

# SB2490

**Measure Title:** RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT.

**Report Title:** Motor Vehicle Industry Licensing Act; Motor Vehicle Dealers; Manufacturers; Distributors

**Description:** Authorizes a license holder to engage in business at motor vehicle dealer locations that are affiliated by common ownership under the same license. Specifies certain recall reimbursement or repair requirements for manufacturers where a stop-sale, or do-not-drive, order has been issued. Clarifies when certain manufacturer's or dealer's requests or performance standards shall be deemed unreasonable, arbitrary, or unfair. Prohibits a manufacturer or dealer from requiring a dealer to purchase items for a dealership facility in certain circumstances or provide certain information related to customer information, unless certain conditions are met.

**Companion:**

**Package:** None

**Current Referral:** CPH

**Introducer(s):** BAKER, KEITH-AGARAN, TOKUDA, S. Chang, Espero, Galuteria, Ihara, Nishihara

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

TO THE SENATE COMMITTEE ON  
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE  
Regular Session of 2018

Tuesday, February 20, 2018  
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 2490, RELATING TO MOTOR VEHICLE  
INDUSTRY LICENSING ACT.**

TO THE HONORABLE ROSALYN H. BAKER, 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") within the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs. 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 S.B. 2490.



Brian Kitagawa, President  
Dave Rolf, Executive Director

HADA TESTIMONY IN STRONG SUPPORT  
of SB2490  
RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT  
Presented to the Senate Committee on Commerce, Consumer Protection and Health  
at the Public Hearing, 9 a.m. Tuesday, February 20, 2018  
Conference Room 229, Hawaii State Capitol

Chair Baker, Vice Chair Tokuda 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 amendment language to the bill language that has been introduced is requested for approval and inclusion in a Senate Draft 1 (shown in yellow highlight). HADA dealers and representatives from the auto manufacturers have been engaged in discussions which, based on the already fruitful exchange, we anticipate, will lead to additional HADA-proposed amendments as additional input from the auto manufacturers' representatives is received and reviewed this coming week.**

**Used Vehicle Recall (replacing the current language in the bill on used vehicle recall with the following language):**

(K) Has (1) issued a stop sale directive applicable to a used vehicle manufactured or distributed by the manufacturer or distributor to a dealer that holds a franchise from the manufacturer or distributor and (2) there are no parts available to fix the motor vehicle and (3) has failed to compensate any dealer that has the used vehicle(s) subject to the stop sale directive in inventory by providing payment to the dealer at a rate of at least 1.75% per month, or portion of a month, of the value of the vehicle, which value shall be determined to be the average trade-in value for used vehicles as indicated in an independent third party guide for the year, make, model, and mileage of the recalled vehicle. The compensation shall be calculated from the 31<sup>st</sup> day after the recall was issued or the 31<sup>st</sup> day after the vehicle was acquired by the dealer, whichever is later. The manufacturer or distributor shall pay the required compensation within 30 days after the motor vehicle's application for payment and continue payment until parts are available to fix the motor vehicle.

#### **Facility Upgrade Protections/Grandfather Period**

A dealer, which has completed facility construction, renovation or substantial alteration, (the "Upgrade") shall be deemed to be in compliance with any facility component of a manufacturer or distributor incentive program for a period of ten years following the completion of the Upgrade and shall be deemed to have earned all facility-related incentives and benefits during such ten year period following the Upgrade's completion, provided no changes have been made to the facility since the manufacturer or distributor approval that would render the facility substantially non-compliant, regardless of whether the manufacturer or distributor's image program has changed. Facility changes that are necessitated due to damage sustained from a natural disaster, or as a result of necessary safety upgrades shall not be considered a change to the facility that renders the facility substantially non-compliant. Eligibility for facility-related incentives under this subsection shall not apply to lump-sum payments so long as the compensation relates to the cost of the facility upgrade and is not paid on a per vehicle basis.

