

Honolulu, Hawaii

APR 22 2010 , 2010

RE: S.B. No. 2859
S.D. 2
H.D. 1
C.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2010
State of Hawaii

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2010
State of Hawaii

Madam and Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 2859, S.D. 2, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to amend the provisions of the Motor Vehicle Industry Licensing Act (Act) to further describe and add to the rights and liabilities that exist in the relationship between automobile dealers and automobile manufacturers.

Your Committee notes that the measure as received is similar in function to, but different in structure from, S.B. No. 2859, S.D. 2, an earlier version of which was previously heard and approved by your Committee. The measure as received amends the existing laws in the Act, including section 437-28, Hawaii Revised Statutes, while S.B. No. 2859, S.D. 2 takes existing provisions from the Act,



primarily from section 437-28(a)(21), Hawaii Revised Statutes, amends these provisions, and places them into a new section within the Act. S.B. No. 2859, S.D. 2 also creates a new section within the Act to address the dispute resolution process regarding the interpretation and enforcement of provisions of the Act.

Based on input from the Motor Vehicle Industries Board (Board) and the Regulated Industries and Complaints Office (RICO), your Committee believes that a compromise between these two approaches is the best course of action. As described further below, your Committee has amended the measure as received to specifically leave intact the current franchise law and licensing procedures as requested by both the Board and RICO. New provisions affecting the relationships between dealers, manufacturers, and distributors are now contained in the newly designated Part II.

Your Committee on Conference further finds that much of the amended measure, as further described below, is a compromise between the positions of the interested parties and is a reflection of this time of economic upheaval. Your Committee is mindful that the resources of the State are limited and has minimized changes to the licensing law unless the new language in this measure necessitated amendments.

The amended measure has an effective date of January 1, 2011, to allow all parties, the Board, and the Department of Commerce and Consumer Protection to comply with these new provisions.

As described above, your Committee on Conference has amended this measure by deleting its contents and inserting the contents of S.B. No. 2859, S.D. 2, with the following amendments:

- (1) Revising post-decision procedures and adding a right of review to the Board for dispute resolution proceedings under the new provision in Section 1 of the measure;
- (2) Dividing the proposed new provision in Section 1 of the measure, designated as "reciprocal rights and obligations among dealers, manufactures and distributors of motor vehicles" into additional sections for purposes of clarity and convenience, and consolidating provisions where appropriate;
- (3) Moving provisions that had been shifted from section 437-28(a)(21), Hawaii Revised Statutes, back into that paragraph, while retaining many of the amendments made in



the language of those provisions or reverting to either existing statutory law or reflecting the language in S.B. No. 2859, S.D. 2, H.D. 1;

- (4) Creating an exception to the prohibition on a manufacturer or distributor to require a dealer in the State to agree to apply the law of another jurisdiction to a dispute or to assent to relieve any person from liability or obligation, subject to certain conditions;
- (5) Creating an exemption to the prohibition on a manufacturer or distributor to require a dealer to enter into an agreement to prospectively assent to a release, assignment, novation, waiver or estoppels that would relieve any person from any liability or obligation of the Act for voluntary settlement agreements based on adequate and valuable consideration;
- (6) Reverting to the existing language in section 437-28(a)(21)(D) regarding prima facie evidence of a manufacturer or distributor's delaying delivery of or refusing to deliver new motor vehicles within a reasonable time after receipt of a written order;
- (7) Modifying the provision prohibiting the refusal or failure to offer an incentive program, bonus payment, holdback margin, or any other mechanism that effectively lowers the net cost of a vehicle to reflect the language in S.B. No. 2859, S.D. 2, H.D. 1;
- (8) Modifying provisions regarding compensation of dealers for labor, parts, and other expenses;
- (9) Modifying the provision prohibiting the requirement that a dealer refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products to reflect the language in S.B. No. 2859, S.D. 2, H.D. 1;
- (10) Creating an exemption to the prohibition on a manufacturer or distributor to require a dealer to construct, renovate, or make substantial alterations to the dealer's facilities for necessary, reasonable facility improvements and technological upgrades;



- (11) Modifying the provision prohibiting the implementation or establishment of a system of motor vehicle allocation or distribution to reflect the language in S.B. No. 2859, S.D. 2, H.D. 1, and adding provisos regarding specified force majeure events and facility improvements;
- (12) Modifying the time within which a manufacturer or distributor must give written notice to a dealer of the manufacturer's intent to terminate, discontinue, cancel, or fail to renew a franchise agreement from seventy-five days before the intended action becomes effective to sixty days before the effective date of the action, to reflect language in S.B. No. 2859, S.D. 2, H.D. 1;
- (13) Reducing the notice requirement in instances where the manufacturer or distributor establishes or relocates a franchise within the relevant market area of an existing dealer, as well as revising other notice requirements;
- (14) Revising the provisions regarding the calculation and payment by the manufacturer or distributor of a markup on labor, repair, and parts;
- (15) Modifying the provisions regarding the sale, assignment, or transfer of the franchise to a qualified purchaser;
- (16) Amending the provisions regarding compensation to the dealer when a manufacturer or distributor ends a franchise;
- (17) Amending section 437-1.1, Hawaii Revised Statutes, to define relevant market area as being with a radius of six miles from the dealership location in counties with a population of more than five hundred thousand persons to reflect language in S.B. No. 2859, S.D. 2, H.D. 1;
- (18) Expanding the definition of "franchise" or "franchise agreement" to include a contract or agreement between a dealer and a manufacturer or distributor that establishes rights or obligations relating to the dealer's new motor vehicle operation, including agreements relating to dealership facilities or site control; and
- (19) Making technical, nonsubstantive changes for purposes of restructuring the measure, consistency, style, and clarity.



As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 2859, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2859, S.D. 2, H.D. 1, C.D. 1.

Respectfully submitted on behalf
of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE



ROBERT N. HERKES, Co-Chair



J. KALANI ENGLISH, Chair



JON RIKI KARAMATSU, Co-Chair




ROSALYN H. BAKER, Co-Chair



Hawaii State Legislature
 Record of Votes of a
 Conference Committee

77-10

Bill / Concurrent Resolution No.: SB 2859, SD 2, HD 1					Date/Time: <i>21 April 2010 4:31 pm</i>						
<input checked="" type="checkbox"/> The recommendation of the House and Senate managers is to pass with amendments (CD).											
<input type="checkbox"/> The Committee is reconsidering its previous decision.											
<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure					<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.						
Senate Managers		A	WR	N	E	House Managers		A	WR	N	E
ENGLISH, J. Kalani, Chr.		✓				HERKES, Robert N., Co-Chr.		✓			
BAKER, Rosalyn H., Co-Chr.		✓				KARAMATSU, Jon Riki, Co-Chr.		✓			
SLOM, Sam					✓	MCKELVEY, Angus L.K.					✓
						MARUMOTO, Barbara C.		✓			
TOTAL		2			1	TOTAL		3			1
A = Aye		WR = Aye with Reservations			N = Nay		E = Excused				
Senate Recommendation is:						House Recommendation is:					
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted						<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted					
Senate Lead Chair's or Designee's Signature:						House Lead Chair's or Designee's Signature:					
<i>J. Kalani English</i>											
Distribution:		Original		Yellow		Pink		Goldenrod			
		File with Conference Committee Report		House Clerk's Office		Senate Clerk's Office		Drafting Agency			