

Honolulu, Hawaii

March 19, 2010

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

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

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred S.B. No. 2859, S.D. 2, entitled:

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

begs leave to report as follows:

The purpose of this bill is to amend the Motor Vehicle Industry Licensing Act to update the rights and liabilities between motor vehicle dealers and manufacturers.

The Hawaii Automobile Dealers Association and a concerned individual testified in support of this bill. The Department of Consumer Affairs' (DCCA) Regulated Industries Complaints Office and Office of Administrative Hearings, Motor Vehicle Industry Licensing Board (Board), Alliance of Automobile Manufacturers, and General Motors, LLC provided comments.

Your Committee has amended this bill by, among other things:

- (1) Removing the provisions relating to the detailed dispute resolution process in section one of the S.D. 2;
- (2) Amending the definition of "relevant market area" from a radius of 10 miles to six miles for populations of more than 500,000 residents;



- (3) Expanding the definition of "franchise agreement" to include agreements relating to dealership facilities, site control, customer satisfaction index requirements and sales performance;
- (4) Expanding the Board's ability to revoke, fine, or deny the renewal of any license where an applicant has willfully failed or refused to perform any unequivocal and indisputable obligation under any written agreement involving the sale or purchase of a motor vehicle or any interest therein;
- (5) Placing the section titled "reciprocal rights and obligations among dealers, manufacturers and distributors of motor vehicles" back into section 437-28(a)(21), Hawaii Revised Statutes (HRS), instead of creating a new section for these circumstances;
- (6) Lowering the threshold for provisions relating to the basis upon which a dealer could file a complaint for action to the Board in circumstances where a manufacturer requires a dealer to sign an agreement where non-Hawaii law applies, where a dealer is required to bring an action against the manufacturer or distributor in a venue outside of Hawaii, where a dealer is required to perform any act not required by or to refrain from performing any act that is not contrary to the reasonable requirements of the franchise agreement, or where a manufacturer requires a dealer to enter into any agreement that would relieve any person from liability or obligation under section 437-28(a) HRS;
- (7) Requiring a manufacturer or distributor to give written notice to the dealer and the Board of the manufacturer's intent to terminate, cancel, or fail to renew a franchise agreement at least 60 days prior to the effective date and to state the grounds for the decision, and delineating certain circumstances where a manufacturer or distributor may provide notice within 15 days of termination (such as where a dealer has abandoned the business or is otherwise engaging in behavior detrimental to the public);
- (8) Outlining a procedure whereby a dealer receiving such a notice could appeal to the Board for a determination as to whether such action is taken in good faith and



supported by good cause and be immediately referred to a hearing officer for a decision pursuant to Title 8, Chapter 91-9 and that during the process, except in outlined circumstances, validity of the franchise agreement or a dealer's rights and remedies pursuant to the franchise agreement will not be affected;

- (9) Awarding a dealer whose franchise agreement is terminated or not renewed due to a discontinuation of a line make or where a manufacturer terminated or failed to renew without good faith or good cause, fair market value for the dealer's capital investment, which would include the going business value of the business, goodwill, property and improvement owned or leased by the dealer for the purpose of the franchise as of the effective date of termination or date of notice, whichever amount is greater;
- (10) Providing that a manufacturer or distributor shall not pay dealers a labor rate per hour for warranty work that is less than that charged by the dealer to its retail customers, and removing the procedure for establishing the labor rate;
- (11) Extending the time period from 30 to 45 days after receipt whereby a manufacturer or distributor must pay a dealer for an approved claim for repair work;
- (12) Removing certain restrictions relating to a manufacturer's ability to conduct a warranty or incentive audit;
- (13) Allowing a dealer to file a petition protesting a proposed chargeback amount within 30 days instead of 45 days of receipt of a written notice from the manufacturer or distributor of the proposed chargeback amount and providing that a chargeback protest would be referred to a hearing officer's decision as a contested case;
- (14) Prohibiting a manufacturer from unreasonably preventing or refusing to approve the relocation of a dealership to another site within the dealer's relevant market area;



- (15) Removing the requirement that a manufacturer or distributor providing notice of a franchise relocation to the Board and affected dealers identify within such a notice, the names and addresses of the dealer-operator, principal investors, and the identity of all same line make franchise dealers in the relevant market area;
- (16) Providing that where an affected dealer files a protest with the Board related to establishing or relocating an additional franchise within the dealer's relevant market area, the protest shall be immediately referred to a hearing officer as a contested case;
- (17) Allowing a dealer to file a petition against a manufacturer or distributor for unreasonably withholding consent to the sale, assignment, or transfer of a franchise to a qualified buyer capable of being licensed as a dealer within 60 days of a notice of denial and providing that such a protest would be referred to a hearing officer's decision as a contested case and requiring that a hearing take place within 90 days instead of 120 days from the date the petition is filed; and
- (18) Providing that a proposed successor filing a petition protesting a manufacturer or distributor's notice of refusal to honor the succession shall also be referred to a hearing officer's decision as a contested case.

Your Committee finds that the comments presented by the Hawaii Automobile Dealers Association and the Alliance of Automobile Manufacturers indicate that the parties are in ongoing discussions to attempt to achieve common ground. While the parties have achieved progress, more discussion is planned to continue to address the issues presented by this legislation and to address the concerns of DCCA and the Board relating to establishing and implementing a viable dispute resolution process. This measure, in its current form, reflects certain agreements reached thus far that will enable the parties to continue to work toward a resolution. Your Committee notes the defective date in this bill and is moving it along for further discussion.



As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2859, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2859, S.D. 2, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,



ROBERT N. HERKES, Chair



