

ACT 264

H.B. NO. 3417

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

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

SECTION 1. Section 437-1, Hawaii Revised Statutes, is amended to read as follows:

“**[[§437-1]] Legislative findings and declaration.** The legislature finds that the manufacture, distribution, and sales of motor vehicles in the State vitally affects the general economy of the State and the public interest and public welfare[; that the manufacturers of motor vehicles, whose physical manufacturing facilities are not located within the State, and distributors are doing business in the State through their control and relationship and transactions with their dealers, branches, and representatives;] and that the geographical location of Hawaii makes it necessary to insure the availability of motor vehicles and parts and dependable service therefor within the State to protect and preserve the transportation system and the investments of its residents. The legislature declares, on the basis of the foregoing findings, that it is necessary to regulate and to license [motor vehicle manufacturers and distributors and their branches and representatives,] motor vehicle dealers, salespersons, and auctions[, and auctioneers and any other person engaged in the business of selling or purchasing motor vehicles] in the State, in order to prevent frauds, impositions, and other abuses against its residents and to protect and preserve the economy and the transportation system of the State.”

SECTION 2. Section 437-1.1, Hawaii Revised Statutes, is amended by:

1. Amending the definition of “dealer” to read:

““Dealer” includes “auction” as defined in this section or any person not expressly excluded by this chapter engaged in the business of selling, soliciting, offering, or attempting to negotiate sales, purchases, or exchanges of motor vehicles or any interest therein, including options to purchase motor vehicles. “New motor vehicle dealer” means a dealer who engages in the business of selling at wholesale or retail, or both, new motor vehicles or new and used motor vehicles. “Used motor vehicle dealer” means a dealer who engages in the business of selling at wholesale or retail, or both, only used motor vehicles. The term “dealer” excludes a person who sells or purchases motor vehicles in the capacity of:

- (1) A receiver, trustee, personal representative, guardian, or any other person appointed by or acting under a judgment or order of any court;
- (2) A public officer while performing official duties;
- (3) A holder of [a] an auction license issued under this chapter[, other than a dealer,] when acting within the scope of the license;
- (4) An insurance company, finance company, bank, or other financial institution selling or offering for sale motor vehicles repossessed or foreclosed by it under the terms of a credit sale contract or security agreement; or
- (5) A person not engaged in the business of selling or purchasing motor vehicles when acquiring or disposing of motor vehicles for the person’s own personal, family, or business use; provided that the vehicles are acquired or disposed of for the person’s use in good faith and not for the purpose of evading any provision of this chapter.”

2. Deleting the definition of “auctioneer”.

[““Auctioneer” means a person who, for gain or compensation of any kind, sells or offers for sale or exchange, motor vehicles or any interest therein by means of soliciting bids on behalf of an auction, from a fixed location, and who sells motor vehicles exclusively.”]

SECTION 3. Section 437-2, Hawaii Revised Statutes, is amended to read as follows:

“§437-2 Licenses. (a) No person shall engage in the business as or serve in the capacity of, or act as a motor vehicle dealer, motor vehicle salesperson, or motor vehicle auction[, motor vehicle auctioneer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative in this State] or otherwise engage in the business of selling or negotiating for the purchase of motor vehicles in this State without being licensed as provided in this chapter. A license issued under this chapter shall authorize the holder to engage in the business or activities permitted by the license, only in the county for which the license is issued.

(b) A license issued under this chapter shall authorize the holder to engage in the same business at branch locations in the same county for which the license is issued during the term thereof; provided that each [of such] branch [locations] location is approved by the board.

(c) A dealer’s license [or auction’s license] issued to a sole proprietorship or partnership shall authorize the sole proprietor or general partner to engage in the business of a salesperson [or auctioneer, respectively,] without a license therefor, only for and in the business of the holder of the dealer’s license [or auction’s license, as the case may be,] and only for the county in which the license is issued.

(d) In the event of the dissolution of a partnership, holding a current license issued under this chapter, due to the death of one or more partners, the surviving partners may operate the business under the license for the remaining effective term

of the license but not to exceed sixty days. In the event of the death or bankruptcy of the holder of a current license issued under this chapter, the duly appointed personal representative or receiver or trustee in bankruptcy, whichever the case may be, may operate the business under the license for the remaining effective term of the license.

(e) Notwithstanding any provisions of this chapter, the authority of any state or county agency to purchase motor vehicles for state or county use from any dealer licensed under this chapter shall not be limited or conditioned. Any dealer licensed under this chapter may sell vehicles to any state or county agency [notwithstanding subsection (b)].”

