

JAN 17 2025

A BILL FOR AN ACT

RELATING TO MOTOR VEHICLES.

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 be appropriately designated
3 and to read as follows:
4 "§437- Remote transmission to vehicle. (a) After the
5 date of sale of a motor vehicle by a dealer to a retail
6 consumer, the manufacturer may sell to the retail consumer, or
7 activate for a fee, a permanent or temporary motor vehicle
8 accessory, option, add-on, feature, improvement, or upgrade for
9 a motor vehicle of a line-make manufactured, imported, or
10 distributed by the manufacturer; provided that the accessory,
11 option, add-on, feature, improvement, or upgrade is activated or
12 installed directly on the retail consumer's motor vehicle
13 through remote electronic transmission; provided further that if
14 the motor vehicle was sold or leased as new by a franchised new
15 motor vehicle dealer in this State within the five-year period
16 preceding the remote electronic transmission, the manufacturer
17 or distributor shall pay the franchised new motor vehicle dealer



1 a minimum of twenty-five per cent of the gross revenue received
2 by the manufacturer, distributor, agent, or common entity for
3 the sale, activation, and renewal during the five-year period.

4 The manufacturer or distributor shall provide each of its
5 franchised dealers a quarterly statement of the revenue received
6 by the manufacturer during that quarter for remote sales or
7 activations and renewals relating to those vehicles sold or
8 leased by the dealer during the five-year period subsequent to
9 the sale or lease of the vehicle to the retail consumer.

10 (b) When providing a new motor vehicle to a dealer for
11 offer or sale to the public, it shall be unlawful for the
12 manufacturer or distributor to fail to provide to the dealer a
13 written disclosure that shall be provided to a potential buyer
14 of the new motor vehicle listing each accessory or function of
15 the vehicle that may be activated, updated, changed, or
16 maintained by the manufacturer through over the air or remote
17 means, and the charge to the consumer for activation, update,
18 change, or maintenance. A manufacturer may comply with this
19 section by notifying the dealer that the information is
20 available on a website or by other digital means."



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

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

"Common entity" means a person who:

(1) Is directly or indirectly controlled by or has more than ten per cent of its equity interest directly or indirectly owned, beneficially or of record, through any form of ownership structure, by a manufacturer;

(2) Has more than ten per cent of its equity interest directly or indirectly controlled or owned, beneficially or of record, through any form of ownership structure, by one or more persons who also directly or indirectly control or own, beneficially or of record, more than thirty per cent of the equity interest of a manufacturer; or

(3) Is affiliated by joint venture, agreement or otherwise, with a manufacturer, except for a distributor of the manufacturer's motor vehicles."

2. By amending the definition of "distributor" to read:



1 ""Distributor" means any person, resident, or nonresident,
2 ~~[including]~~ independent from a manufacturer, who in whole or in
3 part imports, offers for sale, sells, or distributes the
4 manufacturer's new motor vehicles to dealers~~[-]~~ pursuant to an
5 agreement with the manufacturer."

6 3. 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 duly licensed new motor vehicle dealer and a
10 duly licensed manufacturer or distributor that authorizes the
11 dealer to engage in the business of selling or purchasing any
12 particular make or makes of new motor vehicles or motor vehicle
13 parts manufactured or distributed by the manufacturer or
14 distributor, or that establishes rights or obligations, or both,
15 relating to the dealer's new motor vehicle operation, including
16 agreements relating to dealership facilities or site control."

17 4. By amending the definition of "sale" or "selling" to
18 read:

19 ""Sale", "selling", and equivalent expressions, mean the
20 act or attempted act, either as principal or an agent or in any
21 capacity whatsoever, of selling, bartering, exchanging, leasing,



1 or otherwise disposing of, or negotiating, or offering, or
2 attempting to negotiate the sale, purchase, lease, or exchange
3 of, or interest in, a motor vehicle, including an option to
4 purchase a motor vehicle[-], which may involve the following:

5 (1) Accepting a deposit or receiving a payment for the
6 retail purchase, lease, or other use of a motor
7 vehicle, but does not include facilitating a motor
8 vehicle dealer's acceptance of a deposit or receipt of
9 a payment from a consumer or receiving payment under a
10 retail installment sale contract;

11 (2) Accepting a reservation from a retail consumer for a
12 specific motor vehicle identified by a vehicle
13 identification number or other product identifier;

14 (3) Setting the retail price for the purchase, lease, or
15 other use of a motor vehicle, but does not include
16 setting a manufacturer's suggested retail price;

17 (4) Offering or negotiating with a retail consumer terms
18 for the purchase, lease, or other use of a motor
19 vehicle;

20 (5) Offering or negotiating with a retail consumer a value
21 for a motor vehicle being traded in as part of the



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purchase, lease, or other use of a motor vehicle, but
does not include a website or other means of
electronic communication that identifies to a consumer
a conditional trade-in value and that contains
language informing the consumer that the trade-in
value is not binding on any motor vehicle dealer;

(6) Any transaction where the title of a motor vehicle or
a used motor vehicle is transferred to a retail
consumer;

(7) Any retail lease transaction where a retail consumer
leases a vehicle for a period of not less than twelve
months, but does not include administering lease
agreements, taking assignments of leases, performing
required actions pursuant to the leases, or receiving
payments under a lease agreement that was originated
by a motor vehicle dealer;

(8) Displaying sample vehicles or offering or coordinating
test drives to customers;

(9) Arranging the pickup or delivery of a newly purchased
new motor vehicle; or



1 (10) Compensating salespersons, employees, agents, or
2 contractors to engage in the activities identified in
3 paragraphs (1) through (9)."

