

JAN 19 2018

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) Authorizing a license holder to engage in business at
11 motor vehicle dealer locations that are affiliated by
12 common ownership under the same license;
- 13 (2) Specifying certain recall reimbursement or repair
14 requirements for manufacturers where a stop-sale, or
15 do-not-drive, order has been issued;



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(3) Clarifying when certain manufacturer's or dealer's requests or performance standards shall be deemed unreasonable, arbitrary, or unfair; and

(4) Prohibiting a manufacturer or distributor from requiring a dealer to purchase items for a dealership facility in certain circumstances or provide certain information related to customer information, unless certain conditions are met.

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

"(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[+], or other motor vehicle dealer locations located in the same county and affiliated by common ownership with the location for which the license is issued during the term thereof; provided that each branch location of a motor vehicle dealer is approved by the board.

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



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SECTION 3. 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;



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- 1 (2) Has failed to comply with, observe, or adhere to any
2 provision of this chapter or any other law relating to
3 the sale, taxing, or licensing of motor vehicles or
4 any rule or order made pursuant to this chapter;
5 (3) Has committed a fraudulent act in selling, purchasing,
6 or otherwise dealing in motor vehicles or has
7 misrepresented the terms and conditions of a sale,
8 purchase, or contract for sale or purchase of a motor
9 vehicle or any interest therein including an option to
10 purchase motor vehicles;
11 (4) Has engaged in business under a past or present
12 license issued pursuant to this chapter, in a manner
13 as to cause injury to the public or to those with whom
14 one is dealing;
15 (5) Has failed to comply with, observe, or adhere to any
16 law in any other respect so that the board deems the
17 applicant or holder to be an unfit or improper person
18 to hold a license;
19 (6) Has failed to meet or maintain the conditions and
20 requirements necessary to qualify for the issuance of
21 a license;



1 (7) Is insolvent, has filed or is the subject of a
2 petition for bankruptcy, wage earner's plan, or
3 financial reorganization plan, or has made or proposes
4 to make an assignment for benefit of creditors;

5 (8) Is not at least eighteen years of age, or in the case
6 of a partnership applicant or holder of a license, if
7 any general or limited partner is not at least
8 eighteen years of age;

9 (9) Has charged more than the legal rate of interest on
10 the sale, purchase, or attempted sale or purchase, or
11 in arranging the sale or purchase of a motor vehicle
12 or any interest therein including an option to
13 purchase;

14 (10) Has violated any law pertaining to false advertising
15 or to credit sales in the offering, soliciting,
16 selling, purchasing, or arranging to sell or purchase
17 a motor vehicle or any interest therein;

18 (11) Has wilfully failed or refused to perform any
19 unequivocal and indisputable obligation under any
20 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 has had a
license issued under this chapter suspended, revoked,
or the renewal thereof denied for substantial culpable
cause;

(13) Has entered, 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, 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, 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) Is a salesperson or dealer and:



1 (A) Has required a purchaser of a motor vehicle as a
2 condition of sale and delivery, to purchase
3 special features, appliances, accessories, or
4 equipment not desired or requested by the
5 purchaser; provided that this prohibition shall
6 not apply as to special features, appliances,
7 accessories, or equipment which are ordinarily
8 installed on the vehicle when received or
9 acquired by the dealer;

10 (B) Has represented and sold as an unused motor
11 vehicle any motor vehicle which has been leased
12 or operated as a demonstrator or U-drive motor
13 vehicle;

14 (C) Has sold a new motor vehicle without providing or
15 securing for the purchaser the standard factory
16 new car warranty for the vehicle unless the
17 dealer or salesperson clearly notes in writing on
18 the sales contract that the new motor vehicle is
19 sold without the standard factory warranty;

20 (D) Has sold a new motor vehicle covered by a
21 standard factory warranty without informing the



1 purchaser in writing that any repairs or other
2 work necessary on any accessories which were not
3 installed by the manufacturer of the vehicle may
4 not be obtainable in a geographic location other
5 than where the purchase occurred; provided that
6 the notice required by this section shall conform
7 to the plain language requirements of section
8 487A-1, regardless of the dollar amount of the
9 transaction;

