

ACT 154

H.B. NO. 2217-86

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 437-6, Hawaii Revised Statutes, is amended to read as follows:

“§437-6 [Jurisdiction and powers] Powers and duties of the board. [Neither the motor vehicle industry licensing board nor its members shall in any way interfere with the administrative affairs of the department to which it is assigned. However, the board shall have the sole jurisdiction, power, and authority, and discretion, subject only to this chapter, to:] In addition to any other duties and powers granted by this chapter, the board shall:

- (1) [Rules and regulations. Make,] Adopt, amend, and repeal from time to time [such] rules [and regulations] not inconsistent with this chapter, as the board deems appropriate for the carrying out of the provisions and purposes of this chapter and for the efficient administration thereof, and the proper conduct of the business which are subject to this chapter, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of, or as prescribed by the board, which rules [and regulations], when promulgated and filed as provided in chapter 91, shall have the effect of law.
- (2) [Licenses.] Grant, deny, suspend, or revoke licenses which are authorized by this chapter, fine licensees and impose [such] conditions as may be set forth in the rules [and regulations] of the board in connection with the granting of licenses.
- (3) [Duplicate licenses.] Prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed for the issuance of a duplicate license in place of one

- alleged to have been lost or destroyed, including a requirement for any indemnity deemed appropriate to the case.
- (4) [Forms.] Prescribe all forms to be used for the purposes of this chapter not otherwise provided for herein.
- [(5) Investigations, witnesses, and subpoenas.
- (A) Investigate violations through its investigators or inspectors or otherwise, and to report such violations to the prosecuting officer for prosecution; to hear and determine verified complaints against any licensee; to subpoena and examine witnesses under oath and require the production of, and examine any of the books, papers, and records of any licensee which may pertain to his business under his license or which shall or may pertain to any matter being considered, or any hearing or investigation being conducted, by or before the board. The board may investigate any matter of which the board may take cognizance, and take testimony in the same manner as any court and neither the board nor any member shall be bound by the strict legal rules of evidence.
- (B) The fees and mileage of witnesses shall be the same as that allowed in the circuit courts and shall be paid in the same manner as other expenses of the board.
- (C) Depositions of witnesses residing within or without the State may be taken by the board as provided in chapter 624. In any case of disobedience to, or neglect of any such subpoena served on any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated by the board, any circuit judge of any judicial circuit wherein such disobedience, neglect, or refusal occurs, on application of the executive secretary or any person so authorized by the board may compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify therein.
- (D) In addition to, but not in derogation of, this section, section 92-12 shall be applicable to the board and to proceedings by or before or under the jurisdiction of the board.]
- [(6) Minimum qualifications.] (5) Establish, by rules [and regulations], minimum qualifications for [salesmen] salespersons or dealers which must be met by applicants prior to the issuance of any license.
- [(7) Oaths. The board shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses, the production of documentary evidence, and examination of witnesses as are possessed by a circuit court.
- (8) Decisions of board.] (6) The exercise by the board of power, authority, and discretion in it so vested shall be final in each case and shall not be reviewable by or appealable to any court or tribunal, except as otherwise provided in chapter 91 or in this chapter.”

SECTION 2. Section 437-28, Hawaii Revised Statutes, is amended to read as follows:

“§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.] (a) 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 ten per cent interest of [such] the applicant or holder:

- (1) Has intentionally made a false statement of a material fact in [his] the 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] one 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] the applicant or holder to be an 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) 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 a 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] salesperson 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] salesperson 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; 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] salesperson 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] salesperson's license:

- (A) Does not intend to be employed as a [salesman] salesperson for a licensed motor vehicle dealer; or
 - (B) Does not intend to be employed as a [salesman] salesperson as [his] the principal occupation; or
 - (C) Intends to be employed as a [salesman] salesperson 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] the 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] 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 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] the 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] the 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, 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] that the 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 had placed [his] the 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,¹ 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] the dealer more for a new motor vehicle or services, parts, or accessories [therefor] or a higher rate of transportation for transporting [such] the vehicle from the manufacturing or assembly plant to [such] the dealer or any portion of [such] the 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] the 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] the franchised dealer in this State during the same period is deemed to have so discriminated against [such] the 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] the discriminatory act against the franchised 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] the 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] the dealers, including costs which are related to the geographical distances[,] and 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] the 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] the new motor vehicles and cannot be removed therefrom without substantial expense; or
- (G) Has failed to adequately and fairly compensate its dealers for labor, parts, and other expenses incurred by [such] the dealer to perform under and comply with manufacturer's warranty agreements. In no event shall any manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative pay its dealers a labor rate per hour for warranty work that is less than that charged by the dealer to the retail customers of the dealer nor shall [such] the rates be more than the retail rates. All claims made by dealers for compensation for delivery, preparation, and warranty work shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval.

[(c) Suspension pending hearing.] (b) Upon finding by the board or by the director of commerce and consumer affairs 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 the 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] the practices. The order of suspension shall be served upon the licensee at the same time as the notice of hearing upon [such] the 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] a defense.

Any attempt of the licensee to continue [his] the business or occupation while [his] the license is so suspended shall of itself be sufficient to warrant a permanent revocation of [his] the license and shall also subject [him] the licensee to all the penalties prescribed by this chapter for violations. For [such] disregard of an order suspending [his] the 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] the 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] the action are subject to and subordinate to any security interest which has attached to [such] the 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] the motor vehicles is known to the board or who, prior to any [such] action by the board, had filed a financing statement covering [such] the motor vehicles or had noted [his] the lien on the legal ownership certificates thereof.

[(d) Fines.] (c) 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.] (d) 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).] (c).”

SECTION 3. Section 437-30, Hawaii Revised Statutes, is amended to read as follows:

“§437-30 **Judicial review by circuit court.** [(a) Judicial review of the records.] Any person aggrieved by a final decision and order of the [motor vehicle industry licensing] board in a “contested case”, as defined in chapter 91, is entitled to judicial review thereof by the circuit court of the circuit in which the board making [such] the final decision and order has jurisdiction. The review shall be as provided by chapter 91. It shall be conducted by the court without a jury and shall be confined to the record.

[(b) Record of board’s proceedings. The board shall keep a record of its hearings or proceedings in a “contested case” either stenographically or by machine and shall provide a transcript of the hearings or proceedings to a licensee upon his request and at his expense.]”

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

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

(Approved May 13, 1986.)

Note

1. Comma should be underscored.