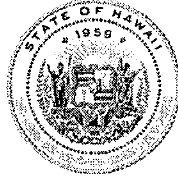
SB 2859



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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON
TRANSPORTATION, INTERNATIONAL, AND INTERGOVERNMENTAL AFFAIRS

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2010

MONDAY, FEBRUARY 8, 2010
2:00 P.M.

WRITTEN TESTIMONY ONLY
ON
SENATE BILL NO. 2859
RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT

TO THE HONORABLE J. KALANI ENGLISH, CHAIR,
AND TO THE HONORABLE MIKE GABBARD, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs' Regulated Industries Complaints Office ("RICO") appreciates the opportunity to testify on Senate Bill No. 2859, Relating To The Motor Vehicle Industry Licensing Act. My name is Jo Ann Uchida, RICO's Complaints and Enforcement Officer.

Senate Bill No. 2859 proposes numerous amendments to the Motor Vehicle Industry Licensing Act, Chapter 437, Hawaii Revised Statutes. RICO's comments are limited to Section 3 of the bill that revises Haw. Rev. Stat. §437-28(a)(21).

These amendments create substantive requirements for franchise and ancillary contracts between manufacturers and dealers and set forth new procedural requirements for certain manufacturer-dealer disputes. Given the comprehensive and unique nature of these revisions, RICO suggests that franchise issues be placed in a separate section of the law with a reference back to §437-28 for violations of the separate section.

Also, to the extent the bill provides for expedited relief of contractual disputes through a variety of new procedures (see, §437-28(a)(21) subsections E(ii), K(iii), T(ii) and U(iii)), RICO suggests that the bill reference existing dispute resolution mechanisms such as private arbitration, mediation, or declaratory relief (Title 16 Hawaii Administrative Rules Chapter 201) instead of requiring the creation of new review procedures.

Thank you for this opportunity to testify on Senate Bill No. 2859. I will be happy to answer any questions that the members of the Committee may have.

PRESENTATION OF THE
MOTOR VEHICLE INDUSTRY LICENSING BOARD

TO THE SENATE COMMITTEE ON
TRANSPORTATION, INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Monday, February 8, 2010
2:00 p.m.

TESTIMONY ON SENATE BILL NO. 2859, RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT.

TO THE HONORABLE J. KALANI ENGLISH, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Werner Umbhau and I am the Chairperson and a public member of the Motor Vehicle Industry Licensing Board ("Board"). The Board has not been able to meet as a whole to discuss Senate Bill No. 2859, but will at its next meeting scheduled for Tuesday, February 16, 2010.

While not a formal position of the Board, an informal poll of Board members indicates that the majority have grave concerns with the bill, particularly with Section 3 that proposes to revise HRS §437-28 by, among other things, setting forth new procedures that would give dealers the right to file an administrative action with the Board in order to resolve their contractual disputes with manufacturers.

The Board members have further indicated that they are willing to discuss the merits of the bill with the proponents and work toward consensus on the bill in its original form or to amend the bill.

The Board thanks you for the opportunity to provide testimony on S.B. No. 2859.

Hawaii Automobile Dealers' Association

Stan Masamitsu, President
Dave Rolf, Executive Director

February 5, 2010

The Honorable Kalani English
Chair, Committee on Transportation, International
Affairs and Intergovernmental Affairs
Hawaii Senate
Room 205, Hawaii State Capitol
415 South Beretania St.
Honolulu, Hawaii 96813

Subj: SB2859 –Relating to The Motor Vehicle Industry Licensing Act – a bill the Association calls "The Healthy Dealer Act."

Dear Chair English:

Good discussions on this bill (SB2859)—relating to The Motor Vehicle Industry Licensing Act have begun. HADA asks that you use the defective date method to allow the bill to continue to move while discussions are held with the Alliance of Automobile Manufacturers, General Motors representatives, the Motor Vehicle Industry Licensing Board and any others so that we may address any questions they may have.

In 2003, when revisions were made to the statute, this was the procedure that was followed to allow stakeholders the opportunity to participate in the process as the the legislation moved.

Also, we have written the MVILB to request time on their Feb. 16th meeting agenda to address any questions. Their questions are being addressed in much the same fashion that this process has been handled in so many other states.

HADA asks that you pass the measure through to CPC in order to meet First Lateral Bill filing deadline, and we will continue the discussions with all stakeholders to arrive with a good bill so as to preserve healthy dealers and well-served consumers.

Best regards,

David H. Rolf

1100 Alakea Street, Suite 2601, Honolulu, Hawaii 96813 (808) 593-0031 FAX (808) 593-0569

TESTIMONY
In STRONG SUPPORT of SB2859
RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT
Presented to the Senate Committee on Transportation, International and Intergovernmental Affairs
For the public hearing 2 p.m. Monday, February 8, 2010
In Conference Room 224

Chair English, Vice Chair Gabbard, and members of the committee:

Hawaii's new car dealers appreciate the members of the Hawaii State Legislature and this committee for hearing SB2859—a bill to update Hawaii's motor vehicle industry franchise laws necessitated by the extraordinary changes in the motor vehicle industry this past year. Hawaii's franchised new car dealers are in STRONG SUPPORT of the measure.

Background

Motor vehicle industry franchise laws appear in all 50 states. This past year, legislators in New York, Florida, Connecticut, North Carolina and many other states have worked with auto dealers to update their respective state's franchise laws. Hawaii dealers, facing many of the same challenges of other dealers across the country, and agreeing with the earlier Hawaii legislative finding that "the geographical location of Hawaii makes it necessary to ensure the availability of motor vehicles and parts and dependable service," believe that it is indeed necessary "to regulate and to license motor vehicle manufacturers, distributors, dealers, salespersons, and auctions in the State to prevent frauds, impositions, and other abuses against its residents, and to protect and preserve the economy and the transportation system of this state.

The following testimony relates to changes proposed (the underlined portions of the bill):

Legislative Intent. SECTION 1. Section 437-1 – Legislative findings and declaration—

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

The change is needed to clarify that the franchise protections are intended to be applicable to all franchise agreements existing at the time of the enactment of the legislation.

