
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~~] state vitally affects the
7 general economy of the State and the public interest
8 and public welfare;

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

16 (3) The geographical location of Hawaii makes it necessary
17 to ensure [~~the availability of~~] that motor vehicles
18 [~~and~~], parts and dependable service [~~therefor~~] are



1 available within the [~~State~~] state to protect and
2 preserve the transportation system and the investments
3 of its residents.

4 The legislature declares, on the basis of the foregoing
5 findings, that it is necessary to regulate and to license motor
6 vehicle manufacturers, distributors, dealers, salespersons, and
7 auctions in the [~~State,~~] state to prevent frauds, impositions,
8 and other abuses against its residents[~~7~~] and to protect and
9 preserve the economy and the transportation system of the State.

10 To further this intent, the legislature finds that all of the
11 provisions of sections 437-1 to 437-41 as amended from time to
12 time are remedial and apply to all franchise agreements existing
13 as of the date of enactment."

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

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

18 "Relevant market area" means the following:

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



1 tourism, the relevant market area shall be the county
2 in which the dealer is located; or

3 (2) In a county with a population of more than five
4 hundred thousand persons according to the most recent
5 data of the United States Census Bureau or the data of
6 the department of business, economic development, and
7 tourism, the relevant market area shall be within a
8 radius of six miles from the dealership location."

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

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

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

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



- 1 (3) A holder of an auction license issued under this
2 chapter when acting within the scope of the license;
- 3 (4) An insurance company, finance company, bank, or other
4 financial institution [~~selling~~] that sells or
5 [~~offering~~] offers for sale motor vehicles repossessed
6 or foreclosed by it under the terms of a credit sale
7 contract or security agreement;
- 8 (5) A person not engaged in the business of selling or
9 purchasing motor vehicles [~~when acquiring~~] who
10 acquires or [~~disposing~~] disposes of motor vehicles for
11 the person's own personal, family, or business use;
12 provided that the vehicles are acquired or disposed of
13 for the person's use in good faith and not for the
14 purpose of evading any provision of this chapter;
- 15 (6) A consumer consultant who is not engaged in the
16 business of selling, soliciting, offering, or
17 attempting to negotiate sales or exchanges of motor
18 vehicles or any interest therein for any dealer, and
19 who for a fee provides specialized information and
20 expertise in motor vehicle sales transactions to
21 consumers [~~wishing~~] who wishes to purchase or lease
22 motor vehicles [~~—The~~]; provided that consumer



1 consultant shall register and pay a fee to the board
2 prior to offering consultant services; or

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

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

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

20 SECTION 3. Section 437-28, Hawaii Revised Statutes, is
21 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]~~.
8 Prior to notice and hearing, the board may deny the issuance of
9 any license for any cause authorized by law, including but not
10 limited to circumstances where the board finds that the
11 applicant or holder, or any officer, director, general manager,
12 trustee, partner, or stockholder owning more than ten per cent
13 interest 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~~] so that
13 the board [~~may deem~~] deems the applicant or holder to
14 be an unfit or 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 a
19 petition for bankruptcy, wage earner's plan, or
20 financial reorganization plan[+] or has made or
21 proposes to make an assignment for benefit of
22 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~~[+]~~, or in the case of a
4 partnership applicant or holder of a license, if any
5 general or limited partner [~~thereof~~] is not at least
6 eighteen years of age;

7 (9) Has charged more than the legal rate of interest on
8 the sale [~~or~~], purchase, or attempted sale or
9 purchase, or in arranging the sale or purchase of a
10 motor vehicle or any interest therein including an
11 option to purchase;

