
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. Chapter 437, Hawaii Revised Statutes, is
2 amended by adding a new section to part I to be appropriately
3 designated and to read as follows:

4 "§437- Remote electronic transmission compensation.

5 (a) New motor vehicle dealers of the line-make located in the
6 State may sell consumers the same motor vehicle accessory,
7 option, add-on, feature, improvement, or upgrade for a motor
8 vehicle of the line-make manufactured, imported, or distributed
9 by the manufacturer or distributor.

10 (b) A manufacturer or distributor may, on the same terms
11 offered to the dealer, after the date of sale of the motor
12 vehicle by a dealer to a consumer, sell to the consumer or
13 activate for a fee a permanent or temporary motor vehicle
14 accessory, option, add-on, feature, improvement, or upgrade for
15 a motor vehicle of a line-make manufactured, imported, or
16 distributed by the manufacturer or distributor; provided that
17 the accessory, option, add-on, feature, improvement, or upgrade



1 is activated or installed directly on the consumer's motor
2 vehicle through remote electronic transmission; provided further
3 that if the motor vehicle was sold or leased as new by a
4 franchised new motor vehicle dealer in the State within the
5 five-year period preceding the remote electronic transmission,
6 then the manufacturer or distributor shall pay the franchised
7 new motor vehicle dealer a minimum of twenty per cent of the
8 gross revenue received by the manufacturer, distributor, agent,
9 or common entity for the sale or activation and renewals during
10 the five-year period.

11 (c) The manufacturer or distributor shall provide each of
12 the manufacturer's or distributor's franchised dealers with a
13 quarterly statement of the revenue received by the manufacturer
14 or distributor, its agent, or its common entity during that
15 quarter for the remote sales or activations and renewals
16 relating to those vehicles sold or leased by the dealer during
17 the five-year period subsequent to the sale or lease of the
18 vehicle to the consumer.

19 (d) When providing a new motor vehicle to a dealer for
20 offer or sale to the public, it shall be unlawful for the
21 manufacturer or distributor to fail to provide to the dealer a



1 written disclosure that may be provided to a potential buyer of
2 the new motor vehicle of each accessory or function of the
3 vehicle that may be initiated, updated, changed, or maintained
4 by the manufacturer or distributor through over-the-air or
5 remote means, and the charge to the consumer for initiation,
6 update, change, or maintenance. A manufacturer or distributor
7 may comply with this subsection by notifying the dealer that the
8 information is available on a website or by other digital
9 means."

10 SECTION 2. Section 437-1.1, Hawaii Revised Statutes, is
11 amended as follows:

12 1. By adding a new definition to be appropriately inserted
13 and to read

14 ""Common entity" means a person:

15 (1) Who is directly or indirectly controlled by or has
16 more than ten per cent of the person's equity interest
17 directly or indirectly owned, beneficially or of
18 record, through any form of ownership structure, by a
19 manufacturer or distributor; or

20 (2) Who has more than ten per cent of the person's equity
21 interest directly or indirectly controlled or owned,



1 beneficially or of record, through any form of
2 ownership structure, by one or more persons who also
3 directly or indirectly control or own, beneficially or
4 of record, more than thirty per cent of the equity
5 interests of a manufacturer or distributor."

6 2. By amending the definition of "franchise" or "franchise
7 agreement" to read:

8 ""Franchise" or "franchise agreement" means any contract or
9 agreement between a dealer and a manufacturer [~~or~~], distributor,
10 or common entity that authorizes the dealer to engage in the
11 business of selling or purchasing any particular make or makes
12 of new motor vehicles or motor vehicle parts manufactured or
13 distributed by the manufacturer or distributor, or that
14 establishes rights or obligations, or both, relating to the
15 dealer's new motor vehicle operation, including agreements
16 relating to dealership facilities or site control."

17 3. By amending the definition of "manufacturer" to read:

18 ""Manufacturer" means any person, resident or nonresident,
19 or a common entity thereof, who is engaged in the business of
20 manufacturing or assembling new motor vehicles."

1 4. By amending the definition of "sale", "selling", and
2 equivalent expressions to read:

3 ""Sale", "selling", and equivalent expressions, mean the
4 act or attempted act, either as principal or an agent or in any
5 capacity whatsoever, of selling, bartering, exchanging, leasing,
6 or otherwise disposing of, or negotiating, or offering, or
7 attempting to negotiate the sale, purchase, lease, or exchange
8 of, or interest in, a motor vehicle, including an option to
9 purchase a motor vehicle. "Sale", "selling", and equivalent
10 expressions, includes:

11 (1) Accepting a deposit or receiving a payment for the
12 retail purchase, lease, or other use of a motor
13 vehicle, but does not include facilitating a motor
14 vehicle dealer's acceptance of a deposit or receipt of
15 a payment from a consumer or receiving payment under a
16 retail installment sale contract;

17 (2) Accepting a reservation from a consumer for a specific
18 motor vehicle identified by a vehicle identification
19 number or other product identifier;



- 1 (3) Setting the retail price for the purchase, lease, or
2 other use of a motor vehicle, but does not include
3 setting a manufacturer's suggested retail price;
- 4 (4) Offering or negotiating with a consumer the terms for
5 the purchase, lease, or other use of a motor vehicle;
- 6 (5) Offering or negotiating with a consumer a value for a
7 motor vehicle being traded in as part of the purchase,
8 lease, or other use of a motor vehicle, but does not
9 include a website or other means of electronic
10 communication that identifies to a consumer a
11 conditional trade-in value and that contains language
12 informing the consumer that the trade-in value is not
13 binding on any motor vehicle dealer;
- 14 (6) Any transaction where the title of a motor vehicle or
15 a used motor vehicle is transferred to a consumer;
- 16 (7) Any retail lease transaction where a consumer leases a
17 vehicle for a period of at least twelve months, but
18 does not include administering lease agreements,
19 taking assignments of leases, performing required
20 actions pursuant to such leases, or receiving payments



- 1 under a lease agreement that was originated by a motor
- 2 vehicle dealer;
- 3 (8) Displaying sample vehicles or offering or coordinating
- 4 test drives to customers;
- 5 (9) Arranging the pickup or delivery of a newly purchased
- 6 new motor vehicle; or
- 7 (10) Compensating salespersons, employees, agents, or
- 8 contractors to engage in these activities."

