



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 10, 2018

GOV. MSG. NO. 1272

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 10, 2018, the following bill was signed into law:

SB2490 SD1 HD2 CD1

RELATING TO THE MOTOR VEHICLE
INDUSTRY LICENSING ACT
ACT 163 (18)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that due to Hawaii's
2 remote location, motor vehicle manufacturers must make certain
3 special considerations when creating programs applicable to
4 franchised motor vehicle dealers located in the State. The
5 legislature further finds that certain amendments to Hawaii's
6 motor vehicle industry licensing laws are necessary to ensure a
7 level playing field amongst the State's motor vehicle dealers.

8 Accordingly, the purpose of this Act is to modernize
9 Hawaii's motor vehicle industry licensing laws by:

- 10 (1) Specifying certain recall reimbursement or repair
11 requirements for manufacturers where a stop-sale order
12 has been issued;
- 13 (2) Authorizing a license holder to engage in business at
14 motor vehicle dealer locations that are affiliated by
15 common ownership under the same license;
- 16 (3) Clarifying when certain manufacturers' or
17 distributors' sales or service performance standards



1 shall be deemed unreasonable, arbitrary, or unfair;

2 and

3 (4) Prohibiting a manufacturer or distributor from
4 requiring a dealer to perform certain construction or
5 renovations to the dealer's facilities; purchase items
6 for a dealership facility in certain circumstances; or
7 provide certain information related to customer
8 information, unless certain conditions are met.

9 SECTION 2. Chapter 437, Hawaii Revised Statutes, is
10 amended by adding a new section to be appropriately designated
11 and to read as follows:

12 "§437- Used vehicle recall; stop-sale orders. (a) A
13 manufacturer shall compensate its new motor vehicle dealers for
14 all labor and parts required by the manufacturer to perform
15 recall repairs. Compensation for recall repairs shall be
16 reasonable as described in subsection (e). If parts or a remedy
17 are not reasonably available to perform a recall service or
18 repair on a used vehicle held for sale by a dealer authorized to
19 sell and service new vehicles of the same line make within
20 thirty days of the manufacturer issuing the initial notice of
21 recall, and the manufacturer has issued a stop-sale order on the



1 vehicle, the manufacturer shall compensate the dealer at a
2 prorated rate of at least one per cent of the value of the
3 vehicle per month, beginning on the date that is thirty days
4 after the date on which the stop-sale order was provided to the
5 dealer until:

6 (1) The date the recall or remedy parts are made
7 available; or

8 (2) The date the dealer sells, trades, or otherwise
9 disposes of the affected used motor vehicle;

10 whichever is earlier.

11 (b) The value of a used vehicle shall be the average
12 trade-in value for used vehicles as indicated in an independent
13 third-party guide for the year, make, and model of the recalled
14 vehicle.

15 (c) This section shall only apply to:

16 (1) Used vehicles subject to a stop-sale order for which
17 repair parts or a remedy remain unavailable for thirty
18 days or longer and that:

19 (A) Are in the dealer's inventory at the time the
20 stop-sale order was issued; or



1 (B) Are taken into the used vehicle inventory of the
2 dealer as a result of a consumer trade-in
3 incident to the purchase of a new or certified
4 pre-owned used vehicle from the dealer after the
5 stop-sale order was issued; and

6 (2) New motor vehicle dealers holding an affected used
7 vehicle for sale that is a line make that the dealer
8 is franchised to sell or on which the dealer is
9 authorized to perform recall repairs.

10 (d) Subject to the audit provisions of section 437-57, it
11 shall be a violation of this section for a manufacturer to
12 reduce the amount of compensation otherwise owed to an
13 individual new motor vehicle dealer, whether through a
14 chargeback, removal of the individual dealer from an incentive
15 program, or reduction in amount owed under an incentive program
16 solely because the new motor vehicle dealer has submitted a
17 claim for reimbursement under this section; provided that this
18 subsection shall not apply to an action by a manufacturer that
19 is applied uniformly among all dealers of the same line make in
20 the State.



1 (e) All reimbursement claims made by new motor vehicle
2 dealers pursuant to this section for recall repairs, or for
3 compensation where no part or repair is reasonably available and
4 the vehicle is subject to a stop-sale order shall be subject to
5 the same limitations and requirements as a warranty
6 reimbursement claim made under section 437-56 or
7 437-28(a) (21) (G). In the alternative, a manufacturer may
8 compensate its franchised dealers under a national recall
9 compensation program; provided that the compensation under the
10 program is equal to or greater than that provided under
11 subsection (a) or the manufacturer and dealer otherwise agree.