#### **Performance Standards/Franchise Agreement Compliance**

A performance standard is deemed unreasonable, arbitrary or unfair if the standard does not include all relevant local market factors, including, but not limited to, market demographics, change in population, product popularity, number of competitor dealers, the geographic configuration of the dealer's assigned territory as set forth in the franchise agreement, and consumer travel patterns.

## Vendor Choice

Require a dealer that is constructing, renovating, or substantially altering its dealership facility to purchase goods, building materials, or services for the dealership facilities, including, but not limited to, office furniture, design features, flooring, and wall coverings, from a vendor chosen by the manufacturer or distributor if goods, building materials, or services of substantially similar appearance, function, design, and quality are available from other sources, and the franchised motor vehicle dealer has received the manufacturer's or distributor's approval. The approval shall not be withheld, or delayed, unreasonably. In the event a manufacturer or distributor does not approve the dealer's use of substantially similar items, the manufacturer or distributor shall, at the time of disapproval, provide the dealer a detailed list of reasons in writing as to why the proposed alternative items are not acceptable. Nothing in this subdivision shall be construed to allow a franchised motor vehicle dealer to impair or eliminate a manufacturer or distributor's intellectual property or trademark rights and trade dress usage guidelines, or to impair other intellectual property interests owned or controlled by the manufacturer or distributor, including the design and use of signs

## 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. Notwithstanding the foregoing, a manufacturer or distributor shall not release or cause to be released a dealer's nonpublic customer information to another dealer unless the franchise has been terminated, or to any other third party unless the manufacturer or distributor provides the dealer with advanced written notice that the manufacturer or distributor intends to distribute the information to such third party (who shall be named) and the dealer provides written consent for the same. A manufacturer or distributor may not condition participation or eligibility in an incentive or bonus program upon the dealer providing such customer and prospective customer information, customer lists, service files, transaction data or other proprietary business information. A manufacturer or distributor may not determine compliance with the franchise agreement based upon the dealer providing access to the information described above. To the extent a manufacturer or distributor accesses the dealer's data management system, the manufacturer or distributor shall reimburse the dealer for any and all costs imposed on the dealer by the data management system provider associated with the dealer providing access to the manufacturer or distributor.

Notwithstanding the terms or conditions of any consent or franchise, every manufacturer, or distributor, or any third party acting on behalf of or through any manufacturer or distributor, having electronic access to consumer or customer data or other information in a data management system utilized by a dealer, or who has otherwise been provided consumer or customer data or information by the dealer, shall fully indemnify and hold harmless any dealer from whom it has acquired such consumer or customer data or other information from all damages, costs, and expenses incurred by such dealer. Such indemnification by the manufacturer or distributor includes, but is not limited to,

judgments, settlements, fines, penalties, litigation costs, defense costs, court costs, costs related to the disclosure of security breaches, and attorneys' fees arising out of complaints, claims, civil or administrative actions, and, to the fullest extent allowable under the law, governmental investigations and prosecutions to the extent caused by a security breach or the access, storage, maintenance, use, sharing, disclosure, or retention of such dealer's consumer or customer data or other information, or maintenance or services provided to any data management system utilized by a dealer.

## **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 has been recently vetted in the courts in that state.

**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.

**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, the members of the Hawaii Automobile Dealers Association request that the members of the Senate Commerce, Consumer Protection and Health Committee give highest consideration to passing SB2490, with the additional amendment language provided, and with the additional note that the fruitful HADA discussions conducted with

representatives of the auto manufacturers this past week, will likely produce additional HADA-proposed amended language as the auto manufacturer input is received and reviewed this week.