9 SECTION 3. Section 437-28, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) In addition to any other actions authorized by law,
12 the board, after notice and hearing as provided in chapter 91,
13 and subject to appeal to the circuit court of the circuit in
14 which the board has jurisdiction under the procedure and rules
15 prescribed by the laws of the State or the applicable rules of
16 the courts pertaining to appeals to circuit courts, may suspend,
17 revoke, fine, or deny the renewal of any license, or prior to
18 notice and hearing deny the issuance of any license for any
19 cause authorized by law, including but not limited to
20 circumstances where the board finds that the applicant or
21 holder, or any officer, director, general manager, trustee,



1 partner, or stockholder owning more than ten per cent interest
2 of the applicant or holder:

3 (1) Has intentionally made a false statement of a material
4 fact in the application for a license or in any other
5 statement required by this chapter or has obtained or
6 attempted to obtain a license by fraud or
7 misrepresentation;

8 (2) Has failed to comply with, observe, or adhere to any
9 provision of this chapter or any other law relating to
10 the sale, taxing, or licensing of motor vehicles or
11 any rule or order made pursuant to this chapter;

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

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



- 1 (5) Has failed to comply with, observe, or adhere to any
2 law in any other respect so that the board deems the
3 applicant or holder to be an unfit or improper person
4 to hold a license;
- 5 (6) Has failed to meet or maintain the conditions and
6 requirements necessary to qualify for the issuance of
7 a license;
- 8 (7) Is insolvent, has filed or is the subject of a
9 petition for bankruptcy, wage earner's plan, or
10 financial reorganization plan, or has made or proposes
11 to make an assignment for benefit of creditors;
- 12 (8) Is not at least eighteen years of age, or in the case
13 of a partnership applicant or holder of a license, if
14 any general or limited partner is not at least
15 eighteen years of age;
- 16 (9) Has charged more than the legal rate of interest on
17 the sale, purchase, or attempted sale or purchase, or
18 in arranging the sale or purchase of a motor vehicle
19 or any interest therein including an option to
20 purchase;



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- 1 (10) Has violated any law pertaining to false advertising
2 or to credit sales in the offering, soliciting,
3 selling, purchasing, or arranging to sell or purchase
4 a motor vehicle or any interest therein;
- 5 (11) Has wilfully failed or refused to perform any
6 unequivocal and indisputable obligation under any
7 written agreement involving the sale or purchase of a
8 motor vehicle or any interest therein, including an
9 option to purchase;
- 10 (12) Has been denied the issuance of a license under this
11 chapter for substantial culpable cause or has had a
12 license issued under this chapter suspended, revoked,
13 or the renewal thereof denied for substantial culpable
14 cause;
- 15 (13) Has entered, has attempted to enter, or proposes to
16 enter into any contract or agreement contrary to this
17 chapter or any rule adopted thereunder;
- 18 (14) Has been, is engaged, or proposes to engage in the
19 business of selling new motor vehicles as a dealer or
20 auction without a proper franchise therefor;



- 1 (15) Has at any time employed, utilized, or attempted or
2 proposed to employ or utilize any person not licensed
3 under this chapter who is required to be so licensed;
- 4 (16) Has entered or attempted to enter any one-payment
5 contract where the contract is required to be signed
6 by the purchaser prior to removal of the motor vehicle
7 for test driving from the seller's premises;
- 8 (17) Is a salesperson or dealer and:
 - 9 (A) Has required a purchaser of a motor vehicle as a
10 condition of sale and delivery, to purchase
11 special features, appliances, accessories, or
12 equipment not desired or requested by the
13 purchaser; provided that this prohibition shall
14 not apply as to special features, appliances,
15 accessories, or equipment [~~which~~] that are
16 ordinarily installed on the vehicle when received
17 or acquired by the dealer;
 - 18 (B) Has represented and sold as an unused motor
19 vehicle any motor vehicle [~~which~~] that has been
20 leased or operated as a demonstrator or U-drive
21 motor vehicle;



- 1 (C) Has sold a new motor vehicle without providing or
2 securing for the purchaser the standard factory
3 new car warranty for the vehicle unless the
4 dealer or salesperson clearly notes in writing on
5 the sales contract that the new motor vehicle is
6 sold without the standard factory warranty;
- 7 (D) Has sold a new motor vehicle covered by a
8 standard factory warranty without informing the
9 purchaser in writing that any repairs or other
10 work necessary on any accessories [~~which~~] that
11 were not installed by the manufacturer of the
12 vehicle may not be obtainable in a geographic
13 location other than where the purchase occurred;
14 provided that the notice required by this section
15 shall conform to the plain language requirements
16 of section 487A-1, regardless of the dollar
17 amount of the transaction;
- 18 (E) Has engaged in any improper business conduct,
19 including but not limited to employing,
20 contracting with, or compensating consumer
21 consultants; or



1 (F) Has sold or leased a new or used motor vehicle,
2 other than at auction, without written
3 documentation upon which the salesperson or
4 dealer shall appropriately indicate the type of
5 sale, which both the customer and salesperson or
6 dealer shall place their initials in the
7 designated spaces prior to the signing of the
8 contract of sale or lease and that contains the
9 following provision printed legibly in at least
10 fourteen point bold typeface:

11
12 "This (IS) (IS NOT) a door-to-door sale. There
13 (IS A) (IS NO) 3-DAY RIGHT TO CANCEL on this
14 purchase.

