

SB2296

Measure Title: RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT.
Report Title: Motor Vehicle Industry Licensing Act
Description: Requires motor vehicles to be insured prior to release from auction. Amends requirements to obtain a dealer license. Amends bond requirements in lieu of a flooring line of credit.
Companion:
Package: None
Current Referral: TIA, CPN
Introducer(s): GABBARD, Baker, Kahele, Kim, Nishihara, Shimabukuro

<u>Sort by</u> <u>Date</u>		Status Text
1/20/2012	S	Introduced.
1/23/2012	S	Passed First Reading.
1/23/2012	S	Referred to TIA, CPN.
2/2/2012	S	The committee(s) on TIA has scheduled a public hearing on 02-06-12 1:18PM in conference room 224.
2/6/2012	S	The committee(s) on TIA recommend(s) that the measure be PASSED, UNAMENDED. The votes in TIA were as follows: 5 Aye(s): Senator(s) English, Espero, Gabbard, Kahele, Kouchi; Aye(s) with reservations: none ; 1 No(es): Senator(s) Slom; and 1 Excused: Senator(s) Dela Cruz.
2/9/2012	S	Reported from TIA (Stand. Com. Rep. No. 2084) with recommendation of passage on Second Reading and referral to CPN.
2/9/2012	S	Report adopted; Passed Second Reading and referred to CPN.
2/21/2012	S	The committee(s) on CPN will hold a public decision making on 02-28-12 10:00AM 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**

**Tuesday, February 28, 2012
10:00 a.m.**

**TESTIMONY ON SENATE BILL NO. 2296, 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 the Chairperson and a public member of the Motor Vehicle Industry Licensing Board ("Board"). Thank you for the opportunity to submit testimony on behalf of the Board regarding Senate Bill No. 2296, Relating to the Motor Vehicle Industry Licensing Act.

For the Committee's information, the Board has met with the proponents of this bill. Therefore, the Board understands the issues that the Hawaii independent automobile dealers are attempting to address. However, the Board has concerns and cannot support the bill in its current form.

Senate Bill No. 2296 proposes to amend Chapter 437, HRS, by:

- 1) mandating motor vehicle **insurance** when a dealer acquires a vehicle at a motor vehicle auction;
- 2) requiring applicants for a dealer's license to present proof of motor vehicle **insurance** for each vehicle to be sold as a prerequisite for a license;

3) excluding dealers of new cars and trucks from submitting a bond in lieu of the flooring line of credit;

4) requiring that the site where a motor vehicle dealer's premise is located be zoned to allow for the sale of motor vehicles; and

5) amending the bond, bond amounts, and terms under which the board may impose a bond when deciding upon whether to issue a license or discipline a license.

The Board opposes any attempt to mandate motor vehicle insurance in Chapter 437, HRS. While the Board agrees with the proponents that the industry needs to accept responsibility and protect consumers by ensuring the motor vehicles in their inventory are covered by insurance, inserting insurance requirements in Chapter 437, HRS, is inappropriate because:

- 1) the State's insurance laws already mandate motor vehicle insurance and provide consequences for when the laws are violated;
- 2) the Legislature, when it enacted Chapter 437, HRS, found that consumers needed to be protected in their motor vehicle transactions, to prevent frauds, impositions and other abuses by dealers. The Legislature further found that the licensure scheme was required to protect and preserve the economy and transportation system of the State.¹

¹ **§437-1 Legislative findings and declaration.** The legislature finds that:

(1) The manufacture, distribution, and sales of motor vehicles in the State vitally affects the general economy of the State and the public interest and public welfare;

Therefore, it appears that the Legislature did not intend for the Board to oversee the dealer's motor vehicle insurance.

The Board does not support the proposed amendment to exclude dealers that sell new cars and new trucks from submitting a bond if they cannot obtain the inventory or flooring line of credit. This is because the Board believes that all classes of licensees within the license type should be allowed to avail themselves of the provision. The proponents state that their intent is to increase the amount of the bond that used car dealers are required to submit from \$25,000.00 to \$100,000.00, in order to protect the consumer. They cite to the increased values of vehicles and a dealer who allegedly injured consumers and other dealers. There is no doubt that vehicle values have increased over the years and that consumers must be protected against the unscrupulous dealer; however, before bond increases are considered, the Board suggests that the proponents first provide data to justify the increase as well as the cost impact to the dealers.

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- (2) Manufacturers of motor vehicles without physical manufacturing facilities within the State and motor vehicle distributors doing business in the State through their control over, and relationships and transactions with their dealers, branches, and representatives; and
 - (3) The geographical location of Hawaii makes it necessary to ensure that motor vehicles, parts and dependable service are available within the State to protect and preserve the transportation system and the investments of its residents.