10 (E) Has engaged in any improper business conduct,
11 including but not limited to employing,
12 contracting with, or compensating consumer
13 consultants; or

14 (F) Has sold or leased a new or used motor vehicle,
15 other than at auction, without written
16 documentation upon which the salesperson or
17 dealer shall appropriately indicate the type of
18 sale, which both the customer and salesperson or
19 dealer shall place their initials in the
20 designated spaces prior to the signing of the
21 contract of sale or lease and that contains the



following provision printed legibly in at least
fourteen point bold typeface:

"This (IS) (IS NOT) a door-to-door sale. There
(IS A) (IS NO) 3-DAY RIGHT TO CANCEL on this
purchase.

_____ Customer's Initials _____ Salesperson's
or Dealer's Initials";

(18) Is an applicant or holder of a dealer's license and:

(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) Is an applicant or holder of an auction's license and
has sold or proposed to sell new motor vehicles
without being franchised therefor; [ex]

(20) Is an applicant for a salesperson's license and:

(A) Does not intend to be employed as a salesperson
for a licensed motor vehicle dealer; or

(B) Intends to be employed as a salesperson for more
than one dealer;

(21) Being a manufacturer or distributor:

(A) Has required any dealer in the State to enter
into any agreement with the manufacturer or
distributor 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



1 enter into a new franchise agreement with the
2 dealer;

3 (B) Has required any dealer in the State to enter
4 into any agreement with the manufacturer or
5 distributor or any other party, to perform any
6 act not required by or to refrain from performing
7 any act not contrary to the reasonable
8 requirements of the franchise agreement with the
9 dealer, by awarding or threatening to award a
10 franchise to another person for the sale of the
11 same make of any motor vehicle in the relevant
12 market area of a dealer;

13 (C) Has canceled or failed to renew the franchise
14 agreement of any dealer in the State without good
15 faith, as defined herein. As used in this
16 subparagraph, "good faith" means the duty of each
17 party to any franchise agreement to fully comply
18 with that agreement, or to act in a fair and
19 equitable manner towards each other;

20 (D) Has delayed delivery of or refused to deliver
21 without cause, any new motor vehicle to a dealer,



1 franchised to sell the new motor vehicle, within
2 a reasonable time after receipt of a written
3 order for the vehicle from the dealer. The
4 delivery to another dealer of a motor vehicle of
5 the same model and similarly equipped as the
6 vehicle ordered by a dealer who has not received
7 delivery thereof, but who had placed the written
8 order for the vehicle prior to the order of the
9 dealer receiving the vehicle, shall be prima
10 facie evidence of a delayed delivery of, or
11 refusal to deliver, a new motor vehicle without
12 cause. The nondelivery of a new motor vehicle to
13 a dealer within sixty days after receipt of a
14 written order for the vehicle from a dealer shall
15 also be prima facie evidence of delayed delivery
16 of, or refusal to deliver, a new motor vehicle
17 without cause; provided that the delayed delivery
18 of, or refusal to deliver, a motor vehicle shall
19 be deemed with cause if the manufacturer
20 establishes that the delay or refusal to deliver
21 is due to a shortage or curtailment of material,



1 labor, transportation, utility service, labor or
2 production difficulty, or other similar cause
3 beyond the reasonable control of the
4 manufacturer;

5 (E) Has discriminated against any of their franchised
6 dealers in the State by directly or indirectly
7 charging the dealer more for a new motor vehicle
8 or services, parts, or accessories or a higher
9 rate of transportation for transporting the
10 vehicle from the manufacturing or assembly plant
11 to the dealer or any portion of the distance,
12 than is charged to any other of their franchised
13 dealers in the State for the same make, model,
14 and year of a new motor vehicle or for the same
15 devices, parts, or accessories for the similar
16 transportation for the vehicle during the same
17 period. A manufacturer or distributor who
18 provides or causes to be provided greater
19 transportation benefits for a new motor vehicle
20 as aforesaid to any of their franchised dealers
21 in the State than is provided to any of their