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

17
18 (18) Is an applicant or holder of a dealer's license and:
19 (A) Has sold or proposed to sell new motor vehicles
20 without providing for the maintenance of a
21 reasonable inventory of parts for new vehicles or



1 without providing and maintaining adequate repair
2 facilities and personnel for new vehicles at
3 either the main licensed premises or at any
4 branch location;

5 (B) Has employed or proposed to employ any
6 salesperson who is not duly licensed under this
7 chapter; or

8 (C) Has sold or proposed to sell new motor vehicles
9 without being franchised therefor;

10 (19) Is an applicant or a holder of an auction's license
11 and has sold or proposed to sell new motor vehicles
12 without being franchised therefor; or

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

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

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

18 (21) Being a manufacturer [~~or~~], distributor[+], or common
19 entity of a manufacturer or distributor that:

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



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

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

20 (C) Has canceled or failed to renew the franchise
21 agreement of any dealer in the State without good



1 faith[, ~~as defined herein~~]. As used in this
2 subparagraph, "good faith" means the duty of each
3 party to any franchise agreement to fully comply
4 with that agreement, or to act in a fair and
5 equitable manner towards each other;

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



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

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



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



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

19 (F) Has required a dealer of new motor vehicles in
20 the State as a condition of sale and delivery of
21 new motor vehicles to purchase special features,



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

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



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

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

15 ~~(+I)]~~ (H) Has wilfully defaced, or removed the vehicle
16 bumper impact notice required by section 437-
17 4.5(a) prior to delivery of the vehicle to which
18 the notice is required to be affixed to the
19 registered owner or lessee. Each wilful
20 defacement, alteration, or removal is a separate
21 offense; ~~[or~~



1 ~~(J)~~ (I) Has required a dealer to refrain from
2 participation in the management of, investment
3 in, or the acquisition of, any other line of new
4 motor vehicle or related products; provided that
5 the new motor vehicle dealer maintains a
6 reasonable line of credit consistent with the
7 requirements of section 437-7(d)(1) for each make
8 or line of new motor vehicle, remains in
9 compliance with reasonable facilities and other
10 franchise requirements of the manufacturer or
11 distributor, and makes no unauthorized change in
12 the principal management of the dealer~~[-]~~; or
13 (J) Has competed with a new motor vehicle dealer
14 operating under an agreement or franchise from
15 the manufacturer, distributor, or common entity
16 in the State:
17 (i) Through the ownership, operation, or control
18 of any new motor vehicle dealers in the
19 State, or by participation in the ownership,
20 operation, or control of any new motor
21 vehicle dealer in the State. A



1 manufacturer, distributor, or factory branch
2 shall not be deemed to be competing when
3 operating, controlling, or owning a
4 dealership, either temporarily for a
5 reasonable period, but in any case not to
6 exceed one year, which one-year period may
7 be extended for a one-time, additional
8 period of up to six months upon application
9 to, and approval by, the board, which
10 approval shall be subject to the
11 manufacturer, distributor, or factory branch
12 demonstrating the need for this extension,
13 and with other new motor vehicle dealers of
14 the same line or make being given notice and
15 an opportunity to be heard in connection
16 with said application, or in a bona fide
17 relationship in which an independent person
18 had made a significant investment subject to
19 loss in the dealership and can reasonably
20 expect to acquire full ownership of the
21 dealership on reasonable terms and



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1 conditions within a reasonable period of
2 time; or
3 (ii) By selling directly or indirectly new motor
4 vehicles to any consumer in the State except
5 through a new motor vehicle dealer holding a
6 franchise for the line-make that includes
7 the new motor vehicle. This clause shall
8 not preclude a manufacturer, distributor, or
9 factory branch from selling new vehicles to
10 its employees, family members of employees,
11 retirees and family members of retirees,
12 not-for-profit organizations, or the
13 federal, state, or local governments;
14 providing information to a consumer for the
15 purpose of marketing; or displaying vehicles
16 or allowing test-drives for promotional
17 purposes at events where the manufacturer,
18 distributor, or factory branch is a sponsor
19 and the vehicles are not for sale to the
20 public at the event."



1 SECTION 4. Section 437-28.5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The same procedures, protections, rights, and
4 remedies provided to a dealer under section 437-3.6, section
5 437-28(a)(21), and part II shall apply to a distributor that is
6 not a manufacturer~~[-]~~, or any common entity of a manufacturer or
7 distributor."

8 SECTION 5. Section 437-52, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) A manufacturer or distributor shall not:

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



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

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



1 [and] provided further that the renewal or
2 continuation of a franchise agreement shall not by
3 itself constitute adequate and valuable consideration;

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

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

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



1 to deny the request within sixty days [~~constitutes~~]
2 shall constitute 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 that a dealer may be required by a
20 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~~] that require the
7 improvements or upgrades or any corresponding
8 incentives or benefits. A manufacturer or distributor
9 may not require a dealer to construct, renovate, or
10 make substantial alterations to the dealer's facility
11 if the dealer has completed a construction,
12 renovation, or substantial alteration to the same
13 component of the facility that was required and
14 approved by the manufacturer or distributor within the
15 previous ten years. For purposes of this paragraph, a
16 "substantial alteration" means an alteration that has
17 a major impact on the architectural features,
18 characteristics, appearance, or integrity of a
19 structure or lot. [~~The term "substantial~~]
20 "Substantial alteration" does not include routine
21 maintenance, such as painting and repairs reasonably



1 necessary to maintain a dealership facility in
2 attractive condition, or any changes to items
3 protected by federal intellectual property rights. If
4 a dealer has completed facility construction,
5 renovation, or substantial alteration under an
6 incentive program, the manufacturer or distributor may
7 not deny a dealer payment or benefits according to the
8 terms of that program in place when the dealer began
9 to perform under the program. If the incentive
10 program under which the dealer completed a facility
11 construction, renovation, or substantial alteration on
12 or after January 1, 2016, does not contain a specific
13 time period during which the manufacturer or
14 distributor must provide payments or benefits to a
15 dealer, then the manufacturer or distributor may not
16 deny the dealer payment or benefits under the terms of
17 that incentive program, as it existed when the dealer
18 began to perform under the program for the balance of
19 ten years after the manufacturer or distributor made
20 the program available to the dealer, regardless of
21 whether the manufacturer's or distributor's facility



1 program has been changed or canceled. This paragraph
2 shall not be construed to require a manufacturer or
3 distributor to provide payment or benefits if changes
4 have been made to the facility since the
5 manufacturer's or distributor's approval that would
6 render the facility non-compliant, regardless of
7 whether the manufacturer's or distributor's image
8 program has changed. Facility changes that are
9 necessitated due to damage sustained from a natural
10 disaster or as a result of necessary safety upgrades
11 shall not be considered a change to the facility that
12 renders the facility non-compliant; provided that
13 those facility changes substantially restore the
14 facilities to the previous or current compliant state.
15 Eligibility for facility-related incentives under this
16 paragraph shall not apply to:

- 17 (A) Lump sum payments for the cost of the facility
18 upgrade;
- 19 (B) Payments on a per vehicle basis; and



1 (C) Any facility-related incentive program in effect
2 with one or more dealers in the State on July 1,
3 2018.

