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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON
TRANSPORTATION

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2011

WEDNESDAY, MARCH 16, 2011
9:00 A.M.

TESTIMONY ON SENATE BILL NO. 35
RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT

TO THE HONORABLE JOSEPH M. SOUKI, CHAIR,
AND TO THE HONORABLE LINDA ICHIYAMA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 35, Relating to the Motor Vehicle Industry Licensing Act. My name is Jo Ann Uchida of the Department's Regulated Industries Complaints Office ("RICO"). The Department supports this bill.

Act 164 (2010) amended Chapter 437, Hawaii Revised Statutes ("HRS"), to establish certain rights and duties among motor vehicle dealers, distributors, and manufacturers. In doing so, a new part to Chapter 437, HRS, was created that

differentiated manufacturer, distributor, and dealer disputes from the rest of Chapter 437, HRS. This bill reconciles the section of the law relating to private action with the new language in part II of Chapter 437, HRS.

Thank you for this opportunity to testify on Senate Bill No. 35. I will be happy to answer any questions that the members of the Committee may have.

HADA Testimony
in STRONG SUPPORT of SB35
RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT

Submitted the House Committee on Transportation
for the public hearing 9:00 a.m. Wednesday March 16, 2011
Room 309, Hawaii State Capitol

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

The members of the Hawaii Automobile Dealers Association, Hawaii's franchised new car dealers, several of whom are also Hawaii licensed distributors, thank you for hearing this housekeeping measure to insure that Hawaii licensed distributors are provided the same provisions as those included for dealers in last year's legislation, along with the attachment of the legal remedies available to licensees.

Such was the agreement reached by all stakeholders last year, however, a reformatting of the bill in the last days of last session omitted the connection of distributors to "Part II" where the distributor and legal remedies provisions were placed.

HADA has contacted all stakeholders from last year and has received confirmation that the connection of the distributors through the proposed language this year conforms with the intent of all the stakeholders involved. The members of the Hawaii Automobile Dealers Association have confirmed such with The Alliance of Automobile Manufacturers, the members of the Motor Vehicle Industry Licensing Board, and JoAnn Uchida at RICO, who confirmed such with officials at the Department of Commerce and Consumer Affairs.

In that it was the intent of all the stakeholders and drafters of the Motor Vehicle Industry Licensing Act measure passed last session that licensed distributors should have the same rights and protections provided to licensed dealers by Part II, the reference to "Part II" is included in the appropriate paragraphs relating to distributors in this year's housekeeping legislation.

Again, this year's housekeeping bill, which facilitates inclusion of distributors, was the intent of all the stakeholders, and was in all drafts before the reformatting; this housekeeping bill also specifies that legal remedies shall be available to all licensees. The members of the Hawaii Automobile Dealers Association are much appreciative of the quick attention paid to this bill and respectfully request support for SB35.

Respectfully submitted,

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Additional HADA Comments on SB35
RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT

Stakeholders in the extensive Motor Vehicle Industry Licensing Act discussions held last year included Hawaii distributors with the same rights as those granted to dealers. The 54-page measure passed unanimously through 10 scheduled committee hearings, multiple floor votes in the both the House and Senate, with a total of 153 "aye" votes cast and 0 "nays."

All approved drafts last session, before reformatting, specified that the provisions applying to dealers also have the same applicability to distributors. The multiple approved drafts of the measure approved last year (before reformatting), among other specified language, provided that:

- both Hawaii distributors and Hawaii dealers should have provisions for dispute resolution with manufacturers SECTION 437-A

- both Hawaii distributors and Hawaii dealers should have provisions which prohibit requirements to agree to dispute resolution outside of Hawaii or to waive rights to bring action. SECTION 437-B(1)

- both Hawaii distributors and Hawaii dealers should have provisions which prohibit manufacturers from requiring a dealer or distributor to prospectively waive or release rights under the Hawaii laws, unless the waiver or release is part of a settlement agreement that resolves a pending dispute between parties. SECTION 437-B(2)

- both Hawaii distributors and Hawaii dealers should have provisions which prohibit a manufacturer from cancelling an agreement unless it acts in good faith and possesses good cause. SECTION 437-B(3)

- both Hawaii distributors and Hawaii dealers should have provisions which prohibit a manufacturer from unreasonably denying a dealer's or distributor's request to relocate a facility so long as the dealer or distributor provides the manufacturer with written notice and a reasonable site plan. SECTION 437-B(5)

- both Hawaii distributors and Hawaii dealers should have provisions which prohibit a manufacturer from requiring a dealer or distributor to renovate, or expand facilities unless the request is reasonable in light of the current and foreseeable economic considerations in the automotive industry. SECTION 437-B(6)

- both Hawaii distributors and Hawaii dealers should have provisions which prohibit a manufacturer from requiring a dealer or a distributor to maintain an exclusive facility unless the request is supported by current and reasonably foreseeable economic conditions in the automotive industry. SECTION 437-B(7)

- both Hawaii distributors and Hawaii dealers should have provisions that prohibit a manufacturer from conditioning the award of a new franchise, on the dealer or distributor entering into a site control agreement or waiving the right to protest the addition of a subsequent franchise. This does not prohibit the dealer or distributor from agreeing to the terms voluntarily and for separate and valuable consideration. SECTION 437-B(8)

- both Hawaii distributors and Hawaii dealers should have provisions which prohibit a manufacturer from requiring a dealer or a distributor to participate in a training program not directly related to the sales and/or service of a new motor vehicle. SECTION 437-B(9)

- both Hawaii distributors and Hawaii dealers should have provisions which prohibit a manufacturer from requiring a dealer or a distributor to participate in the cost of an advertising campaign or purchase promotional materials, unless the dealer or the manufacturer consents to the purchase. SECTION 437-B(10)

