

CHAPTER 437
MOTOR VEHICLE INDUSTRY LICENSING ACT

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"PART I. GENERAL PROVISIONS

Note

Sections 437-1 to 437-42 designated as Part I. L 2010, c 164, §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;
- (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. [L 1969, c 263, §1(2); gen ch 1993; am L 1996, c 264, §1; am L 2003, c 126, §2; am L 2010, c 164, §3]

Revision Note

Former §437-1 is renumbered §437-1.1.

Case Notes

In passing on necessity of convening three judge court, held that chapter raised substantial constitutional questions. 316 F. Supp. 803 (1970).

" **§437-1.1 Definitions.** As used in this chapter:

"Attachment hardware" means the components and associated fasteners that directly attach the bumper to the chassis frame.

"Auction" means any person engaged in the business of selling only motor vehicles by means of bidding at a public or private sale, but excludes an auctioneer and any person referred to in paragraph (1), (2), (4), or (5) in the definition of ["dealer"], or any person auctioning motor vehicles incidental to an auction of other assets, when the auctioneer or person acts in the respective capacity described in this section.

"Board" means the motor vehicle industry licensing board created by this chapter.

"Business" includes any activities regularly engaged in by any person or regularly caused to be engaged in by the person for the object of gain, benefit, or advantage, either direct or indirect.

"Consumer" means any person who purchases, other than for purposes of resale, a motor vehicle for personal, family, household, or business use, any person to whom such motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

"Credit sale contract" is defined as provided for in section 476-1.

"Dealer" includes "auction" as defined in this section or any person or entity not expressly excluded by this chapter who sells three or more vehicles within a calendar year, or who is engaged in the business of selling, soliciting, offering, or attempting to negotiate sales, purchases, or exchanges of motor vehicles or any interest therein, including options to purchase motor vehicles. The term "dealer" excludes a person who sells or purchases motor vehicles in the capacity of:

- (1) A receiver, trustee, personal representative, guardian, or any other person appointed by or acting under a judgment or order of any court;
- (2) A public officer while performing official duties;

- (3) A holder of an auction license issued under this chapter when acting within the scope of the license;
- (4) An insurance company, finance company, bank, or other financial institution that sells or offers for sale motor vehicles repossessed or foreclosed by it under the terms of a credit sale contract or security agreement;
- (5) A person not engaged in the business of selling or purchasing motor vehicles who acquires or disposes of motor vehicles for the person's own personal, family, or business use; provided that the vehicles are acquired or disposed of for the person's use in good faith and not for the purpose of evading any provision of this chapter;
- (6) A consumer consultant who is not engaged in the business of selling, soliciting, offering, or attempting to negotiate sales or exchanges of motor vehicles or any interest therein for any dealer, and who for a fee provides specialized information and expertise in motor vehicle sales transactions to consumers who wish to purchase or lease motor vehicles; provided that the consumer consultant shall register and pay a fee to the board prior to offering consultant services; or
- (7) A Hawaii bank or its affiliate selling or offering for sale motor vehicles surrendered or redelivered to it under the terms of a lease or sold by it pursuant to a purchase option contained in a lease.

"Distributor" means any person, resident, or nonresident, including a manufacturer, who in whole or in part imports, offers for sale, sells, or distributes new motor vehicles to dealers.

"Franchise" or "franchise agreement" means any contract or agreement between a dealer and a manufacturer or distributor that authorizes the dealer to engage in the business of selling or purchasing any particular make or makes of new motor vehicles or motor vehicle parts manufactured or distributed by the manufacturer or distributor, or that establishes rights or obligations, or both, relating to the dealer's new motor vehicle operation, including agreements relating to dealership facilities or site control.

"Impact speed" means the maximum speed of impact tested upon the bumper of the vehicle pursuant to sections 581.6 and 581.7 of part 581 of title 49 of the Code of Federal Regulations.

"Manufacturer" means any person, resident or nonresident, who is engaged in the business of manufacturing or assembling new motor vehicles.

"Minor damage to the bumper and attachment hardware" means damage that can be repaired with the use of common repair materials and without replacing any parts. In addition, not later than thirty minutes after completion of each pendulum or barrier impact test, the bumper face bar shall have no permanent deviation greater than three-quarters of one inch from its original contour and position relative to the vehicle frame and no permanent deviation greater than three-eighths of one inch from its original contour on areas of contact with the barrier face or impact ridge of the pendulum test device, measured from a straight line connecting the bumper contours adjoining the contact area.

"Motor vehicle" includes any vehicle, motor vehicle, or truck, as defined in sections 249-1 and 249-2, except for tractors, trailers, and amphibious vehicles.

"New motor vehicle" means a motor vehicle which (1) has not previously been sold to any person except a distributor, wholesaler, or dealer for resale, except where the vehicle has not left the dealer's possession after the sale to a consumer, (2) has not previously been registered or titled in the name of a consumer except where the vehicle has not left the dealer's possession after the sale to a consumer, and (3) has not been driven more than five hundred miles; provided that where a sale, registration, entitlement, or transfer of title of a motor vehicle, or the accrual of mileage thereon, is primarily for the purpose of evading this provision, the motor vehicle shall be deemed a new motor vehicle for the purposes of this chapter.

"New motor vehicle dealer" means a dealer who engages in the business of selling, at wholesale or retail, new motor vehicles or new and used motor vehicles.

"No damage" means that, when a passenger vehicle is subjected to impact testing conducted pursuant to the conditions and test procedures of sections 581.6 and 581.7 of part 581 of title 49 of the Code of Federal Regulations, the vehicle sustains no damage to the body and safety systems.

"Passenger vehicle" includes any vehicle, motor vehicle, or truck designed for carrying twelve persons or fewer and subject to impact testing conducted pursuant to part 581 of title 49 of the Code of Federal Regulations.

"Premises" or "licensed premises" means the premises in connection with which a license has been, or is proposed to be, issued, including branch locations. The term "premises" or "licensed premises" is substituted for the term "place of business" wherever found in this chapter.

"Relevant market area" means the following:

- (1) In a county with a population of less than five hundred thousand persons according to the most recent data of the United States Census Bureau or the data of the department of business, economic development, and tourism, the relevant market area shall be the county in which the dealer is located; or
- (2) In a county with a population of more than five hundred thousand persons according to the most recent data of the United States Census Bureau or the data of the department of business, economic development, and tourism, the relevant market area shall be within a radius of six miles from the dealership location.

"Retail", "sale at retail", "retail sale", and equivalent expressions, mean the act or attempted act of selling a motor vehicle to a person for use as a consumer.

"Sale", "selling", and equivalent expressions, mean the act or attempted act, either as principal or an agent or in any capacity whatsoever, of selling, bartering, exchanging, or otherwise disposing of, or negotiating, or offering, or attempting to negotiate the sale, purchase, or exchange of, or interest in, a motor vehicle, including an option to purchase a motor vehicle.

"Salesperson" means any person who for gain or compensation of any kind, directly or indirectly, by any form of agreement or arrangement, sells, solicits, offers for sale, exchanges, or otherwise deals in, motor vehicles or any interest therein on behalf of any motor vehicle dealer.

"Treasurer" means the director of finance of each county.

"Used motor vehicle" means a motor vehicle other than a new motor vehicle.

"Used motor vehicle dealer" means a dealer who engages in the business of selling at wholesale or retail, or both, only used motor vehicles.

"Wholesale" or "sale at wholesale" or "wholesale sale" and equivalent expressions, mean any sale other than a retail sale. [L 1939, c 258, §1; am L 1941, c 315, pt of §1; RL 1945, §7361; am L 1949, c 163, §1 and c 168, §1; am L 1951, c 90, pt of §1; RL 1955, §160-160; am L 1957, c 302, §1(1); am L 1959, c 243, §1(1); am L 1961, c 59, §1(1); am L 1963, c 199, §1a; am L 1965, c 114, §1; HRS §437-1; ren §437-1.1; am L 1969, c 263, §1(3); am L 1976, c 200, pt of §1; am L 1979, c 182, §1; am L 1980, c 232, §23; am L 1984, c 164, §2; am L 1985, c 68, §12 and c 254, §1; am L 1992, c 109, §§2, 3, c 153, §1, and c 202, §25; am L 1996, c 264, §2; am L 1997, c 85, §1 and c 312, §1; am L 2003, c 67, §§1, 2 and c 126, §§3, 12; am L 2010, c 164, §4]

" **§437-2 Licenses.** (a) No person shall engage in the business as or serve in the capacity of, or act as a motor vehicle dealer, salesperson, auction, manufacturer, or distributor in this State, or otherwise engage in the business of selling or negotiating for the purchase of motor vehicles in this State without being licensed as provided in this chapter. A license issued under this chapter shall authorize the holder to engage in the business or activities permitted by the license, only in the county for which the license is issued.

(b) A license issued under this chapter shall authorize the holder to engage in the same business at branch locations in the same county for which the license is issued during the term thereof; provided that each branch location of a motor vehicle dealer is approved by the board.

(c) A dealer's license issued to a sole proprietorship or partnership shall authorize the sole proprietor or general partner to engage in the business of a salesperson without a license therefor, only for and in the business of the holder of the dealer's license and only for the county in which the license is issued.

(d) In the event of the dissolution of a partnership, holding a current license issued under this chapter, due to the death of one or more partners, the surviving partners may operate the business under the license for the remaining effective term of the license but not to exceed sixty days. In the event of the death or bankruptcy of the holder of a current license issued under this chapter, the duly appointed personal representative or receiver or trustee in bankruptcy, whichever the case may be, may operate the business under the license for the remaining effective term of the license.

(e) Notwithstanding any provisions of this chapter, the authority of any state or county agency to purchase motor vehicles for state or county use from any dealer licensed under this chapter shall not be limited or conditioned. Any dealer licensed under this chapter may sell vehicles to any state or county agency. [L 1939, c 258, §2; RL 1945, §7362; am L 1951, c 90, pt of §1; RL 1955, §160-161; am L 1957, c 302, §1(2); am L 1961, c 59, §1(2); am L 1963, c 199, §1b; HRS §437-2; am L 1969, c 263, §1(4); am L 1976, c 200, pt of §1; am L 1992, c 45, §1; gen ch 1992; am L 1996, c 264, §3; am L 2003, c 126, §4]

" **§437-2.5 REPEALED.** L 1996, c 264, §15.

" **§437-3 Prohibited acts for dealer or auction.** No dealer or auction shall sell or bring or cause to be brought into this State for purposes of sale any new motor vehicle for which the

dealer or auction is not franchised. [L 1963, c 199, §1c; Supp, §160-161.1; HRS §437-3; am L 1969, c 263, §1(5)]

" **§437-3.5** Renumbered as §490:2-313.1 by L 1985, c 161, §1; repealed by L 1992, c 314, §2.

Cross References

Motor vehicle express warranty enforcement (lemon law), see chapter 481I.