1 competing franchised dealers in the State for the
2 same or lesser price or charge than that imposed
3 upon the franchised dealer in the State during
4 the same period is deemed to have so
5 discriminated against the competing franchised
6 dealer in the State. Evidence of similar
7 discriminatory practice against franchised
8 dealers in other states shall not constitute a
9 defense to or justification of the commission of
10 the discriminatory act against the franchised
11 dealer in the State. The intent and purpose of
12 this subparagraph is to eliminate inequitable
13 pricing policies set by manufacturers or
14 distributors which result in higher prices of new
15 motor vehicles to the consumer in the State.
16 This subparagraph shall be liberally interpreted
17 to effect its intent and purpose and in the
18 application thereof, the substance and effect and
19 not the form of the acts and transactions shall
20 be primarily considered in determining whether a
21 discriminatory act has been committed. Nothing



1 contained in this subparagraph shall prohibit
2 establishing delivered prices or destination
3 charges to dealers in the State which reasonably
4 reflect the seller's total transportation costs
5 incurred in the manufacture or delivery of
6 products to the dealers, including costs that are
7 related to the geographical distances and modes
8 of transportation involved in shipments to this
9 State, or which meet those lower prices
10 established by competitors;

11 (F) Has required a dealer of new motor vehicles in
12 the State as a condition of sale and delivery of
13 new motor vehicles to purchase special features,
14 appliances, accessories, or equipment not desired
15 or requested by the dealer; provided that this
16 prohibition shall not apply to special features,
17 appliances, accessories, or equipment, except
18 heaters, that are regularly installed on that
19 particular model or new motor vehicles as
20 "standard" equipment or to special features,
21 appliances, accessories, or equipment that are an



1 integral part of the new motor vehicles and
2 cannot be removed therefrom without substantial
3 expense. Nothing in this subparagraph shall make
4 it unlawful for a dealer to sell a vehicle that
5 includes a heater that has been installed as
6 standard equipment;

7 (G) Has failed to adequately and fairly compensate
8 its dealers for labor incurred by the dealer to
9 perform under and comply with manufacturer's
10 warranty agreements. In no event shall any
11 manufacturer or distributor pay its dealers a
12 labor rate per hour for warranty work that is
13 less than that charged by the dealer to the
14 retail customers of the dealer nor shall the
15 rates be more than the retail rates. All claims
16 made by the dealers for compensation for
17 delivery, preparation, and warranty work shall be
18 paid within thirty days after approval and shall
19 be approved or disapproved within thirty days
20 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;

(I) Has wilfully defaced, 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; or

(J) Has required a dealer to refrain from participation in the management of, investment in, or the acquisition of, any other line of new motor vehicle or related products; provided that the new motor vehicle dealer maintains a reasonable line of credit consistent with the requirements of section 437-7(d)(1) for each make



1 or line of new motor vehicle, remains in
2 compliance with reasonable facilities and other
3 franchise requirements of the manufacturer or
4 distributor, and makes no unauthorized change in
5 the principal management of the dealer[-]; or

6 (22) Being a manufacturer: has reduced the amount of
7 compensation otherwise owed to a new motor vehicle
8 dealer, whether through a chargeback, removal from an
9 incentive program, reduction in amount owed under an
10 incentive program, or any other means, because the new
11 motor vehicle dealer has submitted a claim for
12 reimbursement under this paragraph or was otherwise
13 compensated for a vehicle subject to a recall where a
14 stop-sale, or do-not-drive, order has been issued.