Respectfully submitted,

David H. Rolf

For the Members of the Hawaii Automobile Dealers Association





**SanHi**

GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 18, 2018

TO: Senator Rosalyn Baker  
Chair, Committee on Commerce, Consumer Protection and Health  
*Submitted Via Capitol Website*

RE: **S.B. 2490 – Relating to Motor Vehicle Industry Licensing Act**  
**Hearing Date: Tuesday, February 20, 2018 at 9 a.m.**  
**Conference Room: 229**

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Dear Chair Baker and Members of the Committee on Commerce, Consumer Protection and Health:

On behalf of the Alliance of Automobile Manufacturers (“Alliance”), we submit this testimony regarding S.B. 2490 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 S.B. 2490 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 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. However, representatives of the Alliance and HADA held a long telephone conference this past week to go over the details of this and the other issues in the bill. As a result, we have come to a much better understanding of each other’s positions and concerns and feel, as has been the case in the past, that we have come closer to finding agreement.

We expect to have further detailed feedback and proposed language from the carmakers shortly and will have further discussions with HADA very shortly.

Thank you for the opportunity to testify on this measure.

# Natori Law Office LLC

A LIMITED LIABILITY LAW COMPANY



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February 17, 2018

Senator Rosalyn H. Baker, Chair  
Senate Committee on Commerce, Consumer Protection, and Health  
Hawaii State Capitol  
Honolulu, Hawaii 96813

**Re: S.B. 2490 Relating to the Motor Vehicle Industry Licensing Act**

Dear Chair Baker and Members of the Committee:

My name is Nathan T. Natori and I represent Insurance Auto Auctions (“IAA”), a licensed motor vehicle dealer which handles the sale of damaged and theft-recovered vehicles for the insurance industry. We are writing in *opposition* to S.B. 2490 Relating to the Motor Vehicle Industry Licensing Act.

Section 3 of S.B. 2490 amends Hawaii Revised Statutes Section 437-28(a) by adding Subsections 22(D) and 22(E) which provides:

(D) A new or used motor vehicle dealer shall disclose in writing to used vehicle purchasers the existence of any open, un-remedied recalls. A dealer shall be deemed to have complied with this subparagraph if the dealer provides a report to the used vehicle purchaser that is obtained from safecar.gov and based on a vehicle identification number search;

(E) This paragraph shall only apply to:

- (i) Used vehicles subject to safety or emissions recalls pursuant to and recalled in accordance with federal and regulations adopted pursuant to federal law and where a stop-sale, or do-no-drive, order has been issued; and
- (ii) New motor vehicle dealers holding used vehicles for sale that are a line make that the dealer is franchised to sell or on which the dealer is authorized to perform recall repairs; and



ATTORNEYS

IAA does not feel that vehicle safety recall notices should apply to (1) wholesale auction sales and (2) auction sales of vehicles with branded titles (salvage title, a nonrepairable vehicle certificate or like document issued by another state or jurisdiction). In wholesale auctions the vehicles are sold to knowledgeable business people such as dealers, dismantlers and scrap processors. In salvage auctions purchasers are very aware that the vehicles are damaged and cannot be driven.

Checking the status of the vehicles VIN and providing a notice for each vehicle in the above scenarios is unnecessary. If the bill would allow auctions to instead provide a notice on the auctioneer's website that vehicles offered for sale may have open recalls and provide a reference to the [www.safercar.gov](http://www.safercar.gov) website that might be an acceptable compromise.

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

Very truly yours,

**Natori Law Office LLLC**

A handwritten signature in black ink that reads "Nathan T. Natori". The signature is written in a cursive, flowing style.

Nathan T. Natori

**SB-2490**

Submitted on: 2/20/2018 4:52:01 AM

Testimony for CPH on 2/20/2018 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joshua Fisher	Individual	Oppose	No

## Comments:

We appreciate the level of engagement and open dialogue we have with Dave Rolf and the Hawaii Auto Dealers Association (HADA). Global Automakers always seeks to reach consensus with dealers, developing public policies that are reasonable and in the best interest of the manufacturers, dealers and consumers. Global Automakers, however, has several concerns regarding the legislation as introduced. We look forward to working with HADA in resolving these concerns.