SECTION 4. Section 437-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Display of motor vehicle at unlicensed premises. All dealers or salespersons shall obtain prior approval of the board, through its executive officer, to display motor vehicles for advertising purposes at or on any place other than the licensed premises.”

SECTION 5. Section 437-7, Hawaii Revised Statutes, is amended to read as follows:

“§437-7 Application for issuance or renewal of license. (a) [Application.] Any person desiring the issuance of a license under this chapter shall file an application therefor with the motor vehicle industry licensing board. Prior to the expiration of the term of a license, the holder shall file an application for renewal of the license. The board shall prescribe the form, information required, manner, and time for presentation of applications for issuance or renewal of licenses issued under this chapter, except as otherwise provided in this chapter.

(b) A person applying for a salesperson’s license [or an auctioneer license] under this section shall be granted a temporary license by the executive [secretary] officer of the board[.]; provided no patent disqualification of the applicant is disclosed or no valid objection to the granting of the temporary license is apparent and if all requirements relative to the filing of the application appear to have been met and the dealer [or auction] files an affidavit certifying that this person is employed by and under the supervision of the dealer [or auction]. A fee shall be charged for the issuance of the temporary license, as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and the license shall remain in effect until the board approves or denies the application for a permanent license.

(c) [Financial] Requirements for financial reviews or financial statements[.] shall be as follows:

- (1) Applicants for the issuance of a dealer’s or auction’s license shall furnish the following financial review or financial statement to the board:
 - (A) [Sole proprietorship.] An applicant proposing to operate as a sole proprietorship shall furnish a personal financial review or financial statement and a financial review or financial statement of the proposed business[.];
 - (B) [Partnership.] An applicant proposing to operate as a partnership shall furnish a personal financial review or financial statement for each general partner and a financial review or a financial statement of the partnership[.]; and
 - (C) [Corporation.] A corporate applicant shall submit a corporate financial review or financial statement[.];

- (2) The board shall determine and prescribe the requirement of, form, and information required in financial reviews and financial statements for applicants for other licenses[.];
- (3) All financial reviews and financial statements shall be certified as to accuracy by a public or certified public accountant[.]; and
- (4) The purpose of the financial review and the financial statement is to provide the board with information to assist it in determining the financial capability and integrity of the applicant.
- (d) [Line] Requirements for lines of credit[.] shall be as follows:
 - (1) Applicants for issuance of a dealer's license shall obtain an inventory or flooring line of credit from a federally insured financial institution or from a financing source having a net worth of at least \$50,000,000. The line of credit shall be in the following amount:
 - (A) For new motor vehicle dealer applicants, \$500,000 or the amount required in the applicant's dealer sales and service agreement, whichever is less;
 - (B) For used motor vehicle dealer applicants, \$50,000; and
 - (C) For new and used motorcycle and motor scooter dealer applicants, \$50,000[.];
 - (2) Applicants for issuance of a dealer's license shall provide the board with a photocopy of the financing statement filed at the bureau of conveyances of the department of land and natural resources, securing the line of credit[.];
 - (3) Applicants for the issuance of an auction license shall obtain a secured line of credit in the amount of \$100,000 from a federally insured financial institution[.]; and
 - (4) When an inventory or flooring line of credit cannot reasonably be obtained by a dealer, the board may provide that a bond, in an amount set forth in the board's rules, be obtained as an alternative form of security for the inventory or flooring line of credit.

(e) Applicants for issuance of an auction license shall provide a written statement from a federally insured financial institution verifying that the applicant has a customer trust account for the auction with that financial institution.

(f) All applicants for the issuance of a new license shall pay a fee concurrently with each application, except the application fee for a new salesperson's [or auctioneer's] license shall be a lesser amount than the fee for other licenses issued under this chapter.

(g) [Investigation and report.] Upon the filing of any application, a staff member shall [indorse] endorse on it the date of filing. If no patent disqualification of the applicant is disclosed or no valid objection to the granting of the application is apparent and if all requirements relative to the filing of the application appear to have been complied with, the [chairperson of the board or] executive [secretary] officer shall refer the application to a staff member for investigation and report. The report shall include:

- (1) A statement as to whether or not the applicant is for any reason disqualified by this chapter from obtaining or exercising a license; and whether or not the licensee has complied with all the requirements of this chapter relative to the making and filing of the licensee's application; [and]
- (2) Information relating to any and all other matters and things which in the judgment of the staff member pertain to or affect the matter of the application or the issuance or the exercise of the license applied for; [and]

- (3) In the case of an application for a dealer's or auction's license in addition to the foregoing:
 - (A) A description of the premises intended to become the licensed premises, and the equipment and surrounding conditions; and
 - (B) If the applicant has held a prior dealer's or auction's license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license[.];

and

- (4) In the case of an application for a dealer's license, if the applicant proposes to engage in the business of selling new motor vehicles, a copy of the dealer sales and service agreement from the applicable manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative.