Examples: The motor vehicle manufacturers have recently sought to circumvent newly enacted franchise laws by arguing that any provision enacted *following* the date of a franchise agreement with a dealer does not apply to the manufacturer's action under that agreement. In Florida, Yahama Motor Company prevailed in a Department of Motor Vehicles case arguing it was not required to pay termination benefits to a dealer under laws enacted in 2007 because the dealer agreement was entered into prior to 2007. Honda Motor Company has recently argued that the new 2009 California franchise law restricting a manufacturer's ability to demand unreasonable renovations to facilities does not apply to dealers in California who are operating under dealer agreements entered into prior to 2009.

Definitions. SECTION 2. Section 437-1.1

Ancillary Agreement

"Ancillary agreement" means any written agreement between the dealer and manufacturer or distributor, other than the franchise agreement, which directly relates to the dealer's new motor vehicle operations such as dealership facilities, site control, CSI requirements, sales performance, or similar agreements.

The addition of this definition is necessary to insure manufacturers cannot avoid the protections of franchise laws by including onerous terms in ancillary agreements instead of in the "dealer agreement" itself. Current franchise protections apply only to the terms of the dealer agreement.

Examples: A number of manufacturers utilize ancillary agreement to require dealers to do things that are not addressed in the standard dealer agreement. Nissan and Mercedes Benz have required dealers to enter into a facility upgrade agreement that includes an agreement by the dealer that the franchise will be terminated if construction timelines are not met. General Motors and Chrysler have ancillary agreements wherein the dealers are required to agree not to add any other linemake to their dealership no matter whether the economy warrants such an addition.

Relevant Market Area

"Relevant market area" means the following:

(1) In a county with a population of less than 500,000 according to the most recent data of the United States Census Bureau or the data of the department of business, economic development, and tourism the relevant market area shall be the county in which the dealer is located; or

(2) In a county with a population of more than 500,000 according to the most recent data of the United States Census Bureau or the data of the department of business, economic development, and tourism the relevant market area shall be a radius of 10 miles from the dealership location."

This defines the radius around an existing dealership which creates standing for that dealer to protest the addition or relocation of a same-linemake dealer to that relevant market area.

Examples: See below under discussion of protesting new or relocated dealership point.

Section 21

(B) Law and Venue in Hawaii

Notwithstanding the terms of a franchise agreement or any ancillary agreement, ...

(B) Has attempted to require or has required any dealer in the State to enter into any agreement with the manufacturer or distributor or any other party, that requires the law of another jurisdiction to apply to any dispute between the dealer and the manufacturer or distributor or requires that the dealer bring an action against the manufacturer or distributor in a venue outside of Hawaii or requires the dealer to agree to arbitration or waive its rights to bring a cause of action against the manufacturer or distributor;

All manufacturer agreements provide that the law of the state of the manufacturer's domicile (i.e. Michigan, California and New Jersey) apply to any dispute between the dealer and manufacturer. This section clarifies that Hawaii law will apply and all disputes will be heard in a Hawaii court.

This section also clarifies that binding arbitration is prohibited. Many manufacturer agreements require that any dispute be decided through binding arbitration. This prevents a dealership from having its concern heard before the Hawaii Motor Vehicle Industry Licensing Board or a Hawaii court.

(C) Prohibition on Prospective Release

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

This prevents manufacturers from requiring a dealer to release the manufacturer from liability under the law, including the franchise protections, in the future. This type of provision thwarts the very purpose of the franchise protections.

Examples: Many manufacturers include in their dealer agreements and ancillary agreements a provision which asks the dealer to agree that franchise laws will not apply in any dispute under

the agreement. General Motors' Participation Agreement entered into with dealers being retained after the GM bankruptcy contains such a provision.

(E) Franchise Termination

" Has attempted to or has canceled or failed to renew the franchise agreement of any dealer in the State without providing notice, and without good cause and good faith, as defined herein."

Requires a manufacturer to give notice and cure period prior to attempting to terminate a dealer. Allows the dealer to protest the termination and maintain the franchise pending the outcome of the protest. Provides criteria to be considered as "good cause" before the dealer is terminated.

"A manufacturer or distributor shall give written notice to the dealer and the board of the manufacturer's intent to terminate, discontinue, cancel, or fail to renew a franchise agreement at least ninety (90) days before the effective date thereof, and state with specificity the grounds being relied upon for such discontinuation, cancellation, termination, or failure to renew. As used in this subparagraph, "good faith" means the duty of each party to any franchise agreement to fully comply with that agreement, and to act in a fair and equitable manner towards each other:

(i) In the event that the manufacturer's or distributor's notice of intent to terminate, discontinue, cancel, or fail to renew is based upon the dealer's alleged failure to comply with sales and/or service performance obligations, the dealer must first be provided with notice of the alleged sales and/or service deficiencies and afforded at least 180 days to correct any alleged failure before the manufacturer or distributor may send its notice of intent to terminate, discontinue, cancel, or fail to renew. Good cause will not exist if a dealer substantially complies with the manufacturer's or distributor's reasonable performance provisions within the 180 day cure period, or if the failure to demonstrate substantial compliance was due to factors which were beyond the control of the dealer;

(ii) A dealer who receives a notice of intent to terminate, discontinue, cancel, or fail to renew may, within the 90-day notice period, file a petition or complaint with the board for a determination of whether such action is unfair or prohibited. The manufacturer or distributor shall have the burden of proof that such action is fair and not prohibited; and

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

(iv) Upon the filing of an action pursuant to clause (ii), the franchise agreement shall remain in effect until a final judgment is entered after all appeals are exhausted, and during that time the dealer shall retain all rights and remedies pursuant to the franchise agreement including, but not limited to, the right to sell or transfer the franchise; and

(v) Upon the termination, discontinuation, cancellation or failure to renew the franchise agreement, regardless of which party terminates the agreement, the manufacturer or

distributor shall compensate the dealer at the fair market value for all new, unused, and undamaged parts, all special tools or equipment in working condition required by the manufacturer or distributor within the three years prior to the termination, all signage required by the manufacturer or distributor, and all current model year new motor vehicles acquired within the past 12 months possessed by the dealer in connection with the franchise, plus reasonable attorney's fees incurred in collecting compensation. The compensation shall be paid to the dealer no later than 90 days from the date of the franchise termination, discontinuation, cancellation, or failure to renew.For the purposes of this clause, "fair market value" means the dealer's net cost to acquire the parts, special tools, equipment, and motor vehicles;

Examples: Without these protections, the manufacturer may rely on the terms of their dealer agreement which in most cases does not require the manufacturer provide any cure period and requires only 30 days notice of the termination. Upon the termination, the dealership is shut off unless the dealer goes through the expensive and involved process of seeking an injunction in court.

