
A BILL FOR AN ACT

RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. The legislature finds that due to Hawaii's
2 remote location, motor vehicle manufacturers must make certain
3 special considerations when creating programs applicable to
4 franchised motor vehicle dealers located in the State. The
5 legislature further finds that certain amendments to Hawaii's
6 motor vehicle industry licensing law are necessary to ensure a
7 level playing field amongst the State's motor vehicle dealers.
- 8 Accordingly, the purpose of this Act is to modernize
9 Hawaii's motor vehicle industry licensing laws by:
- 10 (1) Specifying certain recall reimbursement or repair
11 requirements for manufacturers where a stop-sale order
12 has been issued;
- 13 (2) Authorizing a license holder to engage in business at
14 motor vehicle dealer locations that are affiliated by
15 common ownership under the same license;
- 16 (3) Clarifying when certain manufacturer's or
17 distributor's sales or service performance standards



1 shall be deemed unreasonable, arbitrary, or unfair;
2 and

3 (4) Prohibiting a manufacturer or distributor from
4 requiring a dealer to perform certain construction or
5 renovations to the dealer's facilities; purchase items
6 for a dealership facility in certain circumstances; or
7 provide certain information related to customer
8 information, unless certain conditions are met.

9 SECTION 2. Chapter 437, Hawaii Revised Statutes, is
10 amended by adding a new section to be appropriately designated
11 and to read as follows:

12 "§437- Used vehicle recall; stop-sale orders. (a) A
13 manufacturer shall compensate its new motor vehicle dealers for
14 all labor and parts required by the manufacturer to perform
15 recall repairs. Compensation for recall repairs shall be
16 reasonable. If parts or a remedy is not reasonably available to
17 perform a recall service or repair on a used vehicle held for
18 sale by a dealer authorized to sell and service new vehicles of
19 the same line-make within thirty days of the manufacturer
20 issuing the initial notice of recall, and the manufacturer has
21 issued a stop-sale order on the vehicle, the manufacturer shall



1 compensate the dealer at a prorated rate of at least 1.5 per
2 cent of the value of the vehicle per month, beginning on the
3 date that is thirty days after the date on which the stop-sale
4 order was provided to the dealer until:

5 (1) The date the recall or remedy parts are made
6 available; or

7 (2) The date the dealer sells, trades, or otherwise
8 disposes of the affected used motor vehicle,
9 whichever is earlier.

10 (b) The value of a used vehicle shall be the average
11 trade-in value for used vehicles as indicated in an independent
12 third party guide for the year, make, and model of the recalled
13 vehicle.

14 (c) This section shall only apply to:

15 (1) Used vehicles subject to a stop-sale order for which
16 repair parts or a remedy remain unavailable for thirty
17 days or longer; and

18 (2) New motor vehicle dealers holding an affected used
19 vehicle for sale that is a line-make that the dealer
20 is franchised to sell or on which the dealer is
21 authorized to perform recall repairs.



1 (d) Subject to the audit provisions of section 437-57, it
2 shall be a violation of this section for a manufacturer to
3 reduce the amount of compensation otherwise owed to an
4 individual new motor vehicle dealer, whether through a
5 chargeback, removal of the individual dealer from an incentive
6 program, or reduction in amount owed under an incentive program
7 solely because the new motor vehicle dealer has submitted a
8 claim for reimbursement under this section; provided that this
9 subsection shall not apply to an action by a manufacturer that
10 is applied uniformly among all dealers of the same line-make in
11 the State.

12 (e) All reimbursement claims made by new motor vehicle
13 dealers pursuant to this section for recall remedies or repairs,
14 or for compensation where no part or repair is reasonably
15 available and the vehicle is subject to a stop-sale order shall
16 be subject to the same limitations and requirements as a
17 warranty reimbursement claim made under section 437-56 or
18 437-28(a)(21)(G). In the alternative, a manufacturer may
19 compensate its franchised dealers under a national recall
20 compensation program; provided that the compensation under the



1 program is equal to or greater than that provided under
2 subsection (a) or the manufacturer and dealer otherwise agree.

3 (f) Nothing in this section shall require a manufacturer
4 to provide total compensation to a dealer that would exceed the
5 total average trade-in value of the affected used motor vehicle,
6 as originally determined under subsection (b).

7 (g) Any remedy provided to a dealer under this section is
8 exclusive and may not be combined with any other state or
9 federal recall compensation remedy.

10 (h) For purposes of this section, a "stop-sale order"
11 means a notification issued by a manufacturer to its franchised
12 new motor vehicle dealers, stating that certain used vehicles in
13 inventory should not be sold or leased, at either retail or
14 wholesale."