12 (f) Nothing in this section shall require a manufacturer
13 to provide total compensation to a dealer that would exceed the
14 total average trade-in value of the affected used motor vehicle,
15 as originally determined under subsection (b).

16 (g) Any remedy provided to a dealer under this section is
17 exclusive and may not be combined with any other state or
18 federal recall compensation remedy.

19 (h) A manufacturer may direct the manner and method in
20 which a dealer shall demonstrate the inventory status of an
21 affected used motor vehicle to determine eligibility under this



1 section; provided that the manner and method may not be unduly
2 burdensome and may not require information that is unduly
3 burdensome for a dealer to provide.

4 (i) For purposes of this section, a "stop-sale order"
5 means a notification issued by a manufacturer to its franchised
6 new motor vehicle dealers, stating that certain used vehicles in
7 inventory should not be sold or leased, at either retail or
8 wholesale."

9 SECTION 3. Section 437-2, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) A license issued under this chapter shall authorize
12 the holder to engage in the same business at [~~branch~~]:

13 (1) Branch locations in the same county for which the
14 license is issued during the term thereof; provided
15 that each branch location of a motor vehicle dealer is
16 approved by the board[-]; or

17 (2) Other motor vehicle dealer locations located in the
18 same county and affiliated by common ownership with
19 the location for which the license is issued during
20 the term thereof; provided that each motor vehicle
21 dealer location affiliated by common ownership shall



1 obtain prior approval from the board before
2 transferring salespersons between dealer locations.

3 For purposes of this subsection, "common ownership" shall
4 include entities that have the same exact ownership, whether
5 through individuals, corporations, trusts, or other entities."

6 SECTION 4. Section 437-52, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "~~+~~§437-52~~+~~ Reciprocal rights and obligations among
9 dealers, manufacturers, and distributors of motor vehicles. (a)

10 A manufacturer or distributor shall not:

- 11 (1) Require any dealer in the State to enter into any
- 12 agreement with the manufacturer or distributor or any
- 13 other party that requires the law of another
- 14 jurisdiction to apply to any dispute between the
- 15 dealer and manufacturer or distributor, or requires
- 16 that the dealer bring an action against the
- 17 manufacturer or distributor in a venue outside of
- 18 Hawaii, or requires the dealer to agree to arbitration
- 19 or waive its rights to bring a cause of action against
- 20 the manufacturer or distributor, unless done in
- 21 connection with a settlement agreement to resolve a



1 matter or pending dispute between a manufacturer or
2 distributor, or officer, agent, or other
3 representative thereof, and the dealer; provided[,
4 however,] that such agreement has been entered
5 voluntarily for adequate and valuable consideration;
6 and provided further that the renewal or continuation
7 of a franchise agreement shall not by itself
8 constitute adequate and valuable consideration;

- 9 (2) Require any dealer in the State to enter into any
10 agreement with the manufacturer or distributor or any
11 other party, to prospectively assent to a release,
12 assignment, novation, waiver, or estoppel, which
13 instrument or document operates, or is intended by the
14 applicant or licensee to operate, to relieve any
15 person from any liability or obligation of this
16 chapter, unless done in connection with a settlement
17 agreement to resolve a matter or pending dispute
18 between a manufacturer or distributor, or officer,
19 agent, or other representative thereof, and the
20 dealer; provided[, ~~however,~~] that such agreement has
21 been entered voluntarily for adequate and valuable



1 consideration; and provided further that the renewal
2 or continuation of a franchise agreement shall not by
3 itself constitute adequate and valuable consideration;

4 (3) Cancel or fail to renew the franchise agreement of any
5 dealer in the State without providing notice, and
6 without good cause and good faith, as provided in
7 section 437-58;

8 (4) Refuse or fail to offer an incentive program, bonus
9 payment, holdback margin, or any other mechanism that
10 effectively lowers the net cost of a vehicle to any
11 franchised dealer in the State if the incentive,
12 bonus, or holdback is made to one or more same line
13 make dealers in the State;

14 (5) Unreasonably prevent or refuse to approve the
15 relocation of a dealership to another site within the
16 dealer's relevant market area. The dealer shall
17 provide the manufacturer or distributor with notice of
18 the proposed address and a reasonable site plan of the
19 proposed location. The manufacturer or distributor
20 shall approve or deny the request in writing no later
21 than sixty days after receipt of the request. Failure