4 Nothing in this paragraph shall be construed to allow
5 a franchised motor vehicle dealer to impair or
6 eliminate a manufacturer's or distributor's
7 intellectual property or trademark rights and trade
8 dress usage guidelines; impair other intellectual
9 property interests owned or controlled by the
10 manufacturer or distributor, including the design and
11 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]~~ this paragraph shall not restrict the
2 terms and conditions of any agreement for which the
3 dealer has 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]~~ this paragraph shall not restrict the terms
11 and conditions of any agreement for which the dealer
12 has voluntarily accepted separate and valuable
13 consideration;

14 (9) Require a dealer or the dealer's employees to attend a
15 training program that does not relate directly to the
16 sales or service of a new motor vehicle in the same
17 ~~[line-make]~~ line-make of that sold or serviced, or
18 both, by the dealer;

19 (10) Require a dealer to pay all or part of the cost of an
20 advertising campaign or contest, or purchase any
21 promotional materials, showroom, or other display



1 decorations or materials at the expense of the dealer
2 without the consent of the dealer, which consent shall
3 not be unreasonably withheld;

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

20 (12) Implement or establish an unreasonable, arbitrary, or
21 unfair sales or service performance standard in



1 determining a dealer's compliance with a franchise
2 agreement. If the sales or service performance
3 standard is to be used as the basis for a termination
4 of a dealer, then the performance standard shall be
5 deemed unreasonable, arbitrary, or unfair if the
6 standard does not include material and relevant local
7 market factors, including but not limited to the
8 geography of the dealer's assigned territory as set
9 forth in the franchise agreement, market demographics,
10 change in population, product popularity, number of
11 competitor dealers, and consumer travel patterns;

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



1 this section if such failure is due to an act of God,
2 work stoppage, or delay caused by a strike or labor
3 difficulty, shortage of products or materials, freight
4 delays, embargo, or other causes of which the motor
5 vehicle franchisor shall have no control.

6 Notwithstanding the foregoing, a dealer may be
7 required by a manufacturer or distributor to make
8 reasonable facility improvements and technological
9 upgrades necessary to support the technology of the
10 manufacturer's or distributor's vehicles. If the
11 dealer chooses not to make such facility improvements
12 or technological upgrades, the manufacturer or
13 distributor shall not be obligated to provide the
14 dealer with the vehicles [~~which~~] that 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
2 services of a substantially similar appearance,
3 function, design, and quality are available from other
4 sources; and the franchised motor vehicle dealer has
5 received the manufacturer's or distributor's approval;
6 provided that this approval shall not be unreasonably
7 withheld 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[-]; or



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1 (15) Require a new motor vehicle dealer to purchase or
2 lease any electric vehicle charging stations at the
3 dealer's expense unless the dealer has notified the
4 manufacturer or distributor of the dealer's intention
5 to begin selling and servicing electric vehicles
6 manufactured or distributed by that manufacturer or
7 distributor. If the dealer is actually offering for
8 retail sale or providing warranty service on electric
9 vehicles manufactured or distributed by that
10 manufacturer or distributor, the dealer shall not be
11 required to purchase or lease, at the dealer's
12 expense:

13 (A) More than the number of electric vehicle charging
14 stations for use by service technicians and
15 customer education than would reasonably be
16 necessary for the dealer to perform these
17 functions based on the dealer's reasonably
18 estimated sales and service volume during the
19 following three-year period; or

20 (B) To make electric vehicle charging stations
21 located at the dealership available for use by



1 the general public. Nothing in this subparagraph
2 shall prohibit a manufacturer or distributor from
3 establishing an incentive program for its dealers
4 within the State that provides financial
5 assistance to dealers that purchase or install
6 electric vehicle charging stations; provided that
7 the incentive compensation paid to the dealer for
8 the dealer's purchase or lease and installation
9 of all electric vehicle charging stations is
10 reasonable and the amount is paid in a lump sum
11 related specifically to the electric vehicle
12 charging stations.

13 Notwithstanding the terms or conditions of any
14 franchise or other agreement, policy, or incentive
15 program, it shall be unlawful for any manufacturer or
16 distributor to require that any of its franchised
17 dealers in the State purchase or lease any diagnostic
18 equipment or tool for the maintenance, servicing, or
19 repair of electric vehicles if the dealer has other
20 diagnostic equipment or tools available for servicing
21 another brand or line-make of vehicle manufactured or



1 distributed by that manufacturer or distributor that
2 can perform the work to the standards required by and
3 which have been approved by the applicable
4 manufacturer or distributor; provided that approval by
5 the manufacturer or distributor shall not be
6 unreasonably withheld."

7 SECTION 6. Section 437-53, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "~~§~~437-53~~§~~ **Sale, assignment, or transfer of franchise**
10 **to qualified purchaser.** (a) A manufacturer or distributor
11 shall not unreasonably withhold consent to the sale, assignment,
12 or transfer of the franchise to a qualified purchaser capable of
13 being licensed as a dealer.