15 SECTION 3. Section 437-2, Hawaii Revised Statutes, is
16 amended by amending subsection (b) to read as follows:

17 "(b) A license issued under this chapter shall authorize
18 the holder to engage in the same business at [branch]:

19 (1) Branch locations in the same county for which the
20 license is issued during the term thereof; provided



1 that each branch location of a motor vehicle dealer is
2 approved by the board[-]; or

3 (2) Other motor vehicle dealer locations located in the
4 same county and affiliated by common ownership with
5 the location for which the license is issued during
6 the term thereof; provided that each motor vehicle
7 dealer location affiliated by common ownership shall
8 obtain prior approval from the board before
9 transferring salespersons between dealer locations.

10 For purposes of this subsection, "common ownership" shall
11 include entities that have the same exact ownership, whether
12 through individuals, corporations, trusts, or other entities."

13 SECTION 4. Section 437-52, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[+]§437-52[+] Reciprocal rights and obligations among
16 dealers, manufacturers, and distributors of motor vehicles. A
17 manufacturer or distributor shall not:

18 (1) Require any dealer in the State to enter into any
19 agreement with the manufacturer or distributor or any
20 other party that requires the law of another
21 jurisdiction to apply to any dispute between the



1 dealer and manufacturer or distributor, or requires
2 that the dealer bring an action against the
3 manufacturer or distributor in a venue outside of
4 Hawaii, or requires the dealer to agree to arbitration
5 or waive its rights to bring a cause of action against
6 the manufacturer or distributor, unless done in
7 connection with a settlement agreement to resolve a
8 matter or pending dispute between a manufacturer or
9 distributor, or officer, agent, or other
10 representative thereof, and the dealer; provided[~~7~~
11 ~~however,~~] that such agreement has been entered
12 voluntarily for adequate and valuable consideration;
13 and provided further that the renewal or continuation
14 of a franchise agreement shall not by itself
15 constitute adequate and valuable consideration;

- 16 (2) Require any dealer in the State to enter into any
17 agreement with the manufacturer or distributor or any
18 other party, to prospectively assent to a release,
19 assignment, novation, waiver, or estoppel, which
20 instrument or document operates, or is intended by the
21 applicant or licensee to operate, to relieve any



1 person from any liability or obligation of this
2 chapter, unless done in connection with a settlement
3 agreement to resolve a matter or pending dispute
4 between a manufacturer or distributor, or officer,
5 agent, or other representative thereof, and the
6 dealer; provided~~[, however,]~~ that such agreement has
7 been entered voluntarily for adequate and valuable
8 consideration; and provided further that the renewal
9 or continuation of a franchise agreement shall not by
10 itself constitute adequate and valuable consideration;

11 (3) Cancel or fail to renew the franchise agreement of any
12 dealer in the State without providing notice, and
13 without good cause and good faith, as provided in
14 section 437-58;

15 (4) Refuse or fail to offer an incentive program, bonus
16 payment, holdback margin, or any other mechanism that
17 effectively lowers the net cost of a vehicle to any
18 franchised dealer in the State if the incentive,
19 bonus, or holdback is made to one or more same line
20 make dealers in the State;



- 1 (5) Unreasonably prevent or refuse to approve the
2 relocation of a dealership to another site within the
3 dealer's relevant market area. The dealer shall
4 provide the manufacturer or distributor with notice of
5 the proposed address and a reasonable site plan of the
6 proposed location. The manufacturer or distributor
7 shall approve or deny the request in writing no later
8 than sixty days after receipt of the request. Failure
9 to deny the request within sixty days constitutes
10 approval;
- 11 (6) Require a dealer to construct, renovate, or make
12 substantial alterations to the dealer's facilities
13 unless the manufacturer or distributor can demonstrate
14 that such construction, renovation, or alteration
15 requirements are reasonable and justifiable based on
16 reasonable business consideration, including current
17 and reasonably foreseeable projections of economic
18 conditions existing in the automotive industry at the
19 time such action would be required of the dealer, and
20 agrees to make a good faith effort to make available,
21 at the dealer's option, a reasonable quantity and mix



1 of new motor vehicles, which, after a reasonable
2 analysis of market conditions, are projected to meet
3 the sales level necessary to support the increased
4 overhead incurred by the dealer as a result of the
5 required construction, renovation, or alteration;
6 provided~~[, however,]~~ that a dealer may be required by
7 a manufacturer or distributor to make reasonable
8 facility improvements and technological upgrades
9 necessary to support the technology of the
10 manufacturer's or distributor's vehicles. If the
11 dealer chooses not to make such facility improvements
12 or technological upgrades, the manufacturer or
13 distributor shall not be obligated to provide the
14 dealer with the vehicles which require the
15 improvements or upgrades [↯]. A manufacturer or
16 distributor may not require a dealer to construct,
17 renovate, or make substantial alterations to the
18 dealer's facility if the dealer has completed a
19 construction, renovation, or substantial alteration to
20 the same component of the facility that was required
21 and approved by the manufacturer or distributor within