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

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

19 (1) Has intentionally made a false statement of a material
20 fact in the application for a license or in any other
21 statement required by this chapter or has obtained or



1 attempted to obtain a license by fraud or
2 misrepresentation;

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

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

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

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



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

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

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

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

17 (10) Has violated any law pertaining to false advertising
18 or to credit sales in the offering, soliciting,
19 selling, purchasing, or arranging to sell or purchase
20 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~~] that
7 were not installed by the manufacturer of the
8 vehicle may not be obtainable in a geographic
9 location other than where the purchase occurred;
10 provided that the notice required by this section
11 shall conform to the plain language requirements
12 of section 487A-1, regardless of the dollar
13 amount of the 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; or

18 (F) Has sold or leased a new or used motor vehicle,
19 other than at auction, without written
20 documentation upon which the salesperson or
21 dealer shall appropriately indicate the type of



1 sale, which both the customer and salesperson or
2 dealer shall place their initials in the
3 designated spaces prior to the signing of the
4 contract of sale or lease and that contains the
5 following provision printed legibly in at least
6 fourteen point bold typeface:

7
8 "This (IS) (IS NOT) a door-to-door sale. There
9 (IS A) (IS NO) 3-DAY RIGHT TO CANCEL on this
10 purchase.

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

13 (18) Is an applicant or holder of a new motor vehicle
14 dealer's license and:

15 (A) Has sold or proposed to sell new motor vehicles
16 without providing for the maintenance of a
17 reasonable inventory of parts for new vehicles or
18 without providing and maintaining adequate repair
19 facilities and personnel for new vehicles at
20 either the main licensed premises or at any
21 branch location;



- 1 (B) Has employed or proposed to employ any
- 2 salesperson who is not duly licensed under this
- 3 chapter; ~~[or]~~
- 4 (C) Has sold or proposed to sell new motor vehicles
- 5 without being franchised therefor; or
- 6 (D) Is a manufacturer that has a franchise agreement
- 7 in effect with a new motor vehicle dealer in the
- 8 State, is a common entity of the manufacturer, or
- 9 is otherwise not an independent person or entity
- 10 from the manufacturer or common entity as
- 11 described in this subparagraph;
- 12 (19) Is an applicant or holder of an auction's license and
- 13 has sold or proposed to sell new motor vehicles
- 14 without being franchised therefor; or
- 15 (20) Is an applicant for a salesperson's license and:
- 16 (A) Does not intend to be employed as a salesperson
- 17 for a licensed motor vehicle dealer; or
- 18 (B) Intends to be employed as a salesperson for more
- 19 than one dealer;
- 20 (21) Being a manufacturer or distributor~~[+]~~ that:



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

16 ~~[(I)]~~ (H) 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 ~~(H)~~ (I) 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~~(I)~~;

15 (J) As a manufacturer, has competed with a new motor
16 vehicle dealer operating under a franchise
17 agreement from the manufacturer or from a
18 distributor of the manufacturer through the
19 ownership, operation, or control, or
20 participation therein, of any new motor vehicle
21 dealer in this State; provided that manufacturer



1 or distributor shall not be deemed to be
2 competing under this subparagraph if the
3 ownership, operation, or control is either:

4 (i) Temporary for a period not to exceed one
5 year, which may be extended once for an
6 additional period of up to six months upon
7 application to, and approval by, the board,
8 which shall be subject to the manufacturer
9 or distributor demonstrating the need for
10 the extension; provided further that all
11 other new motor vehicle dealers of the same
12 line or make shall be given notice and an
13 opportunity to be heard in connection with
14 the application; or

15 (ii) In a bona fide relationship where an
16 independent person has made a significant
17 investment subject to loss in the dealership
18 and can reasonably expect to acquire full
19 ownership of the dealership on reasonable
20 terms and within a reasonable time; or



1 (K) As a manufacturer, has competed with a new motor
2 vehicle dealer by selling, directly or
3 indirectly, motor vehicles to any retail consumer
4 in the State, except through an independent new
5 motor vehicle dealer holding a franchise for the
6 line or make that includes the motor vehicle;
7 provided that this subparagraph shall not
8 preclude a manufacturer from:

- 9 (i) Selling new vehicles to its employees or
10 family members of employees, retirees or
11 family members of retirees, nonprofit
12 organizations, or federal, state, or local
13 governments;
14 (ii) Providing information to a consumer for
15 marketing purposes; or
16 (iii) Displaying vehicles or allowing test drives
17 for promotional purposes at events where the
18 manufacturer is a sponsor and the vehicles
19 are not for sale to the public at the
20 event."