14 (b) The dealer shall notify the manufacturer or
15 distributor, in writing, of its desire to sell, assign, or
16 transfer its franchise and identify the proposed transferee's
17 name, address, financial qualifications, and business
18 experience. Along with such notice, the dealer shall also
19 provide the manufacturer or distributor with completed
20 application forms and related information generally used by the
21 manufacturer or distributor to conduct its review of such a



1 proposal, and a copy of all agreements regarding the proposed
2 sale, assignment, or transfer. The manufacturer or distributor
3 shall, within thirty days of receipt of the application and all
4 supporting documentation as specified therein, review the
5 application and identify in writing the additional information,
6 data, or documents, if any, needed by the manufacturer or
7 distributor to complete its review. If the manufacturer or
8 distributor does not reject the application within sixty days of
9 receipt of the completed application and all supporting
10 documentation or within sixty days of receipt of any additional
11 information, data, or documents timely requested by the
12 manufacturer or distributor, the application shall be considered
13 approved, unless the sixty-day deadline is extended by mutual
14 agreement of the manufacturer or distributor and the dealer.

15 (c) If a manufacturer or distributor denies a dealer's
16 proposed sale, assignment, or transfer of the franchise, the
17 dealer may file a petition in the manner prescribed in section
18 437-51, within sixty days of the notice of denial. The
19 manufacturer or distributor shall have the burden of proof to
20 demonstrate at a hearing pursuant to a timely filed complaint



1 that the proposed transferee [~~is not of good moral character or~~
2 ~~does~~]:

3 (1) Has been convicted of a felony or a crime of fraud,
4 deceit, or moral turpitude;

5 (2) Does not meet the written, reasonable, and uniformly
6 applied business standards or qualifications of the
7 manufacturer relating to the financial qualifications
8 of the transferee and business experience of the
9 transferee or the transferee's executive
10 management[-]; or

11 (3) Is not willing to be bound by the existing terms of
12 the franchise agreement by which the dealer was bound.
13 The manufacturer or distributor shall not condition
14 the transfer of a franchise agreement, upon site
15 control or an agreement to renovate or make
16 substantial improvements to a facility; provided that
17 voluntary and noncoerced acceptance of such conditions
18 by the transferee in writing, including but not
19 limited to a written agreement for which the
20 transferee has accepted separate and valuable
21 consideration, shall not constitute a violation.



1 (d) Subsection (c) shall not apply if a dealer, or an
2 officer, partner, or stockholder of a dealership, sells or
3 transfers a part of the interest to another officer, partner,
4 stockholder, spouse, child, grandchild, parent, sibling, or a
5 general manager or other employee with significant and varied
6 managerial experience for a dealer for at least five years. A
7 dealer, officer, partner, or stockholder shall not have the
8 right to sell or transfer a part of the interest, or a right
9 thereunder, without the consent of the manufacturer or
10 distributor, except that the consent may only be denied if the
11 proposed transferee has been convicted of a felony or a crime of
12 fraud, deceit, or moral turpitude. The manufacturer or
13 distributor shall not condition consent upon a change in the
14 franchise agreement."

15 SECTION 7. Section 437-54, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[~~f~~]**\$437-54[~~}]~~ Transfer of franchise to successor who is**
18 **not a qualified purchaser.** (a) A manufacturer or distributor
19 shall not refuse or fail to give effect, unless it has good
20 cause, to the dealer's designated successor[~~, whether designated~~
21 ~~by will, other estate planning document, or written notice to~~



1 ~~the manufacturer or distributor either while the dealer was~~
2 ~~living or within ninety days of the]~~ for principal operator of
3 the dealership upon the dealer's death [e], incapacity[-], or
4 retirement.

5 (b) The designated successor shall be:

6 (1) The person named by filing a written instrument with
7 the manufacturer;

8 (2) If the dealer dies, the person who is entitled to
9 inherit the deceased dealer's ownership interest in
10 the new motor vehicle dealership under the terms of
11 the dealer's will or testamentary trust, or who has
12 otherwise been designated in writing by a deceased
13 dealer to succeed the deceased dealer in the new motor
14 vehicle dealership, or who is entitled to inherit
15 under the laws of intestate succession of the State or
16 the appointed and qualified personal representative or
17 testamentary trustee of the deceased dealer; or

18 (3) If the dealer becomes incapacitated, the person
19 appointed by the court as the legal representative of
20 the dealer.

21



1 ~~[(b)]~~ (c) In determining whether good cause exists for the
2 manufacturer's or distributor's refusal to honor the succession,
3 the manufacturer or distributor shall have the burden to prove
4 that the successor ~~[is not of good moral character, is]~~:

5 (1) Has been convicted of a felony or a crime of fraud,
6 deceit, or moral turpitude;

7 (2) Is not willing to be bound by the existing terms of
8 the franchise agreement~~[, and]~~ by which the dealer was
9 bound; or

10 (3) Does not meet the written, reasonable, and uniformly
11 applied business standards or qualifications of the
12 manufacturer or distributor relating to the financial
13 qualifications of the successor and business
14 experience of the successor or successor's executive
15 management. If the successor is the spouse or a
16 child, grandchild, parent, or sibling of the dealer;
17 or the executive manager of the dealership, then the
18 manufacturer shall show the designated successor is
19 ~~[either]~~ not qualified to operate the dealership ~~[or]~~
20 and fails to demonstrate that the dealership will be
21 operated by a qualified executive manager.



1 ~~[(e)]~~ (d) The designated successor shall furnish written
2 notice to the manufacturer or distributor including all
3 necessary application forms and related information customarily
4 required by the manufacturer or distributor of the successor's
5 intention to succeed to the ownership of the new motor vehicle
6 dealership within sixty days prior to the designee's actual
7 proposed succession to dealership ownership for the manufacturer
8 or distributor to determine whether the ~~[proposed]~~ designated
9 successor meets the ~~[normal, reasonable, and uniformly applied~~
10 ~~standards for the grant of an application as a new motor vehicle~~
11 ~~dealer.]~~ requirements of this section.

