



Brian Kitagawa, President
Dave Rolf, Executive Director

HADA TESTIMONY IN STRONG SUPPORT
of HB2433 HD1
RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT
Presented to the House Committee on Consumer Protection and Commerce
at the Public Hearing, 2 p.m. Monday, February 12, 2018
Conference Room 329, Hawaii State Capitol

Chair Takumi, Vice Chair Ichiyama and members of the committee:

The members of the Hawaii Automobile Dealers Association, Hawaii's franchised new car dealers, appreciate the opportunity to offer **strong support** for this bill which proposes to add certain amendments to Hawaii's motor vehicle industry licensing law.

Background

Motor vehicle industry franchise laws appear in all 50 states. This past year, legislators in Maryland, Florida, New York and many other states have worked with auto dealers to update their respective state's franchise laws. Hawaii dealers, facing many of the same challenges of other dealers across the country, and agreeing with the earlier Hawaii legislative finding that "the geographical location of Hawaii makes it necessary to ensure the availability of motor vehicles and parts and dependable service," believe that it is indeed necessary "to regulate and to license motor vehicle manufacturers, distributors, dealers, salespersons, and auctions in the State to prevent frauds, impositions, and other abuses against its residents, and to protect and preserve the economy and the transportation system of this state."

This bill will provide:

- **for seamless transfer of sales persons between dealerships which have common ownership**
- **for auto manufacturer payments to dealers for certain used vehicles when stop-sell/do not drive orders are issued by the manufacturer**
- **a definition of "unreasonable" with regard to manufacturer facility requirements of dealers.**
- **certain considerations when manufacturers establish sales performance criteria**

- **consideration when goods, materials and services are available locally to fulfill a manufacturer's facility brand requirements**
- **certain limitations on a manufacturer's or certain third party's access to a dealers proprietary business information**

Please note that the following dealer-proposed deletion to the bill language that has been forwarded is requested for approval and inclusion in a House Draft 2 (shown in yellow highlight):

Data Protection

Require a dealer to provide its customer and prospective customer information, customer lists, service files, transaction data or other proprietary business information, or access the dealer's data management system, unless written consent is provided by the dealer, or for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, for evaluation of dealer performance, for analytics or for the submission to the manufacturer for any services supplied by the dealer for any claim for warranty parts or repairs. Nothing in this section shall limit the manufacturer's ability to require or use customer information to satisfy any safety or recall notice obligation or other legal obligation.

Background Information

Re: 100% common ownership

Dealers who have 100% same common ownership for their dealerships, but which are licensed separately are prohibited by current law from transferring sales persons between their dealerships in the same seamless fashion as dealers who own a main licensed dealership with licensed branches. The addition of the language in this bill will remedy this.

Re: Payment to dealers for used vehicles grounded by the manufacturer because of a safety recall when the repair part is not made available.

Auto manufacturers currently are required, under federal law, to pay a dealer 1% of the retail value per month for any new motor vehicle delivered to the dealer, which has been grounded by the manufacturer by an order to stop sell / do-not-drive, if the manufacturer is unable to supply the repair part to allow the vehicle to be repaired and sold.

Stop sell / do-not-drive orders by manufacturers have occurred more frequently in the **used** vehicle category in the past few years.

A National Automobile Dealers Association study found that the value of a vehicle trade-in under a stop sell /do-not-drive order would decline by an average of \$1,210 and by as much as \$5,713 if auto dealers were prohibited from sell or wholesaling any used vehicle while awaiting a part.

Because trade-in allowances are typically used to fund a down payment for a new-car purchase, dealers must balance the projected wholesale value of the car against the costs of holding the vehicle until resale. A dealer would need to assess and reflect the additional risks and costs mandated by the stop sell/ do-not-drive order with the adverse consequences affecting consumers who want to buy a newer, safer vehicle.

Re: Providing a definition of “unreasonable” with regard to manufacturer facility requirements

A Hawaii franchised new car dealer, within the past few years, completed construction of a significant multi-million-dollar new auto dealership facility which met the auto manufacturer’s requirements. However, after less than two years had passed, the auto manufacturer required significant changes requiring the removal and replacement of a wall and adjacent offices. The new language proposes a definition of unreasonable with regard to subsequent facility requirements issued after a dealer has completed agreed upon facility construction, renovation, or substantial alteration.

Re: Taking into consideration Hawaii factors when establishing sales performance standards.

