

JAN 23 2009

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 437-12, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§437-12 Legal ownership certificates[-]; reasonable
4 indicia of ownership or right of possession. (a) Possession or
5 proof of possession of legal ownership certificate. No dealer
6 shall sell or advertise for sale a motor vehicle unless the
7 dealer has in the dealer's possession or proof of possession of
8 the legal ownership certificate of the subject motor vehicle[-];
9 provided that if the vehicle is a used motor vehicle, the dealer
10 may sell or advertise for sale the used motor vehicle if the
11 dealer has in the dealer's possession reasonable indicia of
12 ownership or right of possession of the legal ownership
13 certificate of the subject motor vehicle.

14 (b) Delivery of legal ownership certificate. The legal
15 ownership certificate shall be delivered within the period as
16 provided in section 286-52(b).



1 (c) For the purposes of this section, the term "reasonable
2 indicia of ownership or right of possession" includes but is not
3 limited to:

4 (1) A consignment contract between the owner and the
5 dealer along with a secure power of attorney from the
6 owner to the dealer authorizing the dealer to apply
7 for a duplicate certificate of title and assign the
8 title on behalf of the owner;

9 (2) A court order awarding title to the vehicle to the
10 dealer;

11 (3) A salvage certificate of title;

12 (4) A photocopy of a duly assigned certificate of title
13 being held by a financial institution as collateral
14 for a business loan of money to the dealer;

15 (5) A copy of a cancelled check or other documentation
16 evidencing that an outstanding lien on the vehicle
17 taken in trade by a dealer has been satisfied and that
18 the certificate of title will be, but has not yet
19 been, received by the dealer;

20 (6) A vehicle purchase order or installment contract for a
21 specific vehicle identifying that vehicle as a trade-
22 in on a replacement vehicle; or



1 (7) A duly executed odometer disclosure statement as
2 required under 49 United States Code section 32705."

3 SECTION 2. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun, before its effective date.

6 SECTION 3. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect upon its approval.

9

INTRODUCED BY: Rosalyn H. Baker
Will Ezer
Michelle M. Sidani



Report Title:

Motor Vehicle Dealers

Description:

Allows motor vehicle dealers of used vehicles to have in their possession reasonable indicia of ownership or right of possession, as an alternative to a legal ownership certificate, when selling the used vehicle.



**PRESENTATION OF THE
MOTOR VEHICLE INDUSTRY LICENSING BOARD**

**TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

**TWENTY-FIFTH LEGISLATURE
Regular Session of 2009**

**Wednesday, February 25, 2009
8:30 a.m.**

**TESTIMONY ON SENATE BILL NO. 520 – RELATING TO THE MOTOR VEHICLE
INDUSTRY LICENSING ACT.**

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

My name is Werner Umbhau and I am a public member of the Motor Vehicle Industry Licensing Board (“Board”). Thank you for the opportunity to submit testimony on S.B. No. 520, relating to the Motor Vehicle Industry Licensing Act.

The companion bill, H.B. No. 270, was heard by the House Committee on Consumer Protection and Commerce, and was passed out unamended on January 29, 2009.

The Board has authorized me to speak on its behalf. The Board supports the concept only, of this bill. The Board is concerned that the bill in its current form is confusing. More importantly, the bill fails to provide needed protections for consumers. The Board must ensure that a consumer will receive clear title to the vehicle from the dealer. As such, the Board can not support the bill in its current state.

This bill attempts to allow motor vehicle dealers (“dealer”) to sell or advertise for sale used motor vehicles if the dealer has reasonable indicia of ownership or right of possession of the legal ownership certificate of the respective motor vehicle. Section 1

of the bill, page 2, lines 4 through 22 and page 3, lines 1 and 2, enumerates the type of documents that would satisfy the meaning of "reasonable indicia of ownership or right of possession".