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

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

8 (b) Notwithstanding the terms, provisions, or conditions
9 of any dealer or distributor agreement, franchise, or waiver,
10 and notwithstanding any other legal or administrative remedies
11 available, and following any dispute resolution process agreed
12 to by the parties or required by law, any person who is licensed
13 under this chapter and whose business or property is injured by
14 a violation of section 437-28[~~(a)(21)~~] or part II may [~~bring~~]:

15 (1) Bring a protest before the board for a determination
16 of rights, to enjoin further violations and assess
17 penalties as permitted by the board; or

18 (2) Bring a civil action in a court of competent
19 jurisdiction in the State to enjoin further violations
20 and to recover any damages together with the costs of
21 the suit; provided that the laws of the State of



1 Hawaii shall apply to any action initiated under this
2 subsection.

3 (c) Any person that brings or defends against a protest or
4 a civil action under subsection (b) may be entitled to recover
5 reasonable attorneys' fees as a part of any determination,
6 damages, or injunction; provided that the person substantially
7 prevails in establishing or defending against a violation of
8 section 437-28[~~(a)-(21)~~] or part II."

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

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

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



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

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



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

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

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

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



1 than sixty days after receipt of the request. Failure
2 to deny the request within sixty days constitutes
3 approval;

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



1 distributor to make reasonable facility improvements
2 and technological upgrades necessary to support the
3 technology of the manufacturer's or distributor's
4 vehicles. If the dealer chooses not to make [such]
5 facility improvements or technological upgrades, the
6 manufacturer or distributor shall not be obligated to
7 provide the dealer with the vehicles which require the
8 improvements or upgrades or any corresponding
9 incentives or benefits. A manufacturer or distributor
10 may not require a dealer to construct, renovate, or
11 make substantial alterations to the dealer's facility
12 if the dealer has completed a construction,
13 renovation, or substantial alteration to the same
14 component of the facility that was required and
15 approved by the manufacturer or distributor within the
16 previous ten years. For purposes of this paragraph, a
17 "substantial alteration" means an alteration that has
18 a major impact on the architectural features,
19 characteristics, appearance, or integrity of a
20 structure or lot. The term "substantial alteration"
21 does not include routine maintenance, such as painting



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



1 manufacturer's or distributor's facility program has
2 been changed or canceled. This paragraph shall not be
3 construed to require a manufacturer or distributor to
4 provide payment or benefits if changes have been made
5 to the facility since the manufacturer's or
6 distributor's approval that would render the facility
7 non-compliant, regardless of whether the
8 manufacturer's or distributor's image program has
9 changed. Facility changes that are necessitated due
10 to damage sustained from a natural disaster or as a
11 result of necessary safety upgrades shall not be
12 considered a change to the facility that renders the
13 facility non-compliant; provided that those facility
14 changes substantially restore the facilities to the
15 previous or current compliant state. Eligibility for
16 facility-related incentives under this paragraph shall
17 not apply to:
18 (A) Lump sum payments for the cost of the facility
19 upgrade;
20 (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 shall not restrict the terms and
2 conditions of any agreement for which the dealer has
3 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 shall not restrict the terms and conditions
11 of any agreement for which the dealer has voluntarily
12 accepted separate and valuable consideration;

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

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



1 without the consent of the dealer, which consent shall
2 not be unreasonably withheld;

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

19 (12) Implement or establish an unreasonable, arbitrary, or
20 unfair sales or service performance standard in
21 determining a dealer's compliance with a franchise



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

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



1 stoppage, or delay caused by a strike or labor
2 difficulty, shortage of products or materials, freight
3 delays, embargo, or other causes of which the motor
4 vehicle franchisor shall have no control.

5 Notwithstanding the foregoing, a dealer may be
6 required by a manufacturer or distributor to make
7 reasonable facility improvements and technological
8 upgrades necessary to support the technology of the
9 manufacturer's or distributor's vehicles. If the
10 dealer chooses not to make ~~[such]~~ the facility
11 improvements or technological upgrades, the
12 manufacturer or distributor shall not be obligated to
13 provide the dealer with the vehicles which require the
14 improvements or upgrades; ~~[or]~~

15 (14) Require a dealer that is constructing, renovating, or
16 substantially altering its dealership facility to
17 purchase goods, building materials, or services for
18 the dealership facility, including but not limited to
19 office furniture, design features, flooring, and wall
20 coverings, from a vendor chosen by the manufacturer or
21 distributor if: goods, building materials, or



