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# 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 laws 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 manufacturers' or  
17 distributors' 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 are not reasonably available  
17 to 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 one 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 that:

18 (A) Are in the dealer's inventory at the time the  
19 stop-sale order was issued; or

20 (B) Are taken into the used vehicle inventory of the  
21 dealer as a result of a consumer trade-in



1 incident to the purchase of a new or used vehicle  
2 from the dealer after the stop-sale order was  
3 issued; and

4 (2) New motor vehicle dealers holding an affected used  
5 vehicle for sale that is a line make that the dealer  
6 is franchised to sell or on which the dealer is  
7 authorized to perform recall repairs.

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

19 (e) All reimbursement claims made by new motor vehicle  
20 dealers pursuant to this section for recall repairs, or for  
21 compensation where no part or repair is reasonably available and



1 the vehicle is subject to a stop-sale order shall be subject to  
2 the same limitations and requirements as a warranty  
3 reimbursement claim made under section 437-56 or  
4 437-28(a)(21)(G). In the alternative, a manufacturer may  
5 compensate its franchised dealers under a national recall  
6 compensation program; provided that the compensation under the  
7 program is equal to or greater than that provided under  
8 subsection (a) or the manufacturer and dealer otherwise agree.

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

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

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



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

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

5 (1) Branch locations in the same county for which the  
6 license is issued during the term thereof; provided  
7 that each branch location of a motor vehicle dealer is  
8 approved by the board[-]; or

9 (2) Other motor vehicle dealer locations located in the  
10 same county and affiliated by common ownership with  
11 the location for which the license is issued during  
12 the term thereof; provided that each motor vehicle  
13 dealer location affiliated by common ownership shall  
14 obtain prior approval from the board before  
15 transferring salespersons between dealer locations.

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

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



1 " [†] §437-52 [†] Reciprocal rights and obligations among  
2 dealers, manufacturers, and distributors of motor vehicles. (a)  
3 A manufacturer or distributor shall not:  
4 (1) Require any dealer in the State to enter into any  
5 agreement with the manufacturer or distributor or any  
6 other party that requires the law of another  
7 jurisdiction to apply to any dispute between the  
8 dealer and manufacturer or distributor, or requires  
9 that the dealer bring an action against the  
10 manufacturer or distributor in a venue outside of  
11 Hawaii, or requires the dealer to agree to arbitration  
12 or waive its rights to bring a cause of action against  
13 the manufacturer or distributor, unless done in  
14 connection with a settlement agreement to resolve a  
15 matter or pending dispute between a manufacturer or  
16 distributor, or officer, agent, or other  
17 representative thereof, and the dealer; provided[~~7~~  
18 ~~however,~~] that such agreement has been entered  
19 voluntarily for adequate and valuable consideration;  
20 and provided further that the renewal or continuation



1 of a franchise agreement shall not by itself  
2 constitute adequate and valuable consideration;

3 (2) Require any dealer in the State to enter into any  
4 agreement with the manufacturer or distributor or any  
5 other party, to prospectively assent to a release,  
6 assignment, novation, waiver, or estoppel, which  
7 instrument or document operates, or is intended by the  
8 applicant or licensee to operate, to relieve any  
9 person from any liability or obligation of this  
10 chapter, unless done in connection with a settlement  
11 agreement to resolve a matter or pending dispute  
12 between a manufacturer or distributor, or officer,  
13 agent, or other representative thereof, and the  
14 dealer; provided [~~7, however,~~] that such agreement has  
15 been entered voluntarily for adequate and valuable  
16 consideration; and provided further that the renewal  
17 or continuation of a franchise agreement shall not by  
18 itself constitute adequate and valuable consideration;

19 (3) Cancel or fail to renew the franchise agreement of any  
20 dealer in the State without providing notice, and





- 1 without good cause and good faith, as provided in  
2 section 437-58;
- 3 (4) Refuse or fail to offer an incentive program, bonus  
4 payment, holdback margin, or any other mechanism that  
5 effectively lowers the net cost of a vehicle to any  
6 franchised dealer in the State if the incentive,  
7 bonus, or holdback is made to one or more same line  
8 make dealers in the State;
- 9 (5) Unreasonably prevent or refuse to approve the  
10 relocation of a dealership to another site within the  
11 dealer's relevant market area. The dealer shall  
12 provide the manufacturer or distributor with notice of  
13 the proposed address and a reasonable site plan of the  
14 proposed location. The manufacturer or distributor  
15 shall approve or deny the request in writing no later  
16 than sixty days after receipt of the request. Failure  
17 to deny the request within sixty days constitutes  
18 approval;
- 19 (6) Require a dealer to construct, renovate, or make  
20 substantial alterations to the dealer's facilities  
21 unless the manufacturer or distributor can demonstrate



