

ACT 85

S.B. NO. 1516

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

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

SECTION 1. Section 437-1.1, Hawaii Revised Statutes, is amended by amending the definition of “dealer” to read as follows:

““Dealer” includes “auction” as defined in this section or any person not expressly excluded by this chapter engaged in the business of selling, soliciting, offering, or attempting to negotiate sales, purchases, or exchanges of motor vehicles or any interest therein, including options to purchase motor vehicles. “New motor vehicle dealer” means a dealer who engages in the business of selling at wholesale or retail, or both, new motor vehicles or new and used motor vehicles. “Used motor vehicle dealer” means a dealer who engages in the business of selling at wholesale or retail, or both, only used motor vehicles. The term “dealer” excludes a person who sells or purchases motor vehicles in the capacity of:

- (1) A receiver, trustee, personal representative, guardian, or any other person appointed by or acting under a judgment or order of any court;
- (2) A public officer while performing official duties;
- (3) A holder of an auction license issued under this chapter when acting within the scope of the license;
- (4) An insurance company, finance company, bank, or other financial institution selling or offering for sale motor vehicles repossessed or foreclosed by it under the terms of a credit sale contract or security agreement; [or]
- (5) A person not engaged in the business of selling or purchasing motor vehicles when acquiring or disposing of motor vehicles for the person’s own personal, family, or business use; provided that the vehicles are acquired or disposed of for the person’s use in good faith and not for the purpose of evading any provision of this chapter[.]; or
- (6) A consumer consultant who is not engaged in the business of selling, soliciting, offering, or attempting to negotiate sales or exchanges of motor vehicles or any interest therein for any dealer, and who for a fee provides specialized information and expertise in motor vehicle sales transactions to consumers wishing to purchase or lease motor vehicles. The consumer consultant shall register and pay a fee to the board prior to offering consultant services.”

SECTION 2. Section 437-28, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to any other actions authorized by law, the board, 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 by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, may suspend, revoke, fine, or deny the renewal of any license, or prior to notice and hearing deny the issuance of any license for any cause authorized by law, including but not limited to circumstances where the board finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than ten per cent interest of the applicant or holder:

- (1) Has intentionally made a false statement of a material fact in 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;
- (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 or order made pursuant to this chapter;
- (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 motor vehicles;
- (4) Has engaged in business under a past or present license issued pursuant to this chapter, in a manner as to cause injury to the public or to those with whom one is dealing;
- (5) Has failed to comply, observe, or adhere to any law in any other respect on account whereof the board may deem the applicant or holder to be an unfit or improper person to hold a license;
- (6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;
- (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;
- (8) In the case of an individual applicant or holder of a license, if the applicant or holder 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;
- (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;
- (10) Has violated any of the laws pertaining to false advertising or to credit sales in the offering, soliciting, selling, or purchasing, or arranging to sell or purchase a motor vehicle or any interest therein;
- (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;
- (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;
- (13) Has entered or has attempted to enter or proposes to enter into any contract or agreement contrary to this chapter or any rule adopted thereunder;

- (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;
- (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;
- (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;
- (17) Being a 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;
 - (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;
 - (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 salesperson clearly notes in writing on the sales contract that the new motor vehicle is sold without the standard factory warranty;
 - (D) Has sold a new motor vehicle covered by a standard factory warranty without informing the purchaser in writing that any repairs or other work necessary on any accessories which were not installed by the manufacturer of the vehicle may not be obtainable in a geographic location other than where the purchase occurred; provided that the notice required by this section shall conform to the plain language requirements of section 487A-1¹ regardless of the dollar amount of the transaction; or
 - (E) Has engaged in any improper business conduct[;], including but not limited to employing, contracting with, or compensating consumer consultants;
- (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 new vehicles or without providing and maintaining adequate repair facilities and personnel for new vehicles at either the main licensed premises or at any branch location;
 - (B) Has employed or proposed to employ any salesperson who is not duly licensed under this chapter; or
 - (C) Has sold or proposed to sell new motor vehicles without being franchised therefor;
- (19) Being an applicant or holder of an auction's license has sold or proposed to sell new motor vehicles without being franchised therefor;
- (20) Being an applicant for a salesperson's license:
 - (A) Does not intend to be employed as a salesperson for a licensed motor vehicle dealer;
 - (B) Does not intend to be employed as a salesperson as the principal occupation; or

- (C) Intends to be employed as a salesperson for more than one dealer.’’

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 29, 1997.)

Note

1. Prior to amendment “;” appeared here.