This section also requires a manufacturer repurchase certain items the dealership was required to purchase such a vehicles, parts and special tools.

Examples: Under most manufacturer dealer agreements there is no or very little obligation to repurchase these items in the case the dealership is terminated. However, once the dealership is terminated they are prohibited from selling the manufacturer's vehicles and performing warranty repairs on the manufacturer's vehicles.

Fair Market Value

" (vi) In addition to the compensation set forth in clause (v), upon the termination, discontinuation, cancellation or failure to renew the franchise agreement by a manufacturer or distributor without good cause, the manufacturer or distributor shall compensate the dealer at the fair market value for the dealer's capital investment, which shall include but not be limited to the fair market value of the business, property, and improvement owned or leased by the dealer for the purpose of the franchise. The compensation shall be paid to the dealer no later than 90 days from the date of the franchise termination, discontinuation, cancellation, or failure to renew. For the purposes of this clause, "fair market value" means the value of the business at the time the franchise agreement is terminated, cancelled, or not renewed or the value of the business 12 months prior, whichever is greater;
(vii) A dealer shall be immediately entitled to and a manufacturer or distributor shall within thirty (30) days compensate the dealer for the "fair market value" of the franchise according to the formula set forth in clauses (v) and (vi) whenever a manufacturer publicly announces its plans to terminate, cancel, or discontinue a line make regardless of whether the termination, cancellation, or nonrenewal is effective immediately. The manufacturer's or distributor's compensation pursuant to this section is in exchange for the dealer's cessation of the subject line make franchise operations and the dealer's return of the franchise to the manufacturer;

This section requires that in addition to the above repurchase obligation that a manufacturer who terminates a dealership without good cause pay the dealer the fair market value of the franchise.

Examples: The need for the payment of the lost investment in the dealership's franchise has been most evident in the recent closure by General Motors of various line makes (Oldsmobile, Saturn, etc.). Although the dealers did not violate their dealer agreements in any way, and made substantial investments in their franchises as required by General Motors, dealers for these line makes were not compensated for the franchise taken from them without any cause.

(H) Prohibition on Unreasonable Incentive Programs

"(H) Refuses or fails to offer an incentive program(s), bonus payment(s), hold back margin(s), or any other mechanism that effectively lowers the net cost of a vehicle to any franchised dealer in the State unless the incentive, bonus, or holdback is reasonably and practically available to all same line make dealers in the State. A manufacturer or distributor may offer a bonus, rebate, incentive, or other benefit program to its dealers in this State which is calculated or paid on a per vehicle basis and is related to a dealer's facility or the expansion, improvement, remodeling, alteration, or renovation of a dealer's facility. Any dealer who does not comply with the facility criteria or eligibility requirements of such program is entitled to receive a reasonable percentage of the bonus, incentive, rebate, or other benefit offered by the manufacturer or distributor under that program subject to the dealer's compliance with all other reasonable requirements of the franchise;"

Prohibits manufacturers from instituting bonus or incentive programs that unfairly favor one dealer over another.

Examples: Kia and Hyundai have periodically instituted sales incentives which favor large-volume dealers over small-volume dealers where the small-volume dealer is meeting all sales performance requirements of Kia and Hyundai but sells fewer cars solely because of the size market the dealer serves. Audi, BMW and Mercedes Benz pay dealers per car incentives in return for a facility upgrade which places dealers who cannot economically justify a facility upgrade at a competitive disadvantage. As an example, a dealer who upgraded their facility just 2 years ago may not be able to financially justify incurring additional capital expenditures to meet the manufacturer's latest image requirements but nevertheless does not receive the valuable incentive monies.

(J) Warranty Reimbursement Procedures

(J) Has failed to adequately and fairly compensate its dealers for labor, parts, and other expenses incurred by the dealer to perform under and comply with manufacturer's warranty agreements. In no event shall any manufacturer or distributor pay its dealers a markup on parts or a labor rate per hour for warranty work that is less than that charged by the dealer to the retail customers of the dealer....

(i)For parts reimbursement, the mark up charged by the dealer will be established by submitting to the manufacturer or distributor a sufficient quantity of numerically consecutive repair orders from the most recent months to provide fifty (50) qualifying customer paid repair orders. For a dealer unable to provide fifty (50) qualifying customer paid repair orders out of all numerically consecutive repair orders within the two (2) month period prior to the submission, the dealer will submit customer service repair orders of all types including customer pay, warranty and internal for that two (2) month period. The repair orders must contain the price and percentage mark up. Dealers also must declare in their submission the average mark up the dealer is declaring as its new parts reimbursement rate. The declared parts reimbursement mark up shall go into effect thirty (30) days after initial submission to the manufacturer or distributor and shall be presumed to be fair and reasonable. However, the manufacturer or distributor may make reasonable requests for additional information supporting the submission. The thirty (30) day timeframe in which the manufacturer or distributor has to make the declared parts reimbursement markup effective shall commence following receipt from the dealer of any reasonably requested supporting information. The dealer shall not request a change in the parts reimbursement mark up more often than once every twelve (12) months;