1 that such construction, renovation, or alteration  
2 requirements are reasonable and justifiable based on  
3 reasonable business consideration, including current  
4 and reasonably foreseeable projections of economic  
5 conditions existing in the automotive industry at the  
6 time such action would be required of the dealer, and  
7 agrees to make a good faith effort to make available,  
8 at the dealer's option, a reasonable quantity and mix  
9 of new motor vehicles, which, after a reasonable  
10 analysis of market conditions, are projected to meet  
11 the sales level necessary to support the increased  
12 overhead incurred by the dealer as a result of the  
13 required construction, renovation, or alteration;  
14 provided[~~, however,~~] that a dealer may be required by  
15 a manufacturer or distributor to make reasonable  
16 facility improvements and technological upgrades  
17 necessary to support the technology of the  
18 manufacturer's or distributor's vehicles. If the  
19 dealer chooses not to make such facility improvements  
20 or technological upgrades, the manufacturer or  
21 distributor shall not be obligated to provide the



1 dealer with the vehicles which require the  
2 improvements or upgrades[+]. Where a dealer is  
3 required by a manufacturer or distributor to make  
4 reasonable facility improvements and technological  
5 upgrades, and the dealer does not comply, the dealer  
6 is not eligible for any related facility-related  
7 incentives and benefit. A manufacturer or distributor  
8 may not require a dealer to construct, renovate, or  
9 make substantial alterations to the dealer's facility  
10 if the dealer has completed a construction,  
11 renovation, or substantial alteration to the same  
12 component of the facility that was required and  
13 approved by the manufacturer or distributor within the  
14 previous ten years. For purposes of this paragraph, a  
15 "substantial alteration" means an alteration that has  
16 a major impact on the architectural features,  
17 characteristics, appearance, or integrity of a  
18 structure or lot. The term "substantial alteration"  
19 does not include routine maintenance, such as interior  
20 painting reasonably necessary to maintain a dealership  
21 facility in attractive condition, or any changes to



1 items protected by federal intellectual property  
2 rights. A dealer that has completed facility  
3 construction, renovation, or substantial alteration  
4 shall be deemed to be in compliance with any facility  
5 component of a manufacturer or distributor incentive  
6 program for a period of ten years following the  
7 completion of the upgrade and shall be deemed to have  
8 earned all facility-related incentives and benefits  
9 during the ten year period following the upgrade's  
10 completion; provided that no changes have been made to  
11 the facility since the manufacturer or distributor  
12 approval that would render the facility non-compliant,  
13 regardless of whether the manufacturer's or  
14 distributor's image program has changed. Facility  
15 changes that are necessitated due to damage sustained  
16 from a natural disaster or as a result of necessary  
17 safety upgrades shall not be considered a change to  
18 the facility that renders the facility non-compliant;  
19 provided that those facility changes substantially  
20 restore the facilities to the previous or current  
21 compliant state. Eligibility for facility-related



1 incentives under this paragraph shall not apply to  
2 lump sum payments so long as the compensation relates  
3 to the cost of the facility upgrade and is not paid on  
4 a per vehicle basis. Nothing in this paragraph shall  
5 be construed to allow a franchised motor vehicle  
6 dealer to impair or eliminate a manufacturer's or  
7 distributor's intellectual property or trademark  
8 rights and trade dress usage guidelines; impair other  
9 intellectual property interests owned or controlled by  
10 the manufacturer or distributor, including the design  
11 and use of signs; or refuse to change the design or  
12 branding of any signage or other branded items  
13 required by a manufacturer or distributor at any time,  
14 if the manufacturer or distributor requires those  
15 changes of all of its franchised dealers nationally;

- 16 (7) Require the dealer to establish or maintain an  
17 exclusive showroom or facility unless justified by  
18 current and reasonably expected future economic  
19 conditions existing in the dealer's market and the  
20 automobile industry at the time the request for an  
21 exclusive showroom or facility is made; provided that



