

A Bill for an Act Relating to the Regulation and Licensing of Motor Vehicle Manufacturers and Distributors and their Branches and Representatives, Motor Vehicle Dealers, Auctions, Salesmen and Auctioneers by Amending Chapter 437, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 437, Hawaii Revised Statutes, is amended in the following respects:

(1) By amending the title to read “**MOTOR VEHICLE INDUSTRY LICENSING ACT**”.

(2) By adding a section to be appropriately numbered and to read as follows:

Sec. 437- . Legislative findings and declaration. The legislature finds that the manufacture, distribution, and sales of motor vehicles in the State vitally affects the general economy of the State and the public interest and public welfare; that the manufacturers of motor vehicles, whose physical manufacturing facilities are not located within the State, and distributors are doing business in the State through their control and relationship and transactions with their dealers, branches, and representatives; that the geographical location of Hawaii makes it necessary to insure the availability of motor vehicles and parts and dependable service therefor within the State to protect and preserve the transportation system and the investments of its residents. The legislature declares, on the basis of the foregoing findings, that it is necessary to regulate and to license motor vehicle manufacturers and distributors and their branches and representatives, motor vehicle dealers, salesmen, auctions, and auctioneers and any other person engaged in the business of selling or purchasing motor vehicles in the State, in order to prevent frauds, impositions, and other abuses against its residents and to protect and preserve the economy and the transportation system of the State.”

(3) By amending section 437-1 to read as follows:

Sec. 437-1. Definitions. As used in this chapter:

(1) “Auction” means any person engaged in the business of selling motor vehicles by means of bidding at a public or private sale, but excludes an auctioneer and any person referred to in item (6)(A), (B), (D), or (E) when the auctioneer or person acts in his respective capacity described in this section.

(2) “Auctioneer” means a person who for gain or compensation of any kind, sells or offers for sale or exchange, motor vehicles or any interest therein by means of soliciting bids on behalf of an auction.

(3) “Board” means the motor vehicle industry licensing board created by this chapter.

(4) “Business” includes any activities regularly engaged in by any person or regularly caused to be engaged in by him for the object of gain, benefit, or advantage, either direct or indirect.

(5) “Consumer” means a person who intends to or actually drives or physically utilizes a motor vehicle for his personal, family, or business use, including the business of renting or leasing motor vehicles.

(6) “Dealer” includes any person not expressly excluded by this chapter engaged in the business of selling, soliciting, offering, or attempting to negotiate sales, purchases, or exchanges of motor vehicles or any interest therein, including options to purchase motor vehicles. “New motor vehicle dealer” means a dealer who engages in the business of selling at wholesale or retail, or both, new motor vehicles or new and used motor vehicles. “Used motor vehicle dealer”

ACT 263

means a dealer who engages in the business of selling at wholesale or retail, or both, only used motor vehicles.

The term "dealer" excludes a person who sells or purchases motor vehicles in the capacity of:

(A) A receiver, trustee, administrator, executor, guardian, or any other person appointed by or acting under a judgment or order of any court; or

(B) A public officer while performing his official duties; or

(C) A holder of a license issued under this chapter, other than a dealer, when acting within the scope of the license; or

(D) An insurance company, finance company, bank, or other financial institution selling or offering for sale motor vehicles repossessed or foreclosed by it under the terms of a retail installment sales contract or security agreement; or

(E) A person not engaged in the business of selling or purchasing motor vehicles when acquiring or disposing of motor vehicles for their own personal, family, or business use; provided such vehicles are acquired or disposed of for such use in good faith and not for the purpose of evading any provisions of this chapter.

(7) "Distributor" means any person, resident or nonresident, including a manufacturer, who in whole or in part offers for sale, sells, or distributes new motor vehicles to dealers.

(8) "Distributor branch" means any office or establishment maintained by a distributor, either directly or indirectly, for the purpose of selling, offering for sale, promoting the sale of, or distributing new motor vehicles to dealers, or for the purpose of directing or supervising, in whole or in part, factory or distributor representatives.