12 (10) Has violated any [~~of the laws~~] law 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 has 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
7 to enter into any contract or agreement contrary to
8 this chapter or any rule adopted thereunder;
- 9 (14) Has been [~~or~~], is engaged, or proposes to engage in
10 the business of selling new motor vehicles as a dealer
11 or auction without a proper franchise therefor;
- 12 (15) Has at any time employed [~~or~~], [~~utilized~~] used, or
13 attempted or proposed to employ or [~~utilize~~] use any
14 person not licensed under this chapter who is required
15 to be so licensed;
- 16 (16) Has entered or attempted to enter any one-payment
17 contract[~~7~~] where the contract is required to be
18 signed by the purchaser prior to removal of the motor
19 vehicle for test driving from the seller's premises;
- 20 (17) [~~Being~~] Is a salesperson or dealer[~~+~~] and:
- 21 (A) Has required a purchaser of a motor [~~vehicles~~]
22 vehicle as a condition of sale and delivery



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

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

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

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



1 not be obtainable in a geographic location other
2 than where the purchase occurred; provided that
3 the notice required by this section shall conform
4 to the plain language requirements of section
5 487A-1, regardless of the dollar amount of the
6 transaction;

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

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



1 provision printed legibly in at least fourteen
2 point bold typeface:

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

6 _____ Customer's Initials _____ Salesperson's
7 or Dealer's Initials";

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

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

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

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



- 1 (19) [~~Being~~] Is an applicant or holder of an auction's
- 2 license and has sold or proposed to sell new motor
- 3 vehicles without being franchised therefor; or
- 4 (20) [~~Being~~] Is an applicant for a salesperson's license[+]
- 5 and:
- 6 (A) Does not intend to be employed as a salesperson
- 7 for a licensed motor vehicle dealer; or
- 8 (B) Intends to be employed as a salesperson for more
- 9 than one dealer[~~+~~];
- 10 (21) [~~Being~~] Notwithstanding the terms of a franchise
- 11 agreement, is a manufacturer or distributor[+] that:
- 12 (A) Has [~~attempted to coerce or has coerced~~] required
- 13 any dealer in the [~~State~~] state to enter into any
- 14 agreement with the manufacturer or distributor or
- 15 any other party, to perform any act not required
- 16 by or to refrain from performing any act not
- 17 contrary to the reasonable requirements of the
- 18 franchise agreement with the dealer, by
- 19 threatening to cancel the franchise agreement or
- 20 by threatening to refuse, at the expiration of
- 21 the current franchise agreement, to enter into a
- 22 new franchise agreement with the dealer;



1 (B) Has required any dealer in the state to enter
 2 into any agreement with the manufacturer or
 3 distributor or any other party, that requires the
 4 law of another jurisdiction to apply to any
 5 dispute between the dealer and manufacturer or
 6 distributor or requires that the dealer bring an
 7 action against the manufacturer or distributor in
 8 a venue outside of Hawaii or requires the dealer
 9 to agree to arbitration or waive its rights to
 10 bring a cause of action against the manufacturer
 11 or distributor;

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

20 [-(B)] (D) Has [attempted to coerce or has coerced] required
 21 any dealer in the [State] state to enter into any
 22 agreement with the manufacturer or distributor or



1 any other party, to perform any act not required
 2 by or to refrain from performing any act not
 3 contrary to the reasonable requirements of the
 4 franchise agreement with the dealer, by awarding
 5 or threatening to award a franchise to another
 6 person for the sale of the same make of any motor
 7 vehicle in the [~~same sales area of responsibility~~
 8 ~~covered by the existing franchise agreement of~~
 9 ~~the dealer;~~] dealer's 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~~] state without providing notice, and
 13 without good cause and good faith, as defined
 14 herein. [~~Upon such a cancellation or failure to~~
 15 renew the franchise agreement, the party
 16 canceled or failing to renew the franchise
 17 agreement, at the 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 sixty 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 except that the manufacturer or distributor may
5 provide such notice fifteen days before the
6 effective date of termination, discontinuation,
7 cancellation, or non-renewal in the following
8 circumstances:

9 (i) The dealer has filed a voluntary petition in
10 bankruptcy or has had an involuntary
11 petition in bankruptcy filed against it
12 which has not been discharged within thirty
13 days after the filing, there has been a
14 closeout or sale of a substantial part of
15 the dealer's assets related to the business,
16 or there has been a commencement of
17 dissolution or liquidation of the dealer;

18 (ii) The dealer has failed to operate in the
19 normal course of business for seven
20 consecutive days or has otherwise abandoned
21 the business;



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

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

8 As used in this subparagraph, "good faith" means
9 the duty of each party to any franchise agreement
10 to fully comply with that agreement, and to act
11 in a fair and equitable manner towards each
12 other.

