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H. B. NO. 2112-70

A Bill for an Act Relating to the Motor Vehicle Industry Licensing Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 437-28, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Grounds for suspension, revocation, or denial of issuance or renewal of a license. The board may, 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 from time to time by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, suspend, revoke, or deny the renewal of any license, or prior to such notice and hearing deny the issuance of any license if it finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than a ten per cent interest of such applicant or holder:

- (1) Has intentionally made a false statement of a material fact in his 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; or
- (2) Has failed to comply, observe, or adhere to any provision of this chapter or any other law relating to the sale, taxing, or licensing of

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motor vehicles or any rule, regulation, or order made pursuant to this chapter; or

- (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 such motor vehicles; or
- (4) Has engaged in his business under a past or present license issued pursuant to this chapter, in such a manner as to cause injury to the public or to those with whom he is dealing; or
- (5) Has failed to comply, observe, or adhere to any law in any other respect on account whereof the board may deem him to be an unfit or improper person to hold a license; or
- (6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license; or
- (7) Has been convicted of a felony or misdemeanor involving moral turpitude, and has not been pardoned therefor. This restriction shall also apply to any corporate or partnership applicant or holder of a license, where a stockholder or general or limited partner owning directly or indirectly more than a ten per cent interest in such applicant or holder has been so convicted; or
- (8) Is insolvent or has filed or is the subject of petition for bankruptcy, wage earner's plan, or financial reorganization plan; or has made or proposes to make an assignment for benefit of creditors;
- (9) In the case of an individual applicant or holder of a license, is not at least twenty years of age; in the case of a partnership applicant or holder of a license, if any general or limited partner thereof is not at least twenty years of age; or
- (10) Has charged more than the legal rate of interest on the sale or purchase or attempted sale or purchase or in arranging the sale or purchase of motor vehicle or any interest therein including an option to purchase; or
- (11) Has violated any of the laws pertaining to false advertising or to retail installment sales in the offering, solicitation, selling or purchasing, or arranging to sell or purchase a motor vehicle or any interest therein; or
- (12) 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; or
- (13) Has been denied the issuance of a license under this chapter for substantial culpable cause or for having had a license issued under this

- chapter suspended, revoked, or the renewal thereof denied for substantial culpable cause; or
- (14) Has entered or has attempted to enter or proposes to enter into any contract or agreement contrary to this chapter or any rule or regulation adopted thereunder; or
 - (15) Has been or is engaged or proposes to engage in the business of selling new motor vehicles as a dealer or auction without a proper franchise therefor; or
 - (16) Has at any time employed or utilized or attempted or proposed to employ or utilize any person not licensed under this chapter who is required to be so licensed; or
 - (17) Being a salesman or dealer:
 - (A) Has required a purchaser of motor vehicles as a condition of sale and delivery thereof 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; or
 - (B) Has represented and sold as an unused motor vehicle any motor vehicle which has been operated as a demonstrator, leased, or U-drive motor vehicle; or
 - (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 salesman clearly notes in writing on the sales contract that the new motor vehicle is sold without the standard factory warranty; or
 - (18) Being an applicant or holder of a dealer's license:
 - (A) Has sold or proposed to sell new motor vehicles without providing for the maintenance of a reasonable inventory of parts for such new vehicles or without providing and maintaining adequate repair facilities and personnel for such new vehicles at either the main licensed premises or at any branch location; or
 - (B) Has employed or proposed to employ any salesman who is not duly licensed under this chapter; or
 - (C) Has sold or proposed to sell new motor vehicles without being franchised therefor; or
 - (D) Has proposed to sell new motor vehicles under a franchise awarded by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative who is charged with cancelling or failing to renew a franchise

agreement with a dealer unfairly without due regard to the equities of such dealer or without good faith, in a complaint filed with the board with which such proposal is pending, which complaint has not been finally disposed of by the board and by the highest applicable appellate court if appeal has been taken of the decision of the board; or

