
Sunset Evaluation Update: Motor Vehicle Industry Licensing

A Report to the
Governor
and the
Legislature of
the State of
Hawaii



THE AUDITOR
STATE OF HAWAII

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Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 94-10
September 1994

Foreword

This report evaluates the regulation of motor vehicle industry licensing under Chapter 437, Hawaii Revised Statutes. This evaluation and repeal of the chapter had been scheduled under the Sunset Law. Subsequently, Act 279 of 1994 removed the repeal date and with it the evaluation requirement. Nevertheless, since the work had already been done, we are issuing the report to help decision makers in assessing the regulatory program.

The report presents our findings as to whether the regulatory program complies with policies in the Sunset Law and whether there is a reasonable need to regulate motor vehicle industry licensing to protect the health, safety, and welfare of the public. It includes our recommendation on whether the program should be continued, modified, or repealed. The report incorporates in the Appendix draft legislation to improve the program.

We wish to express our appreciation for the cooperation of the Hawaii State Motor Vehicle Industry Licensing Board and others whom we contacted during the course of our evaluation. We appreciate also the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes, establishes policies for occupational licensing. The law directs the State Auditor to evaluate licensing statutes scheduled for repeal to determine whether the health, safety, and welfare of the public are best served by reenactment, modification, or repeal.

This report evaluates whether the regulation of the motor vehicle industry under Chapter 437, HRS, complies with policies for occupational licensing in the Sunset Law. After our work was substantially completed, Act 279 of 1994 removed the December 31, 1995, repeal date for Chapter 437 and made the chapter permanent. However, we are still issuing the report to assist decision makers in assessing the regulatory program.

Background on the Motor Vehicle Industry

The motor vehicle industry encompasses the manufacture, distribution, and sale of motor vehicles. Participants in the industry include motor vehicle dealers, salespersons, auctioneers, manufacturers, distributors, and others.

As of February 1994, Hawaii had 1,923 motor vehicle industry licensees. Of these, 1,853 licensees had Hawaii addresses. Over 90 percent of the licensees were motor vehicle dealers and salespersons.¹

Regulatory Program

Chapter 437, HRS, governs the regulatory program for the motor vehicle industry in Hawaii. The law regulates sales of new cars, used cars, and motorcycles. The seven-member Motor Vehicle Industry Licensing Board is appointed by the governor and placed for administrative purposes in the Department of Commerce and Consumer Affairs (DCCA). The law requires three members to be engaged with the motor vehicle industry and the remaining four members to be private citizens. An executive officer in DCCA's Professional and Vocational Licensing Division serves as staff to the board.

State licensing is required for those involved in selling or negotiating the purchase of motor vehicles as a motor vehicle dealer, salesperson, auction, auctioneer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative. Licensees can work as such only in the county for which the license was issued. In

addition, motor vehicle salespersons can only work full-time and for a single motor vehicle dealer. Regulation also governs advertising of motor vehicles to prevent misleading or false advertising.

The department's Regulated Industries Complaints Office (RICO) mediates and resolves consumer complaints, pursues disciplinary action against licensees, and seeks court injunctions and fines against unlicensed persons. Final disciplinary decisions are made by the board following a recommended decision from DCCA's Office of Administrative Hearings.

Previous Sunset Report

Our previous sunset evaluation of the motor vehicle industry in 1986 recommended that Chapter 437 be reenacted to continue the regulation of the motor vehicle industry.² Because they posed no significant threat to public health and safety, we recommended that licensing be eliminated for motor vehicle salespersons, auctioneers, manufacturers, factory branches and representatives, distributors, and distributor branches and representatives. We further recommended that licensees be allowed to do business outside the county that issued the license and that motor vehicle salespersons not be required to work full-time and for only a single dealer.

To reflect Act 204, SLH 1982, which transferred the authority to arbitrate, investigate, and prosecute complaints from boards to DCCA, we recommended that the board delegate its authority to receive and investigate complaints to RICO.

We also recommended that the board clarify the licensing requirements for motor vehicle dealers and provide clearer guidelines for determining whether a motor vehicle dealer's bond can be reduced. Finally, we suggested that the background police report be eliminated for applicants.

Objectives of the Evaluation

This evaluation sought to determine whether regulation of the motor vehicle industry complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate the motor vehicle industry to protect the health, safety, and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Establish whether the regulatory program is being implemented effectively and efficiently; and

4. Make recommendations based on findings in these areas.
-

Scope and Methodology

We reviewed the literature on the motor vehicle industry and its regulation. We reviewed statutes and rules on the industry in Hawaii and the changes in these since our 1986 sunset evaluation.

We also reviewed evidence of harm to consumers including complaints. We interviewed members of the board and DCCA personnel. In addition, we obtained information from the National Automotive Dealers Association and the Hawaii Automotive Dealers Association. We also reviewed files at DCCA on licensing, enforcement, correspondence, and the board.

Our work was performed from January 1994 through August 1994 in accordance with generally accepted government auditing standards.

