

SB 2296

RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT.

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.

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

TO THE SENATE COMMITTEE ON TRANSPORTATION
AND INTERNATIONAL AFFAIRS

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Monday, February 6, 2012
1:18 p.m.

**TESTIMONY ON SENATE BILL NO. 2296, 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"). Thank you for the opportunity to testify in **opposition** to Senate Bill No. 2296, Relating to the Motor Vehicle Industry Licensing Act. Although the Board has not had an opportunity to discuss this bill, it has authorized me to speak on its behalf.

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

- 1) requiring motor vehicles to be insured, in accordance with section 431:10C-104, Hawaii Revised Statutes, before the vehicles that are acquired at an auction are released to a motor vehicle dealer;
- 2) mandating applicants for a motor vehicle dealer's license to show proof of motor vehicle insurance, as required under section 431:10C-104, for **each** vehicle to be sold, before a dealer's license can be issued;
- 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.

To amend Chapter 437, HRS, by inserting insurance requirements is inappropriate because the Board does not have any jurisdiction over insurance. The State's insurance laws already mandate motor vehicle insurance. In addition, the insurance laws provide consequences for when the laws are violated.

Presently, the law allows all motor vehicle dealer applicants, whether they sell new cars, trucks, motorcycles or motor scooters, or used cars, trucks, motorcycles or motor scooters, to submit a bond in lieu of an inventory or flooring line of credit. Excluding any class of applicant from the provision would result in an unequal application of the requirements, which is contrary to the Board's mission of treating all applicants fairly and equally.

With regard to zoning requirements, the Board has previously discussed this matter. The record reflects that the Board believes that all motor vehicle dealers shall comply with the county zoning laws. To that end, applicants for a motor vehicle dealer's license are required to attest on their license application forms that they have verified with their respective county that the premise where the motor vehicle dealer activity will be conducted meets the zoning requirements. The Board, however, 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 is not aware of the purpose of this amendment, what type of bond is being sought or whether it is even available in the marketplace.

For these reasons, the Board opposes this bill and respectfully requests that the Committee hold the bill.

NATHAN T. NATORI
Direct (808) 275-0155
nathan@natorilaw.com

1003 BISHOP STREET #1360
HONOLULU, HAWAII 96813

February 3, 2012

Chair J. Kalani English
Senate Committee on Transportation and International Affairs
415 South Beretania Street, Room 205
Honolulu, Hawaii 96813

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

Dear Chair English 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 because it would require all motor vehicles, 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



ATTORNEYS

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 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 handles the disposition of abandoned, wrecked or dismantled motor vehicles or boats or vessels, nor vehicles that are towed or loaded on a transporter.

On page 4, after line 6, add:

February 3, 2012
Page 3



ATTORNEYS

“Nothing in this section shall be required of an applicant that handles the disposition of abandoned, wrecked or dismantled motor vehicles or boats or vessels, nor vehicles that are towed or loaded on a transporter.

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

Very truly yours,

Natori Law Office LLC

Nathan T. Natori

Sharon Lum

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 05, 2012 5:05 PM
To: TIATestimony
Cc: jpgillmor@yahoo.com
Subject: Testimony for SB2296 on 2/6/2012 1:18:00 PM

Testimony for TIA 2/6/2012 1:18:00 PM SB2296

Conference room: 224
Testifier position: Support
Testifier will be present: Yes
Submitted by: John P. Gillmor
Organization: Hawaii Independent Automobile Dealers Association
E-mail: jpgillmor@yahoo.com
Submitted on: 2/5/2012

Comments:

The term wheel base refers to the distance in inches between the front and rear axels of a motor vehicle.

TESTIMONY OF JOHN P. GILMOR ON BEHALF OF HAWAII INDEPENDENT AUTOMOBILE DEALERS
ASSOCIATION
IN SUPPORT OF SB2296 RELATING TO MOTOR VEHICLE DEALERS

The general purpose of the bill is to update dealer bonding requirements and clarify the board's authority to increase the size of the bond in certain cases of dealer misconduct. The bill also makes explicit the requirement that dealers provide no fault insurance coverage on vehicles. The bill also makes explicit that the dealer's sales location must be zoned for such use.

Used car dealers generally do not qualify for a line of credit from a financial institution as required by HRS section 437-7. Instead, the Motor Vehicle Industry Licensing Board has issued regulations which allow dealers to file a bond (even though there appears to be no specific statutory authority for this practice). The amendment would validate the Board's practice, which has proven to be a good practice. The current bond amounts for various sizes of dealers reflect the economic reality of the early 1990's when bond amounts were last set. The amendment would allow the Board to increase the size of the bonds, as appropriate, up to \$100,000. The amendment also makes it explicit that the terms and conditions of the bond will be similar to the terms and conditions of the bond for brokers, as currently set forth in section 437-18.

The insurance provisions address a growing problem of persons who obtain a dealer's license but become "curberstoners" or, i. e., they file an application which appears to comply with the statutory requirement that vehicles be displayed and sold from a fixed commercial place of business. Instead, they have no place of business other than an electronic address on Craig's list and sales are consummated from a public street (hence the term "curbstoner" or "curber") or the parking lot of a big box store. Generally, curbers do not pay for insurance, rent, or applicable taxes. Many curberstoners hold an apparently valid license which permits them to buy at dealer auctions. An additional provision requires the auction to require proof of insurance before a dealer is allowed to remove a vehicle from the auction premises. Dealers generally have a blanket policy (called a garagemen's policy) to provide coverage for vehicles in transit or out on test drive.

There is anecdotal evidence that the board has issued licenses to dealers who listed a residential apartment in a high rise apartment building in Waikiki as the place of business (the board apparently does not do site checks). The addition of language that the site where vehicles will be offered for sale must be "zoned for the sale of motor vehicles" seeks to address this issue.

The proposed change to section 437-18 would extend the right of recovery under the bond from injured retail customers and government agencies to any person injured by fraud or misrepresentation. The major beneficiaries of such a change would include lower income persons seeking to finance the purchase of a used motor vehicle from a used car dealer. Currently Hawaii's banks are very reluctant to provide bank financing for used cars sold by used car dealers. The potential for recovery under a bond for misconduct in connection with the sale or financing of a motor vehicle should make more willing to make financing available.

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 03, 2012 5:54 PM
To: TIATestimony
Cc: azad@voyagerautosales.com
Subject: Testimony for SB2296 on 2/6/2012 1:18:00 PM

Testimony for TIA 2/6/2012 1:18:00 PM SB2296

Conference room: 224
Testifier position: Support
Testifier will be present: Yes
Submitted by: Azad Tirgardoan
Organization: HIADA (hawaii independent autodealer association)
E-mail: azad@voyagerautosales.com
Submitted on: 2/3/2012

Comments:

Current dealer licensing requirments missing two public safty items :

- 1)no specific requirement for auto dealer to have motor vehicle insurance.
- 2)Minumum bond is set too low should be \$100k to bring in line with inflation.

Current law allows multipl dealers to be in same address,this sholud change because the public do not know which car lot belongs to who and there is no room to do contract or..... etc ,and most of time these folks get the license and do bussiness on the street or shopping centers this is called curbstoning by dealer.