The legislature declares, on the basis of the foregoing findings, that it is necessary to regulate and to license motor vehicle manufacturers, distributors, dealers, salespersons, and auctions in the State in order to prevent frauds, impositions, and other abuses against its residents and to protect and preserve the economy and the transportation system of the State. In order to further this intent, the legislature finds that this chapter is remedial and shall apply to all franchise agreements existing as of the date of enactment, except to the extent that such application violates any provision of the state or federal constitutions.

With regard to zoning requirements, the Board's position that all motor vehicle dealers shall comply with the county zoning laws is a matter of the record. The Board does not oppose this proposal. Recognizing, however, that zoning is under the jurisdiction of the counties, the Board defers to the various counties to oversee their respective laws.

Regarding the amendments to the bond, bond amounts, and terms under which the Board may impose a bond when deciding upon whether to issue a license or discipline a license, the Board would like to inform the Committee that it has not issued or disciplined a license under §437-29, HRS, over the past ten (10) years. Therefore, the Board reserves comment on this proposal.

Thank you for the opportunity to testify on S.B. 2296.

**TESTIMONY OF JOHN P. GILLMOR ON BEHALF OF THE HAWAII INDEPENDENT
AUTOMOBILE DEALERS ASSOCIATION ON SB2296**

PUBLIC DECISION MAKING HEARING OF FEBRUARY 28, 2012

Bonding. On the question of whether statutory authority to bond dealers is necessary, compare HRS section 437-7(d) (licensing requirement of letter of credit or line of credit for licensing of dealers) with Administrative Rule 16-86-12 (where an inventory or flooring line of credit cannot be obtained, the Board may allow the dealer applicant to post a bond). The administrative rule, while sound from a public policy standpoint, exceeds the statutory authority. Accordingly, the statute should be amended to reflect the policy which experience has proven to be sound.

Insurance. On the question of whether motor vehicle dealers should be required to provide evidence of motor vehicle insurance (which is required under HRS chapter 431C) to cover such things as test drives and transportation of motor vehicles to and from the dealership, there have been expressions of concern from the auto auctions and some dealers, including new car dealers.

SB2296 contains two proposed insurance provisions. It proposes to add a new section to HRS Chapter 437. Under the new section dealers removing vehicles from the auction premises would be required to show proof of insurance. The other is an amendment to HRS section 437-11 requiring proof of insurance as a condition of issuance of a dealer's license. The problem for auctions under the latter amendment is that "auctions" are "dealers" under HRS section 437-1.1. A number of arguments have been raised as to both of the insurance provisions of the bill.

As to the requirement that auctions shall require proof of insurance from any dealer removing vehicles from the auction premises, there is the argument that the auction should not have to become an enforcer of state policy. The amendment envisions that the dealer will obtain a policy of insurance and deposit a certificate annually at the auction -- period. Not an administrative nightmare or an unduly burdensome procedure (the same would be true of the Board as to annual dealer licensing applications). No requirement that the auction (or the Board) check up periodically to see that the policy is still in effect. The second objection, which is quite valid comes from the Insurance Auto Auction where salvage and other vehicles without plates (because they are either not registered or not currently registerable) are towed away or carried on transporters. Where the dealer is not "operating the vehicle on a highway" it does not make sense to require the auction to check the dealer's insurance. There is an agreement with the representative of the Insurance Auto Auction as to some approved language to deal with this issue.

As to the requirement that auctions as statutory "dealers" obtain a policy of insurance under the proposed amendment to HRS section 437-11, the easy solution would be to add language such as "**provided**, however, that the provision requiring proof of such insurance shall not apply to an applicant which is an auction". The reason this is an

easy answer is because the target of the proposed legislation is the illegal curbstoner, not the auction.

This leads us to the discussion of the dealers, including some new car dealers, who do not believe that the issuance of a dealer's license should be conditioned on proof of insurance covering operation of automobiles. To understand the attitude that insurance should not be required, you have to start with the idea that the auction houses and the big dealers are professionals. Furthermore, they don't move the vehicles tremendous distances, or at night, or after they have attended social events where alcohol has been served. They move vehicles safely and on their own premises. They don't feel that they need insurance by reason of their safe practices and their large asset base. The answer for these large entities (at least the new car dealers) may already be in HRS section 437-7(d)(1)(A) which requires new car dealers to post a letter of credit of the lesser of the amount required by the manufacturer under the dealer agreement or \$500,000. When you compare these mid six figures numbers to the \$25,000 personal injury and \$10,000 property damage limits of the minimum no fault policy, you might just stop worrying whether the new car dealers have a captive insurance company, are self insured, or just have a pot of money handy to pay any motor vehicle claims.

