HB1543

Measure Title: RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING LAW.

Report Title: Motor Vehicle Industry

Description: Makes clarifying amendments to the motor vehicle industry licensing act.

Companion:

Package: None

Current Referral: CPN

Introducer(s): HERKES

Sort by Date		Status Text
1/26/2011	H	Introduced and Passed First Reading
1/28/2011	H	Referred to CPC, referral sheet 3
1/28/2011	H	Bill scheduled to be heard by CPC on Wednesday, 02-02-11 2:05PM in House conference room 325.
2/2/2011	H	The committees on CPC recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 13 Ayes: Representative(s) Herkes, Yamane, Brower, Cabanilla, Ito, Keith-Agaran, Luke, McKelvey, B. Oshiro, Souki, Tsuji, Marumoto, Thielen; Ayes with reservations: none; Noes: none; and 3 Excused: Representative(s) Carroll, Morita, Ching.
3/3/2011	H	Reported from CPC (Stand. Com. Rep. No. 612), recommending passage on Second Reading and placement on the calendar for Third Reading.
3/3/2011	H	Passed Second Reading; placed on the calendar for Third Reading with none voting no (0) and Cabanilla, Carroll, Ching, C. Lee, Mizuno, Morita, M. Oshiro, Saiki, Takumi, Thielen excused (10).
3/4/2011	H	Passed Third Reading with none voting aye with reservations; none voting no (0) and Cabanilla, Ching, McKelvey, Saiki, Takumi excused (5). Transmitted to Senate.
3/8/2011	S	Received from House (Hse. Com. No. 32).

3/8/2011	S	Passed First Reading.
3/8/2011	S	Referred to CPN.
12/1/2011	D	Carried over to 2012 Regular Session.
3/14/2012	S	The committee(s) on CPN has scheduled a public hearing on 03-28-12 9:30AM in conference room 229.

PRESENTATION OF THE
MOTOR VEHICLE INDUSTRY LICENSING BOARD

TO THE SENATE COMMITTEE ON COMMERCE
AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Wednesday, March 28, 2012
9:30 a.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON HOUSE BILL NO. 1543, PROPOSED S.D. 1, RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING LAW.

TO THE HONORABLE ROSALYN H. BAKER, 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"). Thank you for the opportunity to submit written testimony on H.B. No. 1543, Proposed S.D. 1, Relating to the Motor Vehicle Industry Licensing Law. Although the Board has not met on this bill, it has authorized me to speak on its behalf.

H.B. No. 1543, Proposed S.D. 1, seeks to amend Part II of Chapter 437, HRS, by prohibiting motor vehicle manufacturers or distributors from recovering or attempting to recover, from the franchised dealers, the cost for reimbursing the dealer for vehicle warranty repairs that are required under the law.

Act 164, SLH 2010, amended Chapter 437 by adding Part II. Manufacturer, Distributor, and Dealer Disputes. Part II, which provides a civil remedy for disputes between the parties, does not fall under the Board's jurisdiction. In light of this, the Board takes no position on this bill.

Thank you for the opportunity to submit written testimony on H.B. No. 1543, Proposed S.D. 1.

Alliance OF AUTOMOBILE MANUFACTURERS

Written Statement of the Alliance of Automobile Manufacturers on HB 1543
Hawaii Senate Committee on Commerce and Consumer Protection
March 28, 2012

Thank you for the opportunity to submit written comments on behalf of the Alliance of Automobile Manufacturers, a trade association that represents BMW Group, Chrysler, Ford Motor Company, General Motors, Jaguar-Land Rover, Mazda, Mitsubishi, Mercedes-Benz USA, Porsche, Toyota, Volkswagen, and Volvo.

The Alliance is strongly opposed to HB 1543. The Alliance urges the Committee to consider both the extraordinary steps that this bill asks the legislature to undertake and the considerable harm that the bill could cause. First, the bill seeks to involve the legislature in a dispute between a single automobile manufacturer and a single automobile dealer. Second, the costs of that intervention would be very high and impact the entire automobile manufacturing industry. Third, the bill is unconstitutional, and a similar law is already the subject of ongoing litigation in Florida. Finally, the bill would harm consumers.

Background

The background for this dispute concerns the rates at which automobile manufacturers compensate dealers for parts that they use to repair vehicles under a manufacturer's warranty.

Dealers routinely buy parts from the manufacturer. When a dealer uses those parts to fix a vehicle under warranty, the manufacturer reimburses the dealer for the cost of those parts and then pays an additional markup for the dealer's profit. Because dealers are the only businesses authorized to do warranty work, they also receive many benefits from this relationship. Those include a stable stream of revenue, a dedicated group of service customers without the need to advertise or compete against independent repair shops, an opportunity to attract additional non-warranty work, and a better ability to sell cars because they come with a warranty. Despite those benefits, the compensation model changed in 2010 when Hawaii passed a law that gave individual dealers unilateral control over how large the markup for the parts used in warranty repairs would be. The Alliance adopted a neutral position on the 2010 franchise bill after concluding good faith negotiations between the Alliance and the bill's supporters. After the law took effect, manufacturers were suddenly mandated to pay higher rates and were thereby precluded

from negotiating volume discount rates with dealers as any large volume customer would be able to do. Manufacturers have to find a way to cover those higher costs as operating at a loss is not a viable option.

