant or licensee
8 to operate to relieve any person from any liability or
9 obligation of this chapter;

10 (4) Has coerced any dealer in the State to enter into any
11 agreement with the manufacturer, distributor, or any
12 other party to perform any act not required by or to
13 refrain from performing any act not contrary to the
14 reasonable requirements of the franchise agreement
15 with the dealer, by awarding or threatening to award a
16 franchise to another person for the sale of the same
17 make of any motor vehicle in the dealer's relevant
18 market area;

19 (5) Has canceled or failed to renew the franchise
20 agreement of any dealer in the State without providing
21 notice, and without good cause and good faith;



1 (6) Has, without cause, delayed delivery of or refused to
2 deliver any new motor vehicle to a dealer franchised
3 to sell the new motor vehicle within a reasonable time
4 after receipt of a written order for the vehicle from
5 the dealer. The delivery to another dealer of a motor
6 vehicle of the same model and similarly equipped as
7 the delayed or undelivered vehicle or the nondelivery
8 of a new motor vehicle to a dealer within sixty days
9 after receipt of a written order for the vehicle shall
10 be prima facie evidence of a delayed delivery or
11 refusal to deliver a new motor vehicle without cause;
12 provided that the delayed delivery or refusal to
13 deliver a motor vehicle shall be deemed with cause if
14 the manufacturer establishes that the delay or refusal
15 to deliver is due to a shortage or curtailment of
16 material, labor, transportation, utility service,
17 labor or production difficulty, or other similar cause
18 beyond the reasonable control of the manufacturer;
19 (7) Has discriminated against any of their franchised
20 dealers in the State by directly or indirectly
21 charging a dealer more for a new motor vehicle or for
22 services, parts, accessories, or any portion of the



1 transportation of the vehicle from the manufacturing
2 or assembly plant to the dealer than is charged to any
3 other franchised dealer in the State for the same
4 make, model, and year of a new motor vehicle or for
5 the same devices, parts, accessories, or similar
6 transportation for the vehicle during the same period;

7 (8) Refuses or fails to offer an incentive program, bonus
8 payment, hold back margin, or any other mechanism that
9 effectively lowers the net cost of a vehicle to any
10 franchised dealer in the State if the incentive,
11 bonus, or holdback is reasonably and practically
12 available to all same line make dealers in the State;

13 (9) Has required a dealer of new motor vehicles in the
14 State as a condition of sale and delivery of new motor
15 vehicles to purchase special features, appliances,
16 accessories, or equipment not desired or requested by
17 the dealer; provided that this prohibition shall not
18 apply to special features, appliances, accessories, or
19 equipment that are regularly installed on that
20 particular model or new motor vehicles as standard
21 equipment or to special features, appliances,
22 accessories, or equipment that are an integral part of



1 the new motor vehicles and cannot be removed therefrom
2 without substantial expense;

3 (10) Has failed to adequately and fairly compensate its
4 dealers for labor, parts, and other expenses incurred
5 by the dealer to perform under and comply with
6 manufacturer's warranty agreements;

7 (11) Has willfully failed to affix the vehicle bumper
8 impact notice pursuant to section 437-4.5(a), or
9 willfully misstated any information in the notice;
10 provided that each failure or misstatement shall be a
11 separate offense;

12 (12) Has wilfully defaced, or removed the vehicle bumper
13 impact notice required by section 437-4.5(a) prior to
14 delivery of the vehicle to which the notice is
15 required to be affixed to the registered owner or
16 lessee; provided that each wilful defacement,
17 alteration, or removal shall be a separate offense;

18 (13) Has required a dealer to refrain from participation in
19 the management of, investment in, or the acquisition
20 of, any other line of new motor vehicle or related
21 products; provided that the new motor vehicle dealer
22 maintains a reasonable line of credit for each make or



1 line of new motor vehicle, remains in compliance with
2 reasonable facilities and other franchise requirements
3 of the manufacturer or distributor, and makes no
4 unauthorized change in the principal management of the
5 dealer;

6 (14) Unreasonably prevents or refuses to approve the
7 relocation of a dealership to another site within the
8 dealer's relevant market area; provided that the
9 dealer shall provide the manufacturer or distributor
10 with notice of the proposed address and a reasonable
11 site plan of the proposed location; and provided
12 further that the manufacturer or distributor shall
13 approve or deny the request in writing no later than
14 sixty days after receipt of the request. Failure to
15 deny the request within sixty days constitutes
16 approval;

17 (15) Requires a dealer to construct, renovate, or make
18 substantial alterations to the dealer's facilities
19 unless the manufacturer or distributor demonstrates
20 that the construction, renovation, or alteration
21 requirements are reasonable and justifiable in light
22 of current and reasonably foreseeable projections of



1 economic conditions existing in the automotive
2 industry at the time the action would be required of
3 the dealer and agrees to make a good faith effort to
4 make available, at the dealer's option, a reasonable
5 quantity and mix of new motor vehicles, which, after a
6 reasonable analysis of market conditions, are
7 projected to meet the sales level necessary to support
8 the increased overhead incurred by the dealer as a
9 result of the required construction, renovation, or
10 alteration;

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

21 (17) Conditions the award of an additional franchise on the
22 dealer entering a site control agreement or the dealer



1 waiving its rights pursuant to this paragraph to
2 protest the manufacturer's or distributor's award of
3 an additional franchise within the dealer's relevant
4 market area; provided that the award of a franchise
5 shall not restrict the terms and conditions of any
6 agreement for which the dealer has voluntarily
7 accepted separate and valuable consideration;