15 For purposes of this paragraph:

16 (A) A manufacturer shall compensate its new motor
17 vehicle dealers for all labor and parts required
18 by the manufacturer to perform recall repairs.
19 Compensation for recall repairs shall be
20 reasonable. If parts or a remedy is not
21 reasonably available to perform a recall service



1 or repair on a used vehicle held for sale by a
2 dealer authorized to sell new vehicles of the
3 same line make within fifteen days of the
4 manufacturer issuing the initial notice of
5 recall, and the manufacturer has issued a stop-
6 sale, or do-not-drive, order on the vehicle, the
7 manufacturer shall compensate the dealer at a
8 rate of at least 1.75 per cent of the value of
9 the vehicle per month, or portion of a month,
10 while the recall or remedy parts are unavailable
11 and the stop-sale, or do-not-drive, order remains
12 in effect;

13 (B) The value of a used vehicle shall be the average
14 trade-in value for used vehicles as indicated in
15 an independent third party guide for the year,
16 make, model, and mileage of the recalled vehicle;

17 (C) All reimbursement claims made by new motor
18 vehicle dealers pursuant to this paragraph for
19 recall remedies or repairs, or for compensation
20 where no part or repair is reasonably available
21 and the vehicle is subject to a stop-sale, or do-



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1 not-drive, order shall be subject to the same
2 limitations and requirements as a warranty
3 reimbursement claim made under chapter 481J.
4 Claims shall be either approved or disapproved
5 within thirty days after the claims are submitted
6 to the manufacturer in the manner and on the
7 forms as the manufacturer may reasonably
8 prescribe. All claims shall be paid within
9 thirty days of approval of the claim by the
10 manufacturer. Any claim not specifically
11 disapproved in writing within thirty days after
12 the manufacturer receives a properly submitted
13 claim shall be deemed approved. In the
14 alternative, a manufacturer may compensate its
15 franchised dealers under a national recall
16 compensation program; provided that the
17 compensation under the program is equal to or
18 greater than that provided under subparagraph (A)
19 or the manufacturer and dealer otherwise agree;
20 (D) A new or used motor vehicle dealer shall disclose
21 in writing to used vehicle purchasers the



1 existence of any open, un-remedied recalls. A
2 dealer shall be deemed to have complied with this
3 subparagraph if the dealer provides a report to
4 the used vehicle purchaser that is obtained from
5 safercar.gov and based on a vehicle
6 identification number search;

7 (E) This paragraph shall only apply to:

8 (i) Used vehicles subject to safety or emissions
9 recalls pursuant to and recalled in
10 accordance with federal law and regulations
11 adopted pursuant to federal law and where a
12 stop-sale, or do-not-drive, order has been
13 issued; and

14 (ii) New motor vehicle dealers holding used
15 vehicles for sale that are a line make that
16 the dealer is franchised to sell or on which
17 the dealer is authorized to perform recall
18 repairs; and

19 (F) A "stop-sale order" means a notification issued
20 by a vehicle manufacturer to its franchised
21 dealerships stating that certain used vehicles in



1 inventory should not be sold or leased, at retail
2 or wholesale, due to a federal safety recall for
3 a defect or a noncompliance, or a federal or
4 California emissions recall."

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

7 "~~[-]~~§437-52~~[+]~~ Reciprocal rights and obligations among
8 dealers, manufacturers, and distributors of motor vehicles. A
9 manufacturer or distributor shall not:

- 10 (1) Require any dealer in the State to enter into any
11 agreement with the manufacturer or distributor or any
12 other party that requires the law of another
13 jurisdiction to apply to any dispute between the
14 dealer and manufacturer or distributor, or requires
15 that the dealer bring an action against the
16 manufacturer or distributor in a venue outside of
17 Hawaii, or requires the dealer to agree to arbitration
18 or waive its rights to bring a cause of action against
19 the manufacturer or distributor, unless done in
20 connection with a settlement agreement to resolve a
21 matter or pending dispute between a manufacturer or



1 distributor, or officer, agent, or other
2 representative thereof, and the dealer; provided[~~7~~
3 ~~however,~~] that such agreement has been entered
4 voluntarily for adequate and valuable consideration;
5 and provided further that the renewal or continuation
6 of a franchise agreement shall not by itself
7 constitute adequate and valuable consideration;