Even motor vehicle dealers pass their costs through to the final consumer. Dealers rarely if ever sell a vehicle for less than the dealer's cost and often tack on additional "documentation fees." Further, the state has previously mandated that only franchised dealers can perform warranty repairs and has precluded independent repair shops from any access to this stream of revenue. The state has determined that new motor vehicle dealers should be entitled to benefits and protections not afforded to any other business in the state and at the expense of local independent repair shops, manufacturers, and consumers nationwide.

This bill seeks to prevent a business from covering its costs. In this instance, a cost that is not an inherent part of making cars but rather one dictated by the state. The bill is unfair, it is illogical, it is unconstitutional, and it is wrong.

1. <u>This is a dispute between two sophisticated, independent businesses.</u>

It is important to note from the outset that HB 1543 is not meant to address an industry-wide problem. Instead, the bill is intended to address a dispute over warranty reimbursements between one automobile dealer and a single automobile manufacturer that the Alliance does not represent.

Legislation is a particularly broad and heavy tool to use to resolve a dispute between two parties. It changes the rules of the game not only between those two parties but between their competitors as well. In this case, the result of the legislature using HB 1543 to resolve a dispute with a single manufacturer and a single dealer would be to burden the entire automobile manufacturing industry with a very expensive and unfair cost. Legislation is not the best way to resolve this controversy.

The Alliance urges the Committee not to report HB 1543 because legislation is a poorly fitting solution to the problem at hand. The collateral damage would be too widespread and too costly. Instead, the Alliance recommends helping to facilitate a resolution between the individual manufacturer and dealer. The Alliance would like to see these two parties resolve their dispute and return their focus to their unique relationship manufacturing and selling automobiles. This option would promote harmony amongst business partners, and stop Hawaii's automobile franchise code from becoming grossly unfair.

2. <u>HB 1543 would impose a tremendous and unfair cost on manufacturers.</u>

Although the intent of HB 1543 may be to resolve a conflict between two parties, the actual result of this bill would be to force all automobile manufacturers to internalize 100% of the their increased costs of warranty services. That is both illogical and unfair because a profitable business needs to be able to pass on costs to downstream purchasers.

An automobile manufacturer's downstream purchaser is (by law) an automobile dealer, not a customer. That means that the only way that customers can pay for the cost of making the vehicles that they choose to buy is via the dealer. The 2010 law's warranty rate provision made it more expensive for manufacturers to sell cars to Hawaii dealers. But HB 1543 says that the manufacturer cannot charge a dealer more because of that. That is where this bill's absurdity lies. HB 1543 says that even though it's more expensive to sell cars in Hawaii, they can't cost more. That is simply not right.

HB 1543 is also problematic because its cost recovery prohibition is very broadly written, "A manufacturer or distributor may not recover, or attempt to recover, from dealers its cost for reimbursing a dealer for warranty work as required by this section." This broad language invites a dealer to challenge a manufacturer's pricing and policies on a number of transactions beyond the warranty reimbursement context. The Alliance stresses that this is not a small intrusion into the contractual franchise relationship between manufacturer and dealer, both of which are sophisticated businesses that understand contracts.

3. <u>HB 1543 is unconstitutional.</u>

The Alliance strongly believes that the cost recovery prohibition in HB 1543 is unconstitutional. In fact, the Alliance filed a lawsuit against the State of Florida challenging very similar language. The suit is currently pending in a federal district court. Cost recovery bars like HB 1543's are unconstitutional for two reasons: they violate what is commonly known as the Dormant Commerce Clause of the U.S. Constitution, and they violate the U.S. Constitution's Contracts Clause.

The Dormant Commerce Clause is a well-established constitutional doctrine that prohibits states from regulating in ways that unduly burden interstate commerce. When a state imposes a cost on an industry and then prohibits that industry from recouping those costs in-state, it pushes a manufacturer to pay for those costs by raising prices in another state. A state that gives its own citizens or businesses a benefit by shifting costs to citizens and businesses in another state is most likely violating the Dormant Commerce Clause. For example, if a mainland state charged a lower tax for fruit grown in-state than out of state, it would benefit its local industry but harm farmers in other states such as Hawaii. If every other state tried to erect similar barriers, the country would likely look more like 50 small state economies instead of a national economy. In other words, the Dormant Commerce Clause is the important constitutional doctrine that prevents a "Balkanization" of the American economy.

HB 1543 violates the Dormant Commerce Clause because dealers get the benefit of being able to set their higher reimbursement rates, but manufacturers have to cover those costs by shifting them to consumers and dealers in other states. The Alliance feels very strongly that this would be unconstitutional as a matter of law and imprudent and unfair as a matter of policy.