12 ~~[(d)]~~ (e) The manufacturer or distributor shall notify the
13 ~~[proposed]~~ designated successor of its belief that good cause
14 exists to refuse to honor the succession within sixty days after
15 receipt of the notice of the proposed successor's intent to
16 succeed the franchise, and the manufacturer or distributor shall
17 detail its reasons why it believes good cause exists to deny the
18 succession.

19 ~~[(e)]~~ (f) A ~~[proposed]~~ designated successor may file a
20 petition in the manner prescribed in section 437-51 within sixty
21 days after receipt of the manufacturer's or distributor's notice



1 of refusal to honor the succession. The franchise shall
2 continue, and the manufacturer or distributor is prohibited from
3 any action to the contrary, until a final [judgment]
4 determination, including exhaustion of all appellate remedies,
5 has been rendered on the proposed succession.

6 (g) If the designated successor does not choose to protest
7 under subsection (f), or the protest is not successful, the
8 manufacturer or distributor shall allow the designated successor
9 a reasonable period of time, which shall not be less than six
10 months, in which to negotiate a sale of the dealership. Any
11 proposed sale under this section shall be subject to the
12 provisions of section 437-53."

13 SECTION 8. Section 437-56, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§437-56 Reimbursement for parts[-] and labor.** (a) Each
16 manufacturer, distributor, or common entity shall specify in
17 writing to each of its dealers licensed in the State the
18 dealer's obligations for predelivery preparation and warranty
19 service on a manufacturer's, distributor's, or common entity's
20 products. A manufacturer, distributor, or common entity shall
21 timely compensate a motor vehicle dealer who performs required



1 work to maintain or repair a manufacturer's, distributor's, or
2 common entity's product under a warranty or maintenance plan,
3 extended warranty, certified pre-owned warranty, or a service
4 contract, issued by the manufacturer, distributor, or common
5 entity; to fulfill a manufacturer's, distributor's, or common
6 entity's delivery or preparation procedures; or to repair a
7 motor vehicle as a result of a manufacturer's, distributor's, or
8 common entity's recall, campaign service, authorized goodwill,
9 directive, or bulletin.

10 [~~(a)~~] (b) Compensation for parts used in required work
11 shall be determined pursuant to subsection (d). In no event
12 shall any manufacturer [~~or~~], distributor, or common entity pay
13 its dealers a markup on parts for warranty work that is less
14 than that charged by the dealer to the retail customers of the
15 dealer; provided that [~~such~~] the dealer's retail parts markup is
16 not unreasonable when compared with that of same [~~line-make~~]
17 line-make authorized franchise dealers of the manufacturer [~~or~~],
18 distributor, or common entity for identical merchandise or
19 services in the State. If a manufacturer, distributor, or
20 common entity furnishes a part or component to a motor vehicle
21 dealer at no cost to use in performing repairs under a recall,



1 campaign service action, or warranty repair, the manufacturer,
2 distributor, or common entity shall compensate the dealer for
3 the part or component in the same manner as warranty parts
4 compensation under this subsection, less the cost for the part
5 or component as listed in the manufacturer's, distributor's, or
6 common entity's price schedule. The manufacturer, distributor,
7 or common entity shall be prohibited from establishing or
8 implementing a special part or component number for parts used
9 in warranty work, if the result of the special part or component
10 lowers compensation to the dealer below that amount calculated
11 pursuant to this section. This subsection shall not apply to
12 parts or components that are subject to a recall and are issued
13 a new special part or component number.

14 (c) Compensation for labor used in required work shall be
15 determined pursuant to subsection (f).

16 ~~[(b)]~~ (d) The retail markup charged by the dealer shall be
17 established by submitting to the manufacturer or distributor a
18 sufficient quantity of numerically consecutive repair orders
19 from the most recent months to provide one hundred qualifying
20 customer-paid repair orders ~~[. For a dealer unable to provide~~
21 ~~one hundred qualifying customer-paid repair orders out of all~~



1 ~~numerically consecutive repair orders within the two-month~~
2 ~~period prior to the submission, the dealer shall submit customer~~
3 ~~service repair orders of all types, including customer pay,~~
4 ~~warranty, and internal, for that two-month period.]~~ or sixty
5 consecutive days of nonwarranty customer-paid service repair
6 orders that contain warranty-like parts, whichever is less,
7 covering repairs made no more than one hundred eighty days
8 before the submission. The repair orders shall contain the
9 price and percentage markup. [~~Dealers~~] The dealer shall declare
10 in [~~their~~] its submission the average markup the dealer is
11 declaring as its new parts reimbursement rate. The declared
12 parts reimbursement markup shall take effect within [~~ninety~~]
13 thirty days after initial submission to the manufacturer [~~or~~],
14 distributor [~~and shall be presumed to be fair and reasonable.~~
15 ~~However, the manufacturer or distributor may make reasonable~~
16 ~~requests for additional information supporting the submission.~~
17 ~~The ninety-day time frame in which the manufacturer or~~
18 ~~distributor shall make the declared parts reimbursement markup~~
19 ~~effective shall commence following receipt from the dealer of~~
20 ~~any reasonably requested supporting information.],~~ or common
21 entity subject to the procedures in subsection (g). The dealer



1 shall not request a change in the parts reimbursement markup
2 more than once every twelve months.

3 ~~[(e)]~~ (e) In determining qualifying repair orders for
4 parts~~[r]~~ and labor, the following work shall not be included:
5 repairs for manufacturer or distributor special events; repairs
6 covered by any insurance or service contract; federal, state, or
7 local government legislated vehicle emission or safety
8 inspections; parts sold at wholesale or repairs performed at
9 wholesale, which shall include any sale or service to a fleet of
10 vehicles; engine assemblies and transmission assemblies; routine
11 maintenance not covered under any retail customer warranty, such
12 as fluids, filters, and belts not provided in the course of
13 repairs; nuts, bolts, fasteners, and similar items that do not
14 have an individual part number; tires; ~~[and]~~ vehicle
15 reconditioning~~[r]~~; and vehicles owned by the dealer or its
16 employees at the time of the repair.

