
A BILL FOR AN ACT

RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT.

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

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

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

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

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

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

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

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

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

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

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

1 "Relevant market area" means the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (18) Being an applicant or holder of a dealer's license:

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

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

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

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

22 (20) Being an applicant for a salesperson's license:

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

3 (B) Intends to be employed as a salesperson for more
4 than one dealer; or

5 (21) [~~Being~~] Notwithstanding the terms of a franchise
6 agreement or any ancillary agreement, being a
7 manufacturer or distributor[+] that:

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

20 (B) Has attempted to require or has required any
21 dealer in the State to enter into any agreement
22 with the manufacturer or distributor or any other

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 This subparagraph shall be liberally interpreted

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

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

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

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

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

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

21 (i) For parts reimbursement, the mark up charged
22 by the dealer shall be established by

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

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

12 (ii) To establish the labor rate per hour, the
13 dealer shall submit to the manufacturer or
14 distributor all qualifying nonwarranty
15 customer paid service repair orders covering
16 repairs made during any one full month out
17 of the three months prior to submission of
18 the labor rate and dividing the amount of
19 the dealer's total labor sales by the number
20 of total labor hours that generated those
21 sales. The declared labor rate per hour
22 shall go into effect thirty days after

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

14 (iii) In determining qualifying repair orders for
15 parts and labor, the following work shall
16 not be included: repairs for manufacturer
17 or distributor special events, specials or
18 promotional discounts for retail customer
19 repairs; parts sold at wholesale or repairs
20 performed at wholesale, which shall include
21 any sale or service to a fleet of vehicles;
22 engine assemblies and transmission

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

8 (iv) The manufacturer or distributor may rebut
9 the presumption that the declared parts mark
10 up or labor rate per hour is appropriate by
11 showing that the dealer did not follow the
12 requirements set forth in this subparagraph.

13 The manufacturer or distributor shall not
14 require the dealer to submit any
15 documentation or methodology other than the
16 repair orders listed in this subparagraph
17 and the declared rate in order to establish
18 the reimbursement rate;

19 (v) A manufacturer or distributor may not
20 otherwise recover its costs from dealers
21 within this State, including an increase in
22 the wholesale price of a vehicle or

1 surcharge imposed on a dealer solely
2 intended to recover the cost of reimbursing
3 a dealer for parts and labor pursuant to
4 this subparagraph, provided a manufacturer
5 or distributor shall not be prohibited from
6 increasing prices for vehicles or parts in
7 the normal course of business; and
8 (vi) Dealers have, at a minimum, thirty days
9 after the repair work is completed to submit
10 a claim for approval. All claims made by
11 the dealers for compensation for delivery,
12 preparation, and warranty work shall be
13 [~~paid within thirty days after approval and~~
14 ~~shall be approved or disapproved within~~
15 ~~thirty days after receipt.] approved or
16 disapproved, and if approved, paid, within
17 thirty days after receipt by a manufacturer
18 or distributor of a properly completed
19 claim. All sales incentive claims shall be
20 approved or disapproved and if approved,
21 paid, within sixty days after receipt by a
22 manufacturer or distributor of a properly~~

1 completed claim. When any claim is
2 disapproved, the dealer shall be notified in
3 writing of the grounds for disapproval[+].
4 Failure to disapprove a claim within the
5 required timeframe constitutes approval of
6 the claim;

7 (vii) No manufacturer or distributor shall conduct
8 a warranty or incentive audit on previously
9 paid claims or chargeback any warranty or
10 incentive payment previously made more than
11 one year after the date the manufacturer or
12 distributor made the payment to the dealer.

13 No manufacturer or distributor shall conduct
14 more than one warranty or incentive audit
15 every twelve months unless the dealer has
16 committed fraud in submission of claims
17 within that twelve month period. No
18 manufacturer or distributor shall impose any
19 warranty or incentive chargeback pursuant to
20 the results of an audit unless the
21 manufacturer, distributor or a
22 representative has met with the dealer or

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

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

20 (ix) A manufacturer or distributor shall not
21 utilize the method of extrapolation in
22 levying a chargeback against a dealer.