13 In the event that the manufacturer's or
14 distributor's notice of intent to terminate,
15 discontinue, cancel, or fail to renew is based
16 upon the dealer's alleged failure to comply with
17 sales or service performance obligations, the
18 dealer shall first be provided with notice of the
19 alleged sales or service deficiencies and
20 afforded at least one hundred eighty days to
21 correct any alleged failure before the
22 manufacturer or distributor may send its notice



1 of intent to terminate, discontinue, cancel, or
2 fail to renew. Good cause shall not be deemed to
3 exist if a dealer substantially complies with the
4 manufacturer's or distributor's reasonable
5 performance provisions within the one hundred
6 eighty-day cure period, or if the failure to
7 demonstrate substantial compliance was due to
8 factors that were beyond the control of the
9 dealer.

10 A dealer who receives notice of intent to
11 terminate, discontinue, cancel, or fail to renew
12 may, within the sixty-day notice period, file a
13 petition or complaint with the board for a
14 determination of whether such action is taken in
15 good faith and supported by good cause. A
16 petition or complaint filed under this subsection
17 shall be immediately referred to a hearing
18 officer as a contested case in accordance with
19 Title 8, Chapter 91-9, and shall operate under
20 the Administrative Procedure Act and the
21 administrative rules set forth in Title 16,
22 Chapter 201 et al. The contested case shall not



1 be subject to mediation under Title 8, chapter
2 91-8.5. The manufacturer or distributor shall
3 have the burden of proof that such action is
4 taken in good faith and supported by good cause.
5 The hearing officer's final determination shall
6 not be subject to board approval.
7 In an action commenced pursuant to this
8 subparagraph, good cause shall not exist absent a
9 breach of a material and substantial term of the
10 franchise agreement or the existence of one or
11 more circumstances enumerated in subsection (i)
12 or upon the change in ownership of a manufacturer
13 or distributor or upon the cancellation of a line
14 make.
15 Upon the filing of an action pursuant to this
16 subparagraph, except in the circumstances
17 enumerated in subsection (i), the franchise
18 agreement shall remain in effect until a final
19 judgment is entered after all appeals are
20 exhausted, and during that time the dealer shall
21 retain all rights and remedies pursuant to the



1 franchise agreement, including the right to sell
2 or transfer the franchise.
3 Upon the termination, discontinuation,
4 cancellation or failure to renew the franchise
5 agreement by the manufacturer or distributor, the
6 manufacturer or distributor shall compensate the
7 dealer for all new, unused, and undamaged parts
8 listed in the current parts catalog and still in
9 the original, resalable merchandising packages
10 and in unbroken lots; provided that for sheet
11 metal, a comparable substitute may be used.
12 Prices shall be those in effect at the time the
13 manufacturer or distributor receives the parts,
14 less applicable allowances; the fair market value
15 of all undamaged, unmodified special tools,
16 equipment, and signage required by the
17 manufacturer or distributor within the three
18 years prior to the termination; all new,
19 undamaged and unsold vehicle inventory of the
20 current model year, or acquired from the
21 manufacturer or distributor or from another same
22 line make dealer in the ordinary course of



1 business prior to the effective date of
2 termination or non-renewal; provided that the
3 vehicle has less than five hundred miles
4 registered on the odometer. The purchase price
5 shall be the dealer's net acquisition cost. The
6 compensation shall be paid to the dealer no later
7 than ninety days from the date of the franchise
8 termination, discontinuation, cancellation, or
9 failure to renew.

