

ACT 129

H. B. NO. 1005

A Bill for an Act Relating to the Motor Vehicle Industry Licensing Act, Amending Chapter 437 of the Hawaii Revised Statutes.

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

SECTION 1. Chapter 437 of the Hawaii Revised Statutes is amended as follows:

a. Section 437-28(b) (18) (D) is repealed.

b. Section 437-28(b) (22) (A) is amended to read as follows:

“Section 437-28(b) (22) (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 any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with said dealer, by threatening to cancel the franchise agreement or by threatening to refuse at the expiration of the current franchise agreement, to enter a new franchise agreement with such dealer; or.”

c. Section 437-28(b) (22) (B) is amended to read as follows:

“Section 437-28(b) (22) (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 any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with said dealer, by awarding or threatening to award a franchise to another person for the sale of the same make of any motor vehicle in the same sales area of responsibility covered by the existing franchise agreement of the dealer; or.”

d. Section 437-28(b) (22) (C) is amended to read as follows:

“Section 437-28(b) (22) (C). Has attempted to or has cancelled or failed to renew the franchise agreement of any dealer in this State without good faith, as defined herein. Upon such cancellation or failure to renew the 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 business, goodwill, 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 such 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 fully to comply with that agreement, or to act in a fair and equitable manner towards each other.”

e. Section 437-28(b) (22) (F) is amended to read as follows:

“Section 437-28(b) (22) (F). Has discriminated against any of their franchised dealers in this State by directly or indirectly charging such dealer more for a new motor vehicle or services, parts, or accessories therefor or a higher rate of transportation for transporting such vehicle from the manufacturing or assembly plant to such dealer or any portion of such distance, than is charged to any other of their franchised dealers in other states for the same make, model, and year of a new motor vehicle or for the same services, parts, or accessories therefor or for similar transportation for such vehicle during the same period. A manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative who provides or causes to be provided greater transportation benefits for a new motor vehicle as aforesaid to any of their franchised dealers in other states than is provided to any of their franchised dealers in this State for the same or lesser price or charge than that imposed upon such franchised dealer in this State during the same period is deemed to have so discriminated against such franchised dealer in this State. Evidence of similar discriminatory practice against franchised dealers in other states shall not constitute a defense to or justification of the commission of such discriminatory act against the franchised dealer in this State. The intent and purpose of this paragraph is to eliminate inequitable pricing policies set by manufacturers, factory branches, factory representatives, distributors, distributor branches, or distributor representatives which result in higher prices of new motor vehicles to the consumer in this State. This paragraph shall be liberally interpreted to effect such intent and purpose and in the application thereof, the substance and effect and not the form of the acts and transactions shall be primarily considered in determining whether a discriminatory act has been committed. Nothing contained in this subparagraph F shall prohibit establishing delivered prices or destination charges to dealers

in this State which reasonably reflect the seller's total transportation costs incurred in the manufacture or delivery of such products to such dealers, including costs which are related to the geographical distances, modes and costs of transportation involved in shipments to this State, or which meet those lower prices established by competitors.”

f. Section 437-28(c) is repealed.

g. Section 437-28(d) is amended to read as follows:

“Section 437-28(d). Suspension pending hearing. Upon finding by the board or by the Director or Regulatory Agencies that a licensee is engaging within this State in activities which involve (1) an immediate and unreasonable threat to personal safety or (2) fraud or misrepresentation upon customers, and that, for the protection of the public from the possible consequences of such practices, the business of licensee should be immediately suspended, the board or the director may order the summary suspension of the license for a period not to exceed five days, pending a hearing by the board on the charges involving such practices. The order of suspension shall be served upon the licensee at the same time as the notice of hearing upon such charges, which hearing shall be scheduled prior to the expiration of the order of suspension. The period of suspension prior to the hearing cannot be extended except upon request of the licensee for a reasonable continuance adequately to prepare his defense.

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, 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.”

h. Section 437-28(e) is repealed.

i. Section 437-38 is repealed.

j. Section 437-39 is repealed, and substituted in lieu thereof, the following section.

“Section 437-39 Enforcement. When necessary, the board may enforce the provisions of this act including any rule or regulation promulgated thereunder or decision rendered thereunder by applying to the circuit court for any relief which may be appropriate, including injunctive relief. Further, the board may apply to the circuit court for any relief which

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may be appropriate including injunctive relief to enjoin any licensee or other person who violates or threatens to violate any provision of this chapter, including any rule or regulation promulgated thereunder.”

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 18, 1973.)

*Edited accordingly.