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

14 ~~[-(H)]~~ (K) Has wilfully failed to affix the vehicle
15 bumper impact notice pursuant to section 437-
16 4.5(a), or wilfully misstated any information in
17 the notice. Each failure or misstatement is a
18 separate offense;

19 ~~[-(I)]~~ (L) Has wilfully defaced, or removed the vehicle
20 bumper impact notice required by section
21 437-4.5(a) prior to delivery of the vehicle to
22 which the notice is required to be affixed to the

1 registered owner or lessee. Each wilful
2 defacement, alteration, or removal is a separate
3 offense; [~~or~~
4 ~~(J)~~] (M) Has required a dealer to refrain from
5 participation in the management of, investment
6 in, or the acquisition of, any other line of new
7 motor vehicle or related products; provided that
8 the new motor vehicle dealer maintains a
9 reasonable line of credit for each make or line
10 of new motor vehicle, remains in compliance with
11 reasonable facilities and other franchise
12 requirements of the manufacturer or distributor,
13 and makes no unauthorized change in the principal
14 management of the dealer[~~;~~];
15 (N) Unreasonably prevents or refuses to approve the
16 relocation of a dealership to another site within
17 the dealer's relevant market area. The dealer
18 shall provide the manufacturer or distributor
19 with notice of the proposed address and a
20 reasonable site plan of the proposed location.
21 The manufacturer or distributor shall approve or
22 deny the request in writing no later than sixty

1 days after receipt of the request. Failure to
2 deny the request within sixty days constitutes
3 approval. It shall not be considered an
4 unreasonable denial of a relocation request if
5 the relocation fails to meet the manufacturer or
6 distributor's reasonable and uniformly applied
7 minimum standards for a relocation;
8 (O) Requires or attempts to require a dealer to
9 construct, renovate, or make substantial
10 alterations to the dealer's facilities unless the
11 manufacturer or distributor demonstrates that the
12 construction, renovation, or alteration
13 requirements are reasonable and justifiable in
14 light of current and reasonably foreseeable
15 projections of economic conditions existing in
16 the automotive industry at the time the action
17 would be required of the dealer and agrees to
18 make a good faith effort to make available, at
19 the dealer's option, a reasonable quantity and
20 mix of new motor vehicles, which after a
21 reasonable analysis of market conditions, are
22 projected to meet the sales level necessary to

- 1 support the increased overhead incurred by the
2 dealer as a result of the required construction,
3 renovation, or alteration;
- 4 (P) Requires or attempts to require the dealer to
5 establish or maintain an exclusive showroom or
6 facility unless the manufacturer or distributor
7 can establish that the dealer's current facility
8 is inadequate to meet the reasonably expected
9 sales or service demand in the dealer's market
10 area, based on the current and reasonably
11 expected future economic conditions existing in
12 the dealer's market area and the automobile
13 industry at the time the request for an exclusive
14 showroom or facility is made;
- 15 (Q) Conditions the award of an additional franchise
16 on the dealer entering a site control agreement
17 or the dealer waiving its rights pursuant to this
18 paragraph to protest the manufacturer's or
19 distributor's award of an additional franchise
20 within the dealer's relevant market area;
- 21 (R) Establishes or relocates a franchise within the
22 relevant market area of an existing franchise

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

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

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

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

1 adequacy of motor vehicle sales and service
2 facilities, equipment, supply of motor
3 vehicle parts, and qualified service
4 personnel; whether the establishment or
5 relocation of the proposed dealership
6 appears to be warranted and justified based
7 on economic and marketing conditions
8 pertinent to dealers competing in the
9 community or territory, including
10 anticipating future changes; any attempts by
11 the manufacturer or distributor to coerce
12 the existing dealer or dealers into
13 consenting to additional or relocated
14 franchises of the same line make in the
15 relevant market area; the effect on the
16 relocating dealer of a denial of its
17 relocation into the relevant market area;
18 and the reasonably expected market
19 penetration of the line-make motor vehicle
20 for the community or territory involved,
21 after consideration of all factors that may
22 affect said penetration, including, but not

1 limited to, demographic factors such as age,
2 income, education, size class preference,
3 product popularity, retail lease
4 transactions, or other factors affecting
5 sales to consumers of the community or
6 territory.

