



Brian Kitagawa, President
Dave Rolf, Executive Director

HADA TESTIMONY IN STRONG SUPPORT
of HB2433 HD1
RELATING TO THE MOTOR VEHICLE INDUSTRY LICENSING ACT
Presented to the House Committee on Finance
at the Public Hearing, 2 p.m. Wednesday, February 21, 2018
Conference Room 308, Hawaii State Capitol

Chair Luke, Vice Chair Cullen and members of the committee:

The members of the Hawaii Automobile Dealers Association, Hawaii's franchised new car dealers, appreciate the opportunity to offer **strong support** for this bill which proposes to add certain amendments to Hawaii's motor vehicle industry licensing law.

Background

Motor vehicle industry franchise laws appear in all 50 states. This past year, legislators in Maryland, Florida, New York and many other states have worked with auto dealers to update their respective state's franchise laws. Hawaii dealers, facing many of the same challenges of other dealers across the country, and agreeing with the earlier Hawaii legislative finding that "the geographical location of Hawaii makes it necessary to ensure the availability of motor vehicles and parts and dependable service," believe that it is indeed necessary "to regulate and to license motor vehicle manufacturers, distributors, dealers, salespersons, and auctions in the State to prevent frauds, impositions, and other abuses against its residents, and to protect and preserve the economy and the transportation system of this state. "

This bill will provide:

- **for seamless transfer of sales persons between dealerships which have common ownership**
- **for auto manufacturer payments to dealers for certain used vehicles when stop-sell/do not drive orders are issued by the manufacturer**
- **a definition of "unreasonable" with regard to manufacturer facility requirements of dealers.**
- **certain considerations when manufacturers establish sales performance criteria**

- **consideration when goods, materials and services are available locally to fulfill a manufacturer's facility brand requirements**
- **certain limitations on a manufacturer's or certain third party's access to a dealers proprietary business information**

Please note that the following dealer-proposed deletion to the bill language that has been introduced is requested for approval in a House Draft 2 (deletion shown in yellow highlight below). HADA dealers and representatives from the auto manufacturers have been engaged in discussions which, based on the already fruitful exchange, we anticipate will lead to additional HADA-proposed amendments as additional input from the auto manufacturers' representatives is received and reviewed this coming week.

Data Protection

Require a dealer to provide its customer and prospective customer information, customer lists, service files, transaction data or other proprietary business information, or access the dealer's data management system, unless written consent is provided by the dealer, or for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, for evaluation of dealer performance, for analytics or for the submission to the manufacturer for any services supplied by the dealer for any claim for warranty parts or repairs. Nothing in this section shall limit the manufacturer's ability to require or use customer information to satisfy any safety or recall notice obligation or other legal obligation.

Background Information

Re: 100% common ownership

Dealers who have 100% same common ownership for their dealerships, but which are licensed separately are prohibited by current law from transferring sales persons between their dealerships in the same seamless fashion as dealers who own a main licensed dealership with licensed branches. The addition of the language in this bill will remedy this.

Re: Payment to dealers for used vehicles grounded by the manufacturer because of a safety recall when the repair part is not made available.

Auto manufacturers currently are required, under federal law, to pay a dealer 1% of the retail value per month for any new motor vehicle delivered to the dealer, which has been grounded by the manufacturer by an order to stop sell / do-not-drive, if the manufacturer is unable to supply the repair part to allow the vehicle to be repaired and sold.

Stop sell / do-not-drive orders by manufacturers have occurred more frequently in the **used** vehicle category in the past few years.

A National Automobile Dealers Association study found that the value of a vehicle trade-in under a stop sell /do-not-drive order would decline by an average of \$1,210 and by as much as \$5,713 if auto dealers were prohibited from sell or wholesaling any used vehicle while awaiting a part.