1 services of a substantially similar appearance,
2 function, design, and quality are available from other
3 sources; and the franchised motor vehicle dealer has
4 received the manufacturer's or distributor's approval;
5 provided that this approval shall not be unreasonably
6 withheld or unreasonably delayed. In the event that a
7 manufacturer or distributor does not approve the
8 dealer's use of substantially similar goods, building
9 materials, or services, the manufacturer or
10 distributor shall provide the dealer, in writing at
11 the time of disapproval, a detailed list of reasons
12 why the proposed substantially similar items are not
13 acceptable. Nothing in this paragraph shall be
14 construed to allow a franchised motor vehicle dealer
15 to impair or eliminate a manufacturer's or
16 distributor's intellectual property or trademark
17 rights and trade dress usage guidelines or impair
18 other intellectual property interests owned or
19 controlled by the manufacturer or distributor,
20 including the design and use of signs[+]; or



1 (15) Require a new motor vehicle dealer to purchase or
2 lease any electric vehicle charging station, or any
3 other equipment to power or fuel a vehicle, at the
4 dealer's expense unless the equipment is necessary
5 based upon a reasonable estimate of the sales and
6 service volume expected by the dealer during the
7 following three-year period. It shall be considered
8 unreasonable to require a dealer to make the equipment
9 at the dealership available to the general public.
10 Notwithstanding the terms or conditions of any
11 franchise or other agreement, policy, or incentive
12 program, it shall be unlawful for any manufacturer or
13 distributor to require that any of its dealers in the
14 State purchase or lease any diagnostic equipment or
15 tool for the maintenance, servicing, or repair of
16 vehicles if the dealer has other diagnostic equipment
17 or tools available for servicing another brand or line
18 make of vehicle manufactured or distributed by that
19 manufacturer or distributor that can perform the work
20 to the standards required by, and that have been
21 approved by, the applicable manufacturer or



1 distributor; provided that approval by the
2 manufacturer or distributor shall not be unreasonably
3 withheld. Nothing in this paragraph shall prohibit a
4 manufacturer or distributor from establishing an
5 incentive program for its dealers within the State
6 that provides financial assistance to dealers that
7 purchase or install diagnostic equipment; provided
8 that the incentive compensation paid to the dealer for
9 the dealer's purchase or lease and installation of the
10 equipment is reasonable and the amount is paid in a
11 lump sum related specifically to the cost of the
12 equipment."

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

15 **"[f]§437-53[f] Sale, assignment, or transfer of franchise**
16 **to qualified purchaser.** (a) A manufacturer or distributor
17 shall not unreasonably withhold consent to the sale, assignment,
18 or transfer of the franchise to a qualified purchaser capable of
19 being licensed as a dealer.

20 (b) The dealer shall notify the manufacturer or
21 distributor, in writing, of its desire to sell, assign, or



1 transfer its franchise and identify the proposed transferee's
2 name, address, financial qualifications, and business
3 experience. Along with ~~[such]~~ the notice, the dealer shall also
4 provide the manufacturer or distributor with completed
5 application forms and related information generally used by the
6 manufacturer or distributor to conduct its review of ~~[such]~~ a
7 proposal, and a copy of all agreements regarding the proposed
8 sale, assignment, or transfer. The manufacturer or distributor
9 shall, within thirty days of receipt of the application and all
10 supporting documentation as specified therein, review the
11 application and identify in writing the additional information,
12 data, or documents, if any, needed by the manufacturer or
13 distributor to complete its review. If the manufacturer or
14 distributor does not reject the application within sixty days of
15 receipt of the completed application and all supporting
16 documentation or within sixty days of receipt of any additional
17 information, data, or documents timely requested by the
18 manufacturer or distributor, the application shall be considered
19 approved, unless the sixty-day deadline is extended by mutual
20 agreement of the manufacturer or distributor and the dealer.



1 (c) If a manufacturer or distributor denies a dealer's
2 proposed sale, assignment, or transfer of the franchise, the
3 dealer may file a petition in the manner prescribed in section
4 437-51, within sixty days of the notice of denial. The
5 manufacturer or distributor shall have the burden of proof to
6 demonstrate at a hearing pursuant to a timely filed complaint
7 that the proposed transferee ~~[is not of good moral character or~~
8 ~~does]~~:

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

11 (2) Does not meet the written, reasonable, and uniformly
12 applied business standards or qualifications of the
13 manufacturer relating to the financial qualifications
14 of the transferee and business experience of the
15 transferee or the transferee's executive
16 management[-]; or

17 (3) Is not willing to be bound by the existing terms of
18 the franchise agreement by which the dealer is bound;
19 provided that the manufacturer or distributor shall
20 not condition the transfer of a franchise agreement
21 upon site control or an agreement to renovate or make



1 substantial improvements to a facility; provided
2 further that voluntary and noncoerced acceptance of
3 the condition by the transferee in writing, including
4 but not limited to a written agreement for which the
5 transferee has accepted separate and valuable
6 consideration, shall not constitute a violation.

7 (d) This section shall not apply to a dealer or an
8 officer, partner, or stockholder of a dealership that sells or
9 transfers a partial interest to another officer, partner,
10 stockholder, spouse, child, grandchild, parent, sibling, or a
11 general manager, or other employee with significant and varied
12 managerial experience for a dealer, within five years of
13 entering into a franchise agreement; provided that a dealer,
14 officer, partner, or stockholder shall not have the right to
15 sell or transfer a partial interest, or a right thereunder,
16 without the consent of the manufacturer or distributor, except
17 that the consent may be denied only if the proposed transferee
18 has been convicted of a felony or a crime of fraud, deceit, or
19 moral turpitude. The manufacturer or distributor shall not
20 condition consent upon a change in the franchise agreement."



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

"[f]§437-54[+] Transfer of franchise to successor who is not a qualified purchaser. (a) A manufacturer or distributor shall not refuse or fail to give effect, unless it has good cause, to the dealer's designated successor~~[7]~~ for principal operator of the dealership, whether designated by will, other estate planning document, or written notice to the manufacturer or distributor either while the dealer was living or within ~~[ninety days of]~~ a reasonable time following the dealer's death ~~[or]~~, incapacity, or retirement. The designated successor shall be:

(1) The person identified in a written notice delivered to the manufacturer;

(2) If the dealer dies, the person entitled to inherit the deceased dealer's ownership interest in the new motor vehicle dealership under the terms of the deceased dealer's will or testamentary trust, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or who is entitled to inherit



1 under the laws of intestate succession of the State or
2 the appointed and qualified personal representative or
3 testamentary trustee of the deceased new motor vehicle
4 dealer; or

5 (3) If the dealer becomes incapacitated, the person
6 appointed by the court as the legal representative of
7 the dealer.

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

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

14 (2) Is not willing to be bound by the existing terms of
15 the franchise agreement[, and] by which the dealer was
16 bound; or

17 (3) Does not meet the written, reasonable, and uniformly
18 applied business standards or qualifications of the
19 manufacturer or distributor relating to the financial
20 qualifications of the successor and business



1 experience of the successor or successor's executive
2 management; provided that if the successor is the:
3 (A) Spouse, child, grandchild, parent, or sibling of
4 the dealer; or
5 (B) Executive manager of the dealership,
6 then the manufacturer shall show the designated
7 successor is [either] not qualified to operate the
8 dealership [or] and fails to demonstrate that the
9 dealership will be operated by a qualified executive
10 manager.

11 (c) The designated successor shall furnish written notice
12 to the manufacturer or distributor including all necessary
13 application forms and related information customarily required
14 by the manufacturer or distributor of the successor's intention
15 to succeed to the ownership of the new motor vehicle dealership
16 within sixty days [~~prior to~~] before the designee's actual
17 proposed succession to dealership ownership for the manufacturer
18 or distributor to determine whether the [~~proposed~~] designated
19 successor meets the [~~normal, reasonable, and uniformly applied~~
20 ~~standards for the grant of an application as a new motor vehicle~~
21 ~~dealer.~~] requirements of this section.



1 (d) The manufacturer or distributor shall notify the
2 ~~[proposed]~~ designated successor of its belief that good cause
3 exists to refuse to honor the succession within sixty days after
4 receipt of the notice of the proposed successor's intent to
5 succeed the franchise, and the manufacturer or distributor shall
6 detail its reasons why it believes good cause exists to deny the
7 succession.

8 (e) A ~~[proposed]~~ designated successor may file a petition
9 in the manner prescribed in section 437-51 within sixty days
10 after receipt of the manufacturer's or distributor's notice of
11 refusal to honor the succession. The franchise shall continue,
12 and the manufacturer or distributor is prohibited from any
13 action to the contrary, until a final ~~[judgment]~~ determination,
14 including exhaustion of all appellate remedies, has been
15 rendered on the proposed succession.

16 (f) If the designated successor does not choose to protest
17 under subsection (e); or the protest is not successful, the
18 manufacturer or distributor shall allow the designated successor
19 a period of time not to exceed six months to negotiate a sale of
20 the dealership. Any proposed sale under this section shall be
21 subject to section 437-53."



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

"§437-56 Reimbursement for parts~~[-]~~ and labor. (a) Each manufacturer or distributor shall specify in writing to each of its dealers licensed in the State the dealer's obligations for pre-delivery preparation and warranty service on its products. A manufacturer or distributor shall timely compensate a motor vehicle dealer who performs required work to prepare a vehicle for delivery, maintain or repair a manufacturer's or distributor's product under a warranty or maintenance plan, extended warranty, certified pre-owned warranty, service contract or other manufacturer or distributor reimbursed work, or to repair a motor vehicle as a result of a manufacturer's or distributor's recall, campaign service, authorized goodwill, directive, or bulletin.

~~[(a)]~~ (b) Compensation for parts used in required work described in subsection (a) shall be determined pursuant to the methods described in this subsection. In no event shall any manufacturer or distributor pay its dealers a markup on parts for warranty work that is less than that charged by the dealer to the retail customers of the dealer; provided that ~~[such]~~ the



1 dealer's retail parts markup is not unreasonable when compared
2 with that of same line make authorized franchise dealers of the
3 manufacturer or distributor for identical merchandise or
4 services in the State. If a manufacturer or distributor
5 furnishes a part or component to a motor vehicle dealer at no
6 cost to use in performing repairs under a recall, campaign
7 service action, or warranty repair, the manufacturer or
8 distributor shall compensate the dealer for the part or
9 component in the same manner as warranty parts compensation
10 under this subsection, less the reasonable cost for the part or
11 component. The manufacturer or distributor shall be prohibited
12 from establishing or implementing a special part or component
13 number for parts used in warranty work if the result of the
14 special part or component lowers compensation to the dealer
15 below that amount calculated pursuant to this section.

16 ~~[-b-]~~ (c) 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 non-warranty 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 shall declare in their
10 submission the average markup the dealer is declaring as its new
11 parts reimbursement rate. The declared parts reimbursement
12 markup shall take effect within [~~ninety~~] thirty days after
13 initial submission to the manufacturer or distributor [~~and shall~~
14 ~~be presumed to be fair and reasonable. However, the~~
15 ~~manufacturer or distributor may make reasonable requests for~~
16 ~~additional information supporting the submission. The ninety-~~
17 ~~day time frame in which the manufacturer or distributor shall~~
18 ~~make the declared parts reimbursement markup effective shall~~
19 ~~commence following receipt from the dealer of any reasonably~~
20 ~~requested supporting information.]~~ subject to the procedures in



1 subsection (f). The dealer shall not request a change in the
2 parts reimbursement markup more than once every twelve months.

3 (d) A dealer shall be adequately and fairly compensated
4 for labor used in required work as described in subsection (a)
5 that shall be not less than the retail rate customarily charged
6 by the dealer for labor. The retail rate customarily charged by
7 the dealer for labor may be established by submitting to the
8 manufacturer or distributor a sufficient quantity of numerically
9 consecutive repair orders from the most recent months to provide
10 one hundred qualifying customer-paid repair orders or sixty
11 consecutive days of non-warranty customer-paid service repair
12 orders that contain warranty-like repairs, whichever is less,
13 covering repairs made not more than one hundred eighty days
14 before the submission and dividing the amount of the dealer's
15 total labor sales by the number of total labor hours that
16 generated the sales. The repair orders shall contain the price
17 and hourly rate. A dealer shall include in the dealer's
18 submission the hourly rate the dealer is declaring as its new
19 labor reimbursement rate. The average labor rate shall go into
20 effect thirty days following the declaration, subject to the
21 procedures described in subsection (f). The dealer shall not



1 request a change in the labor rate reimbursement markup more
2 than once every twelve months.

3 ~~[(e)]~~ (e) In determining qualifying repair orders for
4 parts~~[7]~~ 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~~[7]~~; and vehicles owned by the dealer or the
16 dealer's employees at the time of the repair.

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



1 pursuant to this subsection, within thirty days after receiving
2 the supplemental repair orders. If the manufacturer or
3 distributor seeks to contest the retail parts markup or labor
4 rate, or both, the manufacturer or distributor shall submit no
5 more than one notification to the dealer. The notification
6 shall be limited to an assertion that the rate is materially
7 inaccurate or fraudulent, and shall provide a full explanation
8 of any and all reasons for the allegation, evidence
9 substantiating the manufacturer or distributor's position, a
10 copy of all calculations used by the manufacturer or distributor
11 in determining the manufacturer or distributor's position, and a
12 proposed adjusted retail parts markup or labor rate, as
13 applicable, on the basis of the repair orders submitted by the
14 dealer. After submitting the notification, the manufacturer or
15 distributor shall not add to, expand, supplement, or otherwise
16 modify any element of that notification, including but not
17 limited to its grounds for contesting the retail parts markup or
18 labor rate, or both, without justification. A manufacturer or
19 distributor shall not deny the dealer's submission for the
20 retail parts markup, retail labor rate, or both. If a
21 manufacturer or distributor contests the accuracy of the cost



1 for parts or labor pursuant to this subsection, the following
2 shall apply:

3 (1) If the dealer agrees with the conclusions of the
4 manufacturer or distributor and any corresponding
5 adjustment to the retail parts markup or labor rate,
6 no further action shall be required. The new adjusted
7 rate shall be deemed effective as of thirty calendar
8 days after the manufacturer's or distributor's receipt
9 of the notice pursuant to subsections (c) and (d);

10 (2) In the event the manufacturer or distributor provides
11 all of the information required in this subsection to
12 the dealer, and the dealer does not agree with the
13 adjusted rate proposed by the manufacturer or
14 distributor, the manufacturer or distributor shall pay
15 the dealer at the manufacturer or distributor's
16 proposed adjusted retail parts markup or labor rate
17 until a decision is rendered upon any board protest
18 filed pursuant to section 437-28.5 or any mutual
19 resolution between the manufacturer or distributor and
20 the dealer. The manufacturer's or distributor's
21 proposed adjusted rate shall be deemed to be effective



1 as of thirty days from the date of the manufacturer or
2 distributor's receipt of the notice submitted pursuant
3 to subsections (c) and (d);