- 1           the foregoing shall not restrict the terms and  
2           conditions of any agreement for which the dealer has  
3           voluntarily accepted separate and valuable  
4           consideration;
- 5           (8) Condition the award of an additional franchise on the  
6           dealer entering a site control agreement or the dealer  
7           waiving its rights to protest the manufacturer's or  
8           distributor's award of an additional franchise within  
9           the dealer's relevant market area; provided that the  
10          foregoing shall not restrict the terms and conditions  
11          of any agreement for which the dealer has voluntarily  
12          accepted separate and valuable consideration;
- 13          (9) Require a dealer or the dealer's employees to attend a  
14          training program that does not relate directly to the  
15          sales or service of a new motor vehicle in the line  
16          make of that sold or serviced, or both, by the dealer;
- 17          (10) Require a dealer to pay all or part of the cost of an  
18          advertising campaign or contest, or purchase any  
19          promotional materials, showroom, or other display  
20          decorations or materials at the expense of the dealer



1 without the consent of the dealer, which consent shall  
2 not be unreasonably withheld;

3 (11) Implement or establish a customer satisfaction index  
4 or other system measuring a customer's degree of  
5 satisfaction with a dealer as a sale or service  
6 provider unless any such system is designed and  
7 implemented in such a way that is fair and equitable  
8 to both the manufacturer and the dealer. In any  
9 dispute between a manufacturer, distributor, and a  
10 dealer, the party claiming the benefit of the system  
11 as justification for acts in relation to the franchise  
12 shall have the burden of demonstrating the fairness  
13 and equity of the system both in design and  
14 implementation in relation to the pending dispute.

15 Upon request of any dealer, a manufacturer or  
16 distributor shall disclose in writing to such dealer a  
17 description of how that system is designed and applied  
18 to such dealer;

19 (12) Implement or establish an unreasonable, arbitrary, or  
20 unfair sales or ~~other~~ service performance standard  
21 in determining a dealer's compliance with a franchise



1           agreement [~~7-07~~] that results in any material and  
2           adverse action against a dealer. If the sales or  
3           service performance standard is to be used as the  
4           basis for any material and adverse action against a  
5           dealer, then the performance standard shall be deemed  
6           unreasonable, arbitrary, or unfair if the standard  
7           does not include material and relevant local market  
8           factors, including the geography of the dealer's  
9           assigned territory as set forth in the franchise  
10          agreement, market demographics, change in population,  
11          product popularity, number of competitor dealers, and  
12          consumer travel patterns;

- 13          (13) Implement or establish a system of motor vehicle  
14          allocation or distribution to one or more of its  
15          dealers that is unfair, inequitable, or unreasonably  
16          discriminatory. As used in this paragraph, "unfair"  
17          includes without limitation, requiring a dealer to  
18          accept new vehicles not ordered by the dealer or the  
19          refusal or failure to offer to any dealer all models  
20          offered to its other same line make dealers in the  
21          State. The failure to deliver any motor vehicle shall





1 not be considered a violation of this section if such  
 2 failure is due to an act of God, work stoppage, or  
 3 delay caused by a strike or labor difficulty, shortage  
 4 of products or materials, freight delays, embargo, or  
 5 other causes of which the motor vehicle franchisor  
 6 shall have no control. Notwithstanding the foregoing,  
 7 a dealer may be required by a manufacturer or  
 8 distributor to make reasonable facility improvements  
 9 and technological upgrades necessary to support the  
 10 technology of the manufacturer's or distributor's  
 11 vehicles. If the dealer chooses not to make such  
 12 facility improvements or technological upgrades, the  
 13 manufacturer or distributor shall not be obligated to  
 14 provide the dealer with the vehicles which require the  
 15 improvements or upgrades[-]; or

16 (14) Require a dealer that is constructing, renovating, or  
 17 substantially altering its dealership facility to  
 18 purchase goods, building materials, or services for  
 19 the dealership facility, including but not limited to  
 20 office furniture, design features, flooring, and wall  
 21 coverings, from a vendor chosen by the manufacturer or