Because trade-in allowances are typically used to fund a down payment for a new-car purchase, dealers must balance the projected wholesale value of the car against the costs of holding the vehicle until resale. A dealer would need to assess and reflect the additional risks and costs mandated by the stop sell/ do-not-drive order with the adverse consequences affecting consumers who want to buy a newer, safer vehicle.

Re: Providing a definition of “unreasonable” with regard to manufacturer facility requirements

A Hawaii franchised new car dealer, within the past few years, completed construction of a significant multi-million-dollar new auto dealership facility which met the auto manufacturer’s requirements. However, after less than two years had passed, the auto manufacturer required significant changes requiring the removal and replacement of a wall and adjacent offices. The new language proposes a definition of unreasonable with regard to subsequent facility requirements issued after a dealer has completed agreed upon facility construction, renovation, or substantial alteration.

Re: Taking into consideration Hawaii factors when establishing sales performance standards.

The bill’s language requires that unique factors found in the Hawaii marketplace be taken into consideration when establishing sales performance requirements for Hawaii dealerships. The proposed language is similar to that found in New York State’s motor vehicle franchise law, and it has been recently vetted and upheld in that state’s courts.

One Hawaii new car dealer reported that a manufacturer’s failure to take into account unique Hawaii market characteristics which involved an up-fitters modification of current model trucks that were regularly sold by the dealer but put into service by another party in Hawaii involved dozens and dozens of government-operated vehicles that caused the dealer’s sales-to-service ratio to become lower-- creating subsequent penalties on the dealer by the manufacturer.

Re: Use of construction and renovation goods or materials or services that are substantially similar in appearance, function, design and quality.

Manufacturer requirements for a dealer to purchase specialized goods, building materials, or services from a specific manufacturer, distributor, or service provider may incur substantial additional unnecessary costs for a dealer if those goods and services of

substantially similar appearance, function, design and quality are available from a local Hawaii source. The proposed language addresses this issue by allowing local purchase of goods or materials or services that are substantially similar in appearance, function, design and quality.

Re: Limiting manufacturer access to a dealer's proprietary business information

This language seeks to prevent manufacturers or certain third parties from taking any action by contract, technical means or otherwise that would prohibit or limit a dealers ability to protect, store, copy, share, or use any protected dealer data.

Dealers are held responsible for the protection of this data. This bill's language provides prohibitions against unreasonable restrictions on the scope and nature of the data which a dealer shares.

In Summary

Commerce plays such a vital role in the health of our economy that it is necessary to insure that it is smooth-flowing and unhampered. For the foregoing reasons outlined, here and in previous testimony submitted, the members of the Hawaii Automobile Dealers Association request that the members of the House Committee Finance give highest consideration to passing HB2433 H2, with the language deletion provided in this testimony as an HD2.

Respectfully submitted,

David H. Rolf

For the Members of the Hawaii Automobile Dealers Association



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GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 20, 2018

TO: Representative Sylvia Luke
Chair, Committee on Finance
Submitted Via Capitol Website

RE: **H.B. 2433, H.D.1 – Relating to Motor Vehicle Industry Licensing Act**
Hearing Date: Wednesday, February 21, 2018 at 2 p.m.
Conference Room: 308

Dear Chair Luke and Members of the Committee on Finance:

On behalf of the Alliance of Automobile Manufacturers (“Alliance”), we submit this testimony regarding H.B. 2433, H.D.1, which proposes changes to the franchise law that are supported by the Hawaii Auto Dealers Association (“HADA”). The Alliance is a trade association of twelve car and light truck manufacturers including BMW Group, Fiat Chrysler Automobiles, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of North America, and Volvo Car USA.

While the Alliance opposes the proposals in H.B. 2433, H.D.1 in their present form, we would note that we have worked closely with HADA in a cooperative manner on many issues, including a very significant rewriting of the franchise law several sessions ago. The Alliance is committed to continuing that relationship as we do the hard work needed to reach agreement on the issues in the bill. The changes proposed in the bill are complex, and the member companies are actively reviewing the bill. We are hopeful that, as we have done in the past, the Alliance and HADA can reach agreement on these proposals as this bill proceeds.