17 (f) The retail rate customarily charged by the dealer for
18 labor may be established by submitting to the manufacturer or
19 distributor a sufficient quantity of numerically consecutive
20 repair orders from the most recent months to provide one hundred
21 qualifying customer-paid repair orders or sixty consecutive days



1 of nonwarranty customer-paid service repair orders that contain
2 warranty-like repairs, whichever is less, covering repairs made
3 no more than one hundred eighty days before the submission and
4 dividing the amount of the dealer's total labor sales by the
5 number of total labor hours that generated those sales. The
6 repair orders shall contain the price and hourly rate. The
7 dealer shall declare in its submission the hourly rate the
8 dealer is declaring as its new labor reimbursement rate. The
9 average labor rate shall go into effect thirty days following
10 the declaration, subject to the procedures laid out in
11 subsection (g). The dealer shall not request a change in the
12 labor rate reimbursement markup more than once every twelve
13 months.

14 (g) (1) A manufacturer, distributor, or common entity may
15 contest to the dealer the material accuracy of the
16 retail parts markup or retail labor rate that was
17 calculated by the dealer under this section within
18 thirty days after receiving notice from the dealer or,
19 if the manufacturer, distributor, or common entity
20 requests supplemental repair orders pursuant to
21 paragraph (4), within thirty days after receiving the



1 supplemental repair orders. If the manufacturer,
2 distributor, or common entity seeks to contest the
3 retail parts markup, retail labor rate, or both, the
4 manufacturer, distributor, or common entity shall
5 submit no more than one notification to the dealer.
6 The notification shall be limited to an assertion that
7 the rate is materially inaccurate or fraudulent, and
8 shall provide a full explanation of any and all
9 reasons for the allegation; evidence substantiating
10 the manufacturer's, distributor's, or common entity's
11 position; a copy of all calculations used by the
12 manufacturer, distributor, or common entity in
13 determining the manufacturer, distributor, or common
14 entity's position, and a proposed adjusted retail
15 parts markup or retail labor rate, as applicable, on
16 the basis of the repair orders submitted by the dealer
17 or, if applicable, on the basis provided in paragraph
18 (5). After submitting the notification, the
19 manufacturer, distributor, or common entity shall not
20 add to, expand, supplement, or otherwise modify any
21 element of that notification, including but not



1 limited to its grounds for contesting the retail parts
2 markup, retail labor rate, or both, without
3 justification. A manufacturer, distributor, or common
4 entity shall not deny the dealer's submission for the
5 retail parts markup, retail labor rate, or both.

6 (2) If the dealer agrees with the conclusions of the
7 manufacturer, distributor, or common entity and any
8 corresponding adjustment to the retail parts markup or
9 retail labor rate, no further action shall be
10 required. The new adjusted rate shall be deemed
11 effective as of the thirtieth calendar day after the
12 manufacturer's, distributor's, or common entity's
13 receipt of the notice submitted pursuant to paragraph
14 (1).

15 (3) In the event the manufacturer, distributor, or common
16 entity provides all of the information required by
17 paragraph (1) to the dealer, and the dealer does not
18 agree with the adjusted rate proposed by the
19 manufacturer, distributor, or common entity, the
20 manufacturer, distributor, or common entity shall pay
21 the dealer at the manufacturer's, distributor's, or



1 common entity's proposed adjusted retail parts rate or
2 retail labor rate until a decision is rendered upon
3 any board protest filed pursuant to paragraph (1) or
4 until any mutual resolution between the manufacturer,
5 distributor, or common entity and the dealer. The
6 manufacturer, distributor, or common entity's proposed
7 adjusted rate shall be deemed to be effective as of
8 the thirtieth day after the manufacturer's,
9 distributor's, or common entity's receipt of the
10 repair orders submitted pursuant to subsections (d)
11 and (f).

12 (4) If the manufacturer, distributor, or common entity
13 determines from the dealer's set of repair orders
14 submitted pursuant to subsections (d) and (f) that the
15 dealer's submission for a retail parts markup or
16 retail labor rate is substantially higher than the
17 dealer's current warranty rate, the manufacturer,
18 distributor, or common entity may request, in writing,
19 within thirty days after the manufacturer's,
20 distributor's, or common entity's receipt of the
21 repair orders submitted pursuant to subsection (d) or



1 (f), all repair orders closed within the period of
2 thirty days immediately preceding, or thirty days
3 immediately following, the set of repair orders
4 submitted by the dealer. If the dealer fails to
5 provide the supplemental repair orders, all time
6 periods under this section shall be suspended until
7 the supplemental repair orders are provided.

8 (5) If the manufacturer, distributor, or common entity
9 requests supplemental repair orders pursuant to
10 paragraphs (1) and (4), the manufacturer, distributor,
11 or common entity may calculate a proposed adjusted
12 retail parts markup or retail labor rate, as
13 applicable, based upon any set of the qualified repair
14 orders submitted by the dealer, if the manufacturer,
15 distributor, or common entity complies with all of the
16 following requirements:

17 (A) The manufacturer, distributor, or common entity
18 uses the same requirements applicable to the
19 dealer's submission pursuant to paragraph (1);

20 (B) The manufacturer, distributor, or common entity
21 uses the formula to calculate the retail parts



1 markup or retail labor rate as provided in
2 subsections (d) and (f); and

3 (C) The manufacturer, distributor, or common entity
4 omits all charges in the repair orders as
5 provided in subsection (e).

6 (h) If the manufacturer, distributor, or common entity
7 does not contest the retail parts markup or retail labor rate
8 that was calculated by the dealer, or if the manufacturer,
9 distributor, or common entity fails to contest the rate pursuant
10 to subsection (g), within thirty days after receiving the repair
11 orders submitted by the dealer pursuant to subsection (d) or
12 (f), the uncontested retail parts markup or retail labor rate
13 shall take effect on the thirtieth day after the manufacturer's,
14 distributor's, or common entity's receipt of the repair orders
15 and the manufacturer, distributor, or common entity shall use
16 the new retail parts markup or retail labor rate, or both, if
17 applicable, to determine compensation to fulfill warranty
18 obligations to the dealer pursuant to this section.