(h) [Notice of interview.] After the filing of the report, the board may interview the applicant and upon the interview and other information that is before the board, it may grant or deny the license.

(i) [Prior inspection of premises.] No dealer's or auction's license shall be issued under this chapter unless and until the board has caused to be made a thorough inspection of the premises upon which the proposed business is to be conducted and is satisfied that it has met all the requirements as provided in this chapter and that all other general conditions and proposed methods of operation under the license are such as are suitable for carrying on the business in a reputable manner.

(j) [Limitation on license.] Limitations on licenses shall be as follows:

- (1) A dealer's or auction's license issued under this chapter shall authorize the doing of the business at the licensed premises, the boundaries of which shall be determined by the map or plan submitted together with the application for license approved by the board; except in the case of an enlargement or reduction of the licensed premises with the approval of the board [indorsed] endorsed on an amended map or plan[.]; and
- (2) A license issued under this chapter shall authorize the doing of a business thereunder only for the county in which the license has been issued; and in the case of a salesperson [or auctioneer], the license shall authorize the salesperson [or auctioneer] to be a salesperson [or auctioneer] only for the dealer [or auctions respectively] named in the application for a license or an amended license.

(k) [Motorcycles and motor scooters.] A used motor vehicle dealer's license shall authorize the holder to sell new motorcycles and motor scooters if the licensee is franchised therefor.

(l) The executive officer may grant preliminary approval of a dealer or auction license application if all licensing requirements have been met and the applicant's inspection report is satisfactory. The board shall ratify all preliminary approvals."

SECTION 6. Section 437-21.1, Hawaii Revised Statutes, is amended to read as follows:

"§437-21.1 Bonds of auctions. The bond of an auction shall be in the same amount and under the same terms and conditions as required for a new motor vehicle dealer [under section 437-17.] in accordance with rules adopted by the motor vehicle industry licensing board."

SECTION 7. Section 437-24, Hawaii Revised Statutes, is amended to read as follows:

“§437-24 Licenses terminate, when. (a) [General.] Any license issued pursuant to this chapter shall terminate upon the permanent or temporary cessation of the business or activity for which it was issued.

(b) [Salesperson’s or auctioneer’s license.] A salesperson’s [or auctioneer’s] license shall terminate upon the termination of the license of the dealer [or auction, respectively,] by whom the salesperson [or auctioneer] is employed [(if employed by only one auction)] or upon the termination of the salesperson’s [or auctioneer’s] employment [(if employed by only one auction)].

(c) [Delivery to board of license.] Upon the termination, suspension, or revocation of a license, the holder shall deliver it to the board.

(d) [License reissued, when.] Where the termination is not the result of suspension or revocation by the board for cause, the board shall reissue the license to the holder without cost if the holder resumes the holder’s business or employment within the term for which it was issued.”

SECTION 8. Section 437-25, Hawaii Revised Statutes, is amended to read as follows:

“§437-25 Amended licenses. (a) [Application.] Prior to entering the employ of a dealer [or auction], other than the one for which the salesperson’s [or auctioneer’s] license was issued, a salesperson [or auctioneer, respectively,] shall apply to the board for an amended license authorizing the new employment. Prior to moving or amending the premises or adding branch locations of a business for which a license was issued under this chapter, the holder shall apply for an amended license authorizing the change.

(b) [Issuance.] The executive [secretary] officer of the board is authorized to issue the amended license of a salesperson [or auctioneer] subject to the ratification by the board for the first three amendments to a license during the original term thereof. The board shall issue the fourth and following amendments to such license during the term of the original license. The executive [secretary is authorized to] officer may issue an amended license for new or amended premises or for additional branch locations of the business under a license subject to the board’s ratification; provided that the executive [secretary shall] officer may not issue an amended license when a prior amendment to the same license has not been acted upon by the board. Unless good cause exists, the amended license shall be freely issued for the remainder of the original term.

(c) The fees for amended licenses shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.”