- 8 (2) Require any dealer in the State to enter into any
9 agreement with the manufacturer or distributor or any
10 other party, to prospectively assent to a release,
11 assignment, novation, waiver, or estoppel, which
12 instrument or document operates, or is intended by the
13 applicant or licensee to operate, to relieve any
14 person from any liability or obligation of this
15 chapter, unless done in connection with a settlement
16 agreement to resolve a matter or pending dispute
17 between a manufacturer or distributor, or officer,
18 agent, or other representative thereof, and the
19 dealer; provided[~~7~~~~however,~~] that such agreement has
20 been entered voluntarily for adequate and valuable
21 consideration; and provided further that the renewal



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

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

7 (4) Refuse or fail to offer an incentive program, bonus
8 payment, holdback margin, or any other mechanism that
9 effectively lowers the net cost of a vehicle to any
10 franchised dealer in the State if the incentive,
11 bonus, or holdback is made to one or more same line
12 make dealers in the State;

13 (5) Unreasonably prevent or refuse to approve the
14 relocation of a dealership to another site within the
15 dealer's relevant market area. The dealer shall
16 provide the manufacturer or distributor with notice of
17 the proposed address and a reasonable site plan of the
18 proposed location. The manufacturer or distributor
19 shall approve or deny the request in writing no later
20 than sixty days after receipt of the request. Failure



1 to deny the request within sixty days constitutes
2 approval;

3 (6) Require a dealer to construct, renovate, or make
4 substantial alterations to the dealer's facilities
5 unless the manufacturer or distributor can demonstrate
6 that such construction, renovation, or alteration
7 requirements are reasonable and justifiable based on
8 reasonable business consideration, including current
9 and reasonably foreseeable projections of economic
10 conditions existing in the automotive industry at the
11 time such action would be required of the dealer, and
12 agrees to make a good faith effort to make available,
13 at the dealer's option, a reasonable quantity and mix
14 of new motor vehicles, which, after a reasonable
15 analysis of market conditions, are projected to meet
16 the sales level necessary to support the increased
17 overhead incurred by the dealer as a result of the
18 required construction, renovation, or alteration;
19 provided[, ~~however,~~] that a dealer may be required by
20 a manufacturer or distributor to make reasonable
21 facility improvements and technological upgrades



1 necessary to support the technology of the
2 manufacturer's or distributor's vehicles. If the
3 dealer chooses not to make such facility improvements
4 or technological upgrades, the manufacturer or
5 distributor shall not be obligated to provide the
6 dealer with the vehicles which require the
7 improvements or upgrades[+]. Facility construction,
8 renovation, or substantial alteration shall be deemed
9 unreasonable if it is within a ten-year period
10 following the dealer's completion of facility
11 construction, renovation, or substantial alteration.
12 A dealer that has completed facility construction,
13 renovation, or substantial alteration shall be deemed
14 to be in compliance with any facility component of a
15 manufacturer or distributor incentive program during
16 the ten-year period following the completion of the
17 upgrade and shall be eligible for all facility-related
18 incentives or benefits during the ten-year period
19 following the upgrade's completion; provided that no
20 changes have been made to the facility since the
21 manufacturer or distributor approval that would render



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1 the facility non-compliant, regardless of whether the
2 manufacturer's or distributor's image program has
3 changed. Eligibility for facility-related incentives
4 under this paragraph shall not apply to lump sum
5 payments so long as the compensation relates to the
6 cost of the facility upgrade and is not paid on a per
7 vehicle basis;

- 8 (7) Require the dealer to establish or maintain an
9 exclusive showroom or facility unless justified by
10 current and reasonably expected future economic
11 conditions existing in the dealer's market and the
12 automobile industry at the time the request for an
13 exclusive showroom or facility is made; provided that
14 the foregoing shall not restrict the terms and
15 conditions of any agreement for which the dealer has
16 voluntarily accepted separate and valuable
17 consideration;
- 18 (8) Condition the award of an additional franchise on the
19 dealer entering a site control agreement or the dealer
20 waiving its rights to protest the manufacturer's or
21 distributor's award of an additional franchise within