The Board has concerns with the following:

Item 1, a consignment of sale that authorizes the dealer to apply for a duplicate certificate of title and assign the title on behalf of the owner;

Item 3, a salvage certificate of title;

Item 4, a photocopy of a duly assigned certificate of title being held by a financial institution as collateral for a business loan of money to the dealer;

Item 6, a contract between a buyer and dealer in which the buyer is trading in their vehicle; and

Item 7, a signed odometer disclosure statement.

During the past few weeks, the Board and proponents of the bill have been working closely together to forge the following agreed upon compromise language as to Section 1:

"§437-12 Legal ownership certificates. (a) Possession [~~or proof of possession~~] of or right to possess legal ownership certificate. No dealer shall sell or advertise for sale a new motor vehicle unless the dealer has in the dealer's possession the actual legal ownership certificate, or a certificate of origin or its equivalent issued by a manufacturer or distributor to the dealer, for the subject motor vehicle. No dealer shall sell or advertise for sale a used motor vehicle unless the dealer has in the dealer's possession the actual legal ownership certificate or proof of [~~possession of~~] the right to

possess the legal ownership certificate [of] for the subject motor vehicle, and evidence that all liens on the subject motor vehicle have been satisfied.

(b) Delivery of legal ownership certificate. The legal ownership certificate shall be delivered within the time period [~~provided~~] specified in section 286-52(b)."

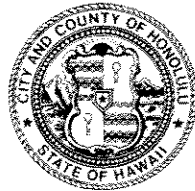
We understand that the proponents of the bill will be submitting identical language to the Committee along with a request to amend the bill. Based on this understanding, the Board could support the bill in the amended form.

The Board thanks you for the opportunity to testify on S.B. No. 520.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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MUJI HANNEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZULU
KARLA A. GODSEY
DEPUTY CHIEFS

OUR REFERENCE SN-NTK

February 25, 2009

The Honorable Rosalyn H. Baker, Chair
and Members
Committee on Commerce
and Consumer Protection
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Baker and Members:

Subject: Senate Bill No. 520, Relating to the Motor Vehicle Industry Licensing Act

I am Sean C. Naito, captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes Senate Bill No. 520, Relating to the Motor Vehicle Industry Licensing Act. This bill authorizes the motor vehicle dealers to have in their possession reasonable indicia of ownership or right of possession as an alternative to a legal ownership certificate when selling the used vehicle.

Accurate and updated records that identify a previous or current owner(s) of a motor vehicle are needed by law enforcement. This allows more timely investigations of crimes. The increased efficiency and effectiveness of investigations benefits the public and the entire criminal justice system.

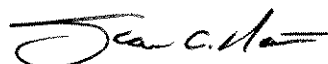
The Honolulu Police Department urges you to oppose Senate Bill No. 520, Relating to the Motor Vehicle Industry Licensing Act.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

for: 
BOISSE P. CORREA
Chief of Police


SEAN C. NAITO, Captain
Criminal Investigation Division

February 23, 2009

Testimony in strong SUPPORT of NEW AMENDED LANGUAGE for SB 520
(See proposed amended language included in this testimony)
RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT

Presented to the Senate Committee on Commerce and Consumer Protection
For the public hearing 8:45 a.m. Wednesday, February 25, 2009
Conference Room 229, Hawaii State Capitol

Submitted by David H. Rolf, for the Hawaii Automobile Dealers Association
Hawaii's franchised new car dealers

Chair Baker and members of the committee:

Hawaii's franchised new car dealers thank you for the opportunity to offer strong support for adding clarifying language to HRS 437-12 regarding possession or proof of possession of the legal ownership certificate --required for a dealer to sell or advertise a new or used car.

