

STAND. COM. REP. NO.

2631

Honolulu, Hawaii

FEB 26 2010

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

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

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 2859, S.D. 1, entitled:

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

begs leave to report as follows:

The purpose of this measure is to add new provisions to 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 by:

- (1) Extending the coverage of the Act to ancillary agreements;
- (2) Adding a definition of "relevant market area";
- (3) Adding new provisions regarding grounds for license suspension and other action by the Motor Vehicle Industry Licensing Board ("Board") including:
 - (A) Requiring disputes to be resolved in Hawaii;
 - (B) Limiting the rights of manufacturers to terminate a franchise agreement;
 - (C) Establishing certain benefits to dealers upon both voluntary and involuntary termination;



- (D) Requiring notice before certain actions can be taken against dealers by manufacturers;
 - (E) Establishing the parameters of good cause for certain actions;
 - (F) Addressing compensation to dealers for labor and costs of parts in warranty work;
 - (G) Limiting the conditions and timing of audits of dealers by manufacturers;
 - (H) Addressing relocation of dealerships;
 - (I) Addressing transfers of dealerships; and
 - (J) Addressing other issues affecting the relationship between dealers and manufacturers;
- (4) Establishing a dispute resolution procedure to be administered by the Board;
 - (5) Setting limits on a manufacturer or distributor's ability to add or relocate a franchise in an existing dealer's relevant market area;
 - (6) Limiting a manufacturer's authority to require training;
 - (7) Limiting a manufacturer's right to establish a customer satisfaction index; and
 - (8) Limiting a manufacturer's right to make vehicle allocations.

Your Committee received testimony in support of this measure from Hawaii Automobile Dealers Association, King Auto Center, Hilo-Kona Mazda Subaru, and Aloha Kia Auto Group. Testimony with comments was received from the Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs and the Motor Vehicle Industry Licensing Board. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that the comments presented by the Hawaii Automobile Dealers Association and the Alliance of



Automobile Manufacturers indicate that the parties have commenced meetings to attempt to achieve common ground. While the parties have achieved some progress, more discussion is planned to continue to address the issues presented by this legislation. Your Committee notes that 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 that this measure in its current form does not represent total agreement among the parties. Accordingly, your Committee has inserted a delayed effective date of July 1, 2050, to facilitate further discussion.

Your Committee also finds that the areas of agreement among industry members, the Regulated Industries Complaints Office, and the Motor Vehicle Industry Licensing Board (Board) include:

- (1) The Board shall not be assigned the responsibility for deciding disputes arising from new sections of the Motor Vehicle Industry Licensing Act that was added by this legislation;
- (2) With regard to terminations of franchise agreements, compromise on the issue of notification period is likely;
- (3) Dealers who voluntarily terminate franchise agreements shall not be entitled to the same benefits as dealers whose franchise agreements are involuntarily terminated;
- (4) Compromise can be achieved on the subject of the value to be paid for depreciable assets;
- (5) Line-make termination by a manufacturer is to be considered good cause;
- (6) Transfer of franchise ownership, especially to a family member, should be more clearly defined and more easily accomplished;
- (7) Incentive payments for partial compliance where incentives are involved are not justified; and
- (8) Compromise on the following issues is likely:
 - (A) Warranty reimbursement rates;



- (B) Audits for causes other than fraud;
- (C) Facility requirements; and
- (D) Relocating a franchise into the relevant market area of an existing franchise.

Your Committee further finds that a major issue that remains to be resolved for this measure relates to the proposal by the dealers to add a new definition of "ancillary agreement" that would make all written agreements, of any kind or nature, subject to the Motor Vehicle Industry Licensing Act where, under existing law, only franchise agreements are subject to the Act. Your Committee notes the testimony of the parties that they remain far apart on this issue. However, your Committee believes that the spirit of cooperation exhibited by the parties will enable them to come to agreement on this issue as well as the other issues outlined in this committee report. Your Committee notes again that this measure currently represents a working document.

Your Committee has amended this measure by:

- (1) Deleting the definition of "ancillary agreement";
- (2) Removing the provisions in section 3 of the bill that were made to section 437-28(a), Hawaii Revised Statutes, and creating a new subsection under chapter 437, Hawaii Revised Statutes, for clarity;
- (3) Removing the phrase "attempted to require" in several paragraphs of the bill;
- (4) Deleting references to the Board in the proposed new chapter;
- (5) Adding language that provides an exception to the provisions of this measure in certain sections where the dealer has received consideration for entering into an agreement;
- (6) Deleting specific notice periods in order to allow the parties to continue to negotiate reasonable notice periods;



- (7) Changing the effective date to July 1, 2050, in order to encourage further discussion; and
- (8) Making nonsubstantive technical changes for the purposes of clarity and accuracy.

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

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



ROSALYN H. BAKER, Chair