4 (3) If the manufacturer or distributor determines from the
5 dealer's set of repair orders submitted pursuant to
6 subsections (c) and (d) that the dealer's submission
7 for a retail parts markup or labor rate is
8 substantially higher than the dealer's current
9 warranty rate, the manufacturer or distributor may
10 request, in writing, within thirty days after the
11 manufacturer or distributor's receipt of the notice
12 submitted pursuant to subsections (c) or (d), all
13 repair orders closed within the period of thirty days
14 immediately preceding, or thirty days immediately
15 following, the set of repair orders submitted by the
16 dealer. If the dealer fails to provide the
17 supplemental repair orders, all time periods under
18 this section shall be suspended until the supplemental
19 repair orders are provided; or

20 (4) If the manufacturer or distributor requests
21 supplemental repair orders pursuant to paragraphs (1)



1 and (3), the manufacturer or distributor may calculate
2 a proposed adjusted retail parts markup or labor rate,
3 as applicable, based upon any set of the qualified
4 repair orders submitted by the dealer, if the
5 manufacturer or distributor complies with all of the
6 following requirements:

7 (A) The manufacturer or distributor uses the same
8 requirements applicable to the dealer's
9 submission pursuant to subsection (f);

10 (B) The manufacturer or distributor uses the formula
11 to calculate retail labor rate or retail parts
12 markup as provided in subsections (c) and (d);
13 and

14 (C) The manufacturer or distributor omits all charges
15 in the repair orders as provided in
16 subsection (e).

17 (g) If the manufacturer or distributor does not contest
18 the retail parts markup or labor rate that was calculated by the
19 dealer, or if the manufacturer or distributor fails to contest
20 the rate pursuant to subsection (f), within thirty days after
21 receiving the notice submitted by the dealer pursuant to



1 subsections (c) or (d), the uncontested retail parts markup or
2 labor rate shall take effect thirty days after the manufacturer
3 or distributor's receipt of the notice and the manufacturer or
4 distributor shall use the new retail parts markup or retail
5 labor rate, or both, if applicable, to determine compensation to
6 fulfill warranty obligations to the dealer pursuant to this
7 section.

8 (h) When calculating the retail parts markup and retail
9 labor rate, promotional reward program cash-equivalent pay
10 methods shall not be considered discounts.

11 (i) A dealer shall be reasonably compensated by the
12 manufacturer or distributor for work to prepare and deliver a
13 vehicle, maintain or repair a manufacturer or distributor's
14 product under a warranty, maintenance plan, extended warranty,
15 certified pre-owned warranty, service contract, or other
16 manufacturer or distributor reimbursed work; or to repair a
17 motor vehicle as a result of a manufacturer or distributor's
18 recall, campaign service, authorized goodwill, directive, or
19 bulletin. Compensation to the dealer for labor time involved
20 with the work shall be the labor time allowance contained in the
21 manufacturer or distributor's labor time guide for the repair or



1 the time allowance contained in the labor time guide used by the
2 dealer for labor furnished other than pursuant to open recall,
3 warranty, or other manufacturer or distributor reimbursed
4 service work, whichever is greater. If neither time guide
5 contains an allowance for a repair, compensation for labor time
6 shall be the actual time spent to complete the repair. A
7 manufacturer or distributor may require requests for labor time
8 be submitted in accordance with a uniform process or procedure,
9 which may not be unduly burdensome or time consuming. It shall
10 be considered unduly burdensome for the manufacturer or
11 distributor, among other things, to require the dealer to submit
12 repair orders for service work performed other than for the
13 specific repair which is the subject of the reimbursement claim.
14 The manufacturer or distributor shall respond to an accurate and
15 complete labor time claim within thirty days of receipt or the
16 claim shall be deemed approved. A manufacturer or distributor
17 may object to the labor time allowance submitted in a claim by a
18 dealer and request a modification of the dealer's labor time
19 allowance for a specific claim; provided that the objection
20 includes documentation including any formal time or motion
21 studies carried out by the manufacturer or distributor that



1 demonstrate the dealer's claimed labor time allowance is
2 excessive. A dealer shall respond to a manufacturer or
3 distributor's request for modification of the dealer's labor
4 time allowance within sixty days by furnishing the manufacturer
5 or distributor with documentation of its own demonstrating the
6 dealer's claimed labor time allowance is not excessive.

7 For the purposes of this section, a dealer's claimed labor
8 time allowance shall be deemed acceptable if the labor time
9 allowance is consistent with the labor time allowance for the
10 same or substantially similar repairs defined by any retail
11 labor time guide utilized by the dealer or any formal time or
12 motion studies carried out by the dealer that demonstrate the
13 dealer's claimed labor time allowance is not excessive.