" **[§437-3.6] Waivers void.** Any condition, stipulation, or provision in a franchise or distributorship agreement purporting to bind any person acquiring or holding any franchise or distributorship to waive compliance with any provision of this chapter or any other law of the State is void; provided that no person acquiring or holding any franchise or distributorship shall be prohibited under this section from electing in writing, at or after the time a dispute arises, to use any voluntary dispute resolution procedure, or from entering into any voluntary agreement to settle legitimate disputes between the disputing parties. [L 2003, c 126, pt of §1]

" **§437-4 Advertising.** (a) Motor vehicle, availability of. No new or used motor vehicle dealer shall advertise or offer for sale or exchange in any newspaper, or through any other medium, any motor vehicle not actually for sale at the premises of the dealer or available to the dealer from the manufacturer, or authorized new car distributor of such automobile at the time the advertisement or offer is made.

(b) False, deceptive, or misleading advertising.

(1) Terms that are false, deceptive, or misleading regarding pricing shall not be used in any retail motor vehicle advertising, including but not limited to the following terms:

(A) "Wholesale";

(B) "Free";

(C) "Invoice price", "manufacturer's invoice price", "factory invoice price", "dealer invoice price", a certain number of dollars "over invoice", or other terms of equivalent import;

(D) "Fleet", in connection with defining prices or a sale;

(E) "Factory sale", "manufacturer's sale", "factory authorized sale", "factory outlet", or other terms of equivalent import; and

- (F) "No credit rejected", "everyone financed", or terms of equivalent import.
- (2) Any advertised product must be available on the stated terms from inventory, or by order with delivery within a reasonable period of time.
- (3) Where a discount or savings is featured, whether by price comparison of dollars, fractions, percentages, or otherwise, the discount or savings must be calculated with reference to the manufacturer's suggested retail price in accordance with the Monroney Act, 15 U.S.C. §1231, et seq., as amended.
- (4) If the term "guarantee" or words of equivalent import are used in advertising, the guarantee, and all of its material terms, must be in writing and made part of the contract of sale of any motor vehicle sold by the seller during the period covered by the advertisement.
- (5) No motor vehicle shall be advertised or offered for sale or exchange or offered to be purchased under the representation that it is a new motor vehicle, unless the motor vehicle conforms to the definition of "new motor vehicle" contained in section 437-1.1.
- (c) Procedure relative to advertising of a specific motor vehicle.
 - (1) No new or used motor vehicle dealer shall advertise the sale of a specific motor vehicle without setting forth:
 - (A) The year;
 - (B) The make of the motor vehicle; and
 - (C) In the case of a used car, the license plate number of the motor vehicle.
 - (2) If a motor vehicle has been advertised as set forth above and has been sold, the motor vehicle dealer shall have in the dealer's office a copy of the retail sale contract or a copy of a bill of sale for the motor vehicle which shows the buyer's signature thereon.
 - (3) No new or used motor vehicle dealer shall in any advertisement designate the price of a motor vehicle without stating the make, the body type, and the manufacturer's classification or series of the motor vehicle, except that the classification or series need not be designated for used cars, and whether or not other charges in addition to the quoted price will be assessed; provided that the gross income tax and transfer of title fees may be excluded from such other charges.

(d) Display of motor vehicle at unlicensed premises. All dealers or salespersons shall obtain prior approval of the board, through its executive officer, to display motor vehicles for advertising purposes at or on any place other than the licensed premises.

(e) Advertising by salesperson prohibited. No salesperson shall advertise the sale of a motor vehicle in or through any advertising medium without designating the name of the salesperson's employer; provided that this provision shall not apply when a salesperson advertises to dispose of a motor vehicle registered under the salesperson's name. [L 1963, c 199, §1d; Supp, §160-161.2; HRS §437-4; gen ch 1985; am L 1992, c 266, §1; am L 1996, c 66, §1 and c 264, §4]

" **[§437-4.5] Vehicle bumper impact notice.** (a) Every manufacturer or distributor of new passenger vehicles for sale in this State shall affix to a window or the windshield of the vehicle a notice with either of the following statements, whichever is appropriate:

- (1) "THIS VEHICLE IS EQUIPPED WITH A BUMPER SYSTEM THAT CONFORMS TO THE CURRENT FEDERAL BUMPER STANDARD OF MILES PER HOUR, AND CAN WITHSTAND AN IMPACT SPEED SPECIFIED BY FEDERAL TEST PROCEDURES WITH NO DAMAGE TO THE VEHICLE'S BODY AND SAFETY SYSTEMS. ALTHOUGH THE BUMPER AND ATTACHMENT HARDWARE MAY SUSTAIN DAMAGE, THE EXTENT OF THE DAMAGE MAY VARY."
- (2) "THIS VEHICLE IS EQUIPPED WITH A BUMPER SYSTEM THAT EXCEEDS CURRENT FEDERAL BUMPER STANDARDS, AND CAN WITHSTAND A FRONTAL IMPACT SPEED OF MILES PER HOUR AND A REAR IMPACT SPEED OF MILES PER HOUR, AS SPECIFIED BY FEDERAL TEST PROCEDURES, WITH NO DAMAGE TO THE VEHICLE'S BODY AND SAFETY SYSTEMS. THE BUMPER AND ATTACHMENT HARDWARE MAY SUSTAIN MINOR DAMAGE, WHICH CAN BE REPAIRED WITH THE USE OF COMMON REPAIR MATERIALS AND WITHOUT REPLACING ANY PARTS."

(b) The notice required by this section shall be printed legibly in English in bold typeface print and may be included in any notice or label required by federal law to be affixed to a window or windshield of the vehicle. [L 1992, c 109, §1]

" **§437-5 Board.** A motor vehicle industry licensing board is created and shall consist of seven members. Three of the members shall be engaged in the motor vehicle industry and four of the members shall be private citizens not connected with the industry. [L 1939, c 258, §9; RL 1945, §7363; am L 1951, c 90, pt of §1; RL 1955, §160-162; am L 1957, c 302, §1(3); am L 1959, c 243, §1(1); am L 1961, c 59, §1(3); am L 1963, c 136, §2; am L

1964, c 36, §2a; am L 1965, c 219, §1; HRS §437-5; am L 1969, c 263, §1(6); am L 1992, c 202, §26]

" **§437-6 Powers and duties of the board.** In addition to any other powers and duties authorized by law, the board shall:

- (1) Adopt, amend, and repeal from time to time rules not inconsistent with this chapter, as the board deems appropriate for the carrying out of the provisions and purposes of this chapter and for the efficient administration thereof, and the proper conduct of the business that is subject to this chapter, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of, or as prescribed by the board, which rules, when adopted under chapter 91, shall have the effect of law;
- (2) Grant, deny, suspend, or revoke licenses that are authorized by this chapter, fine licensees, and impose conditions as may be set forth in the rules of the board in connection with the granting of licenses;
- (3) Prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed for the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement for any indemnity deemed appropriate to the case;
- (4) Prescribe all forms to be used for the purposes of this chapter not otherwise provided for;
- (5) Establish, by rules, minimum qualifications which shall be met by applicants prior to the issuance of any license; and
- (6) The exercise by the board of power, authority, and discretion in it so vested shall be final in each case and shall not be reviewable by or appealable to any court or tribunal, except as otherwise provided in chapter 91 or in this chapter. [L 1939, c 258, §10; RL 1945, §7364; am L 1951, c 90, pt of §1; RL 1955, §160-163; am L 1957, c 302, §1(4); am L 1963, c 199, §1e; am L 1964, c 36, §2b; HRS §437-6; am L 1969, c 263, §1(7), (22); am L 1970, c 82, §1(1); am L 1973, c 31, §18 and pt of §21; gen ch 1985; am L 1986, c 154, §1; am L 1992, c 202, §27; am L 2003, c 126, §5]

" **§437-7 Application for issuance or renewal of license.**

(a) Any person desiring the issuance of a license under this chapter shall file an application therefor with the motor vehicle industry licensing board. Prior to the expiration of

the term of a license, the holder shall file an application for renewal of the license. The board shall prescribe the form, information required, manner, and time for presentation of applications for issuance or renewal of licenses issued under this chapter, except as otherwise provided in this chapter.

(b) A person applying for a salesperson's license under this section shall be granted a temporary license by the executive officer of the board; provided no patent disqualification of the applicant is disclosed or no valid objection to the granting of the temporary license is apparent and if all requirements relative to the filing of the application appear to have been met and the dealer files a statement that this person is employed by and under the supervision of the dealer. A fee shall be charged for the issuance of the temporary license, as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and the license shall remain in effect until the board approves or denies the application for a permanent license.

(c) Requirements for financial reviews or financial statements shall be as follows:

- (1) Applicants for the issuance of a dealer's or auction's license shall furnish the following financial review or financial statement to the board:
 - (A) An applicant proposing to operate as a sole proprietorship shall furnish a personal financial review or financial statement and a financial review or financial statement of the proposed business;
 - (B) An applicant proposing to operate as a partnership shall furnish a personal financial review or financial statement for each general partner and a financial review or a financial statement of the partnership; and
 - (C) A corporate applicant shall submit a corporate financial review or financial statement;
- (2) The board shall determine and prescribe the requirement of, form, and information required in financial reviews and financial statements for applicants for other licenses;
- (3) All financial reviews and financial statements shall be certified as to accuracy by a public or certified public accountant; and
- (4) The purpose of the financial review and the financial statement is to provide the board with information to assist it in determining the financial capability and integrity of the applicant.

- (d) Requirement for lines of credit shall be as follows:
- (1) Applicants for issuance of a dealer's license shall obtain an inventory or flooring line of credit from a federally insured financial institution or from a financing source having a net worth of at least \$50,000,000. The line of credit shall be in the following amount:
 - (A) For new motor vehicle dealer applicants, \$500,000 or the amount required in the applicant's dealer sales and service agreement, whichever is less;
 - (B) For used motor vehicle dealer applicants, \$50,000; and
 - (C) For new and used motorcycle and motor scooter dealer applicants, \$50,000;
 - (2) Applicants for issuance of a dealer's license shall provide the board with a photocopy of the financing statement filed at the bureau of conveyances of the department of land and natural resources, securing the line of credit;
 - (3) Applicants for the issuance of an auction license shall obtain a secured line of credit in the amount of \$100,000 from a federally insured financial institution; and
 - (4) When an inventory or flooring line of credit cannot reasonably be obtained by a dealer, the board may provide that a bond, in an amount set forth in the board's rules, be obtained as an alternative form of security for the inventory or flooring line of credit.

(e) Applicants for issuance of an auction license shall provide a written statement from a federally insured financial institution verifying that the applicant has a customer trust account for the auction with that financial institution.