10 In addition to the other compensation set forth
11 in this subparagraph, upon the termination,
12 discontinuation, cancellation, or failure to
13 renew the franchise agreement by a manufacturer
14 or distributor without good cause and good faith
15 or as a result of the discontinuation of a line
16 make, the manufacturer or distributor shall
17 compensate the dealer at the fair market value
18 for the dealer's capital investment, which shall
19 include the going business value of the business,
20 goodwill, property, and improvement owned or
21 leased by the dealer for the purpose of the
22 franchise as of the effective date of the

1 termination or date of notice, whichever is
2 greater. The compensation shall be paid to the
3 dealer no later than ninety days from the date of
4 the franchise termination, discontinuation,
5 cancellation, or failure to renew. For the
6 purposes of this subparagraph, "fair market
7 value" means the value of the business at the
8 time the franchise agreement is terminated,
9 cancelled, or not renewed or the value of the
10 business twelve months prior, whichever is
11 greater;

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



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



1 or assembly plant to the dealer or any portion of
2 the distance, than is charged to any other of
3 their franchised dealers in the [~~State~~] state for
4 the same make, model, and year of a new motor
5 vehicle or for the same devices, parts, or
6 accessories for the similar transportation for
7 the vehicle during the same period. A
8 manufacturer or distributor who provides or
9 causes to be provided greater transportation
10 benefits for a new motor vehicle as aforesaid to
11 any of their franchised dealers in the [~~State~~]
12 state than is provided to any of their competing
13 franchised dealers in the [~~State~~] state for the
14 same or lesser price or charge than that imposed
15 upon the franchised dealer in the [~~State~~] state
16 during the same period is deemed to have so
17 discriminated against the competing franchised
18 dealer in the [~~State.~~] state. Evidence of
19 similar discriminatory practice against
20 franchised dealers in other states shall not
21 constitute a defense to or justification of the
22 commission of the discriminatory act against the



1 franchised dealer in the [~~State-~~] state. The
2 intent and purpose of this subparagraph is to
3 eliminate inequitable pricing policies set by
4 manufacturers or distributors which result in
5 higher prices of new motor vehicles to the
6 consumer in the [~~State-~~] state. This
7 subparagraph shall be liberally interpreted to
8 effect its intent and purpose and in the
9 application thereof, the substance and effect and
10 not the form of the acts and transactions shall
11 be primarily considered in determining whether a
12 discriminatory act has been committed. Nothing
13 contained in this subparagraph shall prohibit
14 establishing delivered prices or destination
15 charges to dealers in the [~~State~~] state which
16 reasonably reflect the seller's total
17 transportation costs incurred in the manufacture
18 or delivery of products to the dealers, including
19 costs that are related to the geographical
20 distances and modes of transportation involved in
21 shipments to this State, or which meet those
22 lower prices established by competitors;



1 (H) Refuses or fails to offer an incentive program,
2 bonus payment, holdback margin, or any other
3 mechanism that effectively lowers the net cost of
4 a vehicle to any franchised dealer in the State
5 if the incentive, bonus, or holdback is made to
6 one or more same line make dealers in the state;

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



1 to sell a vehicle that includes a heater that has
2 been installed as standard equipment;

3 ~~[(G)]~~ (J) Has failed to adequately and fairly compensate
4 its dealers for labor, parts, and other expenses
5 incurred by the dealer to perform under and
6 comply with manufacturer's warranty agreements.
7 In no event shall any manufacturer or distributor
8 pay its dealers a markup on parts or a labor rate
9 per hour for warranty work that is less than that
10 charged by the dealer to the retail customers of
11 the dealer; provided that such dealer's retail
12 parts markup is not unreasonable when compared
13 with that of other same line make dealers for
14 identical merchandise or services in the
15 geographic area in which the dealer is engaged in
16 business ~~[nor shall the rates be more than the~~
17 ~~retail rates-]:~~

18 (i) For parts reimbursement, the retail markup
19 charged by the dealer shall be established
20 by submitting to the manufacturer or
21 distributor a sufficient quantity of
22 numerically consecutive repair orders from