As an example, the bill, on page 17, proposes a new provision that calls for monthly compensation to franchised dealers who are unable to sell certain used vehicles because of a recall campaign. Alliance agrees that a rate of compensation should be set in statute, but disagrees with the 1.75% rate proposed in the bill, and believes that 1% is the appropriate rate which has precedent in other jurisdictions. However, representatives of the Alliance and HADA members and HADA recently had a lengthy discussion about the issues and their respective positions on the bill. Much progress has been made and both sides now have a better idea of each other’s concerns. The Alliance will be preparing language for consideration by HADA and its members very shortly, and we expect the Alliance representatives to come to Hawaii very soon for face to face discussions.

Thank you for the opportunity to testify on this measure.

February 20, 2018

The Honorable Sylvia Luke
Chair, House Committee on Finance
State Capitol
Honolulu, Hawaii 96813

SUBJECT: HOUSE BILL 2433 – RELATING TO MOTOR VEHICLE INDUSTRY LICENSING ACT – OPPOSE

Dear Representative Luke:

Global Automakers, www.globalautomakers.org, represents the U.S. operations of international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. Our goal is to foster an open and competitive automotive marketplace that encourages investment, job growth, and development of vehicles that can enhance Americans' quality of life. In 2016, our members manufactured 67% of vehicles sold in the state, including 70% of green vehicles sold.

Efforts to Work with the Dealers

We appreciate the level of engagement and open dialogue we have with Dave Rolf and the Hawaii Auto Dealers Association (HADA). Global Automakers always seeks to reach consensus with dealers, developing public policies that are reasonable and in the best interest of the manufacturers, dealers and consumers. **Global Automakers, however, has several concerns regarding the legislation as introduced.**

Our Position

First, Global Automakers and its members worked with the Automotive Trade Association Executives (ATAE) Board of Directors to develop framework language for state franchise legislation regarding dealer reimbursement from manufacturers when there is a “stop sale” recall and a remedy or part are not reasonably available. In its current form, this legislation does not comply with the framework agreed to by Global Automakers and the ATAЕ Board of Directors. Language similar to the framework has been adopted in nine states and the Hawaii Auto Dealers Association (HADA) should amend the bill to reflect the agreed upon language.

Second, HB 2433 would make any new facility construction, renovation or substantial alteration per se unreasonable if it is within a 10-year period following a dealer's prior construction, renovation or substantial alteration of its facilities and a dealer would be deemed in compliance with facility component of an incentive program during that 10-year period. This provision, if enacted, would be detrimental to motor vehicle consumers as it would give dealers rights to operate from sub-standard facilities contrary to their agreements with manufacturers. At the very least, the time period specified in

the bill should be reduced from 10 years to 5 years, and a provision should be added stating that this section does not prohibit contracts entered into voluntarily and for consideration.

Third, HB 2433 includes a provision concerning the manufacturer's use of sales performance standards to evaluate dealers. Current law prohibits a manufacturer from implementing or establishing an unreasonable, arbitrary or unfair sales or other performance standard in determining a dealer's compliance with a franchise agreement. See Haw. Rev. Stat. § 437-52(12). HB 2433 mandates that a sales performance standard is unreasonable, arbitrary or unfair if it "does not include all relevant local market factors, including but not limited to market demographics, change in population, product popularity, number of competitive dealers, and consumer travel patterns." This bill is vague and ambiguous and, if enacted, would be extremely difficult, if not impossible, for manufacturers to comply with. This bill would also impede the ability of our members to evaluate their dealers for deficient sales performance and improve their dealer networks, and would be detrimental to Hawaii consumers. Because current law already prohibits a manufacturer from using unreasonable, arbitrary or unfair sales performance standards to evaluate its dealers, there is no basis for this new provision. Accordingly, it should be stricken from the bill.