8 (18) Establishes or relocates a franchise within the
9 relevant market area of an existing franchise dealer
10 unless the manufacturer or distributor provides notice
11 to all affected dealers; provided that for the
12 purposes of this paragraph, an "affected dealer" is a
13 dealer that operates a same line make franchise in a
14 relevant market area wherein the manufacturer or
15 distributor is proposing to add or relocate a
16 franchise;

17 (19) Unreasonably withholds consent to the sale,
18 assignment, transfer or exchange of the franchise to a
19 qualified buyer capable of being licensed as a dealer;

20 (20) Refuses or fails to give effect, unless it has good
21 cause, to the dealer's designated successor, whether
22 designated by will, other estate planning document, or



1 written notice to the manufacturer or distributor
2 either while the dealer was living or within ninety
3 days of the dealer's death or incapacity;

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

8 (22) Requires a dealer to pay all or part of the cost of an
9 advertising campaign or contest or to purchase any
10 promotional materials, showroom, or other display
11 decorations or materials at the expense of the dealer
12 without the consent of the dealer; provided that a
13 dealer shall not unreasonably withhold consent;

14 (23) Implements or establishes a customer satisfaction
15 index or other system measuring a customer's degree of
16 satisfaction with a dealer as a sale or service
17 provider unless the system is designed and implemented
18 in a way that is fair and equitable to the
19 manufacturer, distributor, or dealer; provided that in
20 any dispute between a manufacturer, distributor, and a
21 dealer, the party claiming the benefit of the system
22 as justification for acts in relation to the franchise



1 shall have the burden of demonstrating the fairness
2 and equity of the system both in design and
3 implementation in relation to the pending dispute; and
4 provided further that upon request of any dealer, a
5 manufacturer or distributor shall disclose in writing
6 to the dealer a description of how that system is
7 designed and applied to the dealer;

8 (24) Implements or establishes an unreasonable, arbitrary
9 or unfair sales or other performance standard in
10 determining a dealer's compliance with a franchise
11 agreement; or

12 (25) Implements or establishes a system of motor vehicle
13 allocation or distribution to one or more of its
14 dealers which is unfair, inequitable, unreasonably
15 discriminatory, or not supportable by good cause;
16 provided that "unfair" includes but is not limited to
17 requiring a dealer to accept new vehicles not ordered
18 by the dealer or the refusal or failure to offer to
19 any dealer all models offered to its other same line
20 make dealers in the State.

21 (b) A manufacturer or distributor shall give written
22 notice to the dealer of the manufacturer's intent to terminate,



1 discontinue, cancel, or fail to renew a franchise agreement at
2 least seventy-five days before the intended action becomes
3 effective and shall state with specificity the grounds being
4 relied upon for the discontinuation, cancellation, termination,
5 or failure to renew; provided that the manufacturer or
6 distributor may provide the notice fifteen days before the
7 effective date of termination, discontinuation, cancellation, or
8 non-renewal in the following circumstances:

9 (1) If, without the consent of the manufacturer or
10 distributor, the dealer has transferred an interest in
11 the dealership; an individual proprietor, partner, or
12 major shareholder of the dealership has withdrawn from
13 the dealership; or there has been a substantial
14 reduction in interest of a partner or major
15 stockholder;

16 (2) The dealer has filed a voluntary petition in
17 bankruptcy or has had an involuntary petition in
18 bankruptcy filed against it which has not been
19 discharged within thirty days after the filing, there
20 has been a closeout or sale of a substantial part of
21 the dealer's assets related to the business, or there



1 has been a commencement of dissolution or liquidation
2 of the dealer;

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

7 (4) The dealer has defaulted under a security agreement
8 between the dealer and the manufacturer or distributor
9 or has revoked or discontinued a guarantee of the
10 dealer's present or future obligations to the
11 manufacturer or distributor;

12 (5) The dealer has failed to operate in the normal course
13 of business for seven consecutive days or has
14 otherwise abandoned the business; or

15 (6) The dealer has pleaded guilty to or has been convicted
16 of a felony affecting the relationship between the
17 dealer and the manufacturer or distributor.

18 (c) For the purposes of this section, "good faith" means
19 the duty of each party to any franchise agreement to fully
20 comply with that agreement, and to act in a fair and equitable
21 manner towards each other. Pursuant to each party's obligation
22 to act in good faith:



- 1 (1) If the manufacturer's or distributor's notice of
2 intent to terminate, discontinue, cancel, or fail to
3 renew is based upon the dealer's alleged failure to
4 comply with sales or service performance obligations,
5 the dealer shall first be provided with notice of the
6 alleged sales or service deficiencies and afforded at
7 least one hundred eighty days to correct any alleged
8 failure before the manufacturer or distributor sends
9 its notice of intent to terminate, discontinue,
10 cancel, or fail to renew; provided that good cause to
11 terminate, discontinue, cancel or fail to renew a
12 franchise agreement shall not exist if a dealer
13 substantially complies with the manufacturer or
14 distributor's reasonable sales or service performance
15 provisions within the one hundred eighty-day cure
16 period, or if the failure to substantially comply was
17 due to factors that were beyond the control of the
18 dealer;
- 19 (2) A dealer who receives a notice of intent to terminate,
20 discontinue, cancel, or fail to renew may, within the
21 ninety-day notice period, file a petition for a
22 determination of whether the action is unfair or



1 prohibited. The manufacturer or distributor shall
2 have the burden of proving that the action is
3 supported by good cause;

4 (A) In an action commenced pursuant to this
5 paragraph, good cause shall not exist absent a
6 breach of a material term of the franchise
7 agreement; and

8 (B) Upon the filing of a petition pursuant to this
9 paragraph, the franchise agreement shall remain
10 in effect until a final judgment is entered after
11 all appeals are exhausted, and during that time
12 the dealer shall retain all rights and remedies
13 pursuant to the franchise agreement including,
14 but not limited to, the right to sell or transfer
15 the franchise; and