1 to deny the request within sixty days constitutes
2 approval;

- 3 (6) Require a dealer to construct, renovate, or make
4 substantial alterations to the dealer's facilities
5 unless the manufacturer or distributor can demonstrate
6 that such construction, renovation, or alteration
7 requirements are reasonable and justifiable based on
8 reasonable business consideration, including current
9 and reasonably foreseeable projections of economic
10 conditions existing in the automotive industry at the
11 time such action would be required of the dealer, and
12 agrees to make a good faith effort to make available,
13 at the dealer's option, a reasonable quantity and mix
14 of new motor vehicles, which, after a reasonable
15 analysis of market conditions, are projected to meet
16 the sales level necessary to support the increased
17 overhead incurred by the dealer as a result of the
18 required construction, renovation, or alteration;
19 provided[~~, however,~~] that a dealer may be required by
20 a manufacturer or distributor to make reasonable
21 facility improvements and technological upgrades



1 necessary to support the technology of the
2 manufacturer's or distributor's vehicles. If the
3 dealer chooses not to make such facility improvements
4 or technological upgrades, the manufacturer or
5 distributor shall not be obligated to provide the
6 dealer with the vehicles which require the
7 improvements or upgrades[+] or any corresponding
8 incentives or benefits. A manufacturer or distributor
9 may not require a dealer to construct, renovate, or
10 make substantial alterations to the dealer's facility
11 if the dealer has completed a construction,
12 renovation, or substantial alteration to the same
13 component of the facility that was required and
14 approved by the manufacturer or distributor within the
15 previous ten years. For purposes of this paragraph, a
16 "substantial alteration" means an alteration that has
17 a major impact on the architectural features,
18 characteristics, appearance, or integrity of a
19 structure or lot. The term "substantial alteration"
20 does not include routine maintenance, such as painting
21 and repairs reasonably necessary to maintain a



1 dealership facility in attractive condition, or any
2 changes to items protected by federal intellectual
3 property rights. If a dealer has completed facility
4 construction, renovation, or substantial alteration
5 under an incentive program, the manufacturer or
6 distributor may not deny a dealer payment or benefits
7 according to the terms of that program in place when
8 the dealer began to perform under the program. If the
9 incentive program under which the dealer completed a
10 facility construction, renovation, or substantial
11 alteration on or after January 1, 2016, does not
12 contain a specific time period during which the
13 manufacturer or distributor must provide payments or
14 benefits to a dealer, then the manufacturer or
15 distributor may not deny the dealer payment or
16 benefits under the terms of that incentive program, as
17 it existed when the dealer began to perform under the
18 program for the balance of ten years after the
19 manufacturer or distributor made the program available
20 to the dealer, regardless of whether the
21 manufacturer's or distributor's facility program has



1 been changed or canceled. This paragraph shall not be
2 construed to require a manufacturer or distributor to
3 provide payment or benefits if changes have been made
4 to the facility since the manufacturer's or
5 distributor's approval that would render the facility
6 non-compliant, regardless of whether the
7 manufacturer's or distributor's image program has
8 changed. Facility changes that are necessitated due
9 to damage sustained from a natural disaster or as a
10 result of necessary safety upgrades shall not be
11 considered a change to the facility that renders the
12 facility non-compliant; provided that those facility
13 changes substantially restore the facilities to the
14 previous or current compliant state. Eligibility for
15 facility-related incentives under this paragraph shall
16 not apply to:

17 (A) Lump sum payments for the cost of the facility
18 upgrade;

19 (B) Payments on a per vehicle basis; and



1 (C) Any facility-related incentive program in effect
2 with one or more dealers in the State on the
3 effective date of this Act.