Chapter 2

Findings and Recommendations

Some of the recommendations made in our 1986 sunset evaluation were implemented. For example, the authority to receive and investigate complaints was delegated to the Regulated Industries Complaints Office (RICO) of the Department of Commerce and Consumer Affairs (DCCA). Also, the requirement for an applicant to submit a background police report was deleted. The board also clarified licensing requirements for dealers and made the bond requirements more flexible. In this report, we recommend continuing the regulation of the motor vehicle industry but amending the law to simplify regulation and make it more effective.

Summary of Findings

1. The State should continue to regulate the motor vehicle industry to safeguard the safety and welfare of the public.
2. Regulation is unnecessary for motor vehicle salespersons and auctioneers, manufacturers, factory branches and representatives, distributors, and distributor branches and representatives.
3. Licensing requirements should be less restrictive to allow licensees to conduct business throughout the state and to allow salespersons to work part-time and for more than a single licensed dealer.
4. The Motor Vehicle Industry Licensing Board is not needed. The regulatory program could be administered by DCCA.

State Should Continue To Regulate the Motor Vehicle Industry

The State should continue the regulation of the motor vehicle industry under Chapter 437 to protect the welfare and safety of the public. The industry generates a large volume of sales and the public makes a large monetary investment when purchasing new motor vehicles. In 1993, 79,168 cars and light trucks were sold in Hawaii. The average selling price of a new vehicle was \$18,000.

This large volume of sales is matched by a large volume of consumer complaints. Of the 44 regulatory programs within DCCA, the Motor Vehicle Industry Licensing Board received the third highest number of complaints in 1991 and 1992, and the fourth highest number of complaints in 1993. Complaints included unfair or deceptive trade practices, advertising violations, misrepresentations, professional misconduct and unethical practices, and various violations of licensing requirements.

Generally, consumers are at a disadvantage when negotiating the purchase of motor vehicles. They lack sophistication about their legal rights and obligations in these transactions. They may be misled or influenced by high-pressure sales, misleading and deceptive advertising, and fraudulent and unethical business practices. Consumers could be subject to serious economic and physical harm. They may be endangered by buying defective or unsafe motor vehicles.

In one case, a consumer purchased a motor vehicle that had a lien outstanding against it. The consumer made repairs to the vehicle, but was unable to obtain title to the vehicle. The consumer eventually received full credit for the purchase price but has yet to be compensated for the cost of repairs. In another instance, a couple bought and paid for a car on the Big Island to take delivery on Oahu. The seller skipped town and the couple never got their car or their money back.

Some Requirements Are Unnecessary or Restrictive

We again affirm that licensing is unnecessary for motor vehicle salespersons and auctioneers, manufacturers, factory branches and representatives, distributors, and distributor branches and representatives. Motor vehicle dealers and auctions, however, should continue to be regulated.

In contrast to the number of complaints made against motor vehicle dealers, the complaints filed against all other motor vehicle industry licensees continue to be minimal. Of the complaints received between 1991 and 1993, 87 percent were against motor vehicle dealers.

Salespersons and auctioneers need not be licensed

Salespersons and auctioneers sell or exchange motor vehicles while employed by a dealer or auction, respectively. They do not need to be licensed because their employers are legally responsible for their job performance. The doctrine of *respondeat superior* is a well-established principle of law. It means that the employer is liable for the wrongful acts of any of the employees when the employees are acting within the course and scope of their employment. It also means the employer is responsible for ensuring that employees are properly qualified and performing their work correctly and competently.

Although motor vehicle salespersons outnumber dealers ten to one, the number of complaints made against salespersons is low. From 1991 to 1993, complaints against sales personnel each year averaged 11 percent of total complaints against all motor vehicle industry licensees. Generally, complaints against salespersons alleged that unlicensed salespersons were accepting money without completing the sale of the vehicle. Our last

sunset evaluation of the program also reported a low number of complaints against salespersons, and we recommended that the licensing requirements for salespersons and auctioneers be repealed.

Motor vehicle manufacturers, factory branches, and distributors need not be licensed

Motor vehicle manufacturers, factory branches and their field representatives, and distributors and their branches and representatives, also need not be licensed. These licensees conduct business with dealers and other industry personnel, not with consumers. Manufacturers, such as Saturn Corporation, manufacture or assemble new motor vehicles. The manufacturer's factory branch and its field representative sell new motor vehicles to a distributor or dealer, or supervise factory or distributor representatives. Distributors, who may also be manufacturers, and their representative sell new motor vehicles to dealers.

Current requirements for these licensees are relatively meaningless. They have no relationship to protecting consumers. To be licensed, manufacturers, factory branches, distributors, and the distributor branches merely submit their financial statement, articles of incorporation, and franchise agreement. Factory and distributor representatives need only submit an application.