1 the previous ten years. For purposes of this
2 paragraph, a "substantial alteration" means an
3 alteration that has a major impact on the
4 architectural features, characteristics, appearance,
5 or integrity of a structure or lot. The term
6 "substantial alteration" does not include routine
7 maintenance, such as interior painting reasonably
8 necessary to maintain a dealership facility in
9 attractive condition, or any changes to items
10 protected by federal intellectual property rights. A
11 dealer that has completed facility construction,
12 renovation, or substantial alteration shall be deemed
13 to be in compliance with any facility component of a
14 manufacturer or distributor incentive program for a
15 period of ten years following the completion of the
16 upgrade and shall be deemed to have earned all
17 facility-related incentives and benefits during the
18 ten year period following the upgrade's completion;
19 provided that no changes have been made to the
20 facility since the manufacturer or distributor
21 approval that would render the facility non-compliant,



1 regardless of whether the manufacturer's or
2 distributor's image program has changed. Facility
3 changes that are necessitated due to damage sustained
4 from a natural disaster or as a result of necessary
5 safety upgrades shall not be considered a change to
6 the facility that renders the facility non-compliant;
7 provided that those facility changes substantially
8 restore the facilities to the previous or current
9 compliant state. Eligibility for facility-related
10 incentives under this paragraph shall not apply to
11 lump sum payments so long as the compensation relates
12 to the cost of the facility upgrade and is not paid on
13 a per vehicle basis. Nothing in this paragraph shall
14 be construed to allow a franchised motor vehicle
15 dealer to impair or eliminate a manufacturer's or
16 distributor's intellectual property or trademark
17 rights and trade dress usage guidelines; impair other
18 intellectual property interests owned or controlled by
19 the manufacturer or distributor, including the design
20 and use of signs; or refuse to change the design or
21 branding of any signage or other branded items



1 required by a manufacturer or distributor at any time,
2 if the manufacturer or distributor requires those
3 changes of all of its franchised dealers nationally;

4 (7) Require the dealer to establish or maintain an
5 exclusive showroom or facility unless justified by
6 current and reasonably expected future economic
7 conditions existing in the dealer's market and the
8 automobile industry at the time the request for an
9 exclusive showroom or facility is made; provided that
10 the foregoing shall not restrict the terms and
11 conditions of any agreement for which the dealer has
12 voluntarily accepted separate and valuable
13 consideration;

14 (8) Condition the award of an additional franchise on the
15 dealer entering a site control agreement or the dealer
16 waiving its rights to protest the manufacturer's or
17 distributor's award of an additional franchise within
18 the dealer's relevant market area; provided that the
19 foregoing shall not restrict the terms and conditions
20 of any agreement for which the dealer has voluntarily
21 accepted separate and valuable consideration;



- 1 (9) Require a dealer or the dealer's employees to attend a
2 training program that does not relate directly to the
3 sales or service of a new motor vehicle in the line
4 make of that sold or serviced, or both, by the dealer;
- 5 (10) Require a dealer to pay all or part of the cost of an
6 advertising campaign or contest, or purchase any
7 promotional materials, showroom, or other display
8 decorations or materials at the expense of the dealer
9 without the consent of the dealer, which consent shall
10 not be unreasonably withheld;
- 11 (11) Implement or establish a customer satisfaction index
12 or other system measuring a customer's degree of
13 satisfaction with a dealer as a sale or service
14 provider unless any such system is designed and
15 implemented in such a way that is fair and equitable
16 to both the manufacturer and the dealer. In any
17 dispute between a manufacturer, distributor, and a
18 dealer, the party claiming the benefit of the system
19 as justification for acts in relation to the franchise
20 shall have the burden of demonstrating the fairness
21 and equity of the system both in design and



1 implementation in relation to the pending dispute.