19 (i) When calculating the retail parts markup or retail
20 labor rate, promotional reward program cash-equivalent pay
21 methods shall not be considered discounts.



1 (j) The labor time allowance claimed by the franchisee for
2 a repair shall be the amount of time allowed by the franchisor's
3 labor time guide or the labor time guide used by the dealer for
4 labor furnished other than pursuant to open recall, warranty, or
5 other manufacturer reimbursed service work, whichever is
6 greater. If neither time guide contains an allowance for a
7 repair, compensation for labor time shall be the actual time
8 spent to complete the repair.

9 [~~d~~] (k) Dealers shall have at least thirty days after
10 the repair work is completed to submit a claim for approval.
11 All claims made by the dealers for compensation for delivery,
12 preparation, and warranty work shall be approved or disapproved
13 and if approved, paid within forty-five days after receipt by a
14 manufacturer [~~or~~], distributor, or common entity of a properly
15 completed claim. All sale incentive claims shall be approved or
16 disapproved and if approved, paid within sixty days after
17 receipt by a manufacturer [~~or~~], distributor, or common entity of
18 a properly completed claim. When any claim is disapproved, the
19 dealer shall be notified in writing of the grounds for
20 disapproval. A claim shall not be disapproved based solely on a
21 dealer's failure to comply with a specific claim processing



1 requirement, such as a clerical error or other administrative
2 technicality that does not put into question the legitimacy of
3 the claim after the dealer properly resubmits the claim in
4 accordance with the manufacturer's, distributor's, or common
5 entity's submission guidelines. If a claim does not meet the
6 submission guidelines, the written notice disapproving the claim
7 shall identify the specific claim documentation procedure or
8 procedures violated by the dealer for the dealer to resubmit a
9 claim for payment or compensation if the claim was denied for a
10 dealer's incidental failure within thirty days of the
11 disapproval. Failure to disapprove a claim within the required
12 time frame constitutes approval of the claim.

13 ~~[(e)]~~ (l) A manufacturer ~~[or]~~, distributor ~~[may]~~, or
14 common entity shall not recover, or attempt to recover, from
15 dealers its cost for reimbursing a dealer for warranty work as
16 required by this section. This subsection shall not prohibit a
17 manufacturer, distributor, or common entity from increasing the
18 prices of parts or motor vehicles in the normal course of
19 business.

20 ~~[(f)]~~ (m) For the purposes of this section, the director
21 of commerce and consumer affairs shall:



1 (1) Conduct a review of the costs of the repairs of motor
2 vehicles, including the prices charged by dealers for
3 performing repairs under warranty and repairs not
4 under warranty; and

5 (2) Compare such costs to repairs performed by non-
6 dealers."

7 SECTION 9. Section 437-57, Hawaii Revised Statutes, is
8 amended by amending subsections (b) and (c) to read as follows:

9 "(b) A manufacturer or distributor shall not chargeback a
10 dealer for sales or warranty payments unless the manufacturer or
11 distributor can satisfy its burden of proof that the dealer's
12 claim was fraudulent or [~~that the dealer did not substantially~~
13 ~~comply with the reasonable written procedures of the~~
14 ~~manufacturer or distributor.~~] unsubstantiated. A manufacturer,
15 distributor, or common entity shall not chargeback a claim based
16 solely on a dealer's failure to comply with a specific claim
17 processing requirement, such as a clerical error or other
18 administrative technicality that does not put into question the
19 legitimacy of the claim after the dealer properly resubmits the
20 claim in accordance with the manufacturer's, distributor's, or
21 common entity's submission guidelines.



1 (c) The manufacturer or distributor shall provide the
2 dealer a written notice [~~thirty~~] sixty days before imposing a
3 proposed chargeback[~~-~~] identifying the specific claim
4 documentation procedure or procedures violated by the dealer for
5 the dealer to resubmit a claim for payment or compensation if
6 the claim was denied for a dealer's incidental failure as set
7 forth in subsection (b). The dealer may protest the imposition
8 of a proposed chargeback prior to the imposition of a proposed
9 chargeback. The dealer, manufacturer, or distributor shall
10 conduct any internal dispute resolution process in accordance
11 with the franchise agreement. After the internal dispute
12 resolution process is concluded, the dealer may file a petition
13 in the manner prescribed in section 437-51 protesting the
14 proposed chargeback amount. If a petition is filed, the
15 proposed chargeback shall be stayed during the entirety of the
16 action and until a final judgment has been rendered."

17 SECTION 10. Section 437-59, Hawaii Revised Statutes, is
18 amended by amending subsection (e) to read as follows:

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



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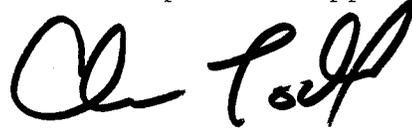
1 the vehicle is subject to a stop-sale order shall be subject to
2 the same limitations and requirements as a warranty
3 reimbursement claim made under section 437-56 [~~or~~
4 ~~437-28(a)(21)(G)~~]. In the alternative, a manufacturer may
5 compensate its franchised dealers under a national recall
6 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 SECTION 11. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 12. This Act shall take effect upon its approval.

12

INTRODUCED BY: _____



JAN 21 2025



H.B. NO. 938

Report Title:

Motor Vehicle Industry Licensing Act; Dealers; Manufacturers; Distributors; Common Entities; Franchises; Parts and Labor

Description:

Authorizes manufacturers and distributors to sell directly to consumers items activated or installed through remote electronic transmission. Clarifies the applicability of the Motor Vehicle Industry Licensing Act to common entities. Amends the grounds for denying, suspending, revoking, or otherwise taking adverse action on a licensee. Prohibits a manufacturer or distributor from requiring a dealer to purchase or lease any electric vehicle charging station at the dealer's expenses unless provided notice of intent to sell the manufacturer's or distributor's electric vehicles. Clarifies the conditions for the transfer of a franchise. Clarifies the requirements for reimbursing a dealer for parts and labor.

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