1 the dealer's relevant market area; provided that the
2 foregoing shall not restrict the terms and conditions
3 of any agreement for which the dealer has voluntarily
4 accepted separate and valuable consideration;

5 (9) Require a dealer or the dealer's employees to attend a
6 training program that does not relate directly to the
7 sales or service of a new motor vehicle in the line
8 make of that sold or serviced, or both, by the dealer;

9 (10) Require a dealer to pay all or part of the cost of an
10 advertising campaign or contest, or purchase any
11 promotional materials, showroom, or other display
12 decorations or materials at the expense of the dealer
13 without the consent of the dealer, which consent shall
14 not be unreasonably withheld;

15 (11) Implement or establish a customer satisfaction index
16 or other system measuring a customer's degree of
17 satisfaction with a dealer as a sale or service
18 provider unless any such system is designed and
19 implemented in such a way that is fair and equitable
20 to both the manufacturer and the dealer. In any
21 dispute between a manufacturer, distributor, and a



1 dealer, the party claiming the benefit of the system
2 as justification for acts in relation to the franchise
3 shall have the burden of demonstrating the fairness
4 and equity of the system both in design and
5 implementation in relation to the pending dispute.

6 Upon request of any dealer, a manufacturer or
7 distributor shall disclose in writing to such dealer a
8 description of how that system is designed and applied
9 to such dealer;

10 (12) Implement or establish an unreasonable, arbitrary, or
11 unfair sales or other performance standard in
12 determining a dealer's compliance with a franchise
13 agreement~~[, or]~~. A performance standard shall be
14 deemed unreasonable, arbitrary, or unfair if the
15 standard does not include all relevant local market
16 factors, including but not limited to market
17 demographics, change in population, product
18 popularity, number of competitor dealers, and consumer
19 travel patterns;

20 (13) Implement or establish a system of motor vehicle
21 allocation or distribution to one or more of its



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



1 provide the dealer with the vehicles which require the
2 improvements or upgrades[-];

3 (14) Require a dealer that is constructing, renovating, or
4 substantially altering its dealership facility to
5 purchase goods, building materials, or services for
6 the dealership facility, including but not limited to
7 office furniture, design features, flooring, and wall
8 coverings, from a manufacturer or distributor if:
9 goods, building materials, or services of a
10 substantially similar appearance, function, design,
11 and quality are available from other sources; and the
12 franchised motor vehicle dealer has received the
13 manufacturer's or distributor's approval; provided
14 that this approval may not be unreasonably withheld.
15 In the event that a manufacturer or distributor does
16 not approve the dealer's use of substantially similar
17 goods, building materials, or services, the
18 manufacturer or distributor shall provide the dealer,
19 in writing at the time of disapproval, a detailed list
20 of reasons why the proposed substantially similar
21 items are not acceptable. Nothing in this paragraph



1 shall be construed to allow a franchised motor vehicle
2 dealer to impair or eliminate a manufacturer's or
3 distributor's intellectual property or trademark
4 rights and trade dress usage guidelines or impair
5 other intellectual property interests owned or
6 controlled by the manufacturer or distributor,
7 including the design and use of signs; or

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

19 Nothing in this paragraph shall limit the
20 manufacturer's ability to require or use customer
21 information to satisfy any safety or recall notice



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

17 SECTION 5. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 6. This Act shall take effect upon its approval.

20
INTRODUCED BY:



S.B. NO. 2490

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Report Title:

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

Description:

Authorizes a license holder to engage in business at motor vehicle dealer locations that are affiliated by common ownership under the same license. Specifies certain recall reimbursement or repair requirements for manufacturers where a stop-sale, or do-not-drive, order has been issued. Clarifies when certain manufacturer's or dealer's requests or performance standards shall be deemed unreasonable, arbitrary, or unfair. Prohibits a manufacturer or dealer from requiring a dealer to purchase items for a dealership facility in certain circumstances or provide certain information related to customer information, unless certain conditions are met.

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

