

Testimony of the Motor Vehicle Industry Licensing Board

**Before the
Senate Committee on Commerce, Consumer Protection, and Health
Tuesday, January 28, 2020
9:00 a.m.
State Capitol, Conference Room 229**

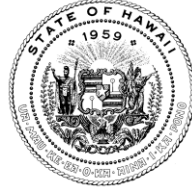
**On the following measure:
S.B. 2269, RELATING TO LICENSING**

Chair Baker 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 will review and discuss this bill at its next publicly noticed meeting on February 18, 2020.

The purpose of this bill is to establish an explicit grounds for discipline if the licensed dealer or salesperson withholds the return of a buyer's down payment or trade-in when the buyer's motor vehicle purchase or lease agreement is contingent upon financing of the purchase, and pursuant to the financing or credit application signed at the time of purchase, the buyer was unable to qualify.

Thank you for the opportunity to testify on this bill.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce, Consumer Protection, and Health
Tuesday, January 28, 2020
9:00 a.m.
State Capitol, Conference Room 229**

**On the following measure:
S.B. 2269, RELATING TO LICENSING**

Chair Baker and Members of the Committee:

My name is Esther Brown, and I am the Complaints and Enforcement Officer of the Department of Commerce and Consumer Affairs' (Department) Regulated Industries Complaints Office (RICO). The Department offers enforcement-related comments on this bill.

The purpose of this bill is to establish an explicit grounds for discipline if the licensed dealer or salesperson withholds the return of a buyer's down payment or trade-in when the buyer's motor vehicle purchase or lease agreement is contingent upon financing of the purchase, and pursuant to the financing or credit application signed at the time of purchase, the buyer was unable to qualify.

Presently, Hawaii Revised Statutes chapter 437 (Motor Vehicle Industry Licensing Act) only offers consumers who are unable to qualify for conditional financing the remedy of voiding the sales agreement. This measure subjects the sales transaction to RICO's jurisdiction by making it a licensing law violation for motor vehicle

dealers and motor vehicle salespersons to not return the consumer's down payment or trade-in because the consumer is unable to qualify for conditional financing of the purchase. Should the Legislature enact S.B. 2269, RICO will be able to enforce the bill's licensing prohibition.

Thank you for the opportunity to testify on this bill.



John Uekawa, President
Dave Rolf, Executive Director

HADA Testimony in Opposition to SB2269
RELATING TO LICENSING

Presented to the Senate Committee On Commerce, Consumer Protection and Health
at the Public Hearing 9 a.m., Tuesday, January 28, 2020
in Room 229 Hawaii State Capitol

by David H. Rolf for members of the Hawaii Automobile Dealers Association,
Hawaii's franchised new car dealers, who provide sales, warranty work and other factory-certified maintenance service for Hawaii's privately-owned and fleet-owned cars and light trucks

Chair Baker, Vice Chair Chang and members of the committee:

SB2269 seeks to codify into Hawaii law provisions which we note are currently referenced in the credit-sale contracts used by Hawaii auto dealers, but because the proposed bill language omits key provisions and considerations, we oppose the bill.

Most conditional sales contracts provide that if financing is not secured on the stated terms within a short period of time, then the parties return to the *status quo ante* (i.e., the consumer returns the delivered vehicle and the dealer returns any consideration provided by the consumer such as a down payment or trade-in vehicle).

The language in SB2269 however, does not provide for the return of the purchased vehicle in the same condition as when sold, excepting for reasonable wear and tear. Also the language in the bill also does not provide time from the date the contract is signed for the dealer to obtain financing for the buyer

Under requirements listed in Chapter 437, of the Hawaii Revised Statutes, known as the Hawaii Motor Vehicle Industry Licensing Act, a dealer is obligated under motor vehicle law to abide by agreements like the written agreement in the credit sale contracts used by auto dealers to obtain financing for the customer. Failure to abide by the contract language will subject the dealer to penalties issued by the Motor Vehicle Industry Licensing Board, if the dealer....

- (11) Has willfully 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;

The proposed language in SB2269 includes some of the provisions in the credit-sale contract language used by most dealers but it omits any reference to a requirement for the buyer to return the purchased vehicle and also omits reference to time allowed for the dealer to obtain financing approval for the purchaser. See below proposed language from SB2269....

(F) Has withheld the return of a buyer's downpayment or trade-in when the buyer's motor vehicle purchase or lease agreement is contingent upon financing of the purchase, and pursuant to the financing or credit application signed at the time of purchase, the buyer was unable to qualify; or

The above proposed language in SB2269, because it omits key provisions in the credit-sale contract, would, in effect, create so much risk for the dealer as to discourage conditional delivery.

For some buyers, conditional delivery at the time of the signing of the contract is even a necessity, because they need to get to work or fulfill other obligations and may not currently have a vehicle.

The conditional delivery is the process in most other states and is the process we use in Hawaii.

HADA dealers respectfully ask that the committee hold SB2269, while the association works with the sponsor of the bill, the Members of the Motor Vehicle Industry Licensing Board and dealers statewide, including other stakeholders, like Hawaii's independent (used) car dealers and truck dealers to address issues brought up by the bill. The MVILB is taking this year to address the Admin Rules relating to the Motor Vehicle Industry Licensing Act. This is their first review in 26 years. We are actively participating in that process. This issue is already being included in these discussions. We ask that the MVILB be the forum for addressing this issue.

Respectfully submitted on behalf of the Hawaii Automobile Dealers Association,
David H. Rolf