SECTION 9. Section 437-27, Hawaii Revised Statutes, is amended to read as follows:

“§437-27 Change of status, notice. If the status of any licensee changes during the period for which the license is issued in respect to:

- (1) Changes in officers, directors, or limited partners of the licensee or termination of the employment of any licensed salesperson [or auctioneer]; [or]
- (2) The transfer of more than ten per cent of the ownership of the licensee to one person; [or]
- (3) The termination of a licensed premises by a dealer or auction or the acquiring or termination of a franchise; or
- (4) The assignment of any part of the licensee’s assets for the benefit of creditors;

the licensee shall within fifteen days thereafter file with the board notice of such change containing such information as may be required by the board; provided that nothing contained in this section shall limit the power of the board to suspend, revoke, or deny the renewal of such license or impose any other penalty authorized by this chapter."

SECTION 10. Section 437-28, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to any other actions authorized by law, the board, 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 by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, may suspend, revoke, fine, or deny the renewal of any license, or prior to notice and hearing deny the issuance of any license for any cause authorized by law, including but not limited to circumstances where the board finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than ten per cent interest of the applicant or holder:

- (1) Has intentionally made a false statement of a material fact in the 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;
- (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 motor vehicles or any rule or order made pursuant to this chapter;
- (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 motor vehicles;
- (4) Has engaged in business under a past or present license issued pursuant to this chapter, in a manner as to cause injury to the public or to those with whom one is dealing;
- (5) Has failed to comply, observe, or adhere to any law in any other respect on account whereof the board may deem the applicant or holder to be an unfit or improper person to hold a license;
- (6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;
- (7) 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;
- (8) In the case of an individual applicant or holder of a license, if the applicant or holder is not at least eighteen 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 eighteen years of age;
- (9) 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 a motor vehicle or any interest therein including an option to purchase;
- (10) Has violated any of the laws pertaining to false advertising or to credit sales in the offering, soliciting, selling, or purchasing, or arranging to sell or purchase a motor vehicle or any interest therein;
- (11) 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;
- (12) 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;
- (13) Has entered or has attempted to enter or proposes to enter into any contract or agreement contrary to this chapter or any rule adopted thereunder;
- (14) 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;
- (15) 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;
- (16) Has entered or attempted to enter any one-payment contract, where the contract is required to be signed by the purchaser prior to removal of the motor vehicle for test driving from the seller's premises;
- (17) Being a salesperson 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;
 - (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;
 - (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 salesperson clearly notes in writing on the sales contract that the new motor vehicle is sold without the standard factory warranty;
 - (D) Has sold a new motor vehicle covered by a standard factory warranty without informing the purchaser in writing that any repairs or other work necessary on any accessories which were not installed by the manufacturer of the vehicle may not be obtainable in a geographic location other than where the purchase occurred; provided that the notice required by this section shall conform to the plain language requirements of section 487A-1, regardless of the dollar amount of the transaction; or
 - (E) Has engaged in any improper business conduct;
- (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 new vehicles or without providing and maintaining adequate repair facilities and personnel for new vehicles at either the main licensed premises or at any branch location;
 - (B) Has employed or proposed to employ any salesperson who is not duly licensed under this chapter; or
 - (C) Has sold or proposed to sell new motor vehicles without being franchised therefor;
- (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] has sold or proposed to sell new motor vehicles without being franchised therefor;
- (20) Being an applicant for a salesperson's license:
 - (A) Does not intend to be employed as a salesperson for a licensed motor vehicle dealer;
 - (B) Does not intend to be employed as a salesperson as the principal occupation; or
 - (C) Intends to be employed as a salesperson for more than one dealer[;
- (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 the manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with the dealer, by threatening to cancel the franchise agreement or by threatening to refuse, at the expiration of the current franchise agreement, to enter a new franchise agreement with the dealer;
 - (B) Has attempted to coerce or coerced any dealer in this State to enter into any agreement with the manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with the dealer, by awarding or threatening to award a franchise to another person for the sale of the same make of any motor vehicle in the same sales area of responsibility covered by the existing franchise agreement of the dealer;
 - (C) Has attempted to or has canceled or failed to renew the franchise agreement of any dealer in this State without good faith, as defined herein. Upon the cancellation or failure to renew the franchise agreement, the party canceling or failing to renew the franchise agreement, at the dealer's option, shall 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 business, goodwill, 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 compensation; provided that the investment shall have been made with reasonable and prudent judgment for the purpose of the franchise agreement; or compensate the dealer for damages including attorney's fees as aforesaid, resulting from the cancellation or failure to renew the franchise agreement. As used in this paragraph, "good faith" means the duty of each party to any franchise agreement fully to comply with that agreement, or to act in a fair and equitable manner towards each other;