(ii) To establish the labor rate, the dealer shall submit to the manufacturer or distributor all qualifying nonwarranty customer paid service repair orders covering repairs made during any one full month out of the three months prior to submission of the labor rate and dividing the amount of the dealer's total labor sales by the number of total labor hours that generated those sales. The declared labor rate shall go into effect thirty (30) days after submission to the manufacturer or distributor and shall be presumed to be fair and reasonable. However, the manufacturer or distributor may make reasonable requests for additional information supporting the submission. The thirty (30) day timeframe in which the manufacturer or distributor has to make the declared labor rate effective shall commence following receipt from the dealer of any reasonably requested supporting information. The dealer shall not request a change in the labor rate more often than once every twelve (12) months;

(iii) In determining qualifying repair orders for parts and labor, the following work shall not be included: repairs for manufacturer or distributor special events, specials or promotional discounts for retail customer repairs; parts sold at wholesale or repairs performed at wholesale, which shall include any sale or service to a fleet of vehicles; engine assemblies and transmission assemblies; routine maintenance not covered under any retail customer warranty, such as fluids, filters and belts not provided in the course of repairs; nuts, bolts, fasteners, and similar items that do not have an individual part number; tires; and vehicle reconditioning;

(iv) The manufacturer or distributor may rebut the presumption that the declared parts mark up or labor rate is appropriate by showing that the dealer did not follow the requirements set forth in this section. The manufacturer or distributor shall not require the dealer to submit any documentation or methodology other than the repair orders listed above and the declared rate in order to establish the reimbursement rate;

(v) A manufacturer or distributor may not otherwise recover its costs from dealers within this State, including an increase in the wholesale price of a vehicle or surcharge imposed on a dealer solely intended to recover the cost of reimbursing a dealer for parts and labor pursuant to this subparagraph, provided a manufacturer or distributor shall not be prohibited

from increasing prices for vehicles or parts in the normal course of business;
(vi) Dealers have, at a minimum, thirty days after the repair work is completed to submit a claim for approval. All claims made by the dealers for compensation for delivery, preparation, and warranty work shall be [~~paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt.~~] approved or disapproved and if approved, paid, within thirty days after receipt by a manufacturer or distributor of a properly completed claim. All sales incentive claims shall be approved or disapproved and if approved, paid, within sixty (60) days after receipt by a manufacturer or distributor of a properly completed claim. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval[~~;~~]. Failure to disapprove a claim within the required timeframe constitutes approval of the claim;

This language establishes clear procedures under which dealers may seek reimbursement for warranty work and requires dealers be paid the equivalent of what the dealer charges for similar repairs in the open market.

Examples: Currently, all manufacturers unilaterally designate the reimbursement rate and profit margin a dealer is paid for warranty work. Almost every one of these predetermined rates is well below what the dealer charges on the open market for like work.

(K) Warranty and Sales Incentive Audit Procedures

(K) No manufacturer or distributor shall conduct a warranty or incentive audit on previously paid claims or chargeback any warranty or incentive payment previously made more than one year after the date the manufacturer or distributor made the payment to the dealer. No manufacturer or distributor shall conduct more than one warranty or incentive audit every 12 months unless the dealer has committed fraud in submission of claims within that twelve (12) month period. No manufacturer or distributor shall impose any warranty or incentive chargeback pursuant to the results of an audit unless the manufacturer, distributor or a representative has met with the dealer or its representative in person, or by telephone, and explained the basis for each proposed chargeback in detail and given the dealer or its representative a reasonable opportunity to respond during the meeting or within thirty (30) days thereafter. The manufacturer shall also provide the dealer with a written statement detailing the basis or methodology upon which the dealer was selected for review:
(i) A manufacturer or distributor shall not chargeback a dealer for sales or warranty payments unless the manufacturer or distributor can satisfy its burden of proof that the dealer's claim was fraudulent or that the dealer did not make a good faith effort to comply with the reasonable written procedures of the manufacturer or distributor;
(ii) A manufacturer or distributor shall not utilize the method of extrapolation in levying a chargeback against a dealer; and
(iii) After all internal dispute resolution processes provided by the manufacturer or distributor have been concluded, the manufacturer or distributor shall give notice to the dealer of the final proposed chargeback amount. The dealer may file an action with the board protesting the proposed chargeback amount within forty five (45) days of receipt of this notice. In the event a

protest is filed, the proposed chargeback shall be stayed during the entirety of the action and until a final judgment has been rendered;

Restricts a manufacturer from auditing and charging back dealers for alleged wrongful claims after a 12 month period and establishes procedures for those audits and chargebacks to include a provision allowing dealers to protest unreasonable chargebacks.

Examples: Currently, all manufacturers reserve for themselves the right to audit and chargeback claims paid to the dealer no matter how much time has passed since payment. In some instances, dealers have had chargeback levied on claims paid as far back as 4 or 5 years prior to the audit which results in an untenable situation for the dealer. In addition, the manufacturers have placed unreasonably restrictive procedures on submitting claims which have resulted in chargebacks for things such as not placing a service technician time stamp in the right location on the repair paperwork or not providing otherwise immaterial detail on a sales incentive claim form.

(O) Relocation of Dealership

(O) Unreasonably prevents or refuses to approve the relocation of a dealership to another site within the dealer's relevant market area. The dealer must provide the manufacturer or distributor with notice of the proposed address and a reasonable site plan of the proposed location. The manufacturer or distributor shall approve or deny the request in writing no later than sixty days after receipt of the request. Failure to deny the request within 60 days constitutes approval. It shall not be considered an unreasonable denial of a relocation request if the relocation fails to meet the manufacturer or distributor's reasonable and uniformly applied minimum standards for a relocation;

Requires manufacturer to consider relocation request within specified time frame and accept or deny upon reasonable basis.

Examples: All manufacturers reserve to their sole discretion the ability of a dealership to relocate. Without a requirement of reasonableness in reviewing such requests, manufacturers will generally not permit a relocation no matter the economic considerations facing the dealer. With the drastic reduction in sales volume experienced by dealers of all linemakes, many dealerships need the flexibility to move into a more financially viable location.