1 the most recent months to provide one
2 hundred qualifying customer-paid repair
3 orders. For a dealer unable to provide one
4 hundred qualifying customer-paid repair
5 orders out of all numerically consecutive
6 repair orders within the two-month period
7 prior to the submission, the dealer shall
8 submit customer service repair orders of all
9 types, including customer pay, warranty, and
10 internal, for that two-month period. The
11 repair orders shall contain the price and
12 percentage markup. Dealers shall declare in
13 their submission the average markup the
14 dealer is declaring as its new parts
15 reimbursement rate. The declared parts
16 reimbursement markup shall take effect
17 thirty days after initial submission to the
18 manufacturer or distributor and shall be
19 presumed to be fair and reasonable.
20 However, the manufacturer or distributor may
21 make reasonable requests for additional
22 information supporting the submission. The



1 thirty-day timeframe in which the
2 manufacturer or distributor shall make the
3 declared parts reimbursement markup
4 effective shall commence following receipt
5 from the dealer of any reasonably requested
6 supporting information. The dealer shall
7 not request a change in the parts
8 reimbursement markup more than once every
9 twelve months;

10 (ii) In no event shall any manufacturer or
11 distributor pay its dealers a labor rate per
12 hour for warranty work that is less than
13 that charged by the dealer to the retail
14 customers of the dealer;

15 (iii) In determining qualifying repair orders for
16 parts, the following work shall not be
17 included: repairs for manufacturer or
18 distributor special events; repairs covered
19 by any insurance or service contract;
20 federal, state, or local government
21 legislated vehicle emission or safety
22 inspections; parts sold at wholesale or



1 repairs performed at wholesale, which shall
2 include any sale or service to a fleet of
3 vehicles; 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) Dealers shall have at least thirty days
12 after the repair work is completed to submit
13 a claim for approval. All claims made by
14 the dealers for compensation for delivery,
15 preparation, and warranty work shall be
16 [paid within thirty days after approval and
17 shall be approved or disapproved within
18 thirty days after receipt.] approved or
19 disapproved and if approved, paid within
20 forty-five days after receipt by a
21 manufacturer or distributor of a properly
22 completed claim. All sale incentive claims



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

10 (K) No manufacturer or distributor shall conduct a
11 warranty or incentive audit on previously paid
12 claims or chargeback any warranty or incentive
13 payment previously made more than one year after
14 the date the manufacturer or distributor made the
15 payment to the dealer. These provisions do not
16 apply to fraudulent claims.

17 A manufacturer or distributor shall not
18 chargeback a dealer for sales or warranty
19 payments unless the manufacturer or distributor
20 can satisfy its burden of proof that the dealer's
21 claim was fraudulent or that the dealer did not
22 make a good faith effort to comply with the



1 reasonable written procedures of the manufacturer
2 or distributor.
3 After all internal dispute resolution processes
4 provided by the manufacturer or distributor have
5 been concluded, the manufacturer or distributor
6 shall give notice to the dealer of the final
7 proposed chargeback amount. The dealer may file
8 an action with the board protesting proposed
9 chargeback amount within thirty days of receipt
10 of this written notice from the manufacturer or
11 distributor of the proposed chargeback. A
12 protest filed under this subsection shall be
13 immediately referred to a hearing officer as a
14 contested case in accordance with Title 8,
15 chapter 91-9, and shall operate under the
16 Administrative Procedure Act and the
17 administrative rules set forth in Title 16,
18 chapter 201 et al. The contested case shall not
19 be subject to mediation under Title 8, chapter
20 91-8.5. The hearing officer's determination
21 shall not be subject to Board approval. In the
22 event a protest is filed, the proposed chargeback



1 shall be stayed during the entirety of the action
2 and until a final judgment has been rendered;

3 ~~[(H)]~~ (L) 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)]~~ (M) 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)]~~ (N) 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 consistent with the
21 requirements of section 437-7(d)(1) for each make
22 or line of new motor vehicle, remains in