(f) All applicants for the issuance of a manufacturer's or distributor's license shall submit:

- (1) If the manufacturer or distributor is publicly traded, a financial statement signed by a certified public accountant or an annual report;
- (2) A copy of the executed agreement granting the distributor applicant the franchise to distribute motor vehicles in this State;
- (3) If the applicant is the manufacturer of the motor vehicles to be distributed, a certified statement to this effect;
- (4) Any other documents or information that may be provided for in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91; and

- (5) The following fees, which shall apply until fees are adopted by the director under this subsection in accordance with chapter 91:
 - (A) Nonrefundable application fee: \$50;
 - (B) Original license fee: \$500;
 - (C) Annual compliance resolution fund fee: \$250 for each dealer franchised by the manufacturer or distributor;
 - (D) Biennial compliance resolution fund fee: \$500 for each dealer franchised by the manufacturer or distributor; and
 - (E) Verification or duplicate fees as provided in title 16, Hawaii Administrative Rules, chapter 53.

The nonrefund provisions of section 16-53-4, Hawaii Administrative Rules, shall apply to fees under this subsection. Application fees for a new salesperson's license shall be a lesser amount than the fee for other licenses issued under this chapter.

(g) Upon the filing of any application, a staff member shall endorse on it the date of filing. If no patent disqualification of the applicant is disclosed or no valid objection to the granting of the application is apparent and if all requirements relative to the filing of the application appear to have been complied with, the chairperson of the board or executive officer shall review a self-inspection report completed by the applicant and made a part of the application. The report shall include:

- (1) A statement that the applicant is not disqualified by this chapter from obtaining or exercising a license and has complied with all the requirements of this chapter relative to the making and filing of the licensee's application;
- (2) Information relating to any and all other matters and things which pertain to or affect the matter of the application or the issuance or the exercise of the license applied for;
- (3) In the case of an application for a dealer's or auction's license the applicant shall submit a report which shall include:
 - (A) A description of the premises intended to become the licensed premises, and the equipment and surrounding conditions; and
 - (B) If the applicant has held a prior dealer's or auction's license for the same or any other premises within two years past, a statement as to the manner in which the premises have been

operated and the business conducted under the previous license; and

- (4) In the case of an application for a dealer's license, if the applicant proposes to engage in the business of selling new motor vehicles, a copy of the dealer sales and service agreement from the applicable manufacturer or distributor.

(h) After the filing of the application, the board may interview the applicant and upon the interview and other information that is before the board, it may grant or deny the license.

(i) No dealer's or auction's license shall be issued under this chapter unless and until the applicant submits:

- (1) A description of the premises intended to become the licensed premises, the office facilities, equipment, and surrounding conditions;
- (2) A statement that the applicant has met the requirements under section 437-11;
- (3) A copy of a minimum one-year lease or rental agreement for the site the applicant has entered into; and
- (4) Photographs of the premises and facilities;

and the board is satisfied that the applicant has met all the requirements as provided in this chapter and that all other general conditions and proposed methods of operation under the license are such as are suitable for carrying on the business in a reputable manner.

(j) Limitations on licenses shall be as follows:

- (1) A dealer's or auction's license issued under this chapter shall authorize the doing of the business at the licensed premises, the boundaries of which shall be determined by the map or plan submitted together with the application for license approved by the board; except in the case of an enlargement or reduction of the licensed premises with the approval of the board endorsed on an amended map or plan; and
- (2) A license issued under this chapter shall authorize the doing of a business thereunder only for the county in which the license has been issued; and in the case of a salesperson, the license shall authorize the salesperson to be a salesperson only for the dealer named in the application for a license or an amended license.

(k) A used motor vehicle dealer's license shall authorize the holder to sell new motorcycles and motor scooters if the licensee is franchised therefor.

(l) The executive officer may grant preliminary approval of a dealer or auction license application if all licensing

requirements have been met. The board shall ratify all preliminary approvals. [L 1939, c 258, §12; RL 1945, §7365; am L 1951, c 90, pt of §1; RL 1955, §160-164; am L 1957, c 302, §1(4), (5); am L 1963, c 199, §1f; HRS §437-7; am L 1969, c 263, §1(8); am L 1974, c 102, §1; am L 1977, c 134, §2; am L 1984, c 7, §§2, 3; gen ch 1985; am L 1992, c 153, §3 and c 202, §28; am L 1993, c 265, §1; am L 1996, c 264, §5; am L 1997, c 38, §§1, 2 and c 40, §2; am L 2003, c 126, §6]

" **§437-8 REPEALED.** L 1992, c 202, §183.

" **§§437-9 and 437-10 REPEALED.** L 1969, c 263, §1(9).

" **§437-11 Additional requirements for dealer's and auction's license.** (a) Requirements to be met before issuance of dealer's and auction's license.

(1) The following requirements shall be met by an applicant for a dealer's license before a license may be issued by the motor vehicle industry licensing board:

(A) The applicant has a site which will be used primarily for the purpose of selling, displaying, offering for sale, or otherwise dealing in motor vehicles;

(B) The site has a permanent building thereon suitable for the display at any one time of at least three motor vehicles having an average base of at least ninety inches; and

(C) The site has suitable sanitation facilities.

(2) The following requirements shall be met by an applicant for an auction's license before a license may be issued by the motor vehicle industry licensing board:

(A) The applicant has a permanent site which will be used primarily for the purpose of selling, displaying, offering for sale, or otherwise dealing in motor vehicles; and

(B) The site has suitable sanitation facilities.

(b) Other related uses permissible. The site may be used for other purposes which are accessory or customarily associated with the retail sale of motor vehicles, such as maintenance operation of a repair, accessories, gasoline and oil, storage, parts, service, or paint branch or department. [L 1963, c 199, §1h; Supp, §160-167.1; HRS §437-11; am L 1969, c 263, §1(22); am L 1970, c 82, §1(3); am L 1992, c 153, §4; am L 1997, c 38, §3]

" **§437-12 Legal ownership certificates.** (a) 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 to the dealer by the manufacturer or distributor 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 evidence that all liens on the subject motor vehicle have been satisfied and the actual legal ownership certificate or proof of the right to possess the legal ownership certificate for the subject motor vehicle.

(b) Delivery of legal ownership certificate. The legal ownership certificate shall be delivered within the time period specified in section 286-52(b). [L 1963, c 199, §1(i); Supp, §160-167.5; HRS §437-12; gen ch 1985; am L 2010, c 3, §1]

" **§437-13 Disclosure of dealer.** Where a person licensed according to this chapter represents a buyer in the State in purchasing or attempting to purchase a motor vehicle from or through a dealer or broker not licensed in the State (hereinafter called "nonresident") residing or doing business without the State the person shall file with the motor vehicle industry licensing board each month a statement showing the name and address of all such nonresidents with whom the person has actually negotiated any such sale for the past month and with whom the person is authorized in writing to negotiate or continue to negotiate or to make such sales. All such statements shall be under oath. [L 1957, c 302, §1(10); am L 1959, c 243, §1(5); am L 1961, c 59, §1(6); Supp, §160-167.555; HRS §437-13; am L 1969, c 263, §1(22); gen ch 1985]

" **§437-14 Delivery of contract required.** In the event any person licensed according to this chapter represents a buyer in the State in purchasing or attempting to purchase a motor vehicle from or through a dealer or broker not licensed in the State (hereinafter called "nonresident") residing or doing business without the State the person shall deliver to the buyer upon execution, a copy of the contract or agreement covering such transaction which shall include the make, model, type, year, and price of the motor vehicle, the name and address of the nonresident through whom the sale or purchase is negotiated. [L 1957, c 302, §1(11); am L 1959, c 243, §1(6); am L 1961, c 59, §1(7); Supp, §160-167.6; HRS §437-14; gen ch 1985]

" **§437-15 Principals held responsible.** Every holder of a license issued under this chapter may be held responsible for

the conduct of the holder's agents and employees in all transactions regarding motor vehicles, motor vehicle parts, franchises, and transactions involving a subject or matter within the jurisdiction of the board. No licensee shall permit any person not licensed under this chapter to sell or exchange or offer to sell or exchange any motor vehicle on the premises specified in the license or to sell or exchange any motor vehicle on behalf of the licensee off the premises specified in the license. [L 1959, c 24, §1(7); am L 1961, c 59, §1(8); Supp, §160-167.66; HRS §437-15; am L 1969, c 263, §1(10); am L 1978, c 92, §1; gen ch 1985]

" **§437-16 Records to be kept.** Every motor vehicle dealer shall keep a record of the purchases, consignments, sales and exchanges, moneys, commissions, or any other thing of value paid or agreed to be paid to any person for each motor vehicle purchased, sold, consigned to be sold, or exchanged, and the record shall be at all times open to the inspection of the motor vehicle industry licensing board or any peace officer designated by the board to inspect the record. The record shall contain:

- (1) The names and addresses of all persons from whom any motor vehicle is purchased or received;
- (2) The names and addresses of all persons to whom any motor vehicle is sold, consigned to be sold, or exchanged;
- (3) The names and addresses of all persons who have received any moneys, commissions, or any other thing of value, or to whom the same is due and owing, in connection with the sale of any motor vehicle; and
- (4) The license number, motor number, serial number, and style of any such motor vehicle. [L 1959, c 243, §1(8); am L 1961, c 59, §1(8); Supp, §160-167.666; HRS §437-16; am L 1969, c 263, §1(22)]

Cross References

Courtesy delivery reports, see §238-9.5.

" **§437-17 REPEALED.** L 1992, c 153, §7.

" **§437-18 Bond of broker.** (a) Each broker receiving a license shall give to the motor vehicle industry licensing board and keep in force a bond or bonds in the penal sum totaling not less than \$200,000.

(b) More than one bond may be furnished by the same applicant, provided they aggregate the full amount prescribed by this section.

(c) If the applicant maintains an established place of business in a county which is used, or will be used, for the purpose of selling, displaying, or offering to negotiate for the purchase of motor vehicles, the market value of which, over and above all liens, charges, and encumbrances thereon, is equal to or greater than ninety per cent of the amount of bond required by this section, and the financial condition of the applicant is such that, in the judgment of the board, the excess over ten per cent of the bond may be waived without unduly jeopardizing the rights and interests of present and prospective claimants against the applicant, then the amount of the bond may be reduced at the discretion of the board.

(d) The bond shall be subject to the following conditions:

(1) That the broker will faithfully and truly comply with all the valid provisions of this chapter as the same now are or may hereafter be amended, and with any rule adopted by the board pursuant to this chapter;

(2) That the broker will not be guilty of fraud, misrepresentation, or other improper business conduct in connection with the selling, purchasing, negotiating for purchase, or otherwise dealing with motor vehicles or any other property related thereto, and will satisfy all judgments rendered against the broker based in whole or in part upon representations or warranties made in connection with any retail sale or negotiation for the purchase of a motor vehicle; and

(3) That the broker will protect the treasurer of the county and any purchaser of any vehicle or any person acquiring any lien thereon or successor in interest of any such person against any loss on account of any defect in or undisclosed encumbrance upon the title of any motor vehicle, registered by the treasurer in reliance upon any certificate, affidavit, or other representation of the dealer, or registration or transfer of registration procured by the broker.