In addition to the Dormant Commerce Clause, HB 1543 also violates the Contracts Clause. The bill improperly interferes with a manufacturer's ability to set its

own wholesale prices for its vehicles. That is a very significant intrusion into the manufacturer's business and its contractual franchise arrangements with its dealer. When that intrusion is weighed against the lack of a good reason to interfere with those contracts, the logical conclusion is that HB 1543 violates the Contracts Clause and is unconstitutional.

4. HB 1543 would harm consumers.

The Alliance understands that even in a dispute between a single manufacturer and one of its dealers, the consumer can still be harmed. HB 1543 is bad for consumers because it could lead to increased prices and reduced incentives.

If a manufacturer is forced to internalize 100% of the costs for warranty repairs, it logically must find a way to pay for that from some other program. Metaphorically speaking, the pie is only so large—a larger slice for one area means another one must get smaller. The question that HB 1543 poses to manufacturers is where does the money come from?

A manufacturer that analyzes its budget may conclude that it needs to reduce the money that it had allocated for incentives to pay for these newly added warranty costs. Incentives help consumers by lowering the price that they pay for a car. Less money for incentives could result in consumers not being able to afford the type of vehicle that they wanted. Other consumers may be priced out of a new car purchase entirely. Those consumers may have wanted to trade in an old car for one of the many fuel-efficient vehicles on the market today. Fewer dollars for incentives could also harm dealers. Incentives help dealers to sell more cars, to improve their profits, and grow their businesses. Pressure against incentives is bad for all participants in the auto industry.

That harm to consumers would be compounded by the negative impact caused by dealers' incentive to set higher warranty reimbursement rates for their warranty work, because the law bases dealers' reimbursement rates on what they charge consumers. As dealers get higher warranty rates from manufacturers, this applies upward pressure on the consumer retail rate for out of warranty repairs.

The Alliance asks the Committee to consider the negative impact that HB 1543 will have on consumer welfare through lower incentives on new vehicles and higher costs to maintain older vehicles.

Conclusion

The contorted logic behind HB 1543 is essentially that things that are more expensive to make cannot cost more. In addition, the bill is meant to be a legislative solution to a dispute between two sophisticated business parties, but what it does is change the rules for an entire industry. HB 1543 is impractical, extremely costly, and unfair as a matter of public policy, and it is unconstitutional as a matter of law.

The Alliance thanks the Committee for the opportunity to submit written comments on HB 1543, and we ask the members to vote against this harmful bill. Please feel free to contact the Alliance's representative in Hawaii, Gary Slovin, at (808) 547-5746 or gslovin@goodsill.com or me at (916) 447-7315 or caugustine@autoalliance.org if you have any questions.

Respectfully Submitted,

Curt Augustine

Curt Augustine
Director of Policy & Government Affairs
Alliance of Automobile Manufacturers

Testimony in STRONG SUPPORT for HB1543
Relating to Motor Vehicle Industry Licensing Law
for Committee on Commerce and Consumer Protection
March 28, 2012 9:30am, Conference Room 229

Dear Chair Baker, Vice-Chair Taniguchi, and members of the Committee:

My name is Stan Masamitsu and I am a franchised new car dealer testifying in STRONG SUPPORT of HB1543 . I am a second generation auto dealer and my family has been in the automobile dealership business in Hawaii for 35 years. We employ almost 400 people and we currently own and operate 5 dealerships representing the Honda, Nissan, Volkswagen, and Hyundai brands. I am also a member of the Motor Vehicle Industry Licensing Board but this testimony is being made on my own behalf and not of the Board's.

In 2010, the Legislature passed an update to H.R.S. Chapter 437 to help 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 so local businesses like ours can better focus on activities that deliver value to our customers and keep our people employed. As the President of the Hawaii Automobile Dealers Association that year, I was part of the team that had worked closely with the Alliance of Automobile Manufacturers and other stakeholders on that particular bill.

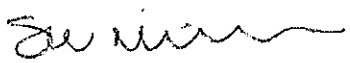
In Section 56 of HRS437, to account for the higher costs of doing business in Hawaii, the Law requires that the manufacturers pay the dealers the same markup for parts as those of retail customers.

In January 2012, Nissan North America started to assess a surcharge of $215 per new vehicle invoiced to the Hawaii dealers for a "Warranty Supplemental Expense Charge." Not only does this effectively renders HRS437-56 irrelevant, by this practice Nissan is essentially charging the Hawaii consumer for the additional cost that they incur when THEIR product fails, **while the vehicle is still under warranty**.

I believe most of our manufacturer partners understand and respect the intent of our State's Law, as Nissan is currently the only manufacturer that I am aware of attempting to recover their warranty parts expenses from the Hawaii market. Sadly, however, this manufacturer practice has been prevalent enough that 13 states have had to write in a section in their laws specifically prohibiting surcharges by manufacturers to recoup the cost of warranty parts reimbursement.

I respectfully request your favorable consideration of HB1543 to maintain the integrity of HRS437 which you helped pass in 2010.

Respectfully submitted,



Stan Masamitsu
President, Tony Group