

ACT 102

H.B. NO. 230

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 437-17, Hawaii Revised Statutes, is amended to read as follows:

“§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.] \$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.] \$100,000; provided that the penal sum shall be \$25,000 for a dealer that sells twenty-five or less motor vehicle units a month. More than one bond may be furnished by the same applicant, provided [they] that the aggregate [the full] amount is as 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] any rule as may be promulgated by the board pursuant to this chapter.

- (2) That [he] the dealer 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] the dealer will satisfy all judgments rendered against [him] the dealer 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] the dealer 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 upon¹ 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 commerce and consumer affairs, 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, and¹ 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 2. Section 437-18, Hawaii Revised Statutes, is amended to read as follows:

"**§437-18 Bond of broker.** (a) Each broker receiving a license shall give to the motor vehicle industry licensing board and keep in force a bond or bonds in the penal sum totaling not less than [\$10,000.] \$200,000.

(b) All provisions contained in section 437-17 pertaining to reduction of bond, bond condition, and suit on bond for a used motor vehicle dealer shall be applicable to a broker."

SECTION 3. Chapter 437, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§437- Requirements to maintain license.** A new motor vehicle dealer, used motor vehicle dealer, motorcycle or motor-scooter dealer, broker, salesperson, auction, auctioneer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative shall have and maintain in full force and effect a bond as required under sections 437-17, 437-18, 437-21, and 437-21.1. Failure, refusal, or neglect to maintain in full force and effect a bond shall cause the automatic suspension of the license effective as of the date of expiration or cancellation of the bond. The license shall not be reinstated until a bond as required under sections 437-17, 437-18, 437-21, or 437-21.1 is received by the board.

Failure to effect a reinstatement of a suspended license within sixty days of the suspension shall cause the license and all fees to be forfeited. A licensee

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may, within fifteen calendar days after receipt of notification of the license forfeiture, request an administrative hearing pursuant to chapter 91 to review the forfeiture.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 5. This Act shall take effect upon its approval.

(Approved May 14, 1985.)

Notes

1. Word missing.
2. Edited pursuant to HRS §23G-16.5.