(P) Dealership Facilities

(P) Requires or attempts to require a dealer to construct, renovate or make substantial alterations to the dealer's facilities unless the manufacturer or distributor can demonstrate that such construction, renovation or alteration requirements are reasonable and justifiable in light of current and reasonably foreseeable projections of economic conditions existing in the automotive industry at the time such action would be required of the dealer and agrees to make a good faith effort to make available, at the dealer's option, a reasonable quantity and mix of new motor vehicles, which after a reasonable analysis

of market conditions, are projected to meet the sales level necessary to support the increased overhead incurred by the dealer as a result of the required construction, renovation, or alteration;

Prevents manufacturer from requiring unreasonably large or expensive facility upgrades.

Examples: Over the last several years, manufacturers including General Motors, Nissan, BMW, Mercedes Benz and others have instituted new facility size and image programs to be applied to all dealerships in the United States. In many cases, the manufacturer's size and image requirements are not financially viable for a particular dealership and are based upon unrealistic sales expectations for a small market.

(Q) Exclusive Dealership Facilities

(Q) Requires or attempts to require the dealer to establish or maintain an exclusive showroom or facility unless the manufacturer or distributor can establish that the dealer's current facility is inadequate to meet the reasonably expected sales and/or service demand in the dealer's market, based on the current and reasonably expected future economic conditions existing in the dealer's market and the automobile industry at the time the request for an exclusive showroom or facility is made;

Prohibits a manufacturer from requiring a dealer provide exclusive facilities.

Examples: General Motors, Nissan, BMW, Mercedes Benz and others have attempted to require dealers to commit to providing exclusive facilities which for many dealerships is not economically feasible. Many dealers require more than one franchise within the dealership facility in order to cover overhead.

(R) Site Control

(R) Conditions the award of an additional franchise on the dealer entering a site control agreement or the dealer waiving its rights pursuant to paragraph (21) to protest the manufacturer's or distributor's award of an additional franchise within the dealer's relevant market area;

Prohibits a manufacturer from requiring that a dealer provide the manufacturer with dealership site control, including a first right of refusal on the purchase of the dealership property with a purchase price of less than fair market value.

Examples: Despite Chrysler's repeated claims that its dealers will have to have the Chrysler, Dodge and Jeep franchises in one location to be viable, Chrysler is refusing to provide dealers with the "missing" franchise without the dealer first agreeing to give Chrysler full control of the use of the dealership site.

(S) New Point or Relocation into Another Dealer's RMA

(S) Establishes or relocates a franchise within the relevant market area of an existing franchise dealer unless the manufacturer or distributor provides notice to the board and all affected

dealers. For the purposes of this subparagraph, an "affected dealer" is a dealer that operates a same line make franchise in a relevant market area wherein the manufacturer or distributor is proposing to add or relocate a franchise or which makes twenty percent (20%) of its retail sales of new motor vehicles, within the 12 month period prior to the notice, to persons whose registered household addresses were located within a radius of 10 miles of the location of the proposed additional or relocated franchise. The manufacturer's or distributor's notice must state the location of the proposed dealership, the date on or after which the franchise intends to be engaged in business, the names and addresses of the dealer-operator and the principal investors in the proposed additional or relocated franchise, and the identity of all same line make franchise dealers in the relevant market area where the proposed addition or relocation would be located:

(i) An affected dealer may file a protest with the board within thirty (30) days of receipt of the manufacturer's or distributor's notice for determination of whether the manufacturer or distributor has good cause to establish or relocate an additional franchise within the dealer's relevant market area. When such a protest is filed, the manufacturer or distributor shall not establish or relocate the proposed franchise until a hearing has been held and a determination made whether good cause exists for the proposed addition or relocation. The board must make its determination no later than 180 days from receipt of notice of the protest except for good cause. The manufacturer or distributor has the burden of proof to demonstrate good cause exists for the addition or relocation of an additional franchise within the affected dealer's relevant market area;

(ii) In determining whether the manufacturer or distributor has good cause to add or relocate the franchise into an affected dealer's relevant market area the board shall consider and make findings upon evidence including but not limited to: the permanency and size of investment made and the reasonable obligations incurred by the existing new motor vehicle dealers in the relevant market area; the growth or decline in population and new car registrations in the relevant market area; the effect on the consuming public in the relevant market area; whether it is injurious or beneficial to the public welfare for a new dealer to be established; whether the new motor vehicle dealers of the same line make in that area are providing adequate competition and convenient customer care for the motor vehicles of the same line make including the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel; whether the establishment or relocation of the proposed dealership appears to be warranted and justified based on economic and marketing conditions pertinent to dealers competing in the community or territory, including anticipating future changes; any attempts by the manufacturer or distributor to coerce the existing dealer or dealers into consenting to additional or relocated franchises of the same line make in the relevant market area; the effect on the relocating dealer of a denial of its relocation into the relevant market area; and the reasonably expected market penetration of the line-make motor vehicle for the community or territory involved, after consideration of all factors which may affect said penetration, including, but not limited to, demographic factors such as age, income, education, size class preference, product popularity, retail lease transactions, or other factors affecting sales to consumers of the community or territory; and

(iv) This subparagraph shall not apply to the relocation of an existing dealer within two (2) miles of the dealer's existing dealership location;

This provision provides existing dealers with the opportunity to protest the addition of a same linemake dealer into a radius of 10 miles around the existing dealership location. The existing dealer will have the right to demonstrate that the addition of the second dealer into the existing dealer's RMA is not warranted. This section provides a procedure for such a protest.

Examples: Honda recently proposed to add a new dealership on Oahu where there exist 4 Honda dealers serving the greater Honolulu area. The existing dealers believe that, particularly under the current economic conditions, the addition of another Honda dealership would have caused severe financial damage to them.