The bill’s language requires that unique factors found in the Hawaii marketplace be taken into consideration when establishing sales performance requirements for Hawaii dealerships. The proposed language is similar to that found in New York State’s motor vehicle franchise law, and it has been recently vetted and upheld in that state’s courts.

One Hawaii new car dealer reported that a manufacturer’s failure to take into account unique Hawaii market characteristics which involved an up-fitters modification of current model trucks that were regularly sold by the dealer but put into service by another party in Hawaii involved dozens and dozens of government-operated vehicles that caused the dealer’s sales-to-service ratio to become lower-- creating subsequent penalties on the dealer by the manufacturer.

Re: Use of construction and renovation goods or materials or services that are substantially similar in appearance, function, design and quality.

Manufacturer requirements for a dealer to purchase specialized goods, building materials, or services from a specific manufacturer, distributor, or service provider may incur substantial additional unnecessary costs for a dealer if those goods and services of substantially similar appearance, function, design and quality are available from a local Hawaii source. The proposed language addresses this issue by allowing local purchase of goods or materials or services that are substantially similar in appearance, function, design and quality.

Re: Limiting manufacturer access to a dealer's proprietary business information

This language seeks to prevent manufacturers or certain third parties from taking any action by contract, technical means or otherwise that would prohibit or limit a dealers ability to protect, store, copy, share, or use any protected dealer data.

Dealers are held responsible for the protection of this data. This bill's language provides prohibitions against unreasonable restrictions on the scope and nature of the data which a dealer shares.

In Summary

Commerce plays such a vital role in the health of our economy that is necessary to insure that it is smooth-flowing and unhampered. For the foregoing reasons outlined, here and in previous testimony submitted, the members of the Hawaii Automobile Dealers Association request that the members of the House Committee on Consumer Protection and Commerce give highest consideration to passing HB2433 HD1, with the language deletion provided in this testimony as an HD2.

Respectfully submitted,

David H. Rolf

For the Members of the Hawaii Automobile Dealers Association

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

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Monday, February 12, 2018
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 2433, H.D. 1, RELATING TO MOTOR VEHICLE
INDUSTRY LICENSING ACT.**

TO THE HONORABLE ROY M. TAKUMI, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Kedin Kleinhans, and I am the Executive Officer of the Motor Vehicle Industry Licensing Board ("Board"). The Board has not had an opportunity to review this bill, but will be discussing it at its next Board meeting on February 20, 2018. Therefore, it is not able to offer comments or take a position on the proposed amendments at this time.

Thank you for the opportunity to provide testimony on H.B. 2433, H.D. 1.



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GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 11, 2018

TO: Representative Roy Takumi
Chair, Committee on Consumer Protection & Commerce
Submitted Via Capitol Website

RE: **H.B. 2433, H.D.1 – Relating to Motor Vehicle Industry Licensing Act**
Hearing Date: Monday, February 12, 2018 at 2 p.m.
Conference Room: 329

Dear Chair Takumi and Members of the Committee on Consumer Protection and Commerce:

On behalf of the Alliance of Automobile Manufacturers (“Alliance”), we submit this testimony regarding H.B. 2433, H.D.1, which proposes changes to the franchise law that are supported by the Hawaii Auto Dealers Association (“HADA”). The Alliance is a trade association of twelve car and light truck manufacturers including BMW Group, Fiat Chrysler Automobiles, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of North America, and Volvo Car USA.

While the Alliance opposes the proposals in H.B. 2433, H.D.1 in their present form, we would note that we have worked closely with HADA in a cooperative manner on many issues, including a very significant rewriting of the franchise law several sessions ago. The Alliance is committed to continuing that relationship as we do the hard work needed to reach agreement on the issues in the bill. The changes proposed in the bill are complex, and the member companies are actively reviewing the bill. We are hopeful that, as we have done in the past, the Alliance and HADA can reach agreement on these proposals as this bill proceeds.

As an example, the bill, on page 17, proposes a new provision that calls for monthly compensation to franchised dealers who are unable to sell certain used vehicles because of a recall campaign. Alliance agrees that a rate of compensation should be set in statute, but disagrees with the 1.75% rate proposed in the bill, and believes that 1% is the appropriate rate which has precedent in other jurisdictions.

We expect to have detailed feedback from the carmakers shortly and will soon begin discussion with HADA on the issues raised in the bill.

Thank you for the opportunity to testify on this measure.