16 (3) Upon the termination, discontinuation, cancellation,
17 or failure to renew the franchise agreement, the
18 manufacturer or distributor shall compensate the
19 dealer for:

20 (A) All new, unused, and undamaged parts listed in
21 the current parts catalog and still in the
22 original, resalable merchandising packages and in



1 unbroken lots or sheet metal in a comparable
2 condition at the price in effect at the time the
3 manufacturer or distributor receives the parts,
4 less applicable allowances;

5 (B) All undamaged, unmodified special tools and
6 equipment required by the manufacturer or
7 distributor within the three years prior to the
8 termination and all signage required by the
9 manufacturer or distributor at fair market value;

10 (C) All new, undamaged and unsold vehicle inventory
11 that is of the current model year or that was
12 acquired from the manufacturer or distributor or
13 from another same line make dealer in the
14 ordinary course of business prior to the
15 effective date of termination or non-renewal;
16 provided that each vehicle has less than five
17 hundred miles registered on the odometer at a
18 price equal to the dealer's net acquisition cost;
19 provided further that the amount shall be paid to
20 the dealer no later than ninety days from the
21 date of the franchise termination,



1 discontinuation, cancellation, or failure to
2 renew; and

3 (D) In addition to any other compensation required by
4 this paragraph, if a manufacturer or distributor
5 terminates, cancels, or fails to renew a
6 franchise agreement due to the discontinuation of
7 a line make, the manufacturer or distributor
8 shall compensate the dealer at the fair market
9 value for the goodwill of the business as of the
10 greater of the effective date of the termination
11 or date of notice; provided that compensation
12 shall be paid to the dealer no later than ninety
13 days from the date of the franchise termination,
14 discontinuation, cancellation, or failure to
15 renew; and provided further that for the purposes
16 of this clause, "fair market value" means the
17 value of the business at the time the franchise
18 agreement is terminated, cancelled, or not
19 renewed.

20 (d) For purposes of this section, a manufacturer or
21 distributor shall be deemed to have discriminated against at
22 dealer if the manufacturer or distributor provides greater



1 transportation benefits for a new motor vehicle for the same or
2 a lesser price or charge to any of their franchised dealers in
3 the State than is provided to any of their competing franchised
4 dealers in the State during the same period. For purposes of
5 this subsection, evidence of similar discriminatory practice
6 against franchised dealers in other states shall not constitute
7 a defense to or justification of a discriminatory act pursuant
8 to this section. The intent and purpose of this subsection is
9 to eliminate inequitable pricing policies set by manufacturers
10 or distributors that result in higher prices of new motor
11 vehicles to the consumer in the State, therefore this subsection
12 shall be liberally interpreted to effect its intent and purpose
13 and in its application, the substance and effect and not the
14 form of the acts and transactions shall be primarily considered
15 in determining whether a discriminatory act has been committed.
16 Nothing contained in this subsection shall prohibit a
17 manufacturer from establishing delivered prices or destination
18 charges to dealers in the State that reasonably reflect the
19 total transportation costs, including costs that are related to
20 the geographical distances and modes of transportation involved
21 in shipments to this State, incurred in the manufacture or



1 delivery of products to the dealers or which meet lower prices
2 established by competitors.

3 (e) In no event shall any manufacturer or distributor pay
4 its dealers a markup on parts or a labor rate per hour for
5 warranty work that is less than a reasonable markup as compared
6 to other same line make dealers in the area charged by the
7 dealer to the retail customers of the dealer; provided that:

8 (1) A dealer shall not request a change in the labor rate
9 more often than once every twelve months;

10 (2) For parts reimbursement, the retail mark up charged by
11 the dealer shall be established by submitting to the
12 manufacturer or distributor seventy-five numerically
13 consecutive customer part repair orders covering
14 repairs made no more than two-hundred-ten days prior
15 to submission along with the average mark up the
16 dealer is declaring as its new parts reimbursement
17 rate; provided that, subject to audit by the
18 manufacturer or distributor, the declared parts
19 reimbursement mark up shall be effective thirty days
20 after submission and shall be presumed to be fair and
21 reasonable;



- 1 (3) To establish the labor rate per hour, the dealer shall
2 submit to the manufacturer or distributor all
3 qualifying nonwarranty customer paid service repair
4 orders covering repairs made during the one month
5 prior to submission of the labor rate and dividing the
6 amount of the dealer's total labor sales by the number
7 of total labor hours that generated those sales.
8 Subject to audit of the submitted repair orders by the
9 manufacturer or distributor, the declared labor rate
10 per hour be effective thirty days after submission to
11 the manufacturer or distributor and shall be presumed
12 to be fair and reasonable;
- 13 (4) In determining qualifying repair orders for parts and
14 labor, the following work shall not be included:
15 repairs for manufacturer or distributor special
16 events, repairs covered by any insurance or service
17 contract, federal, state, or local government
18 legislated vehicle emission or vehicle safety
19 inspections; parts sold at wholesale or repairs
20 performed at wholesale, which shall include any sale
21 or service to a fleet of vehicles; engine assemblies
22 and transmission assemblies; routine maintenance not



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

6 (5) The manufacturer or distributor may rebut the
7 presumption that the declared parts mark up or labor
8 rate per hour is appropriate by showing that the
9 dealer did not follow the requirements of this
10 subsection; provided that the manufacturer or
11 distributor shall not require the dealer to submit any
12 documentation or methodology other than the repair
13 orders listed in this subsection and the declared rate
14 in order to establish the reimbursement rate;

15 (6) A manufacturer or distributor shall not otherwise
16 recover its costs, including through an increase in
17 the wholesale price of a vehicle or surcharge imposed
18 on a dealer if the increase or surcharge is solely
19 intended to recover the cost of reimbursing a dealer
20 for parts and labor pursuant to this subsection;
21 provided that a manufacturer or distributor shall not



1 be prohibited from increasing prices for vehicles or
2 parts in the normal course of business

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

18 (8) No manufacturer or distributor shall conduct a
19 warranty or incentive audit on previously paid claims
20 or chargeback any warranty or incentive payment made
21 more than one year after the date the manufacturer or
22 distributor made the payment to the dealer, or, in the



1 case of an incentive program, one year after the later
2 of the date of the program. These provisions do not
3 apply to fraudulent claims. No manufacturer or
4 distributor shall conduct more than one warranty or
5 incentive audit every twelve months unless the dealer
6 has committed fraud in submission of claims within
7 that twelve month period. No manufacturer or
8 distributor shall impose any warranty or incentive
9 chargeback pursuant to the results of an audit unless
10 the manufacturer, distributor, or a representative has
11 met with the dealer or its representative in person or
12 by telephone, has explained the basis for each
13 proposed chargeback in detail, and has given the
14 dealer or its representative a reasonable opportunity
15 to respond during the meeting or within thirty days
16 thereafter. The manufacturer shall also provide the
17 dealer with a written statement detailing the basis or
18 methodology upon which the dealer was selected for
19 review;
20 (9) A manufacturer or distributor shall not chargeback a
21 dealer for sales or warranty payments unless the
22 manufacturer or distributor can satisfy its burden of



1 proof that the dealer's claim was fraudulent or that
2 the dealer did not comply with the reasonable written
3 procedures of the manufacturer or distributor; and
4 (10) After all internal dispute resolution processes
5 provided by the manufacturer or distributor have been
6 concluded, the manufacturer or distributor shall give
7 notice to the dealer of the final proposed chargeback
8 amount. The dealer may file a petition protesting the
9 proposed chargeback amount within forty-five days of
10 receipt of this written notice from the manufacturer
11 or distributor of the proposed chargeback. If a
12 petition is filed, the proposed chargeback shall be
13 stayed during the entirety of the action and until a
14 final judgment has been rendered.

15 (f) Pursuant to this section, a manufacturer or
16 distributor's notice of the establishment or relocation of a
17 franchise within the relevant market area of an existing
18 franchisee shall state the location of the proposed dealership,
19 and the date on or after which the franchise intends to be
20 engaged in business, the names and addresses of the dealer-
21 operator and the principal investors in the proposed additional
22 or relocated franchise, and the identity of all same line make



1 franchise dealers in the relevant market area where the proposed
2 addition or relocation would be located, provided that:

- 3 (1) An affected dealer may file a petition within thirty
4 days of receipt of the manufacturer or distributor's
5 notice for determination of whether the manufacturer
6 or distributor has good cause to establish or relocate
7 an additional franchise within the dealer's relevant
8 market area. When a petition is filed, the
9 manufacturer or distributor shall not establish or
10 relocate the proposed franchise until a hearing has
11 been held and a determination made regarding whether
12 good cause exists for the proposed addition or
13 relocation. The hearing officer shall make a
14 determination no later than one hundred eighty days
15 from receipt of notice of the protest, except for good
16 cause. The manufacturer or distributor has the burden
17 of proof to demonstrate good cause exists for the
18 addition or relocation of an additional franchise
19 within the affected dealer's relevant market area; and
- 20 (2) In determining whether the manufacturer or distributor
21 has good cause to add or relocate the franchise into
22 an affected dealer's relevant market area the hearing



1 officer shall consider and make findings upon evidence
2 including but not limited to: the permanency and size
3 of investment made and the reasonable obligations
4 incurred by the existing new motor vehicle dealers in
5 the relevant market area; the growth or decline in
6 population and new car registrations in the relevant
7 market area; the effect on the consuming public in the
8 relevant market area; whether it is injurious or
9 beneficial to the public welfare for a new dealer to
10 be established; whether the new motor vehicle dealers
11 of the same line make in that area are providing
12 adequate competition and convenient customer care for
13 the motor vehicles of the same line make including the
14 adequacy of motor vehicle sales and service
15 facilities, equipment, supply of motor vehicle parts,
16 and qualified service personnel; whether the
17 establishment or relocation of the proposed dealership
18 appears to be warranted and justified based on
19 economic and marketing conditions pertinent to dealers
20 competing in the community or territory, including
21 anticipating future changes; the effect on the
22 relocating dealer of a denial of its relocation into



1 the relevant market area; and the reasonably expected
2 market penetration of the line-make motor vehicle for
3 the community or territory involved, after
4 consideration of all factors that may affect said
5 penetration, including, but not limited to,
6 demographic factors such as age, income, education,
7 size class preference, product popularity, retail
8 lease transactions, or other factors affecting sales
9 to consumers of the community or territory.

10 This subsection shall not apply to the relocation of an
11 existing dealer within two miles of the dealer's existing
12 dealership location; the appointment of a successor dealer at
13 the same location as its predecessor or within a two-mile radius
14 from any boundary of the predecessor's former location within
15 one year from the date on which the predecessor ceased
16 operations or was terminated, whichever occurred later; or the
17 relocation of a dealer to a site that is farther away from the
18 protesting affected dealer than the existing location.

19 (g) A dealer shall notify the manufacturer or distributor
20 in writing of its desire to sell, assign, or transfer its
21 franchise and identify the proposed transferee's name, address,
22 financial qualifications, and business experience. Along with



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

18 If a manufacturer or distributor denies a dealer's proposed
19 sale, assignment, or transfer of the franchise, the dealer may
20 file a petition within sixty days of the notice of denial. The
21 manufacturer or distributor has the burden of proof to
22 demonstrate at a hearing pursuant to a timely filed petition



1 that the proposed transferee is not of good moral character or
2 does not meet the written, reasonable, and uniformly applied
3 business standards or qualifications of the manufacturer
4 relating to the financial qualifications of the transferee and
5 business experience of the transferee or the transferee's
6 executive management. The manufacturer or distributor shall
7 respond to the dealer's petition within sixty days from the date
8 it was filed. The hearing pursuant to a timely filed petition
9 under this subsection shall take place within one hundred twenty
10 days from the date the petition is filed;

11 (h) In determining whether good cause exists for the
12 manufacturer or distributor's refusal pursuant to subsection
13 (a) (20) to honor a dealer's succession, the manufacturer shall
14 have the burden to prove that the successor is not of good moral
15 character, not willing to be bound by the terms of the franchise
16 agreement, and is either not qualified to operate the dealership
17 or fails to demonstrate that the dealership will be operated by
18 a qualified executive manager; provided that:

19 (1) The manufacturer or distributor shall notify the
20 proposed successor of its belief that good cause
21 exists to refuse to honor the succession within sixty
22 days after receipt of the notice of the proposed



1 successor's intent to succeed to the franchise, and
2 the manufacturer or distributor shall detail why it
3 believes good cause exists to deny the succession;

4 (2) A proposed successor may file a petition within sixty
5 days after receipt of the manufacturer or
6 distributor's notice of refusal to honor the
7 succession. A hearing pursuant to a timely filed
8 petition under this subsection shall be conducted
9 within ninety days from the date the petition was
10 filed; and

11 (3) The franchise shall continue, and the manufacturer or
12 distributor shall be prohibited from any action to the
13 contrary, until a final judgment has been rendered on
14 the proposed succession."

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

17 "**§437-1 Legislative findings and declaration.** The
18 legislature finds that:

19 (1) The manufacture, distribution, and sales of motor
20 vehicles in the State vitally affects the general
21 economy of the State and the public interest and
22 public welfare;



- 1 (2) Manufacturers of motor vehicles [~~whose~~] without
2 physical manufacturing facilities [~~are not located~~]
3 within the State[~~7~~] and motor vehicle distributors[~~7~~,
4 ~~are doing~~] do business in the State through their
5 control over, and relationships and transactions with
6 their dealers, branches, and representatives; and
- 7 (3) The geographical location of Hawaii makes it necessary
8 to ensure [~~the availability of~~] that motor vehicles
9 [~~and~~], parts and dependable service [~~therefor~~] are
10 available within the State to protect and preserve the
11 transportation system and the investments of its
12 residents.

13 The legislature declares, on the basis of the foregoing
14 findings, that it is necessary to regulate and to license motor
15 vehicle manufacturers, distributors, dealers, salespersons, and
16 auctions in the State[~~7~~] in order to prevent frauds,
17 impositions, and other abuses against its residents[~~7~~] and to
18 protect and preserve the economy and the transportation system
19 of the State. In order to further this intent, the legislature
20 finds that sections 437-1 to 437-41 as amended are remedial and
21 shall apply to all franchise and ancillary agreements existing
22 as of the date of enactment of each subsequent amendment."



1 SECTION 3. Section 437-1.1, Hawaii Revised Statutes, is
2 amended as follows:

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

5 "Relevant market area" means the following:

6 (1) In a county with a population of less than five
7 hundred thousand persons according to the most recent
8 data of the United States Census Bureau or the data of
9 the department of business, economic development, and
10 tourism, the relevant market area shall be the county
11 in which the dealer is located; or

12 (2) In a county with a population of more than five
13 hundred thousand persons according to the most recent
14 data of the United States Census Bureau or the data of
15 the department of business, economic development, and
16 tourism, the relevant market area shall be within a
17 radius of ten miles from the dealership location."

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

20 "Dealer" includes "auction" as defined in this section or
21 any person or entity not expressly excluded by this chapter who
22 sells three or more vehicles within a calendar year, or who is



1 engaged in the business of selling, soliciting, offering, or
2 attempting to negotiate sales, purchases, or exchanges of motor
3 vehicles or any interest therein, including options to purchase
4 motor vehicles. The term "dealer" excludes a person who sells
5 or purchases motor vehicles in the capacity of:

- 6 (1) A receiver, trustee, personal representative,
7 guardian, or any other person appointed by or acting
8 under a judgment or order of any court;
- 9 (2) A public officer while performing official duties;
- 10 (3) A holder of an auction license issued under this
11 chapter when acting within the scope of the license;
- 12 (4) An insurance company, finance company, bank, or other
13 financial institution [~~selling~~] that sells or
14 [~~offering~~] offers for sale motor vehicles repossessed
15 or foreclosed by it under the terms of a credit sale
16 contract or security agreement;
- 17 (5) A person not engaged in the business of selling or
18 purchasing motor vehicles [~~when acquiring~~] who
19 acquires or [~~disposing~~] disposes of motor vehicles for
20 the person's own personal, family, or business use;
21 provided that the vehicles are acquired or disposed of



1 for the person's use in good faith and not for the
2 purpose of evading any provision of this chapter;

3 (6) A consumer consultant who is not engaged in the
4 business of selling, soliciting, offering, or
5 attempting to negotiate sales or exchanges of motor
6 vehicles or any interest therein for any dealer, and
7 who for a fee provides specialized information and
8 expertise in motor vehicle sales transactions to
9 consumers [~~wishing~~] who wishes to purchase or lease
10 motor vehicles [~~—The~~]; provided that consumer
11 consultant shall register and pay a fee to the board
12 prior to offering consultant services; or

13 (7) A Hawaii bank or its affiliate selling or offering for
14 sale motor vehicles surrendered or redelivered to it
15 under the terms of a lease [~~7~~] or sold by it pursuant
16 to a purchase option contained in a lease.