1 distributor if goods, building materials, or services  
2 of a substantially similar appearance, function,  
3 design, and quality are available from other sources;  
4 and the franchised motor vehicle dealer has received  
5 the manufacturer's or distributor's approval; provided  
6 that this approval shall not be unreasonably withheld  
7 or unreasonably delayed. In the event that a  
8 manufacturer or distributor does not approve the  
9 dealer's use of substantially similar goods, building  
10 materials, or services, the manufacturer or  
11 distributor shall provide the dealer, in writing at  
12 the time of disapproval, a detailed list of reasons  
13 why the proposed substantially similar items are not  
14 acceptable. Nothing in this paragraph shall be  
15 construed to allow a franchised motor vehicle dealer  
16 to impair or eliminate a manufacturer's or  
17 distributor's intellectual property or trademark  
18 rights and trade dress usage guidelines or impair  
19 other intellectual property interests owned or  
20 controlled by the manufacturer or distributor,  
21 including the design and use of signs.



1           (b) Notwithstanding the provisions of any franchise  
2 agreement, a manufacturer or distributor shall not require a  
3 dealer to provide its customer and prospective customer  
4 information, customer lists, service files, transaction data or  
5 other proprietary business information ("consumer and  
6 proprietary data"), or access the dealer's data management  
7 system to obtain consumer and proprietary data, unless written  
8 consent is provided by the dealer. Consumer and proprietary data  
9 does not include the same or similar data which is obtained by a  
10 manufacturer from any other source. "Data management system"  
11 means a computer hardware or software system that is owned,  
12 leased or licensed by a dealer, including a system of web-based  
13 applications, and is located at the dealership or hosted  
14 remotely, which stores and provides access to consumer and  
15 proprietary data collected and which is stored by the dealer or  
16 on behalf of a dealer.

17           (c) Notwithstanding the provisions of any franchise  
18 agreement, a manufacturer or distributor:

19           (1) Shall allow a dealer to furnish consumer and  
20 proprietary data in a widely-accepted file format,



- 1           such as comma-separated values, and through a third-  
2           party vendor selected by the dealer;
- 3           (2) May not require a dealer to grant the manufacturer or  
4           distributor access to the dealer's data management  
5           system to obtain consumer and proprietary data;
- 6           (3) May access or obtain consumer data directly from a  
7           dealer's data management system only with the express  
8           written consent of the dealer;
- 9           (4) May not take any adverse action against a dealer for  
10           refusing to grant access to the dealer's data  
11           management system;
- 12           (5) May require that a dealer of the manufacturer or  
13           distributor provide consumer data and proprietary data  
14           that pertains to any of the following:
- 15           (A) Claims for warranty parts or repairs;
- 16           (B) Data pertaining to the sale and delivery of a new  
17           or certified pre-owned vehicle of any line make  
18           of the manufacturer or distributor;
- 19           (C) Safety or recall obligations; or
- 20           (D) Validation and payment of customer or dealer  
21           incentives;



- 1        (6) May not require a dealer to grant access to the
- 2                dealer's data management system through the franchise
- 3                agreement or as a condition of renewal or continuation
- 4                of the franchise agreement;
  
- 5        (7) May not release or cause to be released nonpublic
- 6                personal information about a dealer's customers, as
- 7                defined in title 15 United States Code section
- 8                6809(4), to:
  
- 9                (A) Another dealer unless the franchise has been
- 10                terminated, the customer has relocated out of the
- 11                State or to a different island in the State, or
- 12                the dealer whose information is being released
- 13                has provided written consent; or
  
- 14                (B) Any other third party unless the manufacturer or
- 15                distributor provides the dealer with advanced
- 16                written notice that the manufacturer or
- 17                distributor intends to distribute the information
- 18                to the third party; and
  
- 19        (8) Shall indemnify the dealer for any third-party claims
- 20                asserted against or damages incurred by the dealer to
- 21                the extent the claims or damages are caused by the

1           access to and unlawful disclosure of consumer and  
2           proprietary data resulting from a breach caused by the  
3           manufacturer or distributor or a third party to which  
4           the manufacturer or distributor has provided the  
5           consumer and proprietary data in violation of this  
6           section, the written consent granted by the dealer, or  
7           other applicable state or federal law.

8           (d) Written consent under subsection (c) (3) of this  
9           section:

10           (1) Shall be separate from the dealer franchise agreement;

11           (2) Shall be executed by the dealer; and

12           (3) May be withdrawn by the dealer upon thirty days

13           written notice to the manufacturer or distributor."

14           SECTION 5. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16           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 manufacturers' or distributors' 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 customer and proprietary data; unless certain conditions are met. (SB2490 HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