14 ~~[(d)]~~ (j) Dealers shall have at least thirty days after
15 the repair work is completed to submit a claim for approval.
16 All claims made by the dealers for compensation for ~~[delivery,~~
17 ~~preparation, and warranty]~~ work to prepare and deliver a
18 vehicle, maintain or repair a manufacturer or distributor's
19 product under a warranty, maintenance plan, extended warranty,
20 certified pre-owned warranty, service contract, or other
21 manufacturer or distributor reimbursed work; or to repair a



1 motor vehicle as a result of a manufacturer or distributor's
2 recall, campaign service, authorized goodwill, directive, or
3 bulletin, shall be approved or disapproved and if approved, paid
4 within forty-five days after receipt by a manufacturer or
5 distributor of a properly completed claim. All sale incentive
6 claims shall be approved or disapproved and if approved, paid
7 within sixty days after receipt by a manufacturer or distributor
8 of a properly completed claim. When any claim is disapproved,
9 the dealer shall be notified in writing of the grounds for
10 disapproval. A claim may not be disapproved based solely on a
11 dealer's failure to comply with a specific claim processing
12 requirement, such as a clerical error or other administrative
13 technicality that does not put into question the legitimacy of
14 the claim after the dealer properly resubmits the claim in
15 accordance with the manufacturer or distributor's reasonable
16 submission guidelines. If a claim does not meet the submission
17 guidelines, the written notice disapproving the claim shall
18 identify the specific claim documentation procedure violated by
19 the dealer for the dealer to resubmit a claim for payment or
20 compensation if the claim was denied for a dealer's incidental
21 failure within sixty days of the disapproval. Failure to



1 disapprove a claim within the required time frame constitutes
2 approval of the claim.

3 ~~[(e)]~~ (k) A manufacturer or distributor may not recover,
4 or attempt to recover, from dealers its cost for reimbursing a
5 dealer for warranty work as required by this section. This
6 subsection shall not prohibit a manufacturer or distributor from
7 increasing the prices of parts or vehicles in the normal course
8 of business.

9 ~~[(f)]~~ (l) For the purposes of this section, the director
10 of commerce and consumer affairs shall:

11 (1) Conduct a review of the costs of the repairs of motor
12 vehicles, including the prices charged by dealers for
13 performing repairs under warranty and repairs not
14 under warranty; and

15 (2) Compare such costs to repairs performed by non-
16 dealers."

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

19 "(b) A manufacturer or distributor shall not chargeback a
20 dealer for sales or warranty payments unless the manufacturer or
21 distributor can satisfy its burden of proof that the dealer's



1 claim was fraudulent or [~~that the dealer did not substantially~~
2 ~~comply with the reasonable written procedures of the~~
3 ~~manufacturer or distributor.~~] unsubstantiated. A manufacturer
4 or distributor shall not charge back a claim based solely on a
5 dealer's failure to comply with a specific claim processing
6 requirement, such as a clerical error or other administrative
7 technicality that does not put into question the legitimacy of
8 the claim after the dealer properly resubmits the claim in
9 accordance with the manufacturer or distributor's submission
10 guidelines.

11 (c) The manufacturer or distributor shall provide the
12 dealer a written notice thirty days before imposing a proposed
13 chargeback[~~-~~] identifying the specific claim documentation
14 procedure violated by the dealer for the dealer to resubmit a
15 claim for payment or compensation if the claim was denied for a
16 dealer's incidental failure as described in subsection (b). The
17 dealer may protest the imposition of a proposed chargeback
18 [~~prior to~~] before the imposition of a proposed chargeback. The
19 dealer, manufacturer, or distributor shall conduct any internal
20 dispute resolution process in accordance with the franchise
21 agreement. After the internal dispute resolution process is



1 concluded, the dealer may file a petition in the manner
2 prescribed in section [~~437-51~~] 437-28.5 protesting the proposed
3 chargeback amount. If a petition is filed, the proposed
4 chargeback shall be stayed during the entirety of the action and
5 until a final judgment has been rendered."

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

8 "(e) All reimbursement claims made by new motor vehicle
9 dealers pursuant to this section for recall repairs, or for
10 compensation where no part or repair is reasonably available and
11 the vehicle is subject to a stop-sale order shall be subject to
12 the same limitations and requirements as a warranty
13 reimbursement claim made under section 437-56 [~~or~~
14 ~~437-28(a)(21)(G)~~]. In the alternative, a manufacturer may
15 compensate its franchised dealers under a national recall
16 compensation program; provided that the compensation under the
17 program is equal to or greater than that provided under
18 subsection (a) or the manufacturer and dealer otherwise agree."

19 SECTION 11. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



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

2

INTRODUCED BY: _____

A handwritten signature in black ink, appearing to be 'C. L.', written over a horizontal line.

S.B. NO. 1119

Report Title:

Motor Vehicle Industry Licensing Board; Motor Vehicle Sales;
Motor Vehicle Dealers; Manufacturers; Distributors

Description:

Amends the Hawaii Motor Vehicle Industry Licensing Act by adding the definition of common entity and expanding the definition of sale or selling. Allows a licensed dealer or distributor to protest before the board for damages against another dealer or distributor. Establishes a dispute resolution process for manufacturers and distributors to contest the accuracy of a dealer's reimbursement 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.