(e) Suit on bond. The director of commerce and consumer affairs, or any person who has been or claims to have been injured by the breach of the conditions, shall have the right of action to recover on any such bond, plus a reasonable attorney's fee incurred to secure the recovery under the bond; provided that the aggregate liability of the surety or sureties to all such persons shall in no event exceed the amount of the bond; and provided further that any award of attorney's fees shall be approved by the court and no other attorney's fees shall be permitted from the bond proceeds. Nothing in this section or chapter shall be deemed to prohibit or prevent an independent

action against the broker and any other person from being joined or consolidated with an action on the bond, and the recovery of a larger amount than the amount of the bond founded upon any other cause or causes or action so joined or consolidated. [L 1967, c 113, §1(C); HRS §437-18; am L 1969, c 263, §1(22); am L 1985, c 102, §2; am L 1992, c 153, §5; am L Sp 1993, c 8, §§24 and 58]

" **§§437-19 and 437-20 REPEALED.** L 1969, c 263, §1(9).

" **§437-21 REPEALED.** L 1989, c 299, §1.

" **§437-21.1 Bonds of auctions.** The bond of an auction shall be in the same amount and under the same terms and conditions as required for a new motor vehicle dealer in accordance with rules adopted by the motor vehicle industry licensing board. [L 1969, c 263, §1(17); am L 1971, c 137, §1; am L 1989, c 299, §2; am L 1996, c 264, §6]

" **§437-22 REPEALED.** L 1992, c 202, §184.

" **§437-23 Term of license.** (a) Expiration. All licenses issued pursuant to this chapter shall expire on June 30 of each even-numbered year unless sooner terminated, suspended, or revoked. All applications for renewal of license shall be filed on or before June 30 of each even-numbered year together with the applicable fees.

(b) Reapplication. If a licensee fails to renew the licensee's license on or before June 30 of each even-numbered year and desires to continue in the business or activity for which the license was issued, the licensee shall file a new application for a license and shall pay in addition to the license and filing fee a penalty of twenty-five per cent of the original license fee; provided that the board may for good cause waive the collection of all or a part of the penalty; and provided that nothing contained in this section shall limit the power of the board to deny any application on the grounds provided in this chapter.

(c) Renewal fees for manufacturers and distributors shall be as follows until renewal fees are adopted by the director under this subsection in accordance with chapter 91:

- (1) Biennial renewal fee: \$1,000; and
- (2) Biennial compliance resolution fund fee: \$500 for each dealer franchised by the manufacturer or distributor. [L 1963, c 199, §1j; Supp, §160-171.1; HRS §437-23; am L 1969, c 263, §1(12); am L 1975, c 118, §3(2); gen ch 1985; am L 2003, c 126, §7]

" **§437-24 Licenses terminate, when.** (a) Any license issued pursuant to this chapter shall terminate upon the permanent or temporary cessation of the business or activity for which it was issued.

(b) A salesperson's license shall terminate upon the termination of the license of the dealer by whom the salesperson is employed or upon the termination of the salesperson's employment.

(c) Upon the termination, suspension, or revocation of a license, the holder shall deliver it to the board.

(d) Where the termination is not the result of suspension or revocation by the board for cause, the board shall reissue the license to the holder without cost if the holder resumes the holder's business or employment within the term for which it was issued. [L 1963, c 199, §1k; Supp, §160-171.2; HRS §437-24; am L 1969, c 263, §1(13); gen ch 1985, 1993; am L 1996, c 264, §7]

" **§437-25 Amended licenses.** (a) Prior to entering the employ of a dealer, other than the one for which the salesperson's license was issued, a salesperson shall apply to the board for an amended license authorizing the new employment. Prior to moving or amending the premises or adding branch locations of a business for which a license was issued under this chapter, the holder shall apply for an amended license authorizing the change.

(b) The executive officer of the board is authorized to issue the amended license of a salesperson subject to the ratification by the board for the first three amendments to a license during the original term thereof. The board shall issue the fourth and following amendments to such license during the term of the original license. The executive officer may issue an amended license for new or amended premises or for additional branch locations of the business under a license subject to the board's ratification; provided that the executive officer may not issue an amended license when a prior amendment to the same license has not been acted upon by the board. Unless good cause exists, the amended license shall be freely issued for the remainder of the original term.

(c) The fees for amended licenses shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. [L 1963, c 199, §1(1); Supp, §160-171.3; HRS §437-25; am L 1969, c 263, §1(14); am L 1984, c 7, §5; gen ch 1985, 1993; am L 1996, c 264, §8]

" **§437-26 License not transferable; other requirements.** (a) Nontransferable. No license issued under this chapter shall be transferable.

(b) License to be posted. Each dealer shall keep the license or a certified copy thereof posted in a conspicuous place on each premises.

(c) License on person. Each salesperson shall carry the salesperson's license on the salesperson's person or a certified copy thereof and shall exhibit such license or certified copy thereof upon demand by any person with whom the salesperson seeks to transact business as a motor vehicle salesperson. [L 1963, c 199, §1m; Supp, §160-171.4; HRS §437-26; gen ch 1985, 1993]

" **§437-27 Change of status, notice.** If the status of any licensee changes during the period for which the license is issued because of:

- (1) Changes in officers, directors, or limited partners of the licensee or termination of the employment of any licensed salesperson;
- (2) The transfer of more than ten per cent of the ownership of the licensee to one person;
- (3) The termination of a licensed premises by a dealer or auction or the acquiring or termination of a franchise; or
- (4) The assignment of any part of the licensee's assets for the benefit of creditors;

the licensee shall within fifteen days thereafter file with the board notice of such change containing such information as may be required by the board; provided that nothing contained in this section shall limit the power of the board to suspend, revoke, or deny the renewal of such license or impose any other penalty authorized by this chapter. A manufacturer or distributor shall give written notice to the board pursuant to section 437-58, of its intent to terminate, discontinue, cancel, or fail to renew a franchise agreement. [L 1939, c 258, §8; RL 1945, §7372; am L 1951, c 90, pt of §1; RL 1955, §160-172; am L 1957, c 302, §1(19); am L 1961, c 59, §1(14); HRS §437-27; am L 1969, c 263, §1(15); gen ch 1993; am L 1996, c 264, §9; am L 2010, c 164, §5]

" **§437-27.5 Requirements to maintain license.** A broker shall have and maintain in full force and effect a bond as required under section 437-18. Failure, refusal, or neglect to maintain in full force and effect a bond shall cause the automatic suspension of the license effective as of the date of expiration or cancellation of the bond. The license shall not

be reinstated until a bond as required under section 437-18 is received by the board.

Failure to effect a reinstatement of a suspended license within sixty days of the suspension shall cause the license and all fees to be forfeited.

A licensee may, within fifteen calendar days after receipt of notification of the license forfeiture, request an administrative hearing pursuant to chapter 91 to review the forfeiture. [L 1985, c 102, §3; am L 1989, c 299, §3; am L 1992, c 153, §6]

" **§437-28 Suspension; revocation; fine; denial of issuance or renewal of a license.** (a) In addition to any other actions authorized by law, the board, after notice and hearing as provided in chapter 91, and subject to appeal to the circuit court of the circuit in which the board has jurisdiction under the procedure and rules prescribed by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, may suspend, revoke, fine, or deny the renewal of any license, or prior to notice and hearing deny the issuance of any license for any cause authorized by law, including but not limited to circumstances where the board finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than ten per cent interest of the applicant or holder:

- (1) Has intentionally made a false statement of a material fact in the application for a license or in any other statement required by this chapter or has obtained or attempted to obtain a license by fraud or misrepresentation;
- (2) Has failed to comply with, observe, or adhere to any provision of this chapter or any other law relating to the sale, taxing, or licensing of motor vehicles or any rule or order made pursuant to this chapter;
- (3) Has committed a fraudulent act in selling, purchasing, or otherwise dealing in motor vehicles or has misrepresented the terms and conditions of a sale, purchase, or contract for sale or purchase of a motor vehicle or any interest therein including an option to purchase motor vehicles;
- (4) Has engaged in business under a past or present license issued pursuant to this chapter, in a manner as to cause injury to the public or to those with whom one is dealing;
- (5) Has failed to comply with, observe, or adhere to any law in any other respect so that the board deems the

- applicant or holder to be an unfit or improper person to hold a license;
- (6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;
 - (7) Is insolvent, has filed or is the subject of a petition for bankruptcy, wage earner's plan, or financial reorganization plan, or has made or proposes to make an assignment for benefit of creditors;
 - (8) Is not at least eighteen years of age, or in the case of a partnership applicant or holder of a license, if any general or limited partner is not at least eighteen years of age;
 - (9) Has charged more than the legal rate of interest on the sale, purchase, or attempted sale or purchase, or in arranging the sale or purchase of a motor vehicle or any interest therein including an option to purchase;
 - (10) Has violated any law pertaining to false advertising or to credit sales in the offering, soliciting, selling, purchasing, or arranging to sell or purchase a motor vehicle or any interest therein;
 - (11) Has wilfully failed or refused to perform any unequivocal and indisputable obligation under any written agreement involving the sale or purchase of a motor vehicle or any interest therein, including an option to purchase;
 - (12) Has been denied the issuance of a license under this chapter for substantial culpable cause or has had a license issued under this chapter suspended, revoked, or the renewal thereof denied for substantial culpable cause;
 - (13) Has entered, has attempted to enter, or proposes to enter into any contract or agreement contrary to this chapter or any rule adopted thereunder;
 - (14) Has been, is engaged, or proposes to engage in the business of selling new motor vehicles as a dealer or auction without a proper franchise therefor;
 - (15) Has at any time employed, utilized, or attempted or proposed to employ or utilize any person not licensed under this chapter who is required to be so licensed;
 - (16) Has entered or attempted to enter any one-payment contract where the contract is required to be signed by the purchaser prior to removal of the motor vehicle for test driving from the seller's premises;
 - (17) Is a salesperson or dealer and:

- (A) Has required a purchaser of a motor vehicle as a condition of sale and delivery, to purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; provided that this prohibition shall not apply as to special features, appliances, accessories, or equipment which are ordinarily installed on the vehicle when received or acquired by the dealer;
- (B) Has represented and sold as an unused motor vehicle any motor vehicle which has been leased or operated as a demonstrator or U-drive motor vehicle;
- (C) Has sold a new motor vehicle without providing or securing for the purchaser the standard factory new car warranty for the vehicle unless the dealer or salesperson clearly notes in writing on the sales contract that the new motor vehicle is sold without the standard factory warranty;
- (D) Has sold a new motor vehicle covered by a standard factory warranty without informing the purchaser in writing that any repairs or other work necessary on any accessories which were not installed by the manufacturer of the vehicle may not be obtainable in a geographic location other than where the purchase occurred; provided that the notice required by this section shall conform to the plain language requirements of section 487A-1, regardless of the dollar amount of the transaction;
- (E) Has engaged in any improper business conduct, including but not limited to employing, contracting with, or compensating consumer consultants; or
- (F) Has sold or leased a new or used motor vehicle, other than at auction, without written documentation upon which the salesperson or dealer shall appropriately indicate the type of sale, which both the customer and salesperson or dealer shall place their initials in the designated spaces prior to the signing of the contract of sale or lease and that contains the following provision printed legibly in at least fourteen point bold typeface:

"This (IS) (IS NOT) a door-to-door sale. There (IS A) (IS NO) 3-DAY RIGHT TO CANCEL on this purchase.