After discussions with members of the Motor Vehicle Industry Licensing Board (MVILB) and Hawaii Independent Automobile Dealers Association (HIADA), and other stakeholders, including Manheim Hawaii Auto Auction, the following amended language to SB 520 SECTION 1 was agreed upon:

SECTION 1. Section 437-12, Hawaii Revised Statutes, is amended to read as follows:

"§437-12 Legal ownership certificates. (a) Possession [~~or proof of possession~~] of or right to possess legal ownership certificate. No dealer shall sell or advertise for sale a new motor vehicle unless the dealer has in the dealer's possession the actual legal ownership certificate, or a certificate of origin or its equivalent issued by a manufacturer or distributor to the dealer, for the subject motor vehicle. No dealer shall sell or advertise for sale a used motor vehicle unless the dealer has in the dealer's possession the actual legal ownership certificate or proof of [possession of] the right to possess the legal ownership certificate [of] for the subject motor vehicle, and evidence that all liens on the subject motor vehicle have been satisfied.

(b) Delivery of legal ownership certificate. The legal ownership certificate shall be delivered within the time period [provided] specified in section 286-52(b)."

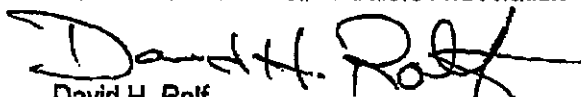
HADA testimony in support of amendment to SB 520 for CPN hearing 8:30 a.m. Feb. 25, 2009, page 2

Without such a clear definition there may be a severe financial penalty for customers to bear in lowered trade-in values because, without this needed clarity in the law, some dealers may feel it necessary to hold the vehicles until the actual certificate of ownership of the vehicle (title) arrives—even though, after payoff of any outstanding liens, along with documents showing transfer of ownership of the vehicle to the dealer by the former owner, the dealer has the right to possess the vehicle. Other states have addressed this with similar methods to allow dealers to sell or advertise a vehicle.

We appreciate the opportunity to work with stakeholders and the legislature in crafting language that meets the needs of all parties.

We respectfully request adoption of the proposed amended language and subsequent passage of SB 520.

Respectfully submitted,
The Hawaii Automobile Dealers Association



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Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

SENATE COMMITTEE ON COMMERCE & CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair

Wednesday, February 25, 2009
8:30 a.m.

SB 520

Chair Baker, Vice Chair Ige and members of the Committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** S.B. 520, which would allow motor vehicle dealers to have a reasonable indicia of ownership or right of possession as an alternative to a legal ownership certificate when selling a used vehicle.

The bill loosely defines the term "reasonable indicia of ownership or right of possession" to include items that can easily be created on a computer. Of even greater concern is that the list is not exhaustive; the definition "includes but is not limited to" the seven items on the list. If passed, nothing in this law would prevent a dealer from selling a vehicle if that dealer deems some other document not listed to be "reasonable."

We are also concerned about enforcement. If a dealer acquires a vehicle under the "reasonable indicia" standard, and sells it to a third party and that vehicle is subsequently found to have been stolen, the true owner would have lost their rights to



Neal K. Okabayashi
Vice President & Attorney

Presentation to the Senate Committee on Commerce and Consumer Protection
Wednesday, February 25, 2009, at 8:30 a.m.

Testimony for SB520 Relating to the Motor Vehicle Industry Licensing Act

TO: The Honorable Roz Baker, Chair
The Honorable David Ige, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection

My name is Neal Okabayashi and I testify for First Hawaiian Bank in support of this bill with amendments.

We suggest on page two, in lines four, five and eight, insert “registered” before “owner”. The purpose of this amendment is to distinguish between the legal owner and the registered owner. The legal owner is the creditor and the registered owner is the person who possesses and controls the car.

On page two, we suggest that on line 12 the following be inserted after “photocopy”: “certified by the financial institution that the photocopy is a true and correct copy . . . “ This ensures that the copy is up to date and accurate.

On page two, line 20, delete “or installment contract”. The reason is that the installment contract generally does not have the name of the financial institution on it.

Thank you for this opportunity to testify, and I would be happy to answer any questions you may have.

that vehicle. It is unclear whether the dealer is accountable for not investigating the title. There doesn't appear to be any enforcement of either the dealer's acquisition via the "reasonable indicia" standard nor the proper investigation of the title.

Hawaii Insurers Council believes that passage of S.B. 520 has the potential to increase auto thefts if it is easier to convert a stolen vehicle's title to a "clean" title.

