

ACT 13

S.B. NO. 35

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

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

SECTION 1. In 2010, the legislature passed Act 164, Session Laws of Hawaii (2010), to update protections for local auto dealers in their relations with manufacturers in response to the current difficult economic climate and major changes in the automotive industry, including the introduction of clean technology. The purpose of this Act is to update statutory cross references within the motor vehicle industry licensing act to reflect the statutory changes contained in Act 164.

SECTION 2. Section 437-28.5, Hawaii Revised Statutes, is amended to read as follows:

“§437-28.5 Procedures, protections, rights, and remedies made available to licensees. (a) The same procedures, protections, rights, and remedies provided to a dealer under ~~[section 437-28(a)(21) and]~~ section 437-3.6, section 437-28(a)(21), and part II shall apply to a distributor that is not a manufacturer.

(b) Notwithstanding the terms, provisions, or conditions of any dealer or distributor agreement ~~[or]~~, franchise, or ~~[the terms or provisions of any]~~ waiver and notwithstanding any other legal or administrative remedies available, any

person who is licensed under this chapter and whose business or property is injured by a violation of section 437-28(a)(21)[;] or part II may bring a civil action in a court of competent jurisdiction in the State to enjoin further violations and to recover any damages together with the costs of the suit. Laws of the State of Hawaii shall apply to any action initiated under this ~~[section;]~~ subsection.

(c) Any person that brings or defends against a civil action under subsection (b) may be entitled to recover reasonable attorneys' fees as a part of any damages or injunction; provided that the person substantially prevails in establishing or defending against a violation of section 437-28(a)(21)[;] or part II.

(d) Upon a cancellation or failure to renew a distributorship agreement, the party canceling or failing to renew the agreement, at the distributor's option, shall either:

- (1) Compensate the distributor at the fair market value ~~[for]~~ of the distributor'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 distributor for the purpose of the distributorship[;]; the distributor's inventory of parts, including compensation related to; the distributor's dealer operations and franchise agreements with other dealers; and motor vehicles possessed by the distributor in connection with the distributorship[;] plus reasonable attorney's fees incurred in collecting compensation; provided that ~~[the]~~ to be eligible for compensation pursuant to this paragraph, an investment shall have been made with reasonable and prudent judgment for the purpose of the distributorship agreement; or
- (2) Compensate the distributor for damages including reasonable attorney's fees ~~[as aforesaid;]~~ incurred in collecting compensation resulting from the cancellation or failure to renew the distributorship agreement.

~~[As used in this paragraph, "good faith" means the duty of each party to any franchise agreement to fully comply with that agreement, or to act in a fair and equitable manner towards each other.]"~~

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

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved April 25, 2011.)