17 "Franchise" or "franchise agreement" means any contract or
18 agreement between a dealer and a manufacturer or distributor
19 that authorizes the dealer to engage in the business of selling
20 or purchasing any particular make or makes of new motor vehicles
21 or motor vehicle parts [~~therefor~~] manufactured or distributed by
22 [~~such~~] manufacturer or distributor.



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

4 SECTION 4. Section 437-28, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

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

19 (1) Has intentionally made a false statement of a material
20 fact in the application for a license or in any other
21 statement required by this chapter or has obtained or



- 1 attempted to obtain a license by fraud or
2 misrepresentation;
- 3 (2) Has failed to comply with, observe, or adhere to any
4 provision of this chapter or any other law relating to
5 the sale, taxing, or licensing of motor vehicles or
6 any rule or order made pursuant to this chapter;
- 7 (3) Has committed a fraudulent act in selling, purchasing,
8 or otherwise dealing in motor vehicles or has
9 misrepresented the terms and conditions of a sale,
10 purchase, or contract for sale or purchase of a motor
11 vehicle or any interest therein including an option to
12 purchase motor vehicles;
- 13 (4) Has engaged in business under a past or present
14 license issued pursuant to this chapter, in a manner
15 as to cause injury to the public or to those with whom
16 one is dealing;
- 17 (5) Has failed to comply with, observe, or adhere to any
18 law in any other respect [~~on account whereof~~] so that
19 the board [~~may deem~~] deems the applicant or holder to
20 be an unfit or improper person to hold a license;



- 1 (6) Has failed to meet or maintain the conditions and
2 requirements necessary to qualify for the issuance of
3 a license;
- 4 (7) Is insolvent [~~or~~], has filed, or is the subject of a
5 petition for bankruptcy, wage earner's plan, or
6 financial reorganization plan[~~+~~] or has made or
7 proposes to make an assignment for benefit of
8 creditors;
- 9 (~~In the case of an individual applicant or holder of a~~
10 ~~license, if the applicant or holder is~~) Is not at
11 least eighteen years of age[~~+~~], or in the case of a
12 partnership applicant or holder of a license, if any
13 general or limited partner [~~thereof~~] is not at least
14 eighteen years of age;
- 15 (9) Has charged more than the legal rate of interest on
16 the sale [~~or~~], purchase, or attempted sale or
17 purchase, or in arranging the sale or purchase of a
18 motor vehicle or any interest therein including an
19 option to purchase;
- 20 (10) Has violated any [~~of the laws~~] law pertaining to false
21 advertising or to credit sales in the offering,
22 soliciting, selling, [~~or~~] purchasing, or arranging to



- 1 sell or purchase a motor vehicle or any interest
2 therein;
- 3 (11) Has wilfully failed or refused to perform any
4 unequivocal and indisputable obligation under any
5 written agreement involving the sale or purchase of a
6 motor vehicle or any interest therein, including an
7 option to purchase;
- 8 (12) Has been denied the issuance of a license under this
9 chapter for substantial culpable cause or [~~for having~~]
10 has had a license issued under this chapter suspended,
11 revoked, or the renewal thereof denied for substantial
12 culpable cause;
- 13 (13) Has entered [~~or~~], has attempted to enter, or proposes
14 to enter into any contract or agreement contrary to
15 this chapter or any rule adopted thereunder;
- 16 (14) Has been [~~or~~], is engaged, or proposes to engage in
17 the business of selling new motor vehicles as a dealer
18 or auction without a proper franchise therefor;
- 19 (15) Has at any time employed [~~or~~], utilized, or attempted
20 or proposed to employ or utilize any person not
21 licensed under this chapter who is required to be so
22 licensed;



- 1 (16) Has entered or attempted to enter any one-payment
2 contract[7] where the contract is required to be
3 signed by the purchaser prior to removal of the motor
4 vehicle for test driving from the seller's premises;
- 5 (17) [~~Being~~] Is a salesperson or dealer[+] and:
- 6 (A) Has required a purchaser of a motor [~~vehicles~~]
7 vehicle as a condition of sale and delivery
8 [~~thereof~~], to purchase special features,
9 appliances, accessories, or equipment not desired
10 or requested by the purchaser; provided that this
11 prohibition shall not apply as to special
12 features, appliances, accessories, or equipment
13 which are ordinarily installed on the vehicle
14 when received or acquired by the dealer;
- 15 (B) Has represented and sold as an unused motor
16 vehicle any motor vehicle which has been leased
17 or operated as a demonstrator[7-~~leased~~7] or U-
18 drive motor vehicle;
- 19 (C) Has sold a new motor vehicle without providing or
20 securing for the purchaser the standard factory
21 new car warranty for the vehicle[7] unless the
22 dealer or salesperson clearly notes in writing on



1 the sales contract that the new motor vehicle is
2 sold without the standard factory warranty;
3 (D) Has sold a new motor vehicle covered by a
4 standard factory warranty without informing the
5 purchaser in writing that any repairs or other
6 work necessary on any accessories which were not
7 installed by the manufacturer of the vehicle may
8 not be obtainable in a geographic location other
9 than where the purchase occurred; provided that
10 the notice required by this section shall conform
11 to the plain language requirements of section
12 487A-1, regardless of the dollar amount of the
13 transaction;
14 (E) Has engaged in any improper business conduct,
15 including but not limited to employing,
16 contracting with, or compensating consumer
17 consultants; or
18 (F) Has sold or leased a new or used motor vehicle,
19 other than at auction, without written
20 documentation [~~that contains the following~~
21 ~~provision printed legibly in at least fourteen-~~
22 ~~point bold typeface print,~~] upon which the



