

A Bill for an Act Relating to Fair Dealership Practices.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
OFFICE MACHINE PRODUCTS DEALERSHIPS**

§ -1 **Definitions.** As used in this chapter:

- (1) “Dealer” means any person, corporation, partnership, association, association of dealers, or other form of business enterprise engaged in the business of selling products.
- (2) “Dealership” means any agreement, written or verbal, between a distributor and a dealer under which the dealer is granted the right, for a definite or indefinite period of time, to sell products on behalf of a distributor to consumers and other end-users.
- (3) “Distributor” means any person, corporation, partnership, or other form of business enterprise engaged in the sale, consignment,

exchange, or any other form of transfer of a product which it manufactures, assembles, constructs, creates, or obtains in any manner from a manufacturer.

- (4) "Products" includes, but is not limited to: typewriters, copiers, electronic cash registers, dictating equipment, calculators, offset printers, letter openers, computers, or word processing equipment, but does not include such items as pencils, erasers, stationery, paper clips, or other such miscellaneous material normally used in an office.

§ -2 **Exemption.** This chapter shall not apply to franchises as defined in section 482E-2.

§ -3 **Distribution of products; dealership required.** No distributor shall sell, consign, exchange, or otherwise transfer any product to any dealer for sale or resale in this State except by way of a dealership.

§ -4 **Wrongful or illegal termination; unreasonable nonrenewal; damages; defenses.** (a) Except as provided in section -5, a distributor shall be liable to a dealer who sells the products of the distributor under a dealership from the distributor for damages and such equitable relief as the court deems proper resulting from the wrongful or illegal termination or cancellation of the dealership during its term or the distributor's unreasonable refusal to renew the dealership.

(b) A dealer suffering damages as a result of the termination or cancellation of, or failure to renew, the dealership may bring an action under this section against the distributor who wrongfully or illegally terminated, canceled, or unreasonably refused to renew the dealership in the court of general jurisdiction of the dealer's principal place of business. The action may be brought without regard to the amount in controversy. If the dealer prevails in the action, the dealer may recover actual damages sustained, the costs of the suit, including reasonable attorney's fees, and such equitable relief as the court deems proper.

The court may also grant such temporary relief as it may deem necessary and proper.

(c) It shall be a defense to any action brought under this section that the dealership was terminated, canceled, or not renewed because:

- (1) The dealer failed to comply substantially with essential and reasonable requirements of the dealership;
- (2) The dealer failed to act in good faith in carrying out the terms and provisions of the dealership; or
- (3) Of any of the reasons enumerated in section -5; or
- (4) Of other legitimate business reasons; provided that a termination, cancellation, or failure to renew a dealership for the purpose of enabling the distributor to assume operation of the dealer's business shall not be considered to be a legitimate business reason unless the dealer is paid reasonable compensation for the value of the dealership, including good will.

(d) No action may be brought under this section for a cause of action which arose more than two years prior to the date on which the action is brought.

§ -5 **Notice of termination, cancellation, or nonrenewal.** A distributor shall not terminate, cancel, or refuse to renew a dealership with a dealer without first

giving written notice by certified mail at least ninety days in advance of the effective date of such action as set forth in the notice. Notwithstanding any provision to the contrary contained in this section, a distributor may terminate, cancel, or refuse to renew a dealership with a dealer effective five days after the posting of written notice by certified mail to the dealer at the dealer's last known address, if such action is based on any of the following reasons:

- (1) Voluntary abandonment of the dealership relationship by the dealer;
- (2) Conviction of the dealer of a crime involving the business conducted pursuant to the dealership; or
- (3) Adjudication of bankruptcy of the dealer, or the dealer becoming insolvent in the sense that the dealer cannot meet financial obligations when due.

§ **-6 Exceptions.** No action may be brought under section -4 in connection with the termination, cancellation, or nonrenewal of a dealership if the dealership provides for the binding arbitration of disputes arising thereunder, including disputes related to the termination, cancellation, or nonrenewal of the dealership in accordance with the rules of the American Arbitration Association.

§ **-7 Disposition of inventory.** Upon termination of a dealership by either the distributor or the dealer, whether or not for cause, the distributor shall at the request of the dealer, take back any inventory from the dealer which was supplied by the distributor and which has not diminished substantially in value and is of similar quality as when originally supplied. The distributor shall reimburse the dealer for not less than ninety per cent of the cost paid by the dealer or shall cancel not less than ninety per cent of any debts owed on account of the inventory.

§ **-8 Antitrust laws.** No provision of this chapter shall repeal, modify, or supersede, directly or indirectly, any provision of chapter 480."

SECTION 2. This Act shall take effect upon its approval.

(Approved June 14, 1983.)