- (19) Being an applicant or holder of an auction's license:
 - (A) Has employed or proposed to employ any auctioneer who is not licensed under this chapter; or
 - (B) Has sold or proposed to sell new motor vehicles without being franchised therefor; or
- (20) Being an applicant for a salesman's license:
 - (A) Does not intend to be employed as a salesman for a licensed motor vehicle dealer; or
 - (B) Does not intend to be employed as a salesman as his principal occupation; or
 - (C) Intends to be employed as a salesman for more than one dealer; or
- (21) Being a motor vehicle auctioneer, does not intend to be employed as such by a licensed auction under this chapter; or
- (22) Being a manufacturer, factory branch, factory representative, distributor, distributor branch or distributor representative:
 - (A) Has attempted to coerce or has coerced any dealer in this State to enter into any agreement with such manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or to do any act which the dealer is not legally required to perform or enter or to refrain from doing any act which the dealer can legally perform, by threatening to cancel or fail to renew any franchise agreement between such manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, and the dealer; or
 - (B) Has attempted to coerce or coerced any dealer in this State to enter into any agreement with such manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or to do any act or enter into any agreement which the dealer is not legally required to perform or enter, or to refrain from doing any act which the dealer can legally perform or to penalize or threaten to penalize any dealer for failing to enter such agreement as aforesaid or for failing to do such act as aforesaid or for failing to refrain from doing such act as aforesaid, by awarding or threatening to award a franchise to another person for the sale of the same make of new motor vehicles in the

same county for which such dealer holds an existing franchise and is duly licensed to sell such make of new motor vehicles therein; or

- (C) Has attempted to or has cancelled or failed to renew the franchise agreement of any dealer in this State unfairly without due regard to the equities of the dealer or without good faith, as defined herein. Upon such cancellation or failure to renew a franchise agreement, the party cancelling or failing to renew the franchise agreement shall, at the dealer's option, either compensate the dealer at the fair market going business value for the dealer's capital investment, which shall include but not be limited to the going business value of the franchise, good will, property and improvement owned or leased by the dealer for the purpose of the franchise, inventory of parts and motor vehicles possessed by the dealer in connection with the franchise, plus reasonable attorney's fees incurred in collecting such compensation; provided that such capital investment shall have been made with reasonable and prudent judgment for the purpose of the franchise agreement; or compensate the dealer for his damages including attorney's fees as aforesaid, resulting from the cancellation or failure to renew the franchise agreement. As used herein, "good faith" means the duty of each party to any franchise agreement to act in a fair and equitable manner towards each other, with freedom from coercion or intimidation or threats thereof from each other; or
- (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 his 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; or
- (E) Has sold or distributed or caused to be sold or distributed any

new motor vehicle to a person in this State at a lower actual price than the actual price charged to a dealer in this State for the same model vehicle similarly equipped; or

(F) Has discriminated against any of their franchised dealers in this State by directly or indirectly charging such dealer more for a new motor vehicle or services, parts, or accessories therefor or a higher rate of transportation for transporting such vehicle from the manufacturing or assembly plant to such dealer or any portion of such distance, than is charged to any other of their franchised dealers in other states for the same make, model, and year of a new motor vehicle or for the same services, parts, or accessories therefor or for similar transportation for such vehicle during the same period. A manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative who provides or causes to be provided greater transportation benefits for a new motor vehicle as aforesaid to any of their franchised dealers in other states than is provided to any of their franchised dealers in this State for the same or lesser price or charge than that imposed upon such franchised dealer in this State during the same period is deemed to have so discriminated against such franchised dealer in this State. Evidence of similar discriminatory practice against franchised dealers in other states shall not constitute a defense to or justification of the commission of such discriminatory act against the franchised dealer in this State. The intent and purpose of this paragraph is to eliminate inequitable pricing policies set by manufacturers, factory branches, factory representatives, distributors, distributor branches, or distributor representatives which result in higher prices of new motor vehicles to the consumer in this State. This paragraph shall be liberally interpreted to effect such 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.

(G) Has required a dealer of new motor vehicles in this 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 such dealer; provided that this prohibition shall not apply to special features, appliances, accessories, or equipment, except heaters, which are regularly installed on that particular model of new motor vehicles as "standard" equipment or to special features, appliances, accessories, or equipment which are an integral part of such new motor vehicles and cannot be removed therefrom without substantial expense.

(23) Has been convicted of a violation of section 291-38."

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SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 15, 1970.)

* Edited accordingly