1 compliance with reasonable facilities and other
2 franchise requirements of the manufacturer or
3 distributor, and makes no unauthorized change in
4 the principal management of the dealer[-];

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

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



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

12 (Q) Requires the dealer to establish or maintain an
13 exclusive showroom or facility unless justified
14 by current and reasonably expected future
15 economic conditions existing in the dealer's
16 market and the automobile industry at the time
17 the request for an exclusive showroom or facility
18 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 "affected dealer" means 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. The
12 manufacturer's or distributor's notice shall
13 state the location of the proposed dealership and
14 the date on or after which the franchise intends
15 to be engaged in business:
16 (i) An affected dealer may file a protest with
17 the board within thirty days of receipt of
18 the manufacturer's or distributor's notice
19 for determination of whether the
20 manufacturer or distributor has good cause
21 to establish or relocate an additional
22 franchise within the dealer's relevant



1 market area. A protest filed under this
2 subsection shall be immediately referred to
3 a hearing officer as a contested case in
4 accordance with Title 8, chapter 91-9, and
5 shall operate under the Administrative
6 Procedure Act and the administrative rules
7 set forth in Title 16, chapter 201 et al.
8 The contested case shall not be subject to
9 mediation under Title 9, chapter 91-8.5.
10 When such a protest is filed, the
11 manufacturer or distributor shall not
12 establish or relocate the proposed franchise
13 until a hearing has been held and a
14 determination made whether good cause exists
15 for the proposed addition or relocation.
16 The hearing officer shall make its
17 determination no later than one hundred
18 eighty days from receipt of notice of the
19 protest except for good cause. The
20 manufacturer or distributor shall have the
21 burden of proof to demonstrate good cause
22 exists for the addition or relocation of an



1 additional franchise within the affected
2 dealer's relevant market area. The hearing
3 officer's determination shall not be subject
4 to board approval;

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 the permanency and size
11 of investment made and the reasonable
12 obligations incurred by the existing new
13 motor vehicle dealers in the relevant market
14 area; the growth or decline in population
15 and new car registrations in the relevant
16 market area; the effect on the consuming
17 public in the relevant market area; whether
18 it is injurious or beneficial to the public
19 welfare for a new dealer to be established;
20 whether the new motor vehicle dealers of the
21 same line make in that area are providing
22 adequate competition and convenient customer



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



1 other factors affecting sales to consumers
2 of the community or territory; and
3 (iii) This subparagraph shall not apply to the
4 relocation of an existing dealer within two
5 miles of the dealer's existing dealership
6 location; the appointment of a successor
7 dealer at the same location as its
8 predecessor or within a two-mile radius from
9 any boundary of the predecessor's former
10 location within one year from the date on
11 which the predecessor ceased operations or
12 was terminated, whichever occurred later; or
13 the relocation of a dealer to a site that is
14 farther away from the protesting affected
15 dealer than the existing location;

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

20 (i) The dealer shall notify the manufacturer or
21 distributor, in writing, of its desire to
22 sell, assign, or transfer its franchise and



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



1 receipt of any additional information, data,
2 or documents timely requested by the
3 manufacturer or distributor, the application
4 shall be considered approved, unless the
5 sixty-day deadline is extended by mutual
6 agreement of the manufacturer or distributor
7 and the dealer;

8 (ii) In the event that a manufacturer or
9 distributor denies a dealer's proposed sale,
10 assignment, or transfer of the franchise,
11 the dealer may file a complaint or protest
12 with the board within sixty days of the
13 notice of denial. A protest filed under
14 this subsection shall be immediately
15 referred to a hearing officer as a contested
16 case in accordance with Title 8, Chapter 91-
17 9, and shall operate under the
18 Administrative Procedure Act and the
19 administrative rules set forth in Title 16,
20 Chapter 201 et al. However, the contested
21 case is not subject to mediation under Title
22 8, chapter 91-8.5. The manufacturer or