(9) "Distributor representative" means any representative, employee, agent, contractor, or any person, other than an independent advertising agency, employed by or under a contract with a distributor, directly or indirectly, for the purpose of selling, promoting the sale of, or distributing new motor vehicles or for the purpose of supervising or regulating the business affairs of motor vehicle dealers or prospective dealers.

(10) "Factory branch" means any office or establishment maintained by a manufacturer, directly or indirectly, for the purpose of selling, offering for sale, or promoting the sale of new motor vehicles to a distributor or dealer, or for directing or supervising, in whole or in part, factory or distributor representatives.

(11) "Factory representative" means a representative, employee, agent, contractor, or any person, other than an independent advertising agency, employed by a manufacturer or factory branch for the purpose of selling or promoting the sale of new motor vehicles of such manufacturer or for supervising the franchised dealers or prospective dealers of such manufacturer.

(12) "Franchise" means any contract or agreement between a dealer and a manufacturer or distributor or branches or representatives thereof, which authorizes the dealer to engage in the business of selling or purchasing any particular make or makes of new motor vehicles or parts therefor manufactured or distributed by such manufacturer or distributor.

(13) "Manufacturer" means any person, resident or nonresident, who is engaged in the business of manufacturing or assembling new motor vehicles.

(14) "Motor vehicle" includes any vehicle, motor vehicle, or truck, as defined in sections 249-1 and 249-2, except for tractors, trailers, and amphibious vehicles.

(15) "New motor vehicle" means a motor vehicle which (A) has not previously been sold to any person except a distributor, wholesaler, or dealer for resale, except where the vehicle has not left the dealer's possession after the sale to a consumer and (B) has not previously been registered or titled in the name of a consumer except where the vehicle has not left the dealer's possession after the sale to a consumer, and (C) has not been driven more than five hundred miles; provided, that where a sale, registration, entitlement, or transfer of title of a motor vehicle or the accrual of mileage thereon is primarily for the purpose of evading this provision, the motor vehicle shall be deemed a new motor vehicle for the purposes of this chapter.

(16) "Person" is defined as provided for in section 1-19.

(17) "Premises" or "licensed premises" means the premises in connection with which a license has been, or is proposed to be, issued, including branch locations. The term "premises" or "licensed premises" is substituted for the term "place of business" wherever found in this chapter.

(18) "Retail", "sale at retail", "retail sale", and equivalent expressions, mean the act or attempted act of selling a motor vehicle to a person for use as a consumer.

(19) "Retail installment contract" is defined as provided for in section 476-1.

(20) "Sale", "selling", and equivalent expressions, mean the act or attempted act, either as principal or an agent or in any capacity whatsoever, of selling, bartering, exchanging, or otherwise disposing of, or negotiating, or offering, or attempting to negotiate the sale, purchase, or exchange of, or interest in, a motor vehicle, including an option to purchase a motor vehicle.

(21) "Salesman" means any person who for gain or compensation of any kind, directly or indirectly, by any form of agreement or arrangement, sells, solicits, offers for sale, exchanges, or otherwise deals in, motor vehicles or any interest therein on behalf of any motor vehicle dealer.

(22) "Treasurer" means the director of finance of each county.

(23) "Used motor vehicle" means a motor vehicle other than a new motor vehicle.

(24) "Wholesale" or "sale at wholesale" or "wholesale sale" and equivalent expressions, mean any sale other than a retail sale."

(4) By amending section 437-2 to read as follows:

"Sec. 437-2. Licenses. (a) No person shall engage in the business as or serve in the capacity of, or act as a motor vehicle dealer, motor vehicle salesman, motor vehicle auction, motor vehicle auctioneer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative in this State or otherwise engage in business of selling or negotiating for the purchase of motor vehicles in this State without being licensed

ACT 263

as provided in this chapter. A license issued under this chapter shall authorize the holder to engage in the business or activities permitted by the license, only in the county for which the license is issued.