We respectfully request that S.B. 520 be held.

Thank you for the opportunity to testify.

**SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

February 25, 2009

Senate Bill 520 Relating to Motor Vehicle Industry Licensing Act

Chair Baker and members of the Senate Committee on Commerce and Consumer Protection, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm offers comments on Senate Bill 520.

State Farm is concerned that documents other than "title documents" may foster fraud. For example, if we insure the car that's being "traded-in" and end up paying a claim for theft or conversion, we may be unable to recover the vehicle, if a used car dealer is allowed to obtain title to the vehicle with documentation less than the title documents. Title documents are the best "indicia of ownership" and the dealer should have obligations to make certain the car being re-sold is actually property that can be sold. Waiting for titles, would seemingly be a transactional cost, part of the cost of doing business.

Thank you for the opportunity to present this testimony.

TESTIMONY OF KIPPEN DE ALBA CHU

1020 Green St., #711

Honolulu, HI 96822

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair • Senator David Y. Ige, Vice Chair

Wednesday, February 25, 2009

SB 520

Chair Baker, Vice Chair Ige, and members of the Committee, thank you for this opportunity to testify in **STRONG OPPOSITION** to Senate Bill 520.

Basically, this bill seeks to legalize what appears to already be common practice: car dealers selling used vehicles to the public without proper title. My purpose in submitting testimony is to inform this Committee that I was a victim of this practice, and I was not alone.

On October 29, 2005, I purchased a used vehicle from Pflueger Auto Value Center in Pearl City. At the time of purchase, I was given a temporary registration, good for 30 days, and a receipt proving that I had purchased the car. The dealer told me that they would mail the certificate of ownership later. When my temporary registration expired, I still had not received anything from Pflueger. On four separate occasions, I was told over the phone that the documents were not ready. Each time, I left a message for the General Manager to return my call, but never received a reply.

On December 21, 2005, nearly two months after my purchase, I was finally able to speak to a manager in charge, who confirmed that Pflueger never obtained the title from the car's previous owner and that he had no idea when I would receive the document. He then offered to issue me another temporary vehicle registration since the one I had had already expired. On that same day, I contacted the Regulated Industries Complaints Office to voice my concerns. The investigator asked me to send a written letter of complaint to Pflueger as documentation. He also said that RICO had already received numerous complaints against the same dealer for the very same issue.

On January 6, 2006, I filed a formal complaint with RICO against Pflueger. Approximately six months after my purchase, the dealer finally obtained the title from the car's previous owner and processed the paperwork to have the vehicle transferred to me legally. At the same time, RICO forwarded my complaint to its Legal Section for further action.

On June 15, 2006, an attorney with RICO informed me that the State filed a legal action against Pflueger and that a trial date had been set for October 19, 2006. Pflueger settled with the State prior to going to trial.

Thank you again for allowing me to testify in strong opposition to this measure.

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Toll-free fax 1-866-339-3380

Law Offices of

JEFF CRABTREE

lawyer@consumerlaw.com

A Limited Liability Law Company

February 24, 2009

[XX] By e-mail to senbaker@Capitol.hawaii.gov

[XX] By fax to 18085866071@rapidfax.com

Rosalyn H. Baker, Chair
Consumer Protection Committee
5th Senatorial District
Hawaii State Capitol, Room 231
415 South Beretania Street
Honolulu, HI 96813

RE: SB 520 (title requirements for selling cars)

Dear Senator Baker:

Aloha to your and the Consumer Protection Committee. Please accept this letter as testimony on S.B. 520, currently set for hearing tomorrow at 8:30 am. I am trying to make it to the hearing tomorrow, but it may not be possible.