_____ Customer's Initials _____ Salesperson's
or Dealer's Initials";

- (18) Is an applicant or holder of a dealer's license and:
 - (A) Has sold or proposed to sell new motor vehicles without providing for the maintenance of a reasonable inventory of parts for new vehicles or without providing and maintaining adequate repair facilities and personnel for new vehicles at either the main licensed premises or at any branch location;
 - (B) Has employed or proposed to employ any salesperson who is not duly licensed under this chapter; or
 - (C) Has sold or proposed to sell new motor vehicles without being franchised therefor;
- (19) Is an applicant or holder of an auction's license and has sold or proposed to sell new motor vehicles without being franchised therefor; or
- (20) Is an applicant for a salesperson's license and:
 - (A) Does not intend to be employed as a salesperson for a licensed motor vehicle dealer; or
 - (B) Intends to be employed as a salesperson for more than one dealer;
- (21) Being a manufacturer or distributor:
 - (A) Has required any dealer in the State to enter into any agreement with the manufacturer or distributor or any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with the dealer, by threatening to cancel the franchise agreement or by threatening to refuse, at the expiration of the current franchise agreement, to enter into a new franchise agreement with the dealer;
 - (B) Has required any dealer in the State to enter into any agreement with the manufacturer or distributor or any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with the dealer, by awarding or threatening to award a franchise to another person for the sale of the

same make of any motor vehicle in the relevant market area of a dealer;

- (C) Has canceled or failed to renew the franchise agreement of any dealer in the State without good faith, as defined herein. As used in this subparagraph, "good faith" means the duty of each party to any franchise agreement to fully comply with that agreement, or to act in a fair and equitable manner towards each other;
- (D) Has delayed delivery of or refused to deliver without cause, any new motor vehicle to a dealer, franchised to sell the new motor vehicle, within a reasonable time after receipt of a written order for the vehicle from the dealer. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a dealer who has not received delivery thereof, but who had placed the written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be prima facie evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle without cause. The nondelivery of a new motor vehicle to a dealer within sixty days after receipt of a written order for the vehicle from a dealer shall also be prima facie evidence of delayed delivery of, or refusal to deliver, a new motor vehicle without cause; provided that the delayed delivery of, or refusal to deliver, a motor vehicle shall be deemed with cause if the manufacturer establishes that the delay or refusal to deliver is due to a shortage or curtailment of material, labor, transportation, utility service, labor or production difficulty, or other similar cause beyond the reasonable control of the manufacturer;
- (E) Has discriminated against any of their franchised dealers in the State by directly or indirectly charging the dealer more for a new motor vehicle or services, parts, or accessories or a higher rate of transportation for transporting the vehicle from the manufacturing or assembly plant to the dealer or any portion of the distance, than is charged to any other of their franchised dealers in the State for the same make, model, and year of a new motor vehicle or for the same devices, parts, or accessories for the similar

transportation for the vehicle during the same period. A manufacturer or distributor who provides or causes to be provided greater transportation benefits for a new motor vehicle as aforesaid to any of their franchised dealers in the State than is provided to any of their competing franchised dealers in the State for the same or lesser price or charge than that imposed upon the franchised dealer in the State during the same period is deemed to have so discriminated against the competing franchised dealer in the State. Evidence of similar discriminatory practice against franchised dealers in other states shall not constitute a defense to or justification of the commission of the discriminatory act against the franchised dealer in the State. The intent and purpose of this subparagraph is to eliminate inequitable pricing policies set by manufacturers or distributors which result in higher prices of new motor vehicles to the consumer in the State. This subparagraph shall be liberally interpreted to effect its intent and purpose and in the application thereof, the substance and effect and not the form of the acts and transactions shall be primarily considered in determining whether a discriminatory act has been committed. Nothing contained in this subparagraph shall prohibit establishing delivered prices or destination charges to dealers in the State which reasonably reflect the seller's total transportation costs incurred in the manufacture or delivery of products to the dealers, including costs that are related to the geographical distances and modes of transportation involved in shipments to this State, or which meet those lower prices established by competitors;

- (F) Has required a dealer of new motor vehicles in the State as a condition of sale and delivery of new motor vehicles to purchase special features, appliances, accessories, or equipment not desired or requested by the dealer; provided that this prohibition shall not apply to special features, appliances, accessories, or equipment, except heaters, that are regularly installed on that particular model or new motor vehicles as "standard" equipment or to special features,

appliances, accessories, or equipment that are an integral part of the new motor vehicles and cannot be removed therefrom without substantial expense. Nothing in this subparagraph shall make it unlawful for a dealer to sell a vehicle that includes a heater that has been installed as standard equipment;

- (G) Has failed to adequately and fairly compensate its dealers for labor incurred by the dealer to perform under and comply with manufacturer's warranty agreements. In no event shall any manufacturer or distributor pay its dealers a labor rate per hour for warranty work that is less than that charged by the dealer to the retail customers of the dealer nor shall the rates be more than the retail rates. All claims made by the dealers for compensation for delivery, preparation, and warranty work shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval;
- (H) Has wilfully failed to affix the vehicle bumper impact notice pursuant to section 437-4.5(a), or wilfully misstated any information in the notice. Each failure or misstatement is a separate offense;
- (I) Has wilfully defaced, or removed the vehicle bumper impact notice required by section 437-4.5(a) prior to delivery of the vehicle to which the notice is required to be affixed to the registered owner or lessee. Each wilful defacement, alteration, or removal is a separate offense; or
- (J) Has required a dealer to refrain from participation in the management of, investment in, or the acquisition of, any other line of new motor vehicle or related products; provided that the new motor vehicle dealer maintains a reasonable line of credit consistent with the requirements of section 437-7(d)(1) for each make or line of new motor vehicle, remains in compliance with reasonable facilities and other franchise requirements of the manufacturer or distributor, and makes no unauthorized change in the principal management of the dealer.

(b) For disregard of an order suspending a license pursuant to section 436B-23, the board may summarily take possession of and impound all motor vehicles belonging to or in the possession of the licensee whether or not the vehicles are situated upon the licensed premises, pending final action in this case or, without taking possession of the motor vehicles, may render them unusable; provided that the right of the board to take any action and any liens for towing or storage or otherwise arising from the action are subject to and subordinate to any security interest that has attached to the motor vehicles prior thereto, and the board, prior to taking any action, shall give notice thereof to any secured party whose security interest in the motor vehicles is known to the board or who, prior to any action by the board, had filed a financing statement covering the motor vehicles or had noted the lien on the legal ownership certificates thereof.

(c) Any fine imposed by the board after a hearing in accordance with chapter 91 shall be no less than \$100 nor no more than \$1,000 for each violation.

(d) In lieu of or in addition to the fine imposed under this section, the board may require the motor vehicle dealer to make restitution to the customer. Restitution may be imposed in lieu of a fine even though the amount may exceed the fine set forth in subsection (c). [L 1939, c 258, §11; RL 1945, §7373; am L 1951, c 90, pt of §1; RL 1955, §160-173; am L 1957, c 302, §1(20); am L 1961, c 59, §1(15); am L 1963, c 199, §1n; HRS §437-28; am L 1969, c 252, §4 and c 263, §1(16); am L 1970, c 87, §1; am L 1972, c 195, §1; am L 1973, c 129, §1(a) to (h); am L 1974, c 21, §1, c 89, §1, and c 205, §2(4); am L 1978, c 92, §3; am L 1980, c 62, §1; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1986, c 154, §2; am L 1987, c 283, §27; am L 1988, c 319, §1; am L 1992, c 109, §4 and c 202, §29; am L 1996, c 264, §10; am L 1997, c 44, §1 and c 85, §2; am L 1999, c 216, §2; am L 2003, c 126, §8; am L 2010, c 164, §6]

Rules of Court

Appeal to circuit court, see HRCP rule 72.

Case Notes

In passing on necessity of convening three judge court, held that section raised substantial constitutional questions. 316 F. Supp. 803 (1970).

Cited: 44 H. 484, 487, 354 P.2d 956 (1960).

" **§437-28.5 Procedures, protections, rights, and remedies made available to licensees.** (a) The same procedures, protections, rights, and remedies provided to a dealer under section 437-3.6, section 437-28(a)(21), and part II shall apply to a distributor that is not a manufacturer.

(b) Notwithstanding the terms, provisions, or conditions of any dealer or distributor agreement, franchise, or waiver and notwithstanding any other legal or administrative remedies available, any person who is licensed under this chapter and whose business or property is injured by a violation of section 437-28(a)(21) or part II may bring a civil action in a court of competent jurisdiction in the State to enjoin further violations and to recover any damages together with the costs of the suit. Laws of the State of Hawaii shall apply to any action initiated under this subsection.

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

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

- (1) Compensate the distributor at the fair market value of the distributor's capital investment, which shall include but not be limited to the going business value of the business, goodwill, property, and improvement owned or leased by the distributor for the purpose of the distributorship; the distributor's inventory of parts; the distributor's dealer operations and franchise agreements with other dealers; and motor vehicles possessed by the distributor in connection with the distributorship plus reasonable attorney's fees incurred in collecting compensation; provided that, to be eligible for compensation pursuant to this paragraph, an investment shall have been made with reasonable and prudent judgment for the purpose of the distributorship agreement; or
- (2) Compensate the distributor for damages including reasonable attorney's fees incurred in collecting compensation resulting from the cancellation or failure to renew the distributorship agreement. [L 2003, c 126, pt of §1; am L 2010, c 164, §7; am L 2011, c 13, §2]

" **§437-29 Discretionary powers of board.** (a) Where any applicant for a license or stockholder owning more than a ten per cent interest in the applicant or any officer, director, trustee, employee, or partner of the applicant has been guilty of any act or omission involving personal misconduct which by this chapter is made ground for refusing to issue a license or for revoking or suspending a license, such as the making of a false statement of a material fact in an application, the commission of a fraudulent act in connection with the sale or negotiation for the purchase of motor vehicles, and the like, the board shall have discretion, nevertheless, to issue the license or suspend or reject the revocation of the license, upon such reasonable conditions, including the furnishing of an additional bond not exceeding \$5,000, as to future good conduct of the applicant and other person concerned, as the board determines, provided the board finds:

- (1) That there are extenuating circumstances that indicate that the act or omission was not due to moral turpitude; or
- (2) That a reasonable time fixed by rule of the board, not less than one year, has elapsed since the act or omission occurred, together with evidence of the person's rehabilitation or general good character, sufficient to indicate that the person is not likely to repeat the offense or engage in illegal, unlawful, or unconscionable practices; or
- (3) That the favorable action by the board will not jeopardize the public interest.

(b) Notification of the application of each dealer or auction approved by the board, or a report of the suspension, revocation, or change of status of a dealer's or auction's license shall be furnished to the treasurer of the affected county motor vehicle registration division or finance department promptly upon the granting, suspension, revocation, or change of status of the license. [L 1939, c 258, §13; RL 1945, §7374; am L 1951, c 90, pt of §1; RL 1955, §160-174; am L 1957, c 302, §1(21); am L 1961, c 59, §1(15); am L 1963, c 199, §10; HRS §437-29; am L 1969, c 263, §1(18); gen ch 1985; am L 1992, c 202, §30; am L 1996, c 264, §11; am L 2003, c 126, §9]

" **§§437-30 and 437-31 REPEALED.** L 1992, c 202, §§185, 186.

" **[§437-31.5] New or used motor vehicle sales and lease contracts.** Regardless of whether or not the buyer has taken possession of the motor vehicle, a new or used motor vehicle purchase or lease agreement by a salesperson or dealer shall be void if the agreement is contingent upon the financing of the

purchase and, pursuant to the financing or credit application signed at the time of purchase, the buyer is unable to qualify. [L 1999, c 216, §1]

" **§437-32 Credit sale contracts; agreements concerning, unlawful.** No person who is engaged in, or about to engage in, the business of selling motor vehicles at retail shall enter into any contract, agreement, or understanding, express or implied, with any manufacturer or distributor of motor vehicles that the person will sell only to a designated person, or class of persons, all or any part of the credit sale contracts arising out of the sale by the person of motor vehicles, or that the person will refuse to sell such credit sale contracts to any designated person, or class of persons. Any such contract, agreement, or understanding is declared to be against the public policy of this State and to be unlawful and void. [L 1939, c 258, §16; RL 1945, §7377; am L 1951, c 90, pt of §1; RL 1955, §160-177; HRS §437-32; gen ch 1985; am L 1987, c 283, §28]

Cross References

Credit sales, generally, see chapter 476.

" **§437-33 Coercion by manufacturer or distributor unlawful.** No person, being a manufacturer or distributor of motor vehicles, or being an officer, agent, or representative of such manufacturer or distributor, shall induce or coerce, or attempt to induce or coerce, any retail motor vehicle dealer or prospective retail motor vehicle dealer to sell or refuse to sell all or any portion of the dealer's retail installment contracts to any person or class of persons designated by the manufacturer or distributor, by means of any statement, suggestion, promise, or threat, made directly or indirectly, that the manufacturer or distributor will in any manner injure or benefit such a dealer, or by means of any act of the manufacturer or distributor that has benefited or injured the dealer, or by means of any statement or representation, made directly or indirectly, that the dealer is under any obligation whatsoever to make or refuse to make such sale. [L 1939, c 258, §17; RL 1945, §7378; am L 1951, c 90, pt of §1; RL 1955, §160-178; HRS §437-33; gen ch 1985]

" **§437-34 Credit sale contracts, when purchase of unlawful.** No person engaged in the business of buying credit sale contracts from motor vehicle dealers in this State, and no officer, agent, or representative of such person, shall purchase

or attempt to purchase any such credit sale contract from any motor vehicle dealer in this State:

- (1) When the dealer in consequence of any contract, agreement, or arrangement between such person and a manufacturer or distributor supplying motor vehicles to the dealer has been induced or coerced to sell such credit sale contract by means of any statement, suggestion, promise, or threat, made, directly or indirectly, that the manufacturer or distributor supplying motor vehicles to the dealer would in any manner injure or benefit the dealer, or by means of any act of the manufacturer or distributor that has benefited or injured the dealer, or by means of any statement or representation, made, directly or indirectly, that the dealer is under any obligation whatsoever to make such sale;
- (2) When such person has received or has contracted to receive from any manufacturer or distributor supplying motor vehicles to the dealer, or has given or contracted to give to the manufacturer or distributor, any subsidy or thing of service or value, where the effect of the giving or receiving of such subsidy or thing of service or value may be to lessen or eliminate competition in the business of purchasing credit sale contracts from motor vehicle dealers or tend to grant an unfair trade advantage or to create a monopoly in such person. [L 1939, c 258, §18; RL 1945, §7379; am L 1951, c 90, pt of §1; RL 1955, §160-179; HRS §437-34; am L 1987, c 283, §29]

" **§437-35 Penalty.** Any person who violates any provision of this chapter or rules of the board, or who engages in the business as, or serves in the capacity of, or acts as a motor vehicle dealer, salesperson, auction, manufacturer, or distributor in the State or otherwise engages in the business of selling or negotiating for the purchase of motor vehicles in this State without being licensed as provided in this chapter, shall be fined not more than \$1,000, and each day's violation or failure to comply shall be deemed a separate offense. [L 1939, c 258, §19; RL 1945, §7380; am L 1951, c 90, pt of §1; RL 1955, §160-180; am L 1957, c 302, §1(22); HRS §437-35; am L 1974, c 99, §1; am L 1986, c 152, §3; gen ch 1992; am L 1996, c 264, §12; am L 2003, c 126, §10]

" **§437-35.5 Misdemeanor.** Any person who is convicted of violating any provision of this chapter or rules of the board, or who engages in the business as or serves in the capacity of,

or acts as a motor vehicle dealer, salesperson, auction, manufacturer, or distributor in the State or otherwise engages in the business of selling or negotiating for the purchase of motor vehicles in this State without being licensed as provided in this chapter, shall have committed a misdemeanor and be subject to a fine of not more than \$1,000, or imprisoned not more than one year, or both. [L 1986, c 152, §1; gen ch 1992; am L 1996, c 264, §13; am L 2003, c 126, §11]

" **§437-36 Injunction; damages.** The motor vehicle industry licensing board or any person, firm, or corporation or any trade association may maintain a suit to enjoin the performance or the continuance of any act or acts by a person acting without a license where a license is required by this chapter, and if injured thereby, for the recovery of damages. If in the suit the court finds that the defendant has violated or is violating any of the provisions of this chapter it may enjoin the defendant from further violation thereof. It shall not be necessary that actual damages to the plaintiff or petitioner be alleged or proved. Plaintiff or petitioner shall be entitled, if the plaintiff or petitioner procures a decree hereunder, to a reasonable attorney's fee to be allowed by the court. [L 1949, c 163, §2; am L 1951, c 90, pt of §1; RL 1955, §160-181; HRS §437-36; am L 1969, c 263, §1(22); gen ch 1985]

Rules of Court

Injunctions, see HRCPC rule 65.

" **§437-37 Credit sale contract violations; penalty.** Whoever violates any of the provisions of sections 437-32 to 437-34 relating to sales or purchase of credit sale contracts shall be fined not less than \$25 nor more than \$1,000. [L 1939, c 258, §20; RL 1945, §7381; am L 1951, c 90, pt of §1; RL 1955, §160-182; HRS §437-37; am L 1987, c 283, §30]

" **[§437-37.5] Cumulative penalties.** Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [L 1986, c 152, §2]

" **§437-38 REPEALED.** L 1973, c 129, §1(i).

" **§437-39 Enforcement.** When necessary, the board may enforce this chapter, including any rule adopted thereunder or decision rendered thereunder by applying to the circuit court

for any relief which may be appropriate, including injunctive relief. Further, the board may apply to the circuit court for any relief which may be appropriate including injunctive relief to enjoin any licensee or other person who violates or threatens to violate any provision of this chapter, including any rule adopted thereunder. [L 1973, c 129, §1(j); am L 1996, c 264, §14]

" **§437-40 Information in applications, confidential; penalty for divulging.** The applications for license and contracts required by section 437-7 shall not be deemed a part of the public records but shall be confidential information for use of the treasurer and the motor vehicle industry licensing board. Whoever, except in a report to the treasurer or the board or when called on to testify in any court or proceeding, divulges any information contained in the applications and acquired by the official or employee in the official's or employee's capacity as an official or employee of the county treasurer's office or of the board shall be fined not less than \$50 nor more than \$100.

Provided that the treasurer or the board may permit the inspection of any such applications by any other person upon being satisfied that the inspection is desired for some lawful and proper purpose. [L 1939, c 258, §23; RL 1945, §7383; am L 1951, c 90, pt of §1; RL 1955, §160-184; am L 1957, c 302, §1(25); am L 1963, c 193, §47; HRS §437-40; am L 1969, c 263, §1(20), (22); gen ch 1985]

" **§437-41 Liberal interpretation.** All provisions in this chapter shall be liberally interpreted to protect the public from fraud in the business of purchasing or selling motor vehicles and to protect the investments of its citizens in motor vehicles and dealerships and to protect the transportation system of the State and shall further be interpreted to affect existing as well as future franchise agreements. [L 1939, c 258, §24; RL 1945, §7384; am L 1951, c 90, pt of §1; RL 1955, §160-185; am L 1957, c 302, §1(26); am L 1961, c 59, §1(16); HRS §437-41; am L 1969, c 263, §1(21)]

" **§437-42 Sections 445-171 and 445-172 not to apply.** Sections 445-171 and 445-172 do not apply to dealers and salespersons licensed under this chapter. [L 1939, c 258, §25; RL 1945, §7385; am L 1951, c 90, pt of §1; RL 1955, §160-186; am L 1957, c 302, §1(27); am L 1961, c 59, §1(16); HRS §437-42; gen ch 1993]

"PART II. MANUFACTURER, DISTRIBUTOR, AND DEALER DISPUTES

[§437-51] Dispute resolution. (a) In any dispute among a manufacturer, distributor, or dealer on matters governed by this part, the manufacturer, distributor, or dealer may seek a hearing from the department of commerce and consumer affairs.

(b) The office of administrative hearings of the department of commerce and consumer affairs shall accept no more than thirty requests for hearing per fiscal year under this section. The office of administrative hearings may reject a request for a hearing if in the opinion of the hearings officer the matter presented does not involve the interpretation or enforcement of the provisions of this chapter. The director of commerce and consumer affairs shall appoint a hearings officer pursuant to section 26-9(f) who shall have jurisdiction to review any request for hearing filed under this section. The hearings officer shall have the power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue written decisions that shall be final and conclusive, unless a party adversely affected by the decision files an appeal in the circuit court under section 91-14. All information so provided in and for the hearing shall be sealed and not subject to public review or access. The information shall also remain confidential and not subject to public access or review on appeal pursuant to section 91-14.

(c) The party requesting the hearing shall file a petition with the department of commerce and consumer affairs specifying the specific provisions of this chapter that are in issue; the interpretation or enforcement sought; the legal and factual basis for the interpretation or enforcement sought; and the remedy or remedies sought. The party requesting a hearing under this section shall provide a copy of the petition to the board at the time the petition is filed. Each adverse party shall file a response with the department of commerce and consumer affairs.

(d) Hearings under this section shall be conducted pursuant to chapter 91 and rules adopted by the department of commerce and consumer affairs. The burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the party initiating the proceeding, unless otherwise specified in this chapter. The standard of proof required shall be by a preponderance of the evidence.

(e) The hearings officer shall issue written findings of fact, conclusions of law, and an order as expeditiously as practicable after the hearing has been concluded.

(f) The prevailing party in any proceeding brought under this section shall provide a copy of the hearings officer's written findings of fact, conclusions of law, and order to the

board within ten days of receipt of the written findings of fact, conclusions of law, and order.

(g) Each party to the hearing shall bear the party's own costs, including attorney's fees. Both parties shall share equally in the cost of the hearing, including any allocable departmental overhead attributable to the hearing.

(h) Any party to a proceeding brought under this section who is aggrieved by a final decision of a hearings officer may apply for judicial review of that decision pursuant to section 91-14; provided that any party seeking judicial review pursuant to section 91-14 shall be responsible for the costs of preparing the record on appeal, including the cost of preparing the transcript of the hearing. Any party aggrieved by a final decision of a hearings officer who applies for judicial review under this section shall provide a copy of the party's application for judicial review to the board within ten days of filing the application for judicial review.

(i) The department of commerce and consumer affairs may adopt rules, pursuant to chapter 91, to effectuate the purpose of this section and to implement its provisions, including fees to recover the cost of hearings. [L 2010, c 164, pt of §2]

" **[§437-52] Reciprocal rights and obligations among dealers, manufacturers, and distributors of motor vehicles.** A manufacturer or distributor shall not:

- (1) Require any dealer in the State to enter into any agreement with the manufacturer or distributor or any other party that requires the law of another jurisdiction to apply to any dispute between the dealer and manufacturer or distributor, or requires that the dealer bring an action against the manufacturer or distributor in a venue outside of Hawaii, or requires the dealer to agree to arbitration or waive its rights to bring a cause of action against the manufacturer or distributor, unless done in connection with a settlement agreement to resolve a matter or pending dispute between a manufacturer or distributor, or officer, agent, or other representative thereof, and the dealer; provided, however, that such agreement has been entered voluntarily for adequate and valuable consideration; and provided further that the renewal or continuation of a franchise agreement shall not by itself constitute adequate and valuable consideration;
- (2) Require any dealer in the State to enter into any agreement with the manufacturer or distributor or any other party, to prospectively assent to a release,

assignment, novation, waiver, or estoppel, which instrument or document operates, or is intended by the applicant or licensee to operate, to relieve any person from any liability or obligation of this chapter, unless done in connection with a settlement agreement to resolve a matter or pending dispute between a manufacturer or distributor, or officer, agent, or other representative thereof, and the dealer; provided, however, that such agreement has been entered voluntarily for adequate and valuable consideration; and provided further that the renewal or continuation of a franchise agreement shall not by itself constitute adequate and valuable consideration;

- (3) Cancel or fail to renew the franchise agreement of any dealer in the State without providing notice, and without good cause and good faith, as provided in section 437-58;
- (4) Refuse or fail to offer an incentive program, bonus payment, holdback margin, or any other mechanism that effectively lowers the net cost of a vehicle to any franchised dealer in the State if the incentive, bonus, or holdback is made to one or more same line make dealers in the State;
- (5) Unreasonably prevent or refuse to approve the relocation of a dealership to another site within the dealer's relevant market area. The dealer shall provide the manufacturer or distributor with notice of the proposed address and a reasonable site plan of the proposed location. The manufacturer or distributor shall approve or deny the request in writing no later than sixty days after receipt of the request. Failure to deny the request within sixty days constitutes approval;
- (6) Require a dealer to construct, renovate, or make substantial alterations to the dealer's facilities unless the manufacturer or distributor can demonstrate that such construction, renovation, or alteration requirements are reasonable and justifiable based on reasonable business consideration, including current and reasonably foreseeable projections of economic conditions existing in the automotive industry at the time such action would be required of the dealer, and agrees to make a good faith effort to make available, at the dealer's option, a reasonable quantity and mix of new motor vehicles, which, after a reasonable analysis of market conditions, are projected to meet the sales level necessary to support the increased

overhead incurred by the dealer as a result of the required construction, renovation, or alteration; provided, however, that a dealer may be required by a manufacturer or distributor to make reasonable facility improvements and technological upgrades necessary to support the technology of the manufacturer's or distributor's vehicles. If the dealer chooses not to make such facility improvements or technological upgrades, the manufacturer or distributor shall not be obligated to provide the dealer with the vehicles which require the improvements or upgrades;

- (7) Require the dealer to establish or maintain an exclusive showroom or facility unless justified by current and reasonably expected future economic conditions existing in the dealer's market and the automobile industry at the time the request for an exclusive showroom or facility is made; provided that the foregoing shall not restrict the terms and conditions of any agreement for which the dealer has voluntarily accepted separate and valuable consideration;
- (8) Condition the award of an additional franchise on the dealer entering a site control agreement or the dealer waiving its rights to protest the manufacturer's or distributor's award of an additional franchise within the dealer's relevant market area; provided that the foregoing shall not restrict the terms and conditions of any agreement for which the dealer has voluntarily accepted separate and valuable consideration;
- (9) Require a dealer or the dealer's employees to attend a training program that does not relate directly to the sales or service of a new motor vehicle in the line make of that sold or serviced, or both, by the dealer;
- (10) Require a dealer to pay all or part of the cost of an advertising campaign or contest, or purchase any promotional materials, showroom, or other display decorations or materials at the expense of the dealer without the consent of the dealer, which consent shall not be unreasonably withheld;
- (11) Implement or establish a customer satisfaction index or other system measuring a customer's degree of satisfaction with a dealer as a sale or service provider unless any such system is designed and implemented in such a way that is fair and equitable to both the manufacturer and the dealer. In any dispute between a manufacturer, distributor, and a

dealer, the party claiming the benefit of the system as justification for acts in relation to the franchise shall have the burden of demonstrating the fairness and equity of the system both in design and implementation in relation to the pending dispute. Upon request of any dealer, a manufacturer or distributor shall disclose in writing to such dealer a description of how that system is designed and applied to such dealer;

- (12) Implement or establish an unreasonable, arbitrary, or unfair sales or other performance standard in determining a dealer's compliance with a franchise agreement; or
- (13) Implement or establish a system of motor vehicle allocation or distribution to one or more of its dealers that is unfair, inequitable, or unreasonably discriminatory. As used in this paragraph, "unfair" includes without limitation, requiring a dealer to accept new vehicles not ordered by the dealer or the refusal or failure to offer to any dealer all models offered to its other same line make dealers in the State. The failure to deliver any motor vehicle shall not be considered a violation of this section if such failure is due to an act of God, work stoppage, or delay caused by a strike or labor difficulty, shortage of products or materials, freight delays, embargo, or other causes of which the motor vehicle franchisor shall have no control. Notwithstanding the foregoing, a dealer may be required by a manufacturer or distributor to make reasonable facility improvements and technological upgrades necessary to support the technology of the manufacturer's or distributor's vehicles. If the dealer chooses not to make such facility improvements or technological upgrades, the manufacturer or distributor shall not be obligated to provide the dealer with the vehicles which require the improvements or upgrades. [L 2010, c 164, pt of §2]

" **[\$437-53] Sale, assignment, or transfer of franchise to qualified purchaser.** (a) A manufacturer or distributor shall not unreasonably withhold consent to the sale, assignment, or transfer of the franchise to a qualified purchaser capable of being licensed as a dealer.

(b) The dealer shall notify the manufacturer or distributor, in writing, of its desire to sell, assign, or transfer its franchise and identify the proposed transferee's name, address, financial qualifications, and business

experience. Along with such notice, the dealer shall also provide the manufacturer or distributor with completed application forms and related information generally used by the manufacturer or distributor to conduct its review of such a proposal, and a copy of all agreements regarding the proposed sale, assignment, or transfer. The manufacturer or distributor shall, within thirty days of receipt of the application and all supporting documentation as specified therein, review the application and identify in writing the additional information, data, or documents, if any, needed by the manufacturer or distributor to complete its review. If the manufacturer or distributor does not reject the application within sixty days of receipt of the completed application and all supporting documentation or within sixty days of receipt of any additional information, data, or documents timely requested by the manufacturer or distributor, the application shall be considered approved, unless the sixty-day deadline is extended by mutual agreement of the manufacturer or distributor and the dealer.

(c) If a manufacturer or distributor denies a dealer's proposed sale, assignment, or transfer of the franchise, the dealer may file a petition in the manner prescribed in section 437-51, within sixty days of the notice of denial. The manufacturer or distributor shall have the burden of proof to demonstrate at a hearing pursuant to a timely filed complaint that the proposed transferee is not of good moral character or does not meet the written, reasonable, and uniformly applied business standards or qualifications of the manufacturer relating to the financial qualifications of the transferee and business experience of the transferee or the transferee's executive management. [L 2010, c 164, pt of §2]

" **[§437-54] Transfer of franchise to successor who is not a qualified purchaser.** (a) A manufacturer or distributor shall not refuse or fail to give effect, unless it has good cause, to the dealer's designated successor, whether designated by will, other estate planning document, or written notice to the manufacturer or distributor either while the dealer was living or within ninety days of the dealer's death or incapacity.

(b) In determining whether good cause exists for the manufacturer's or distributor's refusal to honor the succession, the manufacturer or distributor shall have the burden to prove that the successor is not of good moral character, is not willing to be bound by the terms of the franchise agreement, and is either not qualified to operate the dealership or fails to demonstrate that the dealership will be operated by a qualified executive manager.

(c) The designated successor shall furnish written notice to the manufacturer or distributor including all necessary application forms and related information customarily required by the manufacturer or distributor of the successor's intention to succeed to the ownership of the new motor vehicle dealership within sixty days prior to the designee's actual proposed succession to dealership ownership for the manufacturer or distributor to determine whether the proposed successor meets the normal, reasonable, and uniformly applied standards for the grant of an application as a new motor vehicle dealer.

(d) The manufacturer or distributor shall notify the proposed successor of its belief that good cause exists to refuse to honor the succession within sixty days after receipt of the notice of the proposed successor's intent to succeed the franchise, and the manufacturer or distributor shall detail its reasons why it believes good cause exists to deny the succession.

(e) A proposed successor may file a petition in the manner prescribed in section 437-51 within sixty days after receipt of the manufacturer's or distributor's notice of refusal to honor the succession. The franchise shall continue, and the manufacturer or distributor is prohibited from any action to the contrary, until a final judgment has been rendered on the proposed succession. [L 2010, c 164, pt of §2]

" **[§437-55] Establishment or relocation of franchise within relevant market area.** (a) When a manufacturer or distributor establishes or relocates a franchise within the relevant market area of an existing dealer with a franchise for the same line make, the manufacturer or distributor shall provide a notice to such existing dealers, hereinafter "affected dealers". For the purposes of this section, "affected dealer" means a dealer that operates a same line make franchise in a relevant market area wherein the manufacturer or distributor is proposing to add or relocate a franchise. The manufacturer's or distributor's notice shall state the location of the proposed dealership and the date on or after which the franchise intends to be engaged in business.

(b) An affected dealer may file a petition in the manner prescribed in section 437-51 within thirty days of receipt of the manufacturer's or distributor's notice for determination of whether the manufacturer or distributor has good cause to establish or relocate an additional franchise within the dealer's relevant market area. When such a petition is filed, the manufacturer or distributor shall not establish or relocate the proposed franchise until a hearing has been held and a determination made whether good cause exists for the proposed

addition or relocation. The determination of a petition filed under this subsection shall be made no later than one hundred eighty days from receipt of notice of the petition except for good cause. The manufacturer or distributor shall have the burden of proof to demonstrate good cause exists for the addition or relocation of an additional franchise within the affected dealer's relevant market area.

(c) In determining whether the manufacturer or distributor has good cause to add or relocate the franchise into an affected dealer's relevant market area the hearings officer under section 437-51 shall consider and make findings upon evidence including the permanency and size of investment made and the reasonable obligations incurred by the existing new motor vehicle dealers in the relevant market area; the growth or decline in population and new car registrations in the relevant market area; the effect on the consuming public in the relevant market area; whether it is injurious or beneficial to the public welfare for a new dealer to be established; whether the new motor vehicle dealers of the same line make in that area are providing adequate competition and convenient customer care for the motor vehicles of the same line make including the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel; whether the establishment or relocation of the proposed dealership appears to be warranted and justified based on economic and marketing conditions pertinent to dealers competing in the community or territory, including anticipating future changes; the effect on the relocating dealer of a denial of its relocation into the relevant market area; and the reasonably expected market penetration of the line make motor vehicle for the community or territory involved, after consideration of all factors which may affect such penetration, including demographic factors such as age, income, education, size class preference, product popularity, retail lease transactions, or other factors affecting sales to consumers of the community or territory.

(d) This section shall not apply to the relocation of an existing dealer within two miles of the dealer's existing dealership location; the appointment of a successor dealer at the same location as its predecessor or within a two-mile radius from any boundary of the predecessor's former location within one year from the date on which the predecessor ceased operations or was terminated, whichever occurred later; or the relocation of a dealer to a site that is farther away from the protesting affected dealer than the existing location. [L 2010, c 164, pt of §2]

" **§437-56 Reimbursement for parts.** (a) In no event shall any manufacturer or distributor pay its dealers a markup on parts for warranty work that is less than that charged by the dealer to the retail customers of the dealer; provided that such dealer's retail parts markup is not unreasonable when compared with that of same line make authorized franchise dealers of the manufacturer or distributor for identical merchandise or services in the State.

(b) The retail markup charged by the dealer shall be established by submitting to the manufacturer or distributor a sufficient quantity of numerically consecutive repair orders from the most recent months to provide one hundred qualifying customer-paid repair orders. For a dealer unable to provide one hundred qualifying customer-paid repair orders out of all numerically consecutive repair orders within the two-month period prior to the submission, the dealer shall submit customer service repair orders of all types, including customer pay, warranty, and internal, for that two-month period. The repair orders shall contain the price and percentage markup. Dealers shall declare in their submission the average markup the dealer is declaring as its new parts reimbursement rate. The declared parts reimbursement markup shall take effect within ninety days after initial submission to the manufacturer or distributor and shall be presumed to be fair and reasonable. However, the manufacturer or distributor may make reasonable requests for additional information supporting the submission. The ninety-day time frame in which the manufacturer or distributor shall make the declared parts reimbursement markup effective shall commence following receipt from the dealer of any reasonably requested supporting information. The dealer shall not request a change in the parts reimbursement markup more than once every twelve months.

(c) In determining qualifying repair orders for parts, the following work shall not be included: repairs for manufacturer or distributor special events; repairs covered by any insurance or service contract; federal, state, or local government legislated vehicle emission or safety inspections; parts sold at wholesale or repairs performed at wholesale, which shall include any sale or service to a fleet of vehicles; engine assemblies and transmission assemblies; routine maintenance not covered under any retail customer warranty, such as fluids, filters, and belts not provided in the course of repairs; nuts, bolts, fasteners, and similar items that do not have an individual part number; tires; and vehicle reconditioning.

(d) Dealers shall have at least thirty days after the repair work is completed to submit a claim for approval. All claims made by the dealers for compensation for delivery,

preparation, and warranty work shall be approved or disapproved and if approved, paid within forty-five days after receipt by a manufacturer or distributor of a properly completed claim. All sale incentive claims shall be approved or disapproved and if approved, paid within sixty days after receipt by a manufacturer or distributor of a properly completed claim. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Failure to disapprove a claim within the required time frame constitutes approval of the claim.

(e) 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.

(f) For the purposes of this section, the director of commerce and consumer affairs shall:

- (1) Conduct a review of the costs of the repairs of motor vehicles, including the prices charged by dealers for performing repairs under warranty and repairs not under warranty; and
- (2) Compare such costs to repairs performed by non-dealers. [L 2010, c 164, pt of §2; am L 2012, c 246, §2]

" **[\$437-57] Warranty and incentive audits.** (a) No manufacturer or distributor shall conduct a warranty or incentive audit on previously paid claims or chargeback any warranty or incentive payment previously made more than one year after the date the manufacturer or distributor made the payment to the dealer. This section shall not apply to fraudulent claims.

(b) A manufacturer or distributor shall not chargeback a dealer for sales or warranty payments unless the manufacturer or distributor can satisfy its burden of proof that the dealer's claim was fraudulent or that the dealer did not substantially comply with the reasonable written procedures of the manufacturer or distributor.

(c) The manufacturer or distributor shall provide the dealer a written notice thirty days before imposing a proposed chargeback. The dealer may protest the imposition of a proposed chargeback prior to the imposition of a proposed chargeback. The dealer, manufacturer, or distributor shall conduct any internal dispute resolution process in accordance with the franchise agreement. After the internal dispute resolution process is concluded, the dealer may file a petition in the manner prescribed in section 437-51 protesting the proposed chargeback amount. If a petition is filed, the proposed chargeback shall be stayed during the entirety of the action and

until a final judgment has been rendered. [L 2010, c 164, pt of §2]

" **[§437-58] Cancellation or failure to renew franchise agreement.** (a) A manufacturer or distributor shall give written notice to the dealer and the board of the manufacturer's intent to terminate, discontinue, cancel, or fail to renew a franchise agreement at least sixty days before the effective date thereof, and state with specificity the grounds being relied upon for such discontinuation, cancellation, termination, or failure to renew; provided that the manufacturer or distributor may provide the notice fifteen days before the effective date of termination, discontinuation, cancellation, or nonrenewal in the following circumstances:

- (1) The dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within thirty days after the filing, there has been a closeout or sale of a substantial part of the dealer's assets related to the business, or there has been a commencement of dissolution or liquidation of the dealer;
- (2) The dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned the business;
- (3) The dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and the manufacturer or distributor;
- (4) The dealer has engaged in conduct that is injurious or detrimental to the dealer's customers or to the public welfare;
- (5) There has been a change, without the prior written approval of the manufacturer or distributor, in the location of the dealer's principal place of business under the dealership agreement; or
- (6) Misrepresentation or fraud upon the manufacturer by the dealer.

(b) A dealer who receives notice of intent to terminate, discontinue, cancel, or fail to renew may, within the sixty-day notice period, file a petition in the manner prescribed in section 437-51 for a determination of whether such action is taken in good faith and supported by good cause. The manufacturer or distributor shall have the burden of proof that such action is taken in good faith and supported by good cause.

(c) If the manufacturer's or distributor's notice of intent to terminate, discontinue, cancel, or fail to renew is based upon the dealer's alleged failure to comply with sales or

service performance obligations, the dealer shall first be provided with notice of the alleged sales or service deficiencies and afforded at least one hundred eighty days to correct any alleged failure before the manufacturer or distributor may send its notice of intent to terminate, discontinue, cancel, or fail to renew. Good cause shall not be deemed to exist if a dealer substantially complies with the manufacturer's or distributor's reasonable performance provisions within the one hundred eighty-day cure period, or if the failure to demonstrate substantial compliance was due to factors that were beyond the control of the dealer.

(d) Good cause shall not exist absent a breach of a material and substantial term of the franchise agreement. The existence of one or more circumstances enumerated in subsection (a)(1) through (6) above shall be presumed to be good cause, and the dealer shall have the burden of proof to show that the action was not taken in good faith and supported by good cause.

(e) Except in the circumstances enumerated in subsection (a)(1) through (6) above, the franchise agreement shall remain in effect until a final judgment is entered after all appeals are exhausted, and during that time the dealer shall retain all rights and remedies pursuant to the franchise agreement, including the right to sell or transfer the franchise.

(f) Upon the termination, discontinuation, cancellation, or failure to renew the franchise agreement by the manufacturer or distributor, the manufacturer or distributor shall compensate the dealer for all new, unused, and undamaged parts listed in the current parts catalog and still in the original, resalable merchandising packages and in unbroken lots; provided that for sheet metal, a comparable substitute may be used. Prices shall be those in effect at the time the manufacturer or distributor receives the parts, less applicable allowances; the fair market value of all undamaged, unmodified special tools, equipment, and signage required by the manufacturer or distributor and acquired by the dealer within the three years prior to the termination; all new, undamaged, and unsold vehicle inventory of the current model year and one model year prior acquired from the manufacturer or distributor or from another same line make dealer in the ordinary course of business prior to the effective date of termination or nonrenewal; provided that the vehicle has less than five hundred miles registered on the odometer. The purchase price shall be the dealer's net acquisition cost. The compensation shall be paid to the dealer no later than ninety days from the date of the franchise termination, discontinuation, cancellation, or failure to renew.

(g) In addition to the other compensation set forth in this section, upon the termination, discontinuation,

cancellation, or failure to renew the franchise agreement by a manufacturer or distributor without good cause and good faith; or as a result of the discontinuation of a line make, the manufacturer or distributor shall compensate the dealer at the fair market value for the dealer's capital investment, which shall include the going business value of the business, goodwill, property, and improvement owned or leased by the dealer for the purpose of the franchise as of the effective date of the termination or one day prior to the date of the notice, whichever is greater. The compensation shall be paid to the dealer no later than ninety days from the date of the franchise termination, discontinuation, cancellation, or failure to renew.

(h) As used in this section, "good faith" means the duty of each party to any franchise agreement to fully comply with that agreement, and to act in a fair and equitable manner towards each other. [L 2010, c 164, pt of §2]