(b) A license issued under this chapter shall authorize the holder to engage in the same business at branch locations in the same county for which the license is issued during the term thereof; provided each of such branch locations is approved by the board.

(c) A dealer's license or auction's license issued to a sole proprietorship or partnership shall authorize the sole proprietor or general partner to engage in the business of salesman or auctioneer, respectively, without a license therefor, only for and in the business of the holder of the dealer's license or auction's license, as the case may be, and only for the county in which the license is issued.

(d) In the event of the dissolution of a partnership, holding a current license issued under this chapter, due to the death of one or more partners, the surviving partners may operate the business under the license for the remaining effective term of the license but not to exceed sixty days. In the event of the death or bankruptcy of the holder of a current license issued under this chapter, the duly appointed administrator or executor or receiver or trustee in bankruptcy, whichever the case may be, may operate the business under the license for the remaining effective term of the license."

(5) By amending section 437-3 to read as follows:

"Sec. 437-3. Prohibited acts for dealer or auction. No dealer or auction shall sell or bring or cause to be brought into this State for purposes of sale any new motor vehicle for which the dealer or auction is not franchised."

(6) By amending section 437-5 to read as follows:

"Sec. 437-5. Board. A motor vehicle industry licensing board is created for the State. The board shall consist of seven members and shall be selected in the manner provided by section 26-34. The board shall designate one of its members as chairman. Three of the members shall be engaged in the motor vehicle industry and four of the members shall be private citizens not connected with the industry."

(7) By amending section 437-6(6) to read as follows:

"(6) Minimum qualifications. Establish by rules and regulations, minimum qualifications to be met by applicants for licenses issued pursuant to this chapter."

(8) By amending section 437-7 to read as follows:

"Sec. 437-7. Application for issuance or renewal of license. (a) Application. Any person desiring the issuance of a license under this chapter shall file an application therefor with the motor vehicle industry licensing board. Prior to the expiration of the term of a license, the holder shall file an application for renewal of the license. The board shall prescribe the form, information required, manner, and time for presentation of applications for issuance or renewal of licenses issued under this chapter, except as otherwise provided herein.

(b) Financial statements.

(1) Applicants for the issuance of a dealer's or auction's license shall furnish the following financial statements to the board:

(A) Sole proprietorship. An applicant proposing to operate as a sole proprietorship shall furnish a personal financial statement and a financial statement of the proposed business.

(B) Partnership. An applicant proposing to operate as a partnership shall furnish a personal financial statement for each general partner and a financial statement of the partnership.

(C) Corporation. A corporate applicant shall submit a corporate financial statement.

(2) The board shall determine and prescribe the requirement of, form, and information required, in financial statements for applicants for other licenses.

(3) All financial statements shall be certified as to accuracy by a public or certified public accountant or verified as to accuracy by the applicant under oath.

(c) Filing fees.

(1) All applicants for the issuance of a new license shall pay a \$25 filing fee concurrently with each application, except the filing fee for a new salesman's or auctioneer's license shall be \$5.

(2) When a license is granted, the filing fee deposited with the application shall become part payment of the fee required for the particular class of license. When an application is denied or withdrawn, the filing fee paid shall become a realization of the board.

(d) Investigation and report. Upon the filing of any application, a staff member shall indorse on it the date of filing. If no patent disqualification of the applicant is disclosed or no valid objection to the granting of the application is apparent and if all requirements relative to the filing of the application appear to have been complied with, the chairman of the board or executive secretary shall refer the application to a staff member for investigation and report. The report shall include:

(1) A statement as to whether or not the applicant is for any reason disqualified by this chapter from obtaining or exercising a license; and whether or not he has complied with all the requirements of this chapter relative to the making and filing of his application; and

(2) Information relating to any and all other matters and things which in the judgment of the staff member pertain to or affect the matter of the application or the issuance or the exercise of the license applied for; and

(3) In the case of an application for a dealer's or auction's license, in addition to the foregoing:

(A) A description of the premises intended to become the licensed premises, and the equipment and surrounding conditions; and

(B) If the applicant has held a prior dealer's or auction's license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license; and

ACT 263

(C) If the applicant proposes to engage in the business of selling new motor vehicles, a written statement from the applicable manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or such other evidence as prescribed by the board, that the applicant is authorized to sell or distribute such new motor vehicle in the county of licensing.

(e) Notice of interview. After the filing of the report, the board may interview the applicant and upon the interview and other information that is before the board, it may grant or deny the application.

(f) Prior inspection of premises. No new dealer's or auction's license shall be issued under this chapter unless and until the board has caused to be made a thorough inspection of the premises upon which the proposed business is to be conducted and is satisfied that it has met all the requirements as provided in this chapter and that all other general conditions and proposed methods of operation under the license are such as are suitable for carrying on the business in a reputable manner.

(g) Limitation on license.

(1) A dealer's or auction's license issued under this chapter shall authorize the doing of the business at the licensed premises, the boundaries of which shall be determined by the map or plan submitted together with the application for license approved by the board; except in the case of an enlargement or reduction of the licensed premises with the approval of the board indorsed on an amended map or plan.

(2) A license issued under this chapter shall authorize the doing of a business thereunder only for the county in which the license has been issued; and in the case of a salesman or auctioneer, the license shall authorize him to be a salesman or auctioneer only for the dealer or auctions respectively named in the application for a license or an amended license.

(h) Motorcycles and motor scooters. A used motor vehicle dealer's license shall authorize the holder to sell new motorcycles and motor scooters if the licensee is franchised therefor."

(9) By repealing sections 436-9*, 437-10, 437-19, and 437-20.

(10) By amending section 437-15 to read as follows:

"Sec. 437-15. Principals held responsible. Every holder of a license issued under this chapter shall be held strictly responsible for the conduct of his agents and employees in all transactions regarding motor vehicles, motor vehicle parts, franchises, and transactions involving a subject or matter within the jurisdiction of the board. No licensee shall permit any person not licensed under this chapter to sell or exchange or offer to sell or exchange any motor vehicle on the premises specified in the license or to sell or exchange any motor vehicle on behalf of the licensee off of the premises specified in the license."

(11) By amending section 437-22 to read as follows:

"Sec. 437-22. License fees. (a) Authority to establish. The board shall establish by rules and regulations in accordance with chapter 91, the annual license fees for licenses issued pursuant to this chapter.

(b) Payment. In all cases the license and filing fees shall accompany the

* So in original, should probably read 437-9.

application for license.

(c) Refund. In case the license is not granted, the license fee but not the filing fee shall be returned to the applicant at the time he is formally notified that his application is denied.”

(12) By amending section 437-23 to read as follows:

“**Sec. 437-23. Term of license.** (a) Expiration. All licenses issued pursuant to this chapter shall expire on June 30 of each year unless sooner terminated, suspended, or revoked. All applications for renewal of license shall be filed on or before June 30 of each year together with the applicable fees.

(b) Reapplication. If a licensee fails to renew his license on or before June 30 and desires to continue in the business or activity for which the license was issued, he shall file a new application for a license and shall pay in addition to the license and filing fee a penalty of twenty-five percent of the license fee; provided that the board may for good cause waive the collection of all or a part of the penalty; and provided that nothing contained in this section shall limit the power of the board to deny any application on the grounds provided in this chapter.”

(13) By amending section 437-24 to read as follows:

“**Sec. 437-24. Licenses terminate, when.** (a) General. Any license issued pursuant to this chapter shall terminate upon the permanent or temporary cessation of the business or activity for which it was issued.

(b) Salesman’s or auctioneer’s license. A salesman’s or auctioneer’s license shall terminate upon the termination of the license of the dealer or auction, respectively, by whom he is employed (if employed by only one auction) or upon the termination of his employment (if employed by only one auction).

(c) Delivery to board of license. Upon the termination, suspension, or revocation of a license, the holder shall deliver it to the board.

(d) License reissued, when. Where the termination is not the result of suspension or revocation by the board for cause, the board shall reissue the license to the holder without cost if he resumes his business or employment within the term for which it was issued.”

(14) By amending section 437-25 to read as follows:

“**Sec. 437-25. Amended licenses.** (a) Application. Prior to entering the employ of a dealer or auction, other than the one for which his license was issued, a salesman or auctioneer, respectively, shall apply to the board for an amended license authorizing the new employment. Prior to moving or amending the premises or adding branch locations of a business for which a license was issued under this chapter, the holder shall apply for an amended license authorizing the change.

(b) Issuance. The executive secretary of the board is authorized to issue the amended license of a salesman or auctioneer subject to the ratification by the board for the first three amendments to a license during the original term thereof. The board shall issue the fourth and following amendments to such license during the term of the original license. The executive secretary is author-

ized to issue an amended license for new or amended premises or for additional branch locations of the business under a license subject to the board's ratification; provided that the executive secretary shall not issue an amended license when a prior amendment to the same license has not been acted upon by the board. Unless good cause exists, the amended license shall be freely issued for the remainder of the original term.

(c) Fees. The fees for amended licenses shall be set by the board, by rules and regulations in accordance with chapter 91."

(15) By amending section 437-27 to read as follows:

"Sec. 437-27. Change of status, notice. If the status of any licensee changes during the period for which the license is issued in respect to:

(1) Changes in officers, directors, or limited partners of the licensee or termination of the employment of any licensed salesman or auctioneer; or

(2) The transfer of more than ten percent of the ownership of the licensee to one person; or

(3) The termination of a licensed premises by a dealer or auction or the acquiring or termination of a franchise; or

(4) The assignment of any part of the licensee's assets for the benefit of creditors; the licensee shall within fifteen days thereafter file with the board notice of such change containing such information as may be required by the board; provided that nothing contained in this section shall limit the power of the board to suspend, revoke, or deny the renewal of such license or impose any other penalty authorized by this chapter."

(16) By amending section 437-28 to read as follows:

"Sec. 437-28. Suspension; revocation; denial of issuance or renewal of a license. (a) Investigation. The board shall upon the verified written complaint of any person or may upon its own motion investigate the conduct of any licensee or applicant for a license under this chapter and may suspend, revoke, or deny the issuance or renewal of any license issued under this chapter in the manner and for the causes provided in this chapter.

(b) Grounds for suspension, revocation, or denial of issuance or renewal of a license. The board may, after notice and hearing as provided in chapter 91, and subject to appeal to the circuit court of the circuit in which the board has jurisdiction under the procedure and rules prescribed from time to time by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, suspend, revoke, or deny the renewal of any license, or prior to such notice and hearing deny the issuance of any license if it finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than a ten percent interest of such applicant or holder:

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

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

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

(4) Has engaged in his business under a past or present license issued pursuant to this chapter, in such a manner as to cause injury to the public or to those with whom he is dealing; or

(5) Has failed to comply, observe, or adhere to any law in any other respect on account whereof the board may deem him to be unfit or improper person to hold a license; or

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

(7) Has been convicted of a felony or misdemeanor involving moral turpitude, and has not been pardoned therefor. This restriction shall also apply to any corporate or partnership applicant or holder of a license, where a stockholder or general or limited partner owning directly or indirectly more than a ten percent interest in such applicant or holder has been so convicted; or

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

(9) In the case of an individual applicant or holder of a license, is not at least twenty years of age; in the case of a partnership applicant or holder of a license, if any general or limited partner thereof is not at least twenty years of age; or

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

(11) Has violated any of the laws pertaining to false advertising or to retail installment sales in the offering, solicitation, selling or purchasing, or arranging to sell or purchase a motor vehicle or any interest therein; or

(12) Has wilfully failed or refused to perform any unequivocal and indisputable obligation under any written agreement involving the sale or purchase of a motor vehicle or any interest therein including an option to purchase; or

(13) Has been denied the issuance of a license under this chapter for substantial culpable cause or for having had a license issued under this chapter suspended, revoked, or the renewal thereof denied for substantial culpable cause; or

(14) Has entered or has attempted to enter or proposes to enter into any contract or agreement contrary to this chapter or any rule or regulation adopted thereunder; or

(15) Has been or is engaged or proposes to engage in the business of selling new motor vehicles as a dealer or auction without a proper franchise therefor; or

(16) Has at any time employed or utilized or attempted or proposed to employ or utilize any person not licensed under this chapter who is required to be so licensed; or

(17) Being a salesman or dealer:

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

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

(C) Has sold a new motor vehicle without providing or securing for the purchaser the standard factory new car warranty for the vehicle, unless the dealer or salesman clearly notes in writing on the sales contract that the new motor vehicle is sold without the standard factory warranty; or

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

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

(B) Has employed or proposed to employ any salesman who is not duly licensed under this chapter; or

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

(D) Has proposed to sell new motor vehicles under a franchise awarded by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative who is charged with cancelling or failing to renew a franchise agreement with a dealer unfairly without due regard to the equities of such dealer or without good faith, in a complaint filed with the board with which such proposal is pending, which complaint has not been finally disposed of by the board and by the highest applicable appellate court if appeal has been taken of the decision of the board; or

(19) Being an applicant or holder of an auction's license:

(A) Has employed or proposed to employ any auctioneer who is not licensed under this chapter; or

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

(20) Being an applicant for a salesman's license:

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

(B) Does not intend to be employed as a salesman as his principal occupation; or

(C) Intend to be employed as a salesman for more than one dealer; or

(21) Being a motor vehicle auctioneer, does not intend to be employed as such by a licensed auction under this chapter; or

(22) Being a manufacturer, factory branch, factory representative, distributor, distributor branch or distributor representative:

(A) Has attempted to coerce or has coerced any dealer in this State to

enter into any agreement with such manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or to do any act which the dealer is not legally required to perform or enter or to refrain from doing any act which the dealer can legally perform, by threatening to cancel or fail to renew any franchise agreement between such manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative and the dealer; or

(B) Has attempted to coerce or coerced any dealer in this State to enter into any agreement with such manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or to do any act which the dealer is not legally required to perform or enter or to refrain from doing any act which the dealer can legally perform or to penalize or threaten to penalize any dealer for failing to enter such agreement as aforesaid or for failing to do such act as aforesaid or for failing to refrain from doing such act as aforesaid, by awarding or threatening to award a franchise to another person for the sale of the same make of new motor vehicles in the same sales territory covered by the existing franchise agreement of the dealer; or

(C) Has attempted to or has cancelled or failed to renew the franchise agreement of any dealer in this State unfairly without due regard to the equities of the dealer or without good faith, as defined herein. Upon such cancellation or failure to renew a franchise agreement, the party cancelling or failing to renew the franchise agreement shall, at the dealer's option, either compensate the dealer at the fair market going business value for the dealer's capital investment, which shall include but not be limited to the going business value of the franchise, good will, property and improvement owned or leased by the dealer for the purpose of the franchise, inventory of parts and motor vehicles possessed by the dealer in connection with the franchise, plus reasonable attorney's fees incurred in collecting such compensation; provided that such capital investment shall have been made with reasonable and prudent judgment for the purpose of the franchise agreement; or compensate the dealer for his damages including attorney's fees as aforesaid, resulting from the cancellation or failure to renew the franchise agreement. As used herein, "good faith" means the duty of each party to any franchise agreement to act in a fair and equitable manner towards each other, with freedom from coercion or intimidation or threats thereof from each other; or