(T) Transfer of Dealership

(T) Unreasonably withholds consent to the sale, transfer or exchange of the franchise to a qualified buyer capable of being licensed as a dealer:

(i) The dealer shall notify the manufacturer or distributor, in writing, of its desire to sell, assign, transfer, or dispose of its franchise and identify the proposed transferee's name, address, financial qualifications, and general business experience in the past five years. A manufacturer or distributor must approve or disapprove the transaction within 60 days following receipt of the dealer's notice. Failure of the manufacturer or distributor to disapprove the transaction within the 60 day period constitutes approval of the transfer;

(ii) In the event that a manufacturer or distributor denies a dealer's proposed sale, transfer, or exchange of the franchise, the dealer may file a complaint or protest with the board within 60 days of the notice of denial. The manufacturer or distributor has the burden of proof to demonstrate at a hearing pursuant to a timely filed complaint, that the proposed transferee is not of good moral character or does not meet the written, reasonable, and uniformly applied business standards or qualifications of the manufacturer relating to the financial qualifications of the transferee and general business experience of the transferee or the transferee's executive management. The manufacturer or distributor must respond to the dealer's complaint within thirty (30) days from the date it was filed. Failure to respond within thirty (30) days constitutes approval of the transfer. The hearing pursuant to a timely filed complaint under this section must take place within ninety (90) days from the date the complaint is filed;

Requires manufacturers to reasonably consider requests to transfer the ownership of a dealership, provides a criteria to be used in considering a transfer request and the procedure for a dealership's challenge of a manufacturer's rejection of a transfer request.

Examples: All manufacturers retain sole discretion in approving ownership transfers of dealerships. Despite meeting generally accepted criteria, manufacturers will from time to time refuse to approve the sale of a dealership which prevents the owner from obtaining a return on his or her investment.

(U) Dealership Succession

(U) Refuses or fails to give effect, unless it has good cause, to the dealer's designated successor, whether designated by will, other estate planning document, or written notice to the manufacturer or distributor either while the dealer was living or within ninety (90) days of the dealer's death or incapacity:
(i) In determining whether good cause exists for the manufacturer's or distributor's refusal to honor the succession, the manufacturer has the burden to prove that the successor is not of good moral character, not willing to be bound by the terms of the franchise agreement and either not qualified to operate the dealership or fails to demonstrate that the dealership will be operated by a qualified executive manager;
(ii) The manufacturer or distributor must notify the proposed successor of its belief that good cause exists to refuse to honor the succession within sixty (60) days after receipt of the notice of the proposed successor's intent to succeed the franchise, and the manufacturer or distributor must detail why it believes good cause exists to deny the succession;
(iii) A proposed successor may file a protest with the board within sixty (60) days after receipt of the manufacturer's or distributor's notice of refusal to honor the succession. The hearing pursuant to a timely filed complaint under this clause must be conducted within ninety (90) days from the date the complaint was filed; and
(iv) The franchise shall continue, and the manufacturer or distributor is prohibited from any action to the contrary, until a final judgment has been rendered on the proposed succession;

Requires manufacturers to accept a dealer's choice of family member to succeed the dealer as long as the successor meets minimum criteria or presents a qualified manager for the dealership and provides a procedure for the dealership to challenge a rejection of the proposed successor.
Examples: Despite dealerships traditionally being family-owned, in some cases for several generations, there are numerous examples of manufacturers rejecting a dealer's choice, sometimes following the dealer's death, for the family member to be the dealer-principal of the dealership. As long as the proposed successor meets minimum criteria or presents a qualified dealership manager, the manufacturer should not be permitted to prevent the dealership from passing to the next generation within a family.

(V) Manufacturer Required Training

(V) Requires or attempts to require a dealer or the dealer's employees to attend a training program(s) that does not relate directly to the sales or service of a new motor vehicle in the line make of that sold and/or serviced by the dealer;

Prohibits the manufacturer from requiring the dealership to send personnel to training that is not specific and necessary to a new product.

Examples: Manufacturers periodically create "sales motivational" training and demand that dealers send their sales or service personnel to the training. The training is often on the mainland which creates a tremendous inconvenience and expense for Hawaii dealers.

(W) Advertising and Displays

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

Prohibits manufacturers from requiring dealers to contribute toward advertising or to accept promotional/display material without the dealer's consent.

Examples: Manufacturers regularly attempt to force dealers to contribute to an advertising fund or to accept promotional or display material shipped to the dealership. As independent businesses, dealerships must have the ability to refuse to participate in any given advertising campaign or refuse to accept promotional material the dealer deems a poor investment.

(X) Customer Satisfaction Performance Requirements

(X) Implements or establishes a CSI (customer satisfaction index) or other system measuring a customer's degree of satisfaction with a dealer as a sale or service provider unless any such system is designed and implemented in such a way that is fair and equitable to both the manufacturer and the dealer. In any dispute between a manufacturer, distributor and a dealer the party claiming the benefit of the system as justification for acts in relation to the franchise shall have the burden of demonstrating the fairness and equity of the system both in design and implementation in relation to the pending dispute. Upon request of any dealer, a manufacturer or distributor shall disclose in writing to such dealer a description of how that system is designed and all relevant information pertaining to such dealer used in the application of that system to such dealer;

Requires that a manufacturer's use of CSI performance requirements be reasonable.

Examples: In small markets, a dealership will have only a few CSI survey returned by customers which does not provide an adequate sampling. Nevertheless, manufacturers have customarily enforced their CSI performance criteria despite unreliable samples.

(Y) Sales Performance Requirements

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

Requires that a manufacturer's use of sales performance requirements be reasonable.

Examples: Manufacturers generally apply a fixed formula to judge their dealer's sales performance. However, every market is unique and manufacturers don't always make adjustments for the unique aspects of a dealer's market in gauging the dealership's sales performance.

(Z) Vehicle Allocation

(Z) Implements or establishes a system of motor vehicle allocation or distribution to one or more of its dealers which is unfair, inequitable, unreasonably discriminatory, or not supportable by reason and good cause after considering the equities of the affected dealer or dealers. As used in this subparagraph, "unfair" includes without limitation, requiring a dealer to accept new vehicles not ordered by the dealer, the refusal or failure to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or colors as the manufacturer offers or allocates to its other same line make dealers in the state or the refusal or failure to ship monthly to any dealer, if ordered by the dealer, the number of new vehicles of each make, series, and model needed by the dealer to receive a percentage of total new vehicle sales of each make, series, and model equitably related to the total new vehicle production or importation currently being achieved nationally by each make, series, and model covered under the franchise. A manufacturer and distributor shall maintain for 3 years records that describe its methods or formula of allocation and distribution of its motor vehicles and records of its actual allocation and distribution of motor vehicles to its dealers in this State. Upon the written request of any dealer, the manufacturer or distributor shall disclose to the dealer in writing the basis upon which new motor vehicles are allocated, scheduled, and delivered to the dealers of the same line make by make, model, color, and accessories."