- both Hawaii distributors and Hawaii dealers should have provisions which prohibit a manufacturer from implementing a customer satisfaction index unless the index is fair to the dealer or the distributor. SECTION 437-B (11)

- both Hawaii distributors and Hawaii dealers should have provisions which prohibit a manufacturer from implementing an unreasonable, arbitrary or unfair sales performance standard. SECTION 437-B (12)

- both Hawaii distributors and Hawaii dealers should have provisions which prohibit a manufacturer from implementing an unfair, inequitable, or discriminatory vehicle allocation system, which includes requiring dealers or distributors to accept vehicles not ordered. SECTION 437-B(13)

- both Hawaii distributors and Hawaii dealers should have provisions which prohibit a manufacturer from unreasonably withholding consent to the sale, assignment or transfer of their business to a qualified purchaser. This section also establishes what constitutes a qualified purchaser, the process in which the dealer or distributor must give notice, the time in which the sale must be approved or disapproved, and the dealer or distributors rights in the event the purchaser is not approved. SECTION 437-C

- Both Hawaii distributors and Hawaii dealers should have provisions which prohibit a manufacturer from refusing to give effect to the dealer's or distributor's designated successor unless the successor lacks good moral character, refuses to be bound by the agreement, or is either not qualified to operate the dealership or fails to demonstrate it will hire a qualified manager. The section also establishes how to designate the successor with the manufacturer, the time frame in which the manufacturer must respond and the dealer's or distributor's protest rights. SECTION 437-D

- Both Hawaii distributors and Hawaii dealers should have provisions setting forth the process and formula for determining parts markup and the time frame for warranty work reimbursement. SECTION 437-F

- Both Hawaii distributors and Hawaii dealers should have provisions which limit the time in which an audit may be conducted to one year from the date of payment unless fraud is present. In the event of a chargeback is levied, the manufacturer must provide notice and the dealer or distributor may protest. SECTION 437-G

- Both Hawaii distributors and Hawaii dealers should have provisions which require a manufacturer to provide notice and possess good cause in order to terminate, cancel, or fail to renew a franchise agreement. This section authorizes a dealer to protest a termination, cancellation, or failure to renew, which shall stay the action until a decision has been made as to whether good cause exists. This section provides a cure period in the event the action is based on sales or service performance. This section also establishes that good cause to terminate does not exist unless there has been a breach of a material and substantial term of the agreement. In addition, this section provides dealers and distributors with repurchase benefits that include vehicles, parts, special tools, equipment, signage and the dealer's or distributor's capital investment including property, improvement, business value, and goodwill.

Finally, a severability clause in the law allows all other provisions of the law to stand in the event that any portion granting rights, protections, and legal remedies to dealers does not have applicability to distributors.

In summary, this housekeeping measure this year provides Hawaii licensed distributors with the same rights and protections and legal remedies as were provided to Hawaii licensed new car dealers in last year's legislation—which was the intent of the legislation, as agreed by all stakeholders.

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TO: Representative Joseph M. Souki
Chair, Committee on Transportation
Hawaii State Capitol, Room 433
Via Email: TRNtestimony@capitol.hawaii.gov

FROM: Gary M. Slovin

DATE: March 13, 2011

RE: **S.B. 35 – Relating to The Motor Vehicle Industry Licensing Act**
Hearing: Wednesday, March 16, 2011 at 9:00 a.m., Room 309

Dear Chair Souki and Members of the Committee on Transportation:

I am Gary Slovin, testifying on behalf of the Alliance of Automobile Manufacturers ("Alliance"). The Alliance is a trade association representing twelve car and light truck manufacturers, including: BMW, Chrysler, Ford, GM, Jaguar Land Rover, Mazda, Mercedes-Benz, Mitsubishi, Porsche, Toyota, Volkswagen and Volvo.

The Alliance **supports** S.B. 35, which makes clarifying amendments to the motor vehicle industry licensing act.

During the 2010 Legislative Session, the Alliance worked closely with the Hawai'i Automobile Dealers Association ("HADA") to reach agreement with regard to the proposed—and ultimately adopted—amendments to the Motor Vehicle Industry Licensing law, Chapter 437 of the Hawai'i Revised Statutes.

S.B. 35 provides amendments that are consistent with the agreement reached with HADA last year. For this reason, the Alliance supports this measure.

Thank you very much for the opportunity to submit testimony on this matter.

PRESENTATION OF THE
MOTOR VEHICLE INDUSTRY LICENSING BOARD

TO THE HOUSE COMMITTEE ON TRANSPORTATION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Wednesday, March 16, 2011
9:00 a.m.

TESTIMONY ON SENATE BILL NO. 35, RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT.

TO THE HONORABLE JOSEPH M. SOUKI, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Werner Umbhau and I am the Chairperson and a public member of the Motor Vehicle Industry Licensing Board ("Board"). Thank you for the opportunity to submit testimony in support of Senate Bill No. 35, Relating to the Motor Vehicle Industry Licensing Act. The Board has authorized me to speak on its behalf.

Act 164, SLH 2010 amended Chapter 437, Hawaii Revised Statutes ("HRS"), and resulted in the creation of a new part, entitled "Part II Manufacturer, Distributor, and Dealer Disputes". Part II set aside disputes and the handling of disputes that could arise between motor vehicle manufacturers and/or their designated motor vehicle distributors and the motor vehicle dealers that represent them, from the rest of the regulatory scheme found in Chapter 437, HRS.

This measure proposes amendments to clarify the Motor Vehicle Industry Licensing Act, Chapter 437, HRS, as it pertains to motor vehicle distributors only.

Thank you for the opportunity to testify in favor of Senate Bill No. 35.