1 salesperson or dealer shall appropriately
 2 indicate the type of sale, [~~and upon~~] which both
 3 the customer and salesperson or dealer shall
 4 place their initials in the designated spaces[~~r~~]
 5 prior to the signing of the contract of sale or
 6 lease[+] and that contains the following
 7 provision printed legibly in at least fourteen
 8 point bold typeface:

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

12 _____ Customer's Initials _____ Salesperson's
 13 _____ or Dealer's Initials";

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

16 (A) Has sold or proposed to sell new motor vehicles
 17 without providing for the maintenance of a
 18 reasonable inventory of parts for new vehicles or
 19 without providing and maintaining adequate repair
 20 facilities and personnel for new vehicles at
 21 either the main licensed premises or at any
 22 branch location;



1 (B) Has employed or proposed to employ any
2 salesperson who is not duly licensed under this
3 chapter; or

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

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

9 (20) [~~Being~~] Is an applicant for a salesperson's license[+] and:
10

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

13 (B) Intends to be employed as a salesperson for more
14 than one dealer [~~;- or~~].

15 [~~(21) Being a manufacturer or distributor:~~

16 [~~(A) Has attempted to coerce or has coerced any dealer~~
17 ~~in the State to enter into any agreement with the~~
18 ~~manufacturer or distributor or any other party,~~
19 ~~to perform any act not required by or to refrain~~
20 ~~from performing any act not contrary to the~~
21 ~~reasonable requirements of the franchise~~
22 ~~agreement with the dealer, by threatening to~~



1 ~~cancel the franchise agreement or by threatening~~
2 ~~to refuse, at the expiration of the current~~
3 ~~franchise agreement, to enter into a new~~
4 ~~franchise agreement with the dealer;~~

5 ~~(B) Has attempted to coerce or has coerced any dealer~~
6 ~~in the State to enter into any agreement with the~~
7 ~~manufacturer or distributor or any other party,~~
8 ~~to perform any act not required by or to refrain~~
9 ~~from performing any act not contrary to the~~
10 ~~reasonable requirements of the franchise~~
11 ~~agreement with the dealer, by awarding or~~
12 ~~threatening to award a franchise to another~~
13 ~~person for the sale of the same make of any motor~~
14 ~~vehicle in the same sales area of responsibility~~
15 ~~covered by the existing franchise agreement of~~
16 ~~the dealer;~~

17 ~~(C) Has attempted to or has canceled or failed to~~
18 ~~renew the franchise agreement of any dealer in~~
19 ~~the State without good faith, as defined herein.~~
20 ~~Upon such a cancellation or failure to renew the~~
21 ~~franchise agreement, the party canceling or~~



1 ~~failing to renew the franchise agreement, at the~~
2 ~~dealer's option, shall either:~~

3 ~~(i) Compensate the dealer at the fair market~~
4 ~~going business value for the dealer's~~
5 ~~capital investment, which shall include but~~
6 ~~not be limited to the going business value~~
7 ~~of the business, goodwill, property, and~~
8 ~~improvement owned or leased by the dealer~~
9 ~~for the purpose of the franchise, inventory~~
10 ~~of parts, and motor vehicles possessed by~~
11 ~~the dealer in connection with the franchise,~~
12 ~~plus reasonable attorney's fees incurred in~~
13 ~~collecting compensation; provided that the~~
14 ~~investment shall have been made with~~
15 ~~reasonable and prudent judgment for the~~
16 ~~purpose of the franchise agreement; or~~

17 ~~(ii) Compensate the dealer for damages including~~
18 ~~attorney's fees as aforesaid, resulting from~~
19 ~~the cancellation or failure to renew the~~
20 ~~franchise agreement.~~

21 ~~As used in this paragraph, "good faith" means the~~
22 ~~duty of each party to any franchise agreement to~~



1 ~~fully comply with that agreement, or to act in a~~
2 ~~fair and equitable manner towards each other;~~
3 (D) ~~Has delayed delivery of or refused to deliver~~
4 ~~without cause, any new motor vehicle to a dealer,~~
5 ~~franchised to sell the new motor vehicle, within~~
6 ~~a reasonable time after receipt of a written~~
7 ~~order for the vehicle from the dealer. The~~
8 ~~delivery to another dealer of a motor vehicle of~~
9 ~~the same model and similarly equipped as the~~
10 ~~vehicle ordered by a dealer who has not received~~
11 ~~delivery thereof, but who had placed the written~~
12 ~~order for the vehicle prior to the order of the~~
13 ~~dealer receiving the vehicle, shall be prima~~
14 ~~facie evidence of a delayed delivery of, or~~
15 ~~refusal to deliver, a new motor vehicle without~~
16 ~~cause. The nondelivery of a new motor vehicle to~~
17 ~~a dealer within sixty days after receipt of a~~
18 ~~written order for the vehicle from a dealer shall~~
19 ~~also be prima facie evidence of delayed delivery~~
20 ~~of, or refusal to deliver, a new motor vehicle~~
21 ~~without cause; provided that the delayed delivery~~
22 ~~of, or refusal to deliver, a motor vehicle shall~~



1 ~~be deemed with cause if the manufacturer~~
2 ~~establishes that the delay or refusal to deliver~~
3 ~~is due to a shortage or curtailment of material,~~
4 ~~labor, transportation, utility service, labor or~~
5 ~~production difficulty, or other similar cause~~
6 ~~beyond the reasonable control of the~~
7 ~~manufacturer;~~

