

ACT 92

H.B. NO. 3047-78

A Bill for an Act Relating to the Motor Vehicle Industry.

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

SECTION 1. Section 437-15, Hawaii Revised Statutes, is amended to read:

"Sec. 437-15 Principals held responsible. Every holder of a license issued under this chapter may be held 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 the premises specified in the license."

SECTION 2. Section 437-17, Hawaii Revised Statutes, is amended to read:

"Sec. 437-17 Bond of dealer. (a) Each new motor vehicle dealer receiving a license shall keep in force a bond to the motor vehicle industry licensing board in the penal sum of \$25,000 if the license is for a county with a population of 200,000 or more and \$15,000 if the license is for any county with a population of less than 200,000. Each used motor vehicle dealer shall give and keep in force a bond to the board in the penal sum of \$10,000. More than one bond may be furnished by the same applicant, provided they aggregate the full amount prescribed by this section. If any bond is not (1) executed by a surety company authorized to do business in the State, or (2) secured by a deposit of cash with the board in lieu of surety, then sections 103-35 to 103-37 shall be applicable as nearly as may be to furnishing of such bond and the surety or sureties and the security thereof, with the substitution of the board hereunder for the awarding officer mentioned in sections 103-35 and 103-37 as may be applicable.

(b) It is provided:

- (1) That if the applicant maintains an established place of business in the county concerned which is used, or will be used, for the purpose of selling, displaying, or offering to negotiate for the purchase of motor vehicles, the market value of which, over and above all liens, charges, and encumbrances thereon is equal to or greater than ninety per cent of the amount of bond required by this section, and the financial condition of the applicant is such that, in the judgment of the board the excess over ten per cent of the bond may be waived without unduly jeopardizing the possible rights and interests of present and prospective claimants against the applicant intended to be secured by the bond, then the amount of the bond for new motor vehicle dealers or used motor vehicle dealers may be reduced at the discretion of the board; and
- (2) That if the dealer is licensed to engage in the business of selling only motorcycles and motor scooters, the bond shall be only in the amount of \$5,000 for a county with a population of 200,000 or more, and \$1,000

for any county with a population of less than 200,000.

(c) The bond shall be conditioned:

- (1) That the dealer will faithfully and truly comply with all the valid provisions of this chapter as the same now is or may hereafter be amended, and with such valid regulations as may be promulgated by the board pursuant to this chapter.
- (2) That he will not be guilty of fraud, misrepresentation or other improper business conduct in connection with the selling, purchasing, negotiating for purchase, or otherwise dealing with motor vehicles or any other property related thereto, and that he will satisfy all judgments rendered against him based in whole or in part upon representations or warranties made in connection with any retail sale or negotiation for the purchase of a motor vehicle.
- (3) That he will protect the treasurer of the county and any purchaser of any vehicle or any person acquiring any lien thereon or successor in interest of any such person against any loss on account of any defect in or undisclosed encumbrance upon the title of any motor vehicle, registered by the treasurer in reliance upon any certificate, affidavit, or other representation of the dealer, or registration or transfer of registration procured by the dealer.

(d) Suit on bond. The board, director of regulatory agencies, or the treasurer, or any person, who has been or claims to have been injured by the breach of the conditions shall have the right of action to recover on any such bond, plus a reasonable attorney's fee (to be allowed by the court, no other attorney's fees shall be permitted from the bond proceeds) incurred to procure the recovery under the bond, but the aggregate liability of the surety or sureties to all such persons shall in no event exceed the amount of the bond. Nothing in this section or chapter shall be deemed to prohibit or prevent an independent action against the dealer 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 founded upon any other cause or causes of action so joined or consolidated."

