

**PRESENTATION OF THE  
MOTOR VEHICLE INDUSTRY LICENSING BOARD**

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Thursday, January 29, 2009  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 270 – RELATING TO THE MOTOR VEHICLE  
INDUSTRY LICENSING ACT.**

TO THE HONORABLE ROBERT N. HERKES, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Werner Umbhau and I am a public member of the Motor Vehicle Industry Licensing Board (“Board”). Thank you for the opportunity to submit testimony on H.B. 270, relating to the Motor Vehicle Industry Licensing Act.

Although the Board has not had the opportunity to review and discuss this particular bill, it has authorized me to speak on its behalf. The Board supports the concept of this bill, but has concerns with portions of the bill.

This bill attempts to allow motor vehicle dealers (“dealer”) to sell or advertise for sale used motor vehicles if the dealer has reasonable indicia of ownership or right of possession of the legal ownership certificate of the respective motor vehicle. Section 1 of the bill, page 2, lines 4 through 22 and page 3, lines 1 and 2, enumerates the type of documents that would satisfy the meaning of “reasonable indicia of ownership or right of possession”. The Board has no concerns with the following:

Item 2, in which the dealer is awarded title via a court order; and



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**Alison Powers**  
Executive Director

## TESTIMONY OF ALISON POWERS

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HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Representative Robert N. Herkes, Chair  
Representative Glenn Wakai, Vice Chair

Thursday, January 29, 2009  
2:00 p.m.

### **HB 270**

Chair Herkes, Vice Chair Wakai and members of the Consumer Protection & Commerce Committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** H.B. 270, which would allow motor vehicle dealers to have a reasonable indicia of ownership or right of possession as an alternative to a legal ownership certificate when selling a used vehicle.

The bill loosely defines the term "reasonable indicia of ownership or right of possession" to include items that can easily be created on a computer. Of even greater concern is that the list is not exhaustive; the definition "includes but is not limited to" the seven items on the list. If passed, nothing in this law would prevent a dealer from selling a vehicle if that dealer deems some other document not listed to be "reasonable."

We are also concerned about enforcement. If a dealer acquires a vehicle under the "reasonable indicia" standard, and sells it to a third party and that vehicle is

subsequently found to have been stolen, the true owner would have lost their rights to that vehicle. It is unclear whether the dealer is accountable for not investigating the title. There doesn't appear to be any enforcement of either the dealer's acquisition via the "reasonable indicia" standard nor the proper investigation of the title.

HIC believes that passage of H.B. 270 has the potential to increase auto thefts if it is easier to convert a stolen vehicle's title to a "clean" title.

We respectfully request that H.B. 270 be held.

Thank you for this opportunity to testify.

**From:** Dave Rolf [drolf@hawaiiidealer.com]  
**Sent:** Wednesday, January 28, 2009 12:10 PM  
**To:** CPCtestimony  
**Subject:** HADA testimony in support of HB 270 for CPC hearing 2 p.m. Jan. 29, 2009 Room 325

January 28, 2009  
(submitted by email 12:05 pm 1-28-09)

Testimony in SUPPORT of HB 270  
Relating to The Motor Vehicle Industry Licensing Act  
Presented to the House Committee on Consumer Protection and Commerce  
For the public hearing 2 p.m. Thursday, January 29, 2009  
Conference Room 325, Hawaii State Capitol

Submitted by David H. Rolf, for the Hawaii Automobile Dealers Association  
Hawaii's franchised new car dealers

Chair Herkes and members of the committee:

Hawaii's franchised new car dealers thank you for the opportunity to offer strong support for HB270-- a bill modeled on the Florida statute relating to "Certificate of Title Required." The new language will add needed clarity to the Hawaii Revised Statutes language in HRS 437-12 which states that "possession or proof of possession of the certificate of legal ownership" is required for a dealer to sell or advertise a motor vehicle.

The term "proof of possession" needs a clear definition.

Without such a definition there may be a severe financial penalty for customers to bear in lowered trade-in values because, without clarity in the law, some dealers feel it may be necessary to hold the vehicles until the physical title arrives—even though, after payoff of any outstanding loan or amount due on the vehicle, along with possession of a bill of sale and a signed federal power of attorney to transfer the title, the dealer has control of the trade-in vehicle. Florida and other states have addressed this by specifically defining the requirements needed to sell or advertise a vehicle.

Again, the purpose behind this bill is to provide needed clarity and simplification to Hawaii's law.

Background: The Motor Vehicle Industry Licensing Board in responding to a request to clarify the meaning of proof of possession issued an interpretation for informational and explanatory purposes which they outlined in the minutes of their December 18, 2007 board meeting, but since the board indicated that their interpretation was not binding, the dealers felt that statutory language would provide the most helpful clarity.

The proposed language requires that, the dealer have:

- 1) a signed transfer of title authorization from the trade-in's former owner, which in Hawaii is a bill of sale document,
- 2) a secure power of attorney from the owner authorizing the dealer to apply for a duplicate certificate of title and assign the title on behalf of the owner. Note: Federal law allows use of such Power of Attorney document when the title is held by a lien holder. The helpful federal tamper-proof document authorizes the dealer to write

the vehicle's mileage on the actual title document when the title arrives because such mileage notation of the odometer is required by federal law at the time of transfer of the vehicle's ownership,

- 3) a copy of a cancelled check or other documentation evidencing that an outstanding lien on the vehicle taken in trade by a dealer has been satisfied and that the certificate of title will be, but has not yet been received by the dealer;

Florida's statute language has provided clarity regarding the vehicle transaction process for decades and millions of vehicles.

We respectfully request your support for HB 270.

Respectfully submitted,  
The Hawaii Automobile Dealers Association

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**HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE**

January 29, 2009

House Bill 270 Relating to Motor Vehicle Industry Licensing Act

Chair Herkes and members of the House Committee on Consumer Protection & Commerce, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm offers comments on House Bill 270.

State Farm is concerned that documents other than "title documents" may foster fraud. For example, if we insure the car that's being "traded-in" and end up paying a claim for theft or conversion, we may be unable to recover the vehicle, if a used car dealer is allowed to obtain title to the vehicle with documentation less than the title documents. Title documents are the best "indicia of ownership" and the dealer should have obligations to make certain the car being re-sold is actually property that can be sold. Waiting for titles, would seemingly be a transactional cost, part of the cost of doing business.

Thank you for the opportunity to present this testimony.