4 Nothing in this paragraph shall be construed to allow
5 a franchised motor vehicle dealer to impair or
6 eliminate a manufacturer's or distributor's
7 intellectual property or trademark rights and trade
8 dress usage guidelines; impair other intellectual
9 property interests owned or controlled by the
10 manufacturer or distributor, including the design and
11 use of signs; or refuse to change the design or
12 branding of any signage or other branded items
13 required by a manufacturer or distributor at any time,
14 if the manufacturer or distributor requires those
15 changes of all of its franchised dealers nationally;

16 (7) Require the dealer to establish or maintain an
17 exclusive showroom or facility unless justified by
18 current and reasonably expected future economic
19 conditions existing in the dealer's market and the
20 automobile industry at the time the request for an
21 exclusive showroom or facility is made; provided that



1 the foregoing shall not restrict the terms and
2 conditions of any agreement for which the dealer has
3 voluntarily accepted separate and valuable
4 consideration;

5 (8) Condition the award of an additional franchise on the
6 dealer entering a site control agreement or the dealer
7 waiving its rights to protest the manufacturer's or
8 distributor's award of an additional franchise within
9 the dealer's relevant market area; provided that the
10 foregoing shall not restrict the terms and conditions
11 of any agreement for which the dealer has voluntarily
12 accepted separate and valuable consideration;

13 (9) Require a dealer or the dealer's employees to attend a
14 training program that does not relate directly to the
15 sales or service of a new motor vehicle in the line
16 make of that sold or serviced, or both, by the dealer;

17 (10) Require a dealer to pay all or part of the cost of an
18 advertising campaign or contest, or purchase any
19 promotional materials, showroom, or other display
20 decorations or materials at the expense of the dealer



1 without the consent of the dealer, which consent shall
2 not be unreasonably withheld;

3 (11) Implement or establish a customer satisfaction index
4 or other system measuring a customer's degree of
5 satisfaction with a dealer as a sale or service
6 provider unless any such system is designed and
7 implemented in such a way that is fair and equitable
8 to both the manufacturer and the dealer. In any
9 dispute between a manufacturer, distributor, and a
10 dealer, the party claiming the benefit of the system
11 as justification for acts in relation to the franchise
12 shall have the burden of demonstrating the fairness
13 and equity of the system both in design and
14 implementation in relation to the pending dispute.
15 Upon request of any dealer, a manufacturer or
16 distributor shall disclose in writing to such dealer a
17 description of how that system is designed and applied
18 to such dealer;

19 (12) Implement or establish an unreasonable, arbitrary, or
20 unfair sales or [~~ether~~] service performance standard
21 in determining a dealer's compliance with a franchise



1 agreement [~~7~~ ~~or~~]. If the sales or service performance
2 standard is to be used as the basis for a termination
3 of a dealer, then the performance standard shall be
4 deemed unreasonable, arbitrary, or unfair if the
5 standard does not include material and relevant local
6 market factors, including but not limited to the
7 geography of the dealer's assigned territory as set
8 forth in the franchise agreement, market demographics,
9 change in population, product popularity, number of
10 competitor dealers, and consumer travel patterns;

11 (13) Implement or establish a system of motor vehicle
12 allocation or distribution to one or more of its
13 dealers that is unfair, inequitable, or unreasonably
14 discriminatory. As used in this paragraph, "unfair"
15 includes without limitation, requiring a dealer to
16 accept new vehicles not ordered by the dealer or the
17 refusal or failure to offer to any dealer all models
18 offered to its other same line make dealers in the
19 State. The failure to deliver any motor vehicle shall
20 not be considered a violation of this section if such
21 failure is due to an act of God, work stoppage, or



1 delay caused by a strike or labor difficulty, shortage
2 of products or materials, freight delays, embargo, or
3 other causes of which the motor vehicle franchisor
4 shall have no control. Notwithstanding the foregoing,
5 a dealer may be required by a manufacturer or
6 distributor to make reasonable facility improvements
7 and technological upgrades necessary to support the
8 technology of the manufacturer's or distributor's
9 vehicles. If the dealer chooses not to make such
10 facility improvements or technological upgrades, the
11 manufacturer or distributor shall not be obligated to
12 provide the dealer with the vehicles which require the
13 improvements or upgrades[-]; or

14 (14) Require a dealer that is constructing, renovating, or
15 substantially altering its dealership facility to
16 purchase goods, building materials, or services for
17 the dealership facility, including but not limited to
18 office furniture, design features, flooring, and wall
19 coverings, from a vendor chosen by the manufacturer or
20 distributor if: goods, building materials, or
21 services of a substantially similar appearance,



1 function, design, and quality are available from other
2 sources; and the franchised motor vehicle dealer has
3 received the manufacturer's or distributor's approval;
4 provided that this approval shall not be unreasonably
5 withheld or unreasonably delayed. In the event that a
6 manufacturer or distributor does not approve the
7 dealer's use of substantially similar goods, building
8 materials, or services, the manufacturer or
9 distributor shall provide the dealer, in writing at
10 the time of disapproval, a detailed list of reasons
11 why the proposed substantially similar items are not
12 acceptable. Nothing in this paragraph shall be
13 construed to allow a franchised motor vehicle dealer
14 to impair or eliminate a manufacturer's or
15 distributor's intellectual property or trademark
16 rights and trade dress usage guidelines or impair
17 other intellectual property interests owned or
18 controlled by the manufacturer or distributor,
19 including the design and use of signs.