2 Upon request of any dealer, a manufacturer or
3 distributor shall disclose in writing to such dealer a
4 description of how that system is designed and applied
5 to such dealer;

- 6 (12) Implement or establish an unreasonable, arbitrary, or
7 unfair sales or ~~[other]~~ service performance standard
8 in determining a dealer's compliance with a franchise
9 agreement ~~[, or]~~ that results in any material and
10 adverse action against a dealer. If the sales or
11 service performance standard is to be used as the
12 basis for any material and adverse action against a
13 dealer, then the performance standard shall be deemed
14 unreasonable, arbitrary, or unfair if the standard
15 does not include material and relevant local market
16 factors, including the geography of the dealer's
17 assigned territory as set forth in the franchise
18 agreement, market demographics, change in population,
19 product popularity, number of competitor dealers, and
20 consumer travel patterns;



1 (13) Implement or establish a system of motor vehicle
2 allocation or distribution to one or more of its
3 dealers that is unfair, inequitable, or unreasonably
4 discriminatory. As used in this paragraph, "unfair"
5 includes without limitation, requiring a dealer to
6 accept new vehicles not ordered by the dealer or the
7 refusal or failure to offer to any dealer all models
8 offered to its other same line make dealers in the
9 State. The failure to deliver any motor vehicle shall
10 not be considered a violation of this section if such
11 failure is due to an act of God, work stoppage, or
12 delay caused by a strike or labor difficulty, shortage
13 of products or materials, freight delays, embargo, or
14 other causes of which the motor vehicle franchisor
15 shall have no control. Notwithstanding the foregoing,
16 a dealer may be required by a manufacturer or
17 distributor to make reasonable facility improvements
18 and technological upgrades necessary to support the
19 technology of the manufacturer's or distributor's
20 vehicles. If the dealer chooses not to make such
21 facility improvements or technological upgrades, the



1 manufacturer or distributor shall not be obligated to
2 provide the dealer with the vehicles which require the
3 improvements or upgrades[-];

4 (14) Require a dealer that is constructing, renovating, or
5 substantially altering its dealership facility to
6 purchase goods, building materials, or services for
7 the dealership facility, including but not limited to
8 office furniture, design features, flooring, and wall
9 coverings, from a vendor chosen by the manufacturer or
10 distributor if: goods, building materials, or
11 services of a substantially similar appearance,
12 function, design, and quality are available from other
13 sources; and the franchised motor vehicle dealer has
14 received the manufacturer's or distributor's approval;
15 provided that this approval shall not be unreasonably
16 withheld or unreasonably delayed. In the event that a
17 manufacturer or distributor does not approve the
18 dealer's use of substantially similar goods, building
19 materials, or services, the manufacturer or
20 distributor shall provide the dealer, in writing at
21 the time of disapproval, a detailed list of reasons



1 why the proposed substantially similar items are not
2 acceptable. Nothing in this paragraph shall be
3 construed to allow a franchised motor vehicle dealer
4 to impair or eliminate a manufacturer's or
5 distributor's intellectual property or trademark
6 rights and trade dress usage guidelines or impair
7 other intellectual property interests owned or
8 controlled by the manufacturer or distributor,
9 including the design and use of signs; or

10 (15) Require a dealer to: provide its customer and
11 prospective customer information, customer lists,
12 service files, transaction data or other proprietary
13 business information; access the dealer's data
14 management system; or, for the sale and delivery of a
15 new motor vehicle to a consumer, validate and pay
16 consumer or dealer incentives, for evaluation of
17 dealer performance, analytics, or the submission to
18 the manufacturer for any services supplied by the
19 dealer for any claim for warranty parts or repairs,
20 unless written consent is provided by the dealer.

21 Nothing in this paragraph shall limit the



1 manufacturer's ability to require or use customer
2 information to satisfy any safety or recall notice
3 obligation or other legal obligation; provided that a
4 manufacturer or distributor shall not release or cause
5 to be released a dealer's nonpublic customer
6 information to another dealer or any other third
7 party, unless the franchise has been terminated,
8 unless the manufacturer or distributor provides the
9 dealer with written notice in advance of the third
10 party to which the manufacturer or distributor intends
11 to distribute the information and the dealer provides
12 written consent for the release of such information.
13 A manufacturer or distributor may not condition
14 participation or eligibility in an incentive or bonus
15 program upon the dealer providing this customer and
16 prospective customer information, customer lists,
17 service files, transaction data, or other proprietary
18 business information."

19 SECTION 5. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 6. This Act shall take effect on July 1, 2050.



Report Title:

Motor Vehicle Industry Licensing Act; Motor Vehicle Dealers;
Manufacturers; Distributors

Description:

Specifies certain recall reimbursement or repair requirements for manufacturers where a stop-sale order has been issued. Authorizes a license holder to engage in business at motor vehicle dealer locations that are affiliated by common ownership under the same license. Clarifies when certain manufacturer's or distributor's sales or service performance standards shall be deemed unreasonable, arbitrary, or unfair. Prohibits a manufacturer or distributor from requiring a dealer to perform certain construction or renovations to the dealer's facilities; purchase items for a dealership facility in certain circumstances; or provide certain information related to customer information, unless certain conditions are met. Effective 7/1/2050. (SD1)

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