As initially drafted, SB 520 should be modified and clarified, or unsuspecting consumers will end up buying cars they cannot legally own because the prior owner(s) or lien-holders still own the car. SB 520 as currently drafted could also have the unintended effect of allowing what are called yo-yo sales, where a consumer's trade-in vehicle is sold before a new transaction is finalized, thereby creating pressure on a consumer to finish a new car purchase on unfavorable terms. I believe SB 520 was drafted with good intentions, but it is complicated, and opens potential loopholes that could be exploited by an unscrupulous auto dealer. This area of the law needs to be very clear to prevent abuse, especially in these tough economic times when marginal auto dealers may be tempted to cut corners. Some details of how this will happen appear below.

In the meantime, I believe the Motor Vehicle Industry Licensing Board has come up with alternative language that simplifies the proposed amendment and also cures a long-standing problem with the existing statutory language.

I have taken the liberty of attaching what I believe is the MVILB's proposed draft. I support this proposed change to the law because 1) it clarifies the current ambiguity about "proof of possession," and b) makes clear that all liens must be satisfied before a used car can be sold to a consumer. This is very important to prevent a dealer from selling a car that is still owned by a bank or credit union, and provides some real protection to consumers, yet does not tie the hands of any dealer who is acting in good faith. I would make only one change to the proposed draft, inserting an (a) and (b) as shown on the attached draft. This is solely for clarity--to make clear that evidence of all liens being satisfied is required whether the dealer has an actual legal ownership certificate, or merely has proof of the right to possess the certificate.

Mahalo to you and the Consumer Protection Committee for your time and efforts. Additional details about my background and concerns regarding SB 520 appear below.

I represent individual consumers in consumer protection cases—especially car purchases. I probably do as much or more of this work than any other lawyer in Hawaii.

I do not have a problem with making the current statute clearer, but the "clarification" as currently proposed is also adding a number of loopholes which will allow car dealers to sell cars for which legal title cannot be transferred. The dealer will be able to unload their used car inventory. The unsuspecting consumer will end up "holding the bag."

One of the recurring problems I see is used cars sold by auto dealers before the dealer nails down legal ownership. In other words, at its most basic level, the dealer is selling something that the dealer does not have legal authority to sell—there is some contingency on the car's title that is still floating out there when the unsuspecting consumer buys the car from the dealer. There are many reasons why this problem can happen—it is not rare. When the title problem which the dealer expected to be resolved is not resolved, suddenly the person who bought the car has a serious problem. They had no reason to believe that the car they were buying from the dealer was not really theirs, yet suddenly they learn the car still legally belongs to someone else—the prior owner, a bank, whatever. Yet, the consumer has already signed a contract, made a down payment, got financing, and are making payments. They may

have also traded in their own used car as part of the deal, which they will often be unable to get back because the dealer has sold it already.

This problem has a huge impact on a person serving in the armed forces. I have had more than one case where a serviceman or service woman bought a used car, the title papers did not come through from the dealer, and they could not drive their car on base because they lacked the proper ownership papers.

In another (of many) anecdotal examples of what goes wrong, a case I had last year involved a car sold by a Cutter dealership. Title could not be provided later, and one night the wife is driving home, gets pulled over by a police officer, and because she does not have legal ownership of the car, receives a citation from the police.

If the above problems are recurring with some frequency despite the statute currently in place, it makes sense the problem will get even worse if the current statute is loosened.

Very truly yours,



Jeff Crabtree

Re: SB 520

DRAFT

February 17, 2009

"§437-12 Legal ownership certificates. (a) Possession [~~or proof of possession~~] of or right to possess legal ownership certificate. No dealer shall sell or advertise for sale a new motor vehicle unless the dealer has in the dealer's possession the actual legal ownership certificate, or a certificate of origin or its equivalent issued by a manufacturer or distributor to the dealer, for the subject motor vehicle. No dealer shall sell or advertise for sale a used motor vehicle unless the dealer has in the dealer's possession the actual legal ownership certificate or proof of [possession of] the right to possess the legal ownership certificate [of] for the subject motor vehicle, and evidence that all liens on the subject motor vehicle have been satisfied.

(b) Delivery of legal ownership certificate. The legal ownership certificate shall be delivered within the time period [provided] specified in section 286-52(b)."

and (b)