20 (b) Notwithstanding the provisions of any franchise
21 agreement, a manufacturer or distributor shall not require a



1 dealer to provide its consumer and proprietary data, or access
2 the dealer's data management system to obtain consumer and
3 proprietary data, unless written consent is provided by the
4 dealer.

5 (c) Notwithstanding the provisions of any franchise
6 agreement, a manufacturer or distributor:

- 7 (1) Shall allow a dealer to furnish consumer and
8 proprietary data in a widely-accepted file format,
9 such as comma-separated values, and through a third-
10 party vendor selected by the dealer;
- 11 (2) May not require a dealer to grant the manufacturer or
12 distributor access to the dealer's data management
13 system to obtain consumer and proprietary data;
- 14 (3) May access or obtain consumer data directly from a
15 dealer's data management system only with the express
16 written consent of the dealer;
- 17 (4) May not take any adverse action against a dealer for
18 refusing to grant access to the dealer's data
19 management system;



- 1 (5) May require that a dealer of the manufacturer or
2 distributor provide consumer data and proprietary data
3 that pertains to any of the following:
4 (A) Claims for warranty parts or repairs;
5 (B) Data pertaining to the sale and delivery of a new
6 or certified pre-owned vehicle of any line make
7 of the manufacturer or distributor;
8 (C) Safety or recall obligations;
9 (D) Validation and payment of customer or dealer
10 incentives;
11 (E) Analytics; or
12 (F) Reasonable marketing purposes for the benefit of
13 the providing dealer;
14 (6) May not require a dealer to grant access to the
15 dealer's data management system through the franchise
16 agreement or as a condition of renewal or continuation
17 of the franchise agreement;
18 (7) May not release or cause to be released nonpublic
19 personal information about a dealer's customers, as
20 defined in title 15 United States Code section
21 6809(4), to:



- 1 (A) Another dealer unless the franchise has been
2 terminated, the customer has relocated out of the
3 State or to a different island in the State, or
4 the dealer whose information is being released
5 has provided written consent; or
- 6 (B) Any other third party unless the manufacturer or
7 distributor provides the dealer with advanced
8 written notice that the manufacturer or
9 distributor intends to distribute the information
10 to the third party; and
- 11 (8) Shall indemnify the dealer for any third-party claims
12 asserted against or damages incurred by the dealer to
13 the extent the claims or damages are caused by the
14 access to and unlawful disclosure of consumer and
15 proprietary data resulting from a breach caused by the
16 manufacturer or distributor or a third party to which
17 the manufacturer or distributor has provided the
18 consumer and proprietary data in violation of this
19 section, the written consent granted by the dealer, or
20 other applicable state or federal law.
- 21 (d) Written consent under subsection (c) (3) :



- 1 (1) Shall be separate from the dealer franchise agreement;
- 2 (2) Shall be executed by the dealer; and
- 3 (3) May be withdrawn by the dealer upon thirty days'
- 4 written notice to the manufacturer or distributor.

5 (e) For purposes of this section:

6 "Consumer and proprietary data" means a dealer's customer
 7 and prospective customer information, customer lists, service
 8 files, transaction data, or other proprietary business
 9 information. "Consumer and proprietary data" does not include
 10 the same or similar data which is obtained by a manufacturer
 11 from any other source.

12 "Data management system" means a computer hardware or
 13 software system that is owned, leased, or licensed by a dealer,
 14 including a system of web-based applications, and is located at
 15 the dealership or hosted remotely, which stores and provides
 16 access to consumer and proprietary data collected and which is
 17 stored by the dealer or on behalf of a dealer."

18 SECTION 5. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 6. This Act shall take effect on July 1, 2018.

APPROVED this 10 day of JUL, 2018



GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: May 1, 2018
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the
Senate of the Twenty-ninth Legislature of the State of Hawai'i, Regular Session of 2018.


President of the Senate


Clerk of the Senate

SB No. 2490, SD 1, HD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 1, 2018
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2018.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives