

JAN 17 2020

A BILL FOR AN ACT

RELATING TO LICENSING.

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

1 SECTION 1. Section 437-28, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) In addition to any other actions authorized by law,
4 the board, after notice and hearing as provided in chapter 91,
5 and subject to appeal to the circuit court of the circuit in
6 which the board has jurisdiction under the procedure and rules
7 prescribed by the laws of the State or the applicable rules of
8 the courts pertaining to appeals to circuit courts, may suspend,
9 revoke, fine, or deny the renewal of any license, or prior to
10 notice and hearing deny the issuance of any license for any
11 cause authorized by law, including but not limited to
12 circumstances where the board finds that the applicant or
13 holder, or any officer, director, general manager, trustee,
14 partner, or stockholder owning more than ten per cent interest
15 of the applicant or holder:

16 (1) Has intentionally made a false statement of a material
17 fact in the application for a license or in any other



1 statement required by this chapter or has obtained or
2 attempted to obtain a license by fraud or
3 misrepresentation;

4 (2) Has failed to comply with, observe, or adhere to any
5 provision of this chapter or any other law relating to
6 the sale, taxing, or licensing of motor vehicles or
7 any rule or order made pursuant to this chapter;

8 (3) Has committed a fraudulent act in selling, purchasing,
9 or otherwise dealing in motor vehicles or has
10 misrepresented the terms and conditions of a sale,
11 purchase, or contract for sale or purchase of a motor
12 vehicle or any interest therein including an option to
13 purchase motor vehicles;

14 (4) Has engaged in business under a past or present
15 license issued pursuant to this chapter, in a manner
16 as to cause injury to the public or to those with whom
17 one is dealing;

18 (5) Has failed to comply with, observe, or adhere to any
19 law in any other respect so that the board deems the
20 applicant or holder to be an unfit or improper person
21 to hold a license;



(6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;

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

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

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

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



- 1 (11) Has wilfully failed or refused to perform any
2 unequivocal and indisputable obligation under any
3 written agreement involving the sale or purchase of a
4 motor vehicle or any interest therein, including an
5 option to purchase;
- 6 (12) Has been denied the issuance of a license under this
7 chapter for substantial culpable cause or has had a
8 license issued under this chapter suspended, revoked,
9 or the renewal thereof denied for substantial culpable
10 cause;
- 11 (13) Has entered, has attempted to enter, or proposes to
12 enter into any contract or agreement contrary to this
13 chapter or any rule adopted thereunder;
- 14 (14) Has been, is engaged, or proposes to engage in the
15 business of selling new motor vehicles as a dealer or
16 auction without a proper franchise therefor;
- 17 (15) Has at any time employed, utilized, or attempted or
18 proposed to employ or utilize any person not licensed
19 under this chapter who is required to be so licensed;
- 20 (16) Has entered or attempted to enter any one-payment
21 contract where the contract is required to be signed



1 by the purchaser prior to removal of the motor vehicle
2 for test driving from the seller's premises;

3 (17) Is a salesperson or dealer and:

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

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

17 (C) Has sold a new motor vehicle without providing or
18 securing for the purchaser the standard factory
19 new car warranty for the vehicle unless the
20 dealer or salesperson clearly notes in writing on



1 the sales contract that the new motor vehicle is
2 sold without the standard factory warranty;

3 (D) Has sold a new motor vehicle covered by a
4 standard factory warranty without informing the
5 purchaser in writing that any repairs or other
6 work necessary on any accessories which were not
7 installed by the manufacturer of the vehicle may
8 not be obtainable in a geographic location other
9 than where the purchase occurred; provided that
10 the notice required by this section shall conform
11 to the plain language requirements of section
12 487A-1, regardless of the dollar amount of the
13 transaction;

14 (E) Has engaged in any improper business conduct,
15 including but not limited to employing,
16 contracting with, or compensating consumer
17 consultants; [ex]

18 (F) Has withheld the return of a buyer's downpayment
19 or trade-in when the buyer's motor vehicle
20 purchase or lease agreement is contingent upon
21 financing of the purchase, and pursuant to the



financing or credit application signed at the
time of purchase, the buyer was unable to
qualify; or

[~~(F)~~] (G) Has sold or leased a new or used motor vehicle, other than at auction, without written documentation upon which the salesperson or dealer shall appropriately indicate the type of sale, which both the customer and salesperson or dealer shall place their initials in the designated spaces prior to the signing of the 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; or

(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:



1 (A) Has required any dealer in the State to enter
2 into any agreement with the manufacturer or
3 distributor or any other party, to perform any
4 act not required by or to refrain from performing
5 any act not contrary to the reasonable
6 requirements of the franchise agreement with the
7 dealer, by threatening to cancel the franchise
8 agreement or by threatening to refuse, at the
9 expiration of the current franchise agreement, to
10 enter into a new franchise agreement with the
11 dealer;

12 (B) Has required any dealer in the State to enter
13 into any agreement with the manufacturer or
14 distributor or any other party, to perform any
15 act not required by or to refrain from performing
16 any act not contrary to the reasonable
17 requirements of the franchise agreement with the
18 dealer, by awarding or threatening to award a
19 franchise to another person for the sale of the
20 same make of any motor vehicle in the relevant
21 market area of a dealer;



1 (C) Has canceled or failed to renew the franchise
2 agreement of any dealer in the State without good
3 faith, as defined herein. As used in this
4 subparagraph, "good faith" means the duty of each
5 party to any franchise agreement to fully comply
6 with that agreement, or to act in a fair and
7 equitable manner towards each other;

8 (D) Has delayed delivery of or refused to deliver
9 without cause, any new motor vehicle to a dealer,
10 franchised to sell the new motor vehicle, within
11 a reasonable time after receipt of a written
12 order for the vehicle from the dealer. The
13 delivery to another dealer of a motor vehicle of
14 the same model and similarly equipped as the
15 vehicle ordered by a dealer who has not received
16 delivery thereof, but who had placed the written
17 order for the vehicle prior to the order of the
18 dealer receiving the vehicle, shall be prima
19 facie evidence of a delayed delivery of, or
20 refusal to deliver, a new motor vehicle without
21 cause. The nondelivery of a new motor vehicle to



1 a dealer within sixty days after receipt of a
2 written order for the vehicle from a dealer shall
3 also be prima facie evidence of delayed delivery
4 of, or refusal to deliver, a new motor vehicle
5 without cause; provided that the delayed delivery
6 of, or refusal to deliver, a motor vehicle shall
7 be deemed with cause if the manufacturer
8 establishes that the delay or refusal to deliver
9 is due to a shortage or curtailment of material,
10 labor, transportation, utility service, labor or
11 production difficulty, or other similar cause
12 beyond the reasonable control of the
13 manufacturer;

14 (E) Has discriminated against any of their franchised
15 dealers in the State by directly or indirectly
16 charging the dealer more for a new motor vehicle
17 or services, parts, or accessories or a higher
18 rate of transportation for transporting the
19 vehicle from the manufacturing or assembly plant
20 to the dealer or any portion of the distance,
21 than is charged to any other of their franchised



1 dealers in the State for the same make, model,
2 and year of a new motor vehicle or for the same
3 devices, parts, or accessories for the similar
4 transportation for the vehicle during the same
5 period. A manufacturer or distributor who
6 provides or causes to be provided greater
7 transportation benefits for a new motor vehicle
8 as aforesaid to any of their franchised dealers
9 in the State than is provided to any of their
10 competing franchised dealers in the State for the
11 same or lesser price or charge than that imposed
12 upon the franchised dealer in the State during
13 the same period is deemed to have so
14 discriminated against the competing franchised
15 dealer in the State. Evidence of similar
16 discriminatory practice against franchised
17 dealers in other states shall not constitute a
18 defense to or justification of the commission of
19 the discriminatory act against the franchised
20 dealer in the State. The intent and purpose of
21 this subparagraph is to eliminate inequitable



1 pricing policies set by manufacturers or
2 distributors which result in higher prices of new
3 motor vehicles to the consumer in the State.

4 This subparagraph shall be liberally interpreted
5 to effect its intent and purpose and in the
6 application thereof, the substance and effect and
7 not the form of the acts and transactions shall
8 be primarily considered in determining whether a
9 discriminatory act has been committed. Nothing
10 contained in this subparagraph shall prohibit
11 establishing delivered prices or destination
12 charges to dealers in the State which reasonably
13 reflect the seller's total transportation costs
14 incurred in the manufacture or delivery of
15 products to the dealers, including costs that are
16 related to the geographical distances and modes
17 of transportation involved in shipments to this
18 State, or which meet those lower prices
19 established by competitors;

20 (F) Has required a dealer of new motor vehicles in
21 the State as a condition of sale and delivery of



1 new motor vehicles to purchase special features,
2 appliances, accessories, or equipment not desired
3 or requested by the dealer; provided that this
4 prohibition shall not apply to special features,
5 appliances, accessories, or equipment, except
6 heaters, that are regularly installed on that
7 particular model or new motor vehicles as
8 "standard" equipment or to special features,
9 appliances, accessories, or equipment that are an
10 integral part of the new motor vehicles and
11 cannot be removed therefrom without substantial
12 expense. Nothing in this subparagraph shall make
13 it unlawful for a dealer to sell a vehicle that
14 includes a heater that has been installed as
15 standard equipment;

16 (G) Has failed to adequately and fairly compensate
17 its dealers for labor incurred by the dealer to
18 perform under and comply with manufacturer's
19 warranty agreements. In no event shall any
20 manufacturer or distributor pay its dealers a
21 labor rate per hour for warranty work that is



1 less than that charged by the dealer to the
2 retail customers of the dealer nor shall the
3 rates be more than the retail rates. All claims
4 made by the dealers for compensation for
5 delivery, preparation, and warranty work shall be
6 paid within thirty days after approval and shall
7 be approved or disapproved within thirty days
8 after receipt. When any claim is disapproved,
9 the dealer shall be notified in writing of the
10 grounds for disapproval;

11 (H) Has wilfully failed to affix the vehicle bumper
12 impact notice pursuant to section 437-4.5(a), or
13 wilfully misstated any information in the notice.
14 Each failure or misstatement is a separate
15 offense;

16 (I) Has wilfully defaced, or removed the vehicle
17 bumper impact notice required by section
18 437-4.5(a) prior to delivery of the vehicle to
19 which the notice is required to be affixed to the
20 registered owner or lessee. Each wilful



1 defacement, alteration, or removal is a separate
2 offense; or

3 (J) Has required a dealer to refrain from
4 participation in the management of, investment
5 in, or the acquisition of, any other line of new
6 motor vehicle or related products; provided that
7 the new motor vehicle dealer maintains a
8 reasonable line of credit consistent with the
9 requirements of section 437-7(d)(1) for each make
10 or line of new motor vehicle, remains in
11 compliance with reasonable facilities and other
12 franchise requirements of the manufacturer or
13 distributor, and makes no unauthorized change in
14 the principal management of the dealer."

15 SECTION 2. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20




S.B. NO. 2269

1 SECTION 4. This Act shall take effect upon its approval.

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S.B. NO. 2269

Report Title:

Motor Vehicle Dealer Licenses; Motor Vehicle Salesperson
Licenses; Suspension; Revocation; Denial of Issuance or Renewal;
Failure to Return; Conditional Financing

Description:

Clarifies that a motor vehicle dealer or salesperson license may be suspended, revoked, or denied if the dealer or salesperson withholds the return of a buyer's downpayment or trade-in when the buyer's motor vehicle purchase or lease agreement is contingent upon financing of the purchase, and pursuant to the financing or credit application signed at the time of purchase, the buyer was unable to qualify.

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