- (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 the 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;
- (E) Has discriminated against any of their franchised dealers in this State by directly or indirectly charging the dealer more for a new motor vehicle or services, parts, or accessories or a higher rate of transportation for transporting the vehicle from the manufacturing or assembly plant to the dealer or any portion of the 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 or for similar transportation for the 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 the franchised dealer in this State during the same period is deemed to have so discriminated against the 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 the discriminatory act against the franchised dealer in this State. The intent and purpose of this subparagraph 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 subparagraph shall be liberally interpreted to effect its 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. Nothing contained in this subparagraph shall prohibit establishing delivered prices or destination charges to dealers in this State which reasonably reflect the seller's total transportation costs incurred in the manufacture or delivery of products to the dealers, including costs that are related

to the geographical distances and modes of transportation involved in shipments to this State, or which meet those lower prices established by competitors;

- (F) 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 the dealer; provided that this prohibition shall not apply to special features, appliances, accessories, or equipment, except heaters, that are regularly installed on that particular model of new motor vehicles as "standard" equipment or to special features, appliances, accessories, or equipment that are an integral part of the new motor vehicles and cannot be removed therefrom without substantial expense;
- (G) Has failed to adequately and fairly compensate its dealers for labor, parts, and other expenses incurred by the dealer to perform under and comply with manufacturer's warranty agreements. In no event shall any manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative pay its dealers a labor rate per hour for warranty work that is less than that charged by the dealer to the retail customers of the dealer nor shall the rates be more than the retail rates. All claims made by dealers for compensation for delivery, preparation, and warranty work shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval;
- (H) Has wilfully failed to affix the vehicle bumper impact notice pursuant to section 437-4.5(a), or wilfully misstated any information in the notice. Each failure or misstatement is a separate offense; or
- (I) Has wilfully defaced, altered, or removed the vehicle bumper impact notice required by section 437-4.5(a) prior to delivery of the vehicle, to which the notice is required to be affixed, to the registered owner or lessee. Each wilful defacement, alteration, or removal is a separate offense]."

SECTION 11. Section 437-29, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) [Notice to treasurer. A copy of] Notification of the application of each dealer or auction [executed and] approved by the board, or a report of the suspension, revocation, or change of status of a dealer's or auction's license shall be furnished to the [treasurer] affected county motor vehicle registration division or finance department promptly upon the granting, suspension, revocation, or change of status of the license."

SECTION 12. Section 437-35, Hawaii Revised Statutes, is amended to read as follows:

"**§437-35 Penalty.** Any person who violates any provision of this chapter or rules of the board, or who engages in the business as, or serves in the capacity of, or acts as a motor vehicle dealer, motor vehicle salesperson, or motor vehicle auction[, motor vehicle auctioneer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative] in the State or otherwise

engages in the business [or] of selling or negotiating for the purchase of motor vehicles in this State without being licensed as provided in this chapter shall be fined not more than \$1,000 and each day's violation or failure to comply shall be deemed a separate offense."

SECTION 13. Section 437-35.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[§437-35.5]] Misdemeanor.** Any person who is convicted of violating any provision of this chapter or rules of the board, or who engages in the business as or serves in the capacity of, or acts as a motor vehicle dealer, motor vehicle salesperson, or motor vehicle auction[, motor vehicle auctioneer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative] in the State or otherwise engages in the business [or] of selling or negotiating for the purchase of motor vehicles in this State without being licensed as provided in this chapter shall have committed a misdemeanor and be subject to a fine of not more than \$1,000 or imprisoned not more than one year, or both."

SECTION 14. Section 437-39, Hawaii Revised Statutes, is amended to read as follows:

"**§437-39 Enforcement.** When necessary, the board may enforce [the provisions of] this [act] chapter, including any rule [or regulation promulgated] adopted thereunder or decision rendered thereunder by applying to the circuit court for any relief which may be appropriate, including injunctive relief. Further, the board may apply to the circuit court for any relief which may be appropriate including injunctive relief to enjoin any licensee or other person who violates or threatens to violate any provision of this chapter, including any rule [or regulation promulgated] adopted thereunder."

SECTION 15. Section 437-2.5, Hawaii Revised Statutes, is repealed.

SECTION 16. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 17. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 18. This Act shall take effect upon its approval.

(Approved June 19, 1996.)²

Notes

1. Edited pursuant to HRS §23G-16.5.

2. This Act was approved on June 19, 1996, which is after the approval date (June 18, 1996) of Acts 266 through 286 and Act 288.