7 This subparagraph shall not apply to
8 the relocation of an existing dealer within
9 two miles of the dealer's existing
10 dealership location;

11 (S) Withholds unreasonably consent to the sale,
12 transfer or exchange of the franchise to a
13 qualified buyer capable of being licensed as a
14 dealer; provided that:

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

1 disapprove the transaction within sixty days
2 following receipt of the dealer's notice.
3 Failure of the manufacturer or distributor
4 to disapprove the transaction within the
5 sixty day period constitutes approval of the
6 transfer; and

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

1 manufacturer or distributor shall respond to
2 the dealer's complaint within thirty days
3 from the date it was filed. Failure to
4 respond within thirty days constitutes
5 approval of the transfer. The hearing
6 pursuant to a timely filed complaint under
7 this section must take place within ninety
8 days from the date the complaint is filed;

9 (T) Refuses or fails to give effect, unless it has
10 good cause, to the dealer's designated successor,
11 whether designated by will, other estate planning
12 document, or written notice to the manufacturer
13 or distributor either while the dealer was living
14 or within ninety days of the dealer's death or
15 incapacity; provided that:

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

1 operate the dealership or fails to
2 demonstrate that the dealership will be
3 operated by a qualified executive manager;
4 (ii) The manufacturer or distributor shall notify
5 the proposed successor of its belief that
6 good cause exists to refuse to honor the
7 succession within sixty days after receipt
8 of the notice of the proposed successor's
9 intent to succeed to the franchise, and the
10 manufacturer or distributor shall detail why
11 it believes good cause exists to deny the
12 succession;
13 (iii) A proposed successor may file a protest with
14 the board within sixty days after receipt of
15 the manufacturer or distributor's notice of
16 refusal to honor the succession. The
17 hearing pursuant to a timely filed complaint
18 under this clause shall be conducted within
19 ninety days from the date the complaint was
20 filed; and
21 (iv) The franchise shall continue, and the
22 manufacturer or distributor shall be

1 prohibited from any action to the contrary,
2 until a final judgment has been rendered on
3 the proposed succession;

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

9 (V) Requires or attempts to require a dealer to pay
10 all or part of the cost of an advertising
11 campaign or contest, or purchase any promotional
12 materials, showroom, or other display decorations
13 or materials at the expense of the dealer without
14 the consent of the dealer;

15 (W) 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 the system is designed
19 and implemented in a way that is fair and
20 equitable to both the manufacturer and the
21 dealer. In any dispute between a manufacturer,
22 distributor, and a dealer, the party claiming the

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

12 (X) Implements or establishes an unreasonable,
13 arbitrary or unfair sales or other performance
14 standard in determining a dealer's compliance
15 with a franchise agreement. Before applying any
16 sales, service, or other performance standard to
17 a dealer, a manufacturer or distributor shall
18 communicate the performance standard in writing
19 in a clear and concise manner; or

20 (Y) Implements or establishes a system of motor
21 vehicle allocation or distribution to one or more
22 of its dealers which is unfair, inequitable,

1 unreasonably discriminatory, or not supportable
2 by reason and good cause after considering the
3 equities of the affected dealer or dealers. As
4 used in this subparagraph, "unfair" includes
5 without limitation, requiring a dealer to accept
6 new vehicles not ordered by the dealer, the
7 refusal or failure to offer to any dealer an
8 equitable supply of new vehicles under its
9 franchise, by model, mix, or colors as the
10 manufacturer offers or allocates to its other
11 same line make dealers in the state or the
12 refusal or failure to ship monthly to any dealer,
13 if ordered by the dealer, the number of new
14 vehicles of each make, series, and model needed
15 by the dealer to receive a percentage of total
16 new vehicle sales of each make, series, and model
17 equitably related to the total new vehicle
18 production or importation currently being
19 achieved nationally by each make, series, and
20 model covered under the franchise. A
21 manufacturer and distributor shall maintain for
22 three years records that describe its methods or

1 formula of allocation and distribution of its
2 motor vehicles and records of its actual
3 allocation and distribution of motor vehicles to
4 its dealers in this State. Upon the written
5 request of any dealer, the manufacturer or
6 distributor shall disclose to the dealer in
7 writing the basis upon which new motor vehicles
8 are allocated, scheduled, and delivered to the
9 dealers of the same line make by make, model,
10 color, and accessories."

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

13 "~~§~~**437-28.5**~~§~~ **Procedures, protections, rights, and**
14 **remedies made available to licensees.** (a) The same procedures,
15 protections, rights, and remedies provided to a dealer under
16 section 437-28(a)(21) and section 437-3.6 shall apply to a
17 distributor that is not a manufacturer; provided that for a
18 distributor that is not a manufacturer, the measure of
19 compensation under section 437-28(a)(21)(C) upon cancellation or
20 failure to renew a franchise agreement, without good cause and
21 good faith, shall include compensation related to that

1 distributor's dealer operations and franchise agreements with
2 other dealers.

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

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

19 SECTION 5. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 6. This Act shall take effect upon its approval.

22

Report Title:

Motor Vehicle Industry Licensing Act

Description:

Increases the grounds for license revocations. (SD1)

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