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

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

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

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

Requires that a manufacturer provide a reasonable quantity and mix of vehicles to its dealers and prohibits forcing dealers to accept vehicles not ordered.

Examples: Manufacturers have total control over which dealers receive which vehicles. It is critical that the manufacturers be prevented from discriminating amongst its dealers in allocated new vehicles. In contrast, prior to its bankruptcy proceedings, Chrysler was demanding that dealers accept vehicles that the dealers had no need for.

In summary, a healthy dealer is more apt to be able to help consumers. Nothing says this more clearly than the Feb. 1, 2010 "Hawaii Toyota Dealers Extending Hours to Fix Gas Pedals in Recalled Cars" NEWS RELEASE. Please see below:

Hawaii Toyota Dealers Extending Hours to Fix Gas Pedals in Recalled Cars

Servco Pacific Inc. (Servco) says all Toyota dealers in Hawaii will be extending service hours of operation, including 24 hours a day to accommodate customer demand at the largest and busiest Toyota dealership located in Mapunapuna, to remedy possible sticking accelerator pedals in vehicles that have been recalled.

There have been no confirmed reports of accidents in Hawaii involving sticking gas pedals in the recalled vehicles, but Servco says extending hours of operation will allow repairs to be completed as quickly and conveniently as possible. Servco estimates approximately 8,000 vehicles state-wide are impacted by the recall.

"We want to assure our customers that the Toyota cars they drive are safe and reliable, so we will act quickly," said Mark Fukunaga, Chairman and CEO of Servco.

Toyota Motor Corp. today announced that engineers had designed and tested a solution that eliminates the excess friction that may cause accelerator pedals to stick in rare instances. The necessary precision-cut steel reinforcement bar is now being shipped to all dealers.

Said Fukunaga, "We expect to receive the initial shipment of these parts before the end of this week and our customers will be notified either by letter or phone call to schedule installations to repair their cars as soon as possible." Mailed letters will be sent to all affected customers directly from Toyota. When the letter is received customers should schedule an appointment at the Toyota Service Center of their choice.

He added, "We apologize for the inconvenience this recall has caused to our valued customers, and we pledge to work hard to restore their trust in Toyota vehicles."

Servco Auto Honolulu will begin its 24 hour service as soon as the parts are received and appointments scheduled. Other Toyota locations on Oahu and the Neighbor Islands will be extending their hours to accommodate all customers. Toyota owners can find additional details at www.toyotahawaii.com.

# # #

Finally, HADA dealers thank you for your consideration of this measure to insure a healthy transportation sector for Hawaii –one which includes a healthy auto industry capable of being responsive to the needs of Hawaii consumers. We respectfully ask that you pass SB2859.

Respectfully submitted,

David H. Rolf
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SENATE COMMITTEE ON
TRANSPORTATION, INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS

February 8, 2010

Senate Bill 2859 Relating to the Motor Vehicle Industry Licensing Act

Chair English and members of the Senate Committee on Transportation, International and Intergovernmental Affairs, I am Rick Tsujimura, representing General Motors, LLC (GM). GM opposes Senate Bill 2859 Relating to the Motor Vehicle Industry Licensing Act.

General Motors has significant and substantial concerns with regards to Senate Bill 2859, which amends in multiple sections the dealer franchise laws of the State of Hawaii. We are currently reviewing the measure with the Alliance of Automobile Manufacturers and upon our review will have more substantial comments to the measure. We do, however, note that the measure includes language which is problematic.

The United States Constitution in Article 1, Section 10, clause 1 states:

> **No State shall** enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts**; pass any** Bill of Attainder, ex post facto Law, or **Law impairing the Obligation of Contracts**, or grant any Title of Nobility.

Section 1 of Senate Bill 2859 states that it is the intent of Chapter 437 amendments to be applicable not only to future contracts but to those existing as of the date of enactment. In other words the proposed bill and the amendments are intended to impair the pre-existing obligations agreed upon between the parties by contract. It is fundamental law that a state cannot enact such legislation and at best the amendments must be prospective and not impair pre-existing agreements.

"The Supreme Court laid out the test for whether a law violates the Contract Clause in *Energy Reserves* Group *v. Kansas Power & Light* 459 U.S. 400 (1983). The test is a three part test. First, the state regulation must substantially impair a contractual relationship. Second, the State "must have a significant and legitimate purpose behind the regulation, such as the remedying of a broad and general social or economic problem." *459 U.S. at 411-13* Third, the law must be reasonable and appropriate for its intended purpose. This test is similar to rational basis review." See Chemerinsky, Erwin (2002) (in English). Constitutional Law. New York, United States: Aspen Publishers. p. 1276.

We do not believe that the amendments are reasonable or appropriate for the intended purpose. The economic situation facing the nation and which led to the closure of dealerships throughout the nation by automobile manufacturers was not a situation created by those manufacturers, it was a result of the economic recession which we all faced. Indeed the

manufacturers were as much a victim of the economic recession as any one else. To now place the burden solely on the automobile manufacturers is unwarranted. Could the situation have been handled better or differently we could all opine differently. Who would have thought that many of America's manufacturers, distributors and dealers would have faced such a situation?