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



1 ~~as aforesaid to any of their franchised dealers~~
2 ~~in the State than is provided to any of their~~
3 ~~competing franchised dealers in the State for the~~
4 ~~same or lesser price or charge than that imposed~~
5 ~~upon the franchised dealer in the State during~~
6 ~~the same period is deemed to have so~~
7 ~~discriminated against the competing franchised~~
8 ~~dealer in the State. Evidence of similar~~
9 ~~discriminatory practice against franchised~~
10 ~~dealers in other states shall not constitute a~~
11 ~~defense to or justification of the commission of~~
12 ~~the discriminatory act against the franchised~~
13 ~~dealer in the State. The intent and purpose of~~
14 ~~this subparagraph is to eliminate inequitable~~
15 ~~pricing policies set by manufacturers or~~
16 ~~distributors which result in higher prices of new~~
17 ~~motor vehicles to the consumer in the State.~~
18 ~~This subparagraph shall be liberally interpreted~~
19 ~~to effect its intent and purpose and in the~~
20 ~~application thereof, the substance and effect and~~
21 ~~not the form of the acts and transactions shall~~
22 ~~be primarily considered in determining whether a~~



1 ~~discriminatory act has been committed. Nothing~~
2 ~~contained in this subparagraph shall prohibit~~
3 ~~establishing delivered prices or destination~~
4 ~~charges to dealers in the State which reasonably~~
5 ~~reflect the seller's total transportation costs~~
6 ~~incurred in the manufacture or delivery of~~
7 ~~products to the dealers, including costs that are~~
8 ~~related to the geographical distances and modes~~
9 ~~of transportation involved in shipments to this~~
10 ~~State, or which meet those lower prices~~
11 ~~established by competitors;~~

12 ~~(F) Has required a dealer of new motor vehicles in~~
13 ~~the State as a condition of sale and delivery of~~
14 ~~new motor vehicles to purchase special features,~~
15 ~~appliances, accessories, or equipment not desired~~
16 ~~or requested by the dealer; provided that this~~
17 ~~prohibition shall not apply to special features,~~
18 ~~appliances, accessories, or equipment, except~~
19 ~~heaters, that are regularly installed on that~~
20 ~~particular model or new motor vehicles as~~
21 ~~"standard" equipment or to special features,~~
22 ~~appliances, accessories, or equipment that are an~~



1 ~~integral part of the new motor vehicles and~~
2 ~~cannot be removed therefrom without substantial~~
3 ~~expense. Nothing in this subparagraph shall make~~
4 ~~it unlawful for a dealer to sell a vehicle that~~
5 ~~includes a heater that has been installed as~~
6 ~~standard equipment;~~

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



- 1 ~~be notified in writing of the grounds for~~
2 ~~disapproval;~~
- 3 ~~(H) Has wilfully failed to affix the vehicle bumper~~
4 ~~impact notice pursuant to section 437-4.5(a), or~~
5 ~~wilfully misstated any information in the notice.~~
6 ~~Each failure or misstatement is a separate~~
7 ~~offense;~~
- 8 ~~(I) Has wilfully defaced, or removed the vehicle~~
9 ~~bumper impact notice required by section~~
10 ~~437-4.5(a) prior to delivery of the vehicle to~~
11 ~~which the notice is required to be affixed to the~~
12 ~~registered owner or lessee. Each wilful~~
13 ~~defacement, alteration, or removal is a separate~~
14 ~~offense; or~~
- 15 ~~(J) Has required a dealer to refrain from~~
16 ~~participation in the management of, investment~~
17 ~~in, or the acquisition of, any other line of new~~
18 ~~motor vehicle or related products; provided that~~
19 ~~the new motor vehicle dealer maintains a~~
20 ~~reasonable line of credit for each make or line~~
21 ~~of new motor vehicle, remains in compliance with~~
22 ~~reasonable facilities and other franchise~~



1 ~~requirements of the manufacturer or distributor,~~
2 ~~and makes no unauthorized change in the principal~~
3 ~~management of the dealer.]"~~

4 SECTION 5. Section 437-28.5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "~~+~~§437-28.5~~+~~ **Procedures, protections, rights, and**
7 **remedies made available to licensees.** (a) The same procedures,
8 protections, rights, and remedies provided to a dealer under
9 section 437-28(a)(21) and section 437-3.6 shall apply to a
10 distributor that is not a manufacturer; provided that for a
11 distributor that is not a manufacturer, the measure of
12 compensation under section 437-28(a)(21)(C) upon cancellation or
13 failure to renew a franchise agreement, without good cause and
14 good faith, shall include compensation related to ~~that~~
15 distributor's dealer operations and franchise agreements with
16 other dealers.

17 (b) Notwithstanding the terms, provisions, or conditions
18 of any dealer or distributor agreement or franchise or the terms
19 or provisions of any waiver~~7~~ and notwithstanding any other
20 legal or administrative remedies available, any person who is
21 licensed under this chapter and whose business or property is
22 injured by a violation of section 437-28(a)(21), may bring a



1 civil action in a court of competent jurisdiction in the State
2 to enjoin further violations and to recover any damages together
3 with the costs of the suit. Laws of the State of Hawaii shall
4 apply to any action initiated under this section.

5 (c) Any person that brings or defends against a civil
6 action under subsection (b) [~~shall~~] may be entitled to recover
7 reasonable attorneys' fees as a part of any damages or
8 injunction; provided that the person substantially prevails in
9 establishing or defending against a violation of section 437-
10 28(a)(21)."

11 SECTION 6. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect on July 1, 2050.



Report Title:

Motor Vehicle Industry Licensing Act

Description:

Increases the grounds for license revocations. Takes effect 7/1/2050. (SD2)

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

