

GOV. MSG. NO. **1113**

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

April 25, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

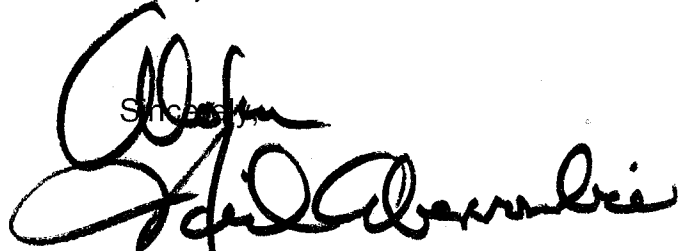
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on April 25, 2011, the following bill was signed into law:

SB35

RELATING TO THE MOTOR VEHICLE
INDUSTRY LICENSING ACT
ACT 013 (11)



NEIL ABERCROMBIE
Governor, State of Hawaii

JAN 20 2011

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. In 2010, the legislature passed Act 164,
2 Session Laws of Hawaii (2010), to update protections for local
3 auto dealers in their relations with manufacturers in response
4 to the current difficult economic climate and major changes in
5 the automotive industry, including the introduction of clean
6 technology. The purpose of this Act is to update statutory
7 cross references within the motor vehicle industry licensing act
8 to reflect the statutory changes contained in Act 164.

9 SECTION 2. Section 437-28.5, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§437-28.5 Procedures, protections, rights, and remedies
12 made available to licensees. (a) The same procedures,
13 protections, rights, and remedies provided to a dealer under
14 [~~section 437-28(a)(21) and~~] section 437-3.6, section
15 437-28(a)(21), and part II shall apply to a distributor that is
16 not a manufacturer.

17 (b) Notwithstanding the terms, provisions, or conditions
18 of any dealer or distributor agreement [~~or~~], franchise, or [~~the~~



1 ~~terms or provisions of any~~] waiver and notwithstanding any other
2 legal or administrative remedies available, any person who is
3 licensed under this chapter and whose business or property is
4 injured by a violation of section 437-28(a)(21) [~~7~~] or part II
5 may bring a civil action in a court of competent jurisdiction in
6 the State to enjoin further violations and to recover any
7 damages together with the costs of the suit. Laws of the State
8 of Hawaii shall apply to any action initiated under this
9 [~~section.~~] subsection.

10 (c) Any person that brings or defends against a civil
11 action under subsection (b) may be entitled to recover
12 reasonable attorneys' fees as a part of any damages or
13 injunction; provided that the person substantially prevails in
14 establishing or defending against a violation of section
15 437-28(a)(21) [~~7~~] or part II.

16 (d) Upon a cancellation or failure to renew a
17 distributorship agreement, the party canceling or failing to
18 renew the agreement, at the distributor's option, shall either:

19 (1) Compensate the distributor at the fair market value
20 [~~fee~~] of the distributor's capital investment, which
21 shall include but not be limited to the going business
22 value of the business, goodwill, property, and



1 improvement owned or leased by the distributor for the
2 purpose of the distributorship[7]; the distributor's
3 inventory of parts [7, including compensation related
4 to]; the distributor's dealer operations and franchise
5 agreements with other dealers; and motor vehicles
6 possessed by the distributor in connection with the
7 distributorship[7] plus reasonable attorney's fees
8 incurred in collecting compensation; provided that
9 [the], to be eligible for compensation pursuant to
10 this paragraph, an investment shall have been made
11 with reasonable and prudent judgment for the purpose
12 of the distributorship agreement; or

- 13 (2) Compensate the distributor for damages including
14 reasonable attorney's fees [as aforesaid,] incurred in
15 collecting compensation resulting from the
16 cancellation or failure to renew the distributorship
17 agreement.

18 ~~[As used in this paragraph, "good faith" means~~
19 ~~the duty of each party to any franchise agreement to~~
20 ~~fully comply with that agreement, or to act in a fair~~
21 ~~and equitable manner towards each other.] "~~



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect on July 1, 2011.
4

APPROVED this 25 day of APR, 2011

A handwritten signature in black ink, reading "Neil Abernethy". The signature is written in a cursive style with a prominent "N" and "A".

GOVERNOR OF THE STATE OF HAWAII