General Motors and the other automobile manufacturers have numerous concerns with the proposed changes in the bill. A few examples of the most egregious issues are: 1) The proposed change that would entitle a dealer to the benefit of a manufacturer-to-dealer incentive program even if the dealer does not meet the requirements of the program (Sec 2, para (21)(H)) as well as additional proposed changes that entitle a dealer to payment of warranty and consumer incentive payments upon a showing of only "good faith effort to comply", (Sec 2, para (21)(K)(i)). This would effectively permit a dealer to ignore the actual program eligibility requirements and decide for themselves what provisions should or should not apply. 2) The proposed change that would extend the application of the dealer franchise act to other agreements and programs that relate to site control, customer satisfaction or sales performance metrics. This change would effectively turn every sales incentive program or contest into a franchise agreement subjecting it to the full provisions of the franchise act (Sec 2, para (1)). This is an overly burdensome, restrictive, and costly imposition that would likely result in the cancellation of many valuable programs to the detriment of the consumer. 3) The proposed changes that prohibit agreements of any kind related to waiver of rights, exclusivity of facilities, or site control (Sec 2, para (21)(C), para (21)(Q), para (21)(R) respectively). These provisions are not unusual in contracts within the industry that play an important role in the development of an efficient and high quality dealer network. Such agreements are commonly voluntary agreements supported by separate consideration and as such the state should not interfere with these arms length transactions. Finally, 4) the proposed changes that seek to expand termination assistance payments from the manufacturer to the dealer to cases of voluntary termination by the dealer (Sec 2, para (21)(E)(v)). Such a provision amounts to a level of state protectionism not enjoyed by any other entity or individual in the state.

Punishing manufacturers and providing dealers more economic power will not improve Hawaii's economic condition. On the contrary it will make an already fragile situation even more so. We therefore respectfully request that the committee withhold action on this measure, and convene a working group to address the differing concerns.

Thank you for the opportunity to present this testimony.

GOODSILL ANDERSON QUINN & STIFEL
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MEMORANDUM

TO: Senator J. Kalani English
Chair, Committee on Transportation, International & Intergovernmental Affairs
VIA EMAIL: TIATestimony@Capitol.hawaii.gov

FROM: Gary M. Slovin

DATE: February 5, 2010

RE: **S.B. 2859 – Relating to the Motor Vehicle Industry Licensing Act**
Hearing: Monday, February 8, 2010 at 2:00 p.m., Room 224

Dear Chair English and Members of the Senate Committee on Transportation, International & Intergovernmental Affairs:

I am Gary Slovin, testifying on behalf of the Alliance of Automobile Manufacturers ("Alliance"). The Alliance is a trade association representing eleven car and light truck manufacturers, including: BMW, Chrysler, Ford, GM, Jaguar Land Rover, Mazda, Mercedes-Benz, Mitsubishi, Porsche, Toyota, and Volkswagen.

Senate Bill 2859 proposes numerous changes to the Motor Vehicle Industry Licensing Act. I have forwarded this proposed legislation to the Alliance for review and comment. The Alliance's initial comments are that many of the provisions run contrary to the basic premises of the law and are unacceptable.

In 2003, another bill relating to motor vehicle franchises was introduced and the industry members met to come up with a compromise position that became the present law. It is fair to say that the issues presented by the present proposal will be far more difficult to resolve than those presented in 2003. However, as a result of the downturn in the automobile industry, the Alliance and manufacturers have been meeting with dealers around the country in an effort to resolve issues such as those raised in this bill. We are hopeful that through similar meetings we will be able to resolve differences and come up with a bill that will be acceptable.

For the past several years, the Alliance and the local dealers have worked together for the common good of this critically important industry. Both the dealers and

manufacturers must be able to operate in a manner that allows them to be successful. The Alliance's concern is that there are provisions in this bill that would make it extremely difficult for manufacturers to do business in the State; that would not be in anyone's interest. The proposed bill is a one-sided approach in an industry that is just starting to recover from the recession.

Our hope is that we can engage in productive meetings and negotiations that will produce not only a bill that will be acceptable, but that can build on the relationships that have been created in Hawaii over the past several years to serve the industry and the community.

In its present form, the Alliance has no alternative but to oppose the bill but is agreeable to, and has begun, working with the Hawaii Automobile Dealers Association on the issues presented.

Thank you very much for the opportunity to provide testimony on this measure.

Testimony in Strong Support of SB2859
Presented to the Committee on Transportation, International and Intergovernmental Affairs
For the public hearing 2 p.m. Monday, February 8, 2010
In Conference Room 224, Hawaii State Capitol

Dear Chair English, Vice Chair Gabbard, and members of the committee:

My name is Stan Masamitsu, and I am an industry member of the Motor Vehicle Industry Licensing Board. Today, I am testifying on this matter in my capacity as the president of Tony Group. I am a second generation auto dealer, and my family has been in the automobile dealership business in Hawaii for over 30 years. We currently employ over 350 people and not too long ago made a major commitment to our people and our community by investing in and building Hawaii's auto mall, Tony Group Autoplex, in Waipio in 2001.

Tony Group Autoplex initialy included Tony Honda, Tony Nissan, and Tony Volkswagen. The mall was expanded from 6 to 11 acres in 2004 with the addition of Tony Hyundai and Autoplex Car Wash.

I am in STRONG SUPPORT of SB2859 - Relating to the Motor Vehicle Industry Licensing Act.

This update to H.R.S. Chapter 437 will help local family businesses like Tony Group operate on a more level playing field with our multinational manufacturer partners. By clarifying the ground rules of the auto franchisee-franchisor relationship by updating its motor vehicle licensing law, as many other states have done recently, local businesses like ours will be better able to focus on competing with others in the marketplace based on how well we operate our business and service the general public.

Although contracts between dealers and manufacturers are referred to as "Agreements," its terms are, for all practical purposes, not negotiable. Although one has the option whether or not to initially enter into a business relationship with an auto manufacturer, once the factory-required investments are made in land, building, personnel, training, special tools, other equipment, and inventory are made, dealers, with their significant initial, ongoing, and often long-term investment, essentially lose their flexibility to negotiate when the manufacturers "update" the terms of *their* Agreements.

Manufacturers, especially in light of the current economic environment, have also been attempting to unreasonably shift costs to dealers, increasing our costs, which forces us to reduce expenses (like personnel, though as a last resort) or pass the additional costs on to the consumer.

Stan Masamitsu
Tony Group Autoplex:
Tony Honda
Tony Nissan
Tony Volkswagen

Tony Hyundai
Autoplex Car Wash
Tony Group Body Shop