(D) Has delayed delivery of or refused to deliver without cause, any new motor vehicle to a dealer, franchised to sell the new motor vehicle, within a reasonable time after receipt of a written order for the vehicle from the dealer. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a dealer who has not received delivery thereof, but who had placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be prima facie evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle without cause. The non-delivery of a new motor vehicle to a dealer within sixty days after receipt of a written order for the vehicle from a dealer shall also be prima facie evidence of delayed delivery of, or refusal to deliver, a new motor vehicle without cause; provided that the delayed delivery of, or refusal to deliver, a motor vehicle shall

ACT 263

be deemed with cause if the manufacturer establishes that the delay or refusal to deliver is due to a shortage or curtailment of material, labor, transportation, utility service, labor, or production difficulty, or other similar cause beyond the reasonable control of the manufacturer; or

(E) Has sold or distributed or caused to be sold or distributed any new motor vehicle to a person in this State at a lower actual price than the actual price charged to a dealer in this State for the same model vehicle similarly equipped; or

(F) Has discriminated against their franchised dealers in this State by not providing the equivalent value of service, transportation, parts, and accessories with each new motor vehicle for the purchase price as provided to their franchised dealers in other states.

(c) Violation. Each of the aforementioned grounds for suspension, revocation, or denial of issuance or renewal of license shall also constitute a violation of this chapter, unless the person involved has been tried and acquitted or convicted of the offense constituting such grounds.

(d) Suspension pending hearing. When it is deemed urgent by the board for the proper protection of the public that a license be immediately or summarily suspended pending a hearing of any charge against the licensee, the order of suspension shall be served upon the licensee at the same time as the notice of hearing on the charge. Any attempt of the licensee to continue his business or occupation while his license is so suspended shall of itself be sufficient to warrant a permanent revocation of his license and shall also subject him to all the penalties prescribed by this chapter for violations. For such disregard of an order suspending his license, the board may summarily take possession of and impound all motor vehicles belonging to or in the possession of the licensee whether or not the vehicles are situated upon the licensed premises, pending final action in this case or may, without taking possession of such motor vehicles, render them unusable; provided, however, that the right of the board to take any such action and any liens for towing or storage or otherwise arising from such action are subject to and subordinate to any security interest which has attached to such motor vehicles prior thereto, and the board shall prior to taking any such action give notice thereof to any secured party whose security interest in such motor vehicles is known to the board or who, prior to any such action by the board, had filed a financing statement covering such motor vehicles or had noted his lien on the legal ownership certificates thereof.

(e) In addition to criminal penalties. The suspension, revocation, or refusal to issue or renew a license or the imposition of any other penalty by the board shall be in addition to any penalty which might be imposed upon any licensee upon a conviction at law for any violation of this chapter."

(17) By adding a new section to be appropriately numbered and to read as follows:

"Sec. 437- . Bonds: manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, auction, auctioneer. (a) Auction. The bond of an auction shall be in the same amount and under the same terms and conditions as required for a new motor

vehicle dealer under section 437-17.

(b) Auctioneer. The bond of an auctioneer shall be in the same amount and under the same terms and conditions as required for a salesman under section 437-21, regardless of whether the auctioneer is employed by more than one auction.

(c) Manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative. Each manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative engaged in the business of manufacturing, distributing, or selling new motor vehicles in this State shall furnish and maintain a surety bond in the penal sum of \$100,000 guaranteeing compliance by the principal with this chapter and the rules and regulations enacted thereunder and protecting the treasurer, the dealers, and the general public from any loss or damage resulting from the violation of any provision of this chapter or any rule or regulation enacted thereunder; provided that a factory branch, factory representative, distributor, distributor branch, or distributor representative need not furnish separate bonds if the manufacturer or distributor it represents has filed the bond required hereunder and the factory branch, factory representative distributor, distributor branch, or distributor representative is named as a principal therein.

Suit on bonds shall be allowed under the same terms and conditions provided for a dealer's bond in section 437-17(d). Nothing contained in this section shall prohibit or prevent an independent action against the licensee in violation as aforesaid and any other person from being joined or consolidated with an action on the bond and the recovery of a larger amount than the amount of the bond."