SECTION 3. Section 437-28, Hawaii Revised Statutes, is amended to read:

"Sec. 437-28 Suspension; revocation; fine; 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, fine, 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, fine, 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, fine, 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 per cent 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 an unfit or improper person 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) 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
- (8) In the case of an individual applicant or holder of a license, is not at least eighteen 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 eighteen years of age; or
- (9) 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
- (10) Has violated any of the laws pertaining to false advertising or to retail installment sales in the offering, soliciting, selling, or purchasing, or arranging to sell or purchase a motor vehicle or any interest therein; or
- (11) 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
- (12) 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

- (13) 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
- (14) 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
- (15) 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
- (16) Has entered or attempted to enter any one-payment contract, where the contract is required to be signed by the purchaser prior to removal of the motor vehicle for test driving from the seller's premises; 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
 - (D) Has engaged in any improper business conduct.
- (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
- (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) Intends 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 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 such 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
 - (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 such 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
 - (C) Has attempted to or has canceled 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 canceling 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, 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 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; 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 has 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 nondelivery 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 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 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 franchise dealer in this State. The intent and purpose of this subparagraph 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 subparagraph 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 (E) 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 cost of transportation involved in shipments to this State, or which meet those lower prices established by competitors; or

- (F) Has required a dealer of new motor vehicles in this State as a condition of sale and delivery of new motor vehicles to purchase special features, appliances, accessories, or equipment not desired or requested by such dealer; provided that this prohibition shall not apply to special features, appliances, accessories, or equipment, except heaters, which are regularly installed on that particular model of new motor vehicles as "standard" equipment or to special features, appliances, accessories, or equipment which are an integral part of such new motor vehicles and cannot be removed therefrom without substantial expense.

(c) Suspension pending hearing. Upon finding by the board or by the director of 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 cover-

ing such motor vehicles or had noted his lien on the legal ownership certificates thereof.

(d) Fines. Any fine imposed by the board after a hearing in accordance with chapter 91 shall be no less than \$100 nor no more than \$1,000 for each violation.

(e) Restitution. In lieu of or in addition to the fine imposed under this section, the board may require the motor vehicle dealer to make restitution to the customer. Restitution may be imposed in lieu of a fine even though the amount may exceed the fine set forth in subsection (d)."

SECTION 4. Section 286-52, Hawaii Revised Statutes, is amended to read:

"Sec. 286-52 Procedure when title of vehicle transferred; delivery of certificate mandatory. (a) Upon a transfer of the title or interest of a legal owner in or to a vehicle registered under this part, the person whose title or interest is to be transferred and the transferee shall write their signatures with pen and ink upon the certificate of ownership issued for the vehicle, together with the address of the transferee in the appropriate space provided upon the reverse of the certificate.

(b) Within twenty calendar days thereafter, the transferee shall forward both the certificate of ownership so indorsed and the certificate of registration to the director of finance who shall file the same. Whenever a transferee fails to comply with these provisions, the director of finance shall charge a fee of \$2, in addition to the fee provided in section 286-51, for a new certificate of ownership.

(c) Subsection (b) of this section, requiring a transferee to forward the certificate of ownership after indorsement and the certificate of registration to the director of finance, shall not apply to the transferee of a vehicle who was not intending to and does not drive the vehicle or permit the vehicle to be driven upon the public highways, but every such transferee shall, upon transferring his interest or title to another, give notice of the transfer to the director of finance and indorse the certificate of ownership to the new legal owner and the certificate of registration to the new owner; provided that the director of finance, if he has ascertained as of the date of the application that the registered owner has not deposited or paid bail with respect to any summons or citation issued to the registered owner for stopping, standing, or parking in violation of traffic ordinances within the county, may require, as a condition precedent to the transfer, that the registered owner deposit or pay bail with respect to all such summons or citations.

(d) The director of finance, upon receipt of the certificate of ownership properly indorsed and the certificate of registration of the vehicle, shall register the vehicle, and shall issue to the owner and legal owner entitled thereto by reason of the transfer a new certificate of registration and the certificate of ownership, respectively, in the manner and form hereinabove provided for original registration.