It is recommended that a further proviso be added to the proposed amendment to HRS section 437-11: "**provided**, further that any new motor vehicle dealer which has complied with the requirement of section 7(d)(1)(A) of this chapter shall not be required to provide proof of such insurance



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February 22, 2012

Chair Rosalyn H. Baker
Senate Committee on Commerce and Consumer Protection
415 South Beretania Street, Room 230
Honolulu, Hawaii 96813

Re: Senate Bill No. 2296 (Relating to the Motor Vehicle Industry Licensing Act)

Dear Chair Baker and members of the Committee:

My name is Nathan Natori and I represent Insurance Auto Auctions ("IAA"), a licensed motor vehicle dealer which handles the sale of damaged and theft-recovered vehicles for the insurance industry. **IAA opposes Senate Bill No. 2296 in its current form because it would require all motor vehicles sold by dealers, even ones that are not operable on the street, to have motor vehicle insurance.**

Salvage Vehicle Auctions

After an accident, if the car is not drivable, the car is typically transported to a repair facility or a towing and storage facility. If an insurance adjuster determines that the vehicle is a total-loss, the vehicle is then transported to a salvage auction where it is stored for some period of time until the proper title is received and the car is sold.

Salvage vehicle auctions and auto dismantling yards play an important role in the lawful disposal of wrecked vehicles. These industries have been providing local employment, consumer service, and environmental conservation for many decades. Salvage auctions and automobile dismantling yards are already subject to rigorous state and local licensing requirements.

Potential Violations Under Senate Bill No. 2296

Section 1

Section 1 requires that "Prior to the transfer of any motor vehicle to a dealer pursuant to an auction, the motor vehicle shall be insured as required in section 431:10C-104." Hawaii Revised Statute Section 431:10C-104(a) provides, "no person shall operate or use a motor vehicle upon



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any public street, road, or highway of this State at any time unless such motor vehicle is insured at all times under a motor vehicle insurance policy.”

Section 1 appears to be written to apply to used car auctions. However, because IAA sells vehicles at auction, the proposed requirement may apply to IAA’s auctions and that does not make any sense.

IAA is in the business of selling “totaled” vehicles for the insurance industry, and so the vast majority of vehicles have salvage certificates. They cannot be operated on the public streets, and do not even have license plates. They therefore have no need for insurance. (Hawaii Revised Section 286-44.5 notes that “A salvage certificate shall authorize the holder of the certificate to possess, transport but not drive upon a highway, and transfer ownership in a salvage vehicle.”).

As for the remaining vehicles sold at auction, those clear title vehicles are not registered and so cannot even be operated on the public streets. (Hawaii Revised Statute Section 286-41 requires a vehicle be registered in order to be operated on the road).

In summary, the vehicles sold at IAA’s auctions are towed by purchasers from the IAA facility. They are not operated upon any public street, road or highway. Therefore, requiring them to have insurance when sold to a dealer is unjustified and would prevent them from leaving IAA’s facility.

Section 3

Section 3 provides that in order to obtain a dealer’s license, the applicant must first present “proof of motor vehicle insurance required under section 431:10C-104 for each vehicle to be sold” As discussed above, there is no need “for each vehicle to be sold” by IAA to have motor vehicle insurance as they are not driven off of IAA’s lot.

In addition, it is impossible to obtain an insurance policy that covers each vehicle that may be sold. Finally, it may not be possible to obtain insurance until the policy holder has a dealer’s license, and so we are caught in a vicious circle where without the license we have no insurance, and without the insurance we have no license.

For the reasons described above, IAA opposes Senate Bill No. 2296 and requests it be held, or at minimum amended as follows:

On page 1, after line 7 add:

“Nothing in this section shall apply to an auction that predominately handles the disposition of abandoned, wrecked or dismantled motor vehicles.

On page 4, after line 6, add:

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"Section 437-11(a)(1)(D) shall not apply to an applicant that predominately handles the disposition of abandoned, wrecked or dismantled motor vehicles.

We have met with the Hawaii Independent Automobile Dealers Association and they have no objections to our proposed amendments.

Please feel free to contact me should you have any comments or questions regarding the above.

Very truly yours,

Natori Law Office LLLC

Nathan T. Natori

Testimony for CPN 2/28/2012 10:00:00 AM SB2296

Conference room: 229

Testifier position: Support

Testifier will be present: No

Submitted by: Brenda Kosky

Organization: Individual

E-mail: Brenda.Kosky@gmail.com

Submitted on: 2/27/2012

Comments:

Yes strongly support this Bill. I know this has been one way of getting a car without the person having to have insurance. There are actual people making a living selling cars to persons who will never go to get insurance! Then they get into an accident, and we pay for them not taking care of their business.