1 distributor shall have the burden of proof
2 to demonstrate at a hearing pursuant to a
3 timely filed complaint, that the proposed
4 transferee is not of good moral character or
5 does not meet the written, reasonable, and
6 uniformly applied business standards or
7 qualifications of the manufacturer relating
8 to the financial qualifications of the
9 transferee and business experience of the
10 transferee or the transferee's executive
11 management. The hearing pursuant to a
12 timely filed complaint under this section
13 shall take place within ninety days from the
14 date the complaint is filed. The hearing
15 officer's final determination shall not be
16 subject to board approval;

17 (U) Refuses or fails to give effect, unless it has
18 good cause, to the dealer's designated successor,
19 whether designated by will, other estate planning
20 document, or written notice to the manufacturer
21 or distributor either while the dealer was living



1 or within ninety days of the dealer's death or
2 incapacity:

3 (i) In determining whether good cause exists for
4 the manufacturer's or distributor's refusal
5 to honor the succession, the manufacturer
6 shall have the burden to prove that the
7 successor is not of good moral character, is
8 not willing to be bound by the terms of the
9 franchise agreement and is either not
10 qualified to operate the dealership or fails
11 to demonstrate that the dealership will be
12 operated by a qualified executive manager;

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



1 (iii) A proposed successor may file a protest with
2 the board within sixty days after receipt of
3 the manufacturer's or distributor's notice
4 of refusal to honor the succession. A
5 protest filed under this subsection shall be
6 immediately referred to a hearing officer as
7 a contested case in accordance with Title 8,
8 chapter 91-9, and shall operate under the
9 Administrative Procedure Act and the
10 administrative rules set forth in Title 16,
11 chapter 201 et al. The contested case shall
12 not be subject to mediation under Title 8,
13 chapter 91-8.5. The hearing pursuant to a
14 timely filed complaint under this clause
15 shall be conducted within ninety days from
16 the date the complaint was filed. The
17 hearing officer's final determination shall
18 not be subject to board approval; and
19 (iv) The franchise shall continue, and the
20 manufacturer or distributor is prohibited
21 from any action to the contrary, until a

1 final judgment has been rendered on the
2 proposed succession;

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

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

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



1 party claiming the benefit of the system as
2 justification for acts in relation to the
3 franchise shall have the burden of demonstrating
4 the fairness and equity of the system both in
5 design and implementation in relation to the
6 pending dispute. Upon request of any dealer, a
7 manufacturer or distributor shall disclose in
8 writing to such dealer a description of how that
9 system is designed and applied to such dealer;

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

14 (Z) Implements or establishes a system of motor
15 vehicle allocation or distribution to one or more
16 of its dealers that is unfair, inequitable, or
17 unreasonably discriminatory. As used in this
18 subparagraph, "unfair" includes without
19 limitation, requiring a dealer to accept new
20 vehicles not ordered by the dealer or the refusal
21 or failure to offer to any dealer all models



1 offered to its other same line make dealers in
2 the state."

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

5 " ~~[+]§437-28.5[+]~~ **Procedures, protections, rights, and**
6 **remedies made available to licensees.** (a) The same procedures,
7 protections, rights, and remedies provided to a dealer under
8 section 437-28(a)(21) and section 437-3.6 shall apply to a
9 distributor that is not a manufacturer; provided that for a
10 distributor that is not a manufacturer, the measure of
11 compensation under section 437-28(a)(21)(C) upon cancellation or
12 failure to renew a franchise agreement, without good cause and
13 good faith, shall include compensation related to ~~[that]~~
14 distributor's dealer operations and franchise agreements with
15 other dealers.

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



1 state to enjoin further violations and to recover any damages
2 together with the costs of the suit. Laws of the State of
3 Hawaii shall apply to any action initiated under this section.

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

10 SECTION 5. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 6. This Act shall take effect on July 1, 2050.



Report Title:

Motor Vehicle Industry Licensing Act

Description:

Increases the grounds for license revocations.
Effective July 1, 2050. (SB2859 HD1)

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