(e) Until the director of finance has issued the new certificate of registration and certificate of ownership as in subsection (d) provided, delivery of such vehicle shall be deemed not to have been made and title thereto shall be deemed not to have passed, and the intended transfer shall be deemed to be incomplete and not to be valid or effective for any purpose, notwithstanding any provision of

the Uniform Commercial Code; provided that a security interest in a motor vehicle shall be perfected as provided in the Uniform Commercial Code, sections 490:9-302(3) (b) and 490:9-302(4), and that the validity, attachment, priority, and enforcement of such security interest shall be governed by Article 9 of the Code.

(f) In the event of the transfer by operation of law of the title or interest of a legal owner in and to a vehicle registered under this part, as upon inheritance, devise, or bequest, order in bankruptcy, or insolvency, execution sale, repossession upon default in performance of the terms of a lease or executory sales contract, or otherwise than by the voluntary act of the person whose title or interest is so transferred, the certificate of ownership shall be signed upon the reverse thereof by the personal representative, receiver, trustee, sheriff, or other representative, or successor in interest of the person whose title or interest is so transferred in lieu of such person. Every personal representative, receiver, trustee, sheriff, or other representative hereinabove referred to shall file with the director of finance a notice of any transfer by sale, lease, or otherwise by him, of any such vehicle, together with evidence satisfactory to the director of finance of all facts entitling such representative to make the transfer. Upon notice given to the director of finance that transfer by operation of law of the title or interest of a legal owner or a registered owner has been effected pursuant to any provision of law, the director of finance shall send to the legal owner or the registered owner or both a notice of registered mail of such action and requesting the delivery to the director of finance of the certificate of ownership or the certificate of registration, as the case may be, within ten days after date of mailing of the notice, and any person who refuses or neglects to deliver the same to the director of finance pursuant to the notice shall be guilty of a misdemeanor and shall be punished as provided in section 286-61.

(g) Nothing in the foregoing subsections shall prevent a legal owner from assigning his title or interest in or to a vehicle registered under this part to another legal owner at any time without the consent of and without affecting the interest of the holder of the certificate of registration thereof. Upon filing with the director of finance of a certificate of ownership endorsed by the legal owner and a transferee of legal ownership, the director of finance shall, whether the certificate of registration has expired or not, enter the name of the new legal owner upon the records of his office and shall forthwith issue a new certificate of ownership to the new legal owner in the form for original registration. Upon so doing, the director of finance shall send to the registered owner a notice by mail of the action.

(h) Any person who refuses or neglects to deliver a certificate of ownership to a transferee entitled thereto under this part, shall be punished as provided in section 286-61.

(i) Every dealer, upon transferring a motor vehicle, whether by sale, lease, or otherwise, shall immediately give notice of the transfer to the director of finance upon the official form provided by the director of finance. Every such notice shall contain the date of the transfer, the names and addresses of the transferor and transferee, and such description of the vehicles as may be called for in the official form.

(j) Every person, other than a dealer, upon transferring a motor vehicle, whether by sale, lease, or otherwise, shall within ten days give notice of the

transfer to the director of finance upon the official form provided by the director of finance. Every notice shall contain the date of transfer, the names and addresses of the transferor and transferee, and such description of the vehicle as may be called for in the official form. Any person who violates this subsection shall be fined not more than \$100.

(k) Whenever the registered owner of any motor vehicle or any licensed dealer has given notice to the director of finance of a transfer of his title or interest in the motor vehicle, as provided in subsection (j) or (i) of this section, and has delivered the certificate of ownership bearing his signature to the transferee as required by subsection (a) of this section, he shall be relieved from any liability, civil or criminal, which he might subsequently incur by reason only of his being the registered owner of the vehicle.

(l) A licensed dealer who has forwarded a properly indorsed certificate of ownership and certificate of registration to the director of finance shall be relieved of any civil liability, provided a specific written authorization to forward the certificates has been obtained from the transferee.

(m) Any person who falsely or fraudulently gives notice to the director of finance of a transfer of his title or interest in a motor vehicle shall be subject to the penalty provided in section 286-61."

SECTION 5. 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 6. This Act shall take effect upon its approval, except for Section 2 which shall take effect three months after approval.

(Approved May 18, 1978.)

*Edited accordingly.