(18) By amending section 437-29 to read as follows:

"Sec. 437-29. Notice of hearing; discretionary powers of board. (a) Before suspending, revoking, or refusing to renew a license, the board shall notify the licensee in writing of the specific charges against him and shall afford him an opportunity to be heard in person, or by counsel, with reference thereto. Notice of the hearing may be served in person, or by mailing the same by registered mail addressed to the address shown on the latest application for a license or amended license. No hearing shall be held less than fifteen days after notice has been so served.

(b) Where any applicant for a license or stockholder owning more than a ten percent interest in the applicant or any officer, director, trustee, employee, or partner of such applicant has been guilty of any act or omission involving personal misconduct which by this chapter is made ground for refusing to issue a license or for revoking or suspending license, such as the making of a false statement of a material fact in an application, the commission of a fraudulent act in connection with the sale or negotiation for the purpose of motor vehicles, and the like, the board shall have discretion, nevertheless, to issue the license or suspend or reject the revocation of the license, upon such reasonable conditions, including the furnishing of an additional bond not exceeding \$5,000, as to future good conduct of the applicant and other person concerned, as the

ACT 263

board determines, provided the board finds:

(1) That there are extenuating circumstances which indicate that the act or omission was not due to moral turpitude; or

(2) That a reasonable time fixed by regulation of the board, not less than one year, has elapsed since the act or omission occurred, together with evidence of the person's rehabilitation or general good character, sufficient to indicate that the person is not likely to repeat the offense or engage in illegal, unlawful, or unconscionable practices; or

(3) That such favorable action by the board will not jeopardize the public interest.

(c) Denial of application for a new license. No person whose application for the issuance of a new license has been denied by the board shall be entitled to a hearing thereon, unless the person files a written request for a hearing with the board within fifteen days after the issuance of the notice of such denial.

(d) Notice to treasurer. A copy of the application of each dealer or auction executed and approved by the board or a report of the suspension, revocation, or change of status of a dealer's or auction's license shall be furnished to the treasurer promptly upon the granting, suspension, revocation, or change of status of such license.

(19) By amending section 437-39 to read as follows:

"Sec. 437-39. Injunction by any person. Any licensee or other person who violates or threatens to violate any provision of this chapter or rule or regulation enacted thereunder may be enjoined from committing or continuing the violation or engaging in the business under the license issued under this chapter, in action brought by the board or by any person who will be or is damaged or aggrieved by the violation or threatened violation."

(20) By amending section 437-40 by amending the phrase "sections 437-9 and 437-19" to read "section 437-7".

(21) By amending section 437-41 to read as follows:

"Sec. 437-41. Liberal interpretation. All provisions in this chapter shall be liberally interpreted to protect the public from fraud in the business of purchasing or selling motor vehicles and to protect the investments of its citizens in motor vehicles and dealerships and to protect the transportation system of the State and shall further be interpreted to affect existing as well as future franchise agreements."

(22) By amending the words "motor vehicle dealers licensing board" wherever they appear to read "motor vehicle industry licensing board".

SECTION 2. If any provision or portion thereof of this Act or the application thereof to any person or circumstances is held invalid or unconstitutional, the remainder of such provisions of this Act or the application of such provision or portion thereof to other persons or circumstances shall not be affected thereby.

SECTION 3. This Act shall take effect upon its approval; provided that the provisions requiring the licensing of and furnishing of bonds by manufacturers, factory branch, factory representatives, distributors, distributor

branches, distributor representatives, auctions, and auctioneers shall take effect on July 1, 1970; and provided that nothing contained in this Act shall affect the legality and effect of rules and regulations previously enacted by the boards which are not inconsistent with this Act; and provided further that all licenses issued and current on the effective date of this Act shall be valid for the remainder of the term thereof unless suspended, revoked, or terminated or unless renewal thereof is denied as provided by this Act and chapter 437, Hawaii Revised Statutes.

(Approved July 16, 1969.)