Lastly, HB 2433 would prohibit a manufacturer from requiring a dealer to provide its customer information and lists, service files or other proprietary information and would prohibit a manufacturer from accessing the dealer's data management system unless written consent is provided by the dealer. And, it would be unlawful for a manufacturer to condition participation in an incentive or bonus program based on the dealer providing customer information and lists or other proprietary business information. This bill, if enacted, would be harmful to Hawaii consumers as it would essentially prevent customers from receiving valuable information from manufacturers concerning their vehicles. For example, consumers should be able to receive information concerning, among other things, the availability of accessories, parts, services, product enhancements and/or improvements, accessibility-related information for persons with disabilities, software updates and many other topics of interest to consumers. Consumers expect to receive such information from the manufacturers and appreciate having a point of contact with the manufacturer. This proposed amendment has nothing to do with protecting consumer privacy; instead, it has everything to do with dealers attempting to hoard customer data for their own profit to the detriment of manufacturers and consumers. Accordingly, it should be stricken from the bill.

Sincerely,



Josh Fisher
Manager, State Government Affairs

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

LATE

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Wednesday, February 21, 2018
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 2433, H.D. 1, RELATING TO MOTOR VEHICLE
INDUSTRY LICENSING ACT.**

TO THE HONORABLE SYLVIA LUKE, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Kedin Kleinhans, and I am the Executive Officer of the Motor Vehicle Industry Licensing Board (“Board”) within the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs. The Board appreciates the intent of this measure, which is a companion to S.B. 2490, and provides the following comments.

This measure allows a licensed motor vehicle dealer (“dealer”) to engage in business at multiple locations affiliated by common ownership within the same county. This measure also authorizes revocation, suspension, or denial of a motor vehicle manufacturer’s (“manufacturer”) or motor vehicle distributor’s (“distributor”) license or issuance of fines for failure to compensate a dealer for a recalled vehicle. This measure clarifies the rights and obligations of dealers, manufacturers, and distributors with respect to improvements and upgrades on dealers’ facilities, dealers’ performance standards, and access to dealers’ business information.

Regarding section 1 of the bill, Hawaii Revised Statutes (“HRS”) section 437-2(b)(2) on page 1, lines 9-12, the Board recommends adding language to require dealer locations to obtain prior board approval before transferring motor vehicle salespersons (“salespersons”), similar to the existing provision in subsection (b)(1), lines 5-8. The Board respectfully suggests the following language: “. . . for which the license is issued during the term thereof, provided each motor vehicle dealer location affiliated by common ownership shall obtain prior approval from the board before transferring

salespersons between dealer locations.” To further define “common ownership,” the Board recommends amending “same ownership” on page 1, line 14 to read “same exact ownership,” as this will assist the Board in determining which locations are precisely affiliated by same common ownership.

Regarding section 2 of the bill, the Board supports the amendments to HRS 437-28(a)(21)(K) on page 16, line 20 to page 17, line 10 and agrees that stop-sell orders on used motor vehicles need some form of compensation. However, the Board is unable to take a position on the proposed reimbursement rate of 1.75%. The Board is aware of ongoing discussion between the Hawaii Automobile Dealers’ Association (“HADA”) and the Alliance of Automobile Manufacturers in determining a proposed reimbursement rate. Thus, the Board defers the reimbursement rate to an agreement between HADA and interested manufacturer stakeholders.

Regarding section 3 of the measure, the Board supports the amendments to HRS section 437-52 and notes that the amendments from page 22, line 7 to page 28, line 9 will allow dealers to save on additional resources that may lead to additional consumer services, such as car repairs. In addition, the Board supports the addition of HRS section 437-52(15) on page 28, line 10 to page 31, line 14 and agrees this will keep non-public consumer information protected, without restricting a manufacturer’s ability to satisfy any safety or recall notice obligation or other legal obligation.

Thank you for the opportunity to testify on H.B. 2433, H.D. 1.