Motor vehicle manufacturers, factory branches, and distributors and their field representatives were originally required to be licensed to protect motor vehicle dealers from unfair or abusive practices. However, state regulation to protect dealers is unnecessary. The Automobile Dealers Franchise Act (also known as the Automobile Dealers Day in Court Act) provides adequate recourse for dealers that are subjected to unfair, capricious, or arbitrary actions by manufacturers. This act allows franchised motor vehicle dealers to bring suit in federal district court to recover compensatory damages from a manufacturer who fails to comply with the provisions of the franchise agreement.

As in 1986, we see no compelling reason for the State to continue licensing motor vehicle salespersons and auctioneers; manufacturers, factory branches and representatives; and distributors, their branches and representatives.

Restrictions on conducting business or work should be removed

Several regulatory provisions should be removed because they are anticompetitive, impracticable, and do not necessarily protect the consumer.

In our prior report, we recommended that consideration be given to deleting the statutory requirements that (a) prohibit a licensee from doing business outside the county for which the license was issued, and (b)

require motor vehicle salespersons to be employed full time and work for only one motor vehicle dealer. Our recommendation was not implemented.

State regulatory requirements should be directed at ensuring safe, competent, and scrupulous practices of an occupation. They should not have the effect of reducing competition by restricting access to occupations or by prohibiting competitive practices such as doing business only in the county for which the license was issued. Further, requiring salespersons to be employed full time and work for only one dealer unnecessarily interferes with the employment activities of motor vehicle salespersons and the preferences and needs of employers. We still believe that these restrictions do little to protect the public. They are unreasonable, unnecessarily restrictive, and should be removed from the statute.

Board Is Not Needed

The Motor Vehicle Industry Licensing Board is no longer needed. Generally, regulatory boards are established to bring expertise or consumer input into decision making. For example, board expertise would be needed to examine the competency of applicants. Board expertise and consumer orientation may also be helpful to discipline practitioners. However, if the regulatory program is straightforward and little board discretion or evaluative expertise is required, a board is not necessary.

Currently, the board does not examine applicants for licensing and its expertise is not needed for approving applications for licensure. DCCA's licensing section preliminarily approves all applications, and the board merely ratifies them. The board generally does not review or examine the applications.

With respect to disciplinary actions, only about seven complaints are brought to the board each year. The board has the authority to accept or reject recommended orders submitted by the department's hearings officer or settlements proposed by RICO. The director of DCCA, however, could easily handle these functions as the director already does with many other regulatory programs.

Recommendations

1. The Legislature should continue to regulate the motor vehicle industry.
2. The Legislature should consider amending Chapter 437 to:

- a. Repeal all the licensing requirements for motor vehicle salespersons, auctioneers, manufacturers, factory branches and representatives, distributors, and distributor branches and representatives;
- b. Allow licensees to conduct business outside the county for which the license was issued;
- c. Repeal the provisions requiring motor vehicle salespersons to be employed full-time and work for only one motor vehicle dealer; and
- d. Repeal the provisions for a Motor Vehicle Industry Licensing Board.

Notes

Chapter 1

1. Hawaii, Department of Commerce and Consumer Affairs, *Summary/ Geographic Report* (printout), February 4, 1994, p. 19-22.
2. Hawaii, Legislative Auditor, *Sunset Evaluation Report: Motor Vehicle Licensing*, Report No. 86-3, Honolulu, January 1986.

Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Motor Vehicle Industry Licensing Board and to the Department of Commerce and Consumer Affairs on August 11, 1994. A copy of the transmittal letter to the board is included as Attachment 1. A similar letter was sent to the department. The response from the board is included as Attachment 2. The department did not submit a separate response.

The board agrees that the Legislature should continue the regulation of the motor vehicle industry. It also agrees that the licensing requirements for motor vehicle auctioneers, manufacturers, factory branches and representatives, distributors, and distributor branches and representatives should be eliminated. However, the board does not agree that licensing motor vehicle salespersons should be eliminated. It believes that licensing of salespersons serves as a deterrent to unscrupulous activity and provides a degree of accountability for salespersons.

The board has no objection to allowing licensees to conduct business outside the counties for which the license is issued provided licensees have branch offices or maintenance facilities in those counties to service clients.

The board also agrees that the statutory requirement that salespersons be full-time employees be repealed. But it does not agree that the requirement that they work for only one motor vehicle dealer should be repealed. It believes that allowing salespersons to work for more than one dealer could lead to potential conflicts of interest. Salespersons, however, should be allowed to work for different dealerships owned by the same dealer.

Finally, the board is divided on our recommendation to do away with the board.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
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August 11, 1994

Mr. Gary A. Wassel, Chair
Motor Vehicle Industry Licensing Board
Department of Commerce and Consumer Affairs
Kamamalu Building
1010 Richards Street
Honolulu, Hawaii 96813

Dear Mr. Wassel:

Enclosed for your information are 8 copies, numbered 9 to 16 of our draft report, *Sunset Evaluation Update: Motor Vehicle Industry Licensing*. We ask that you telephone us by Monday, August 15, 1994, on whether or not you intend to comment on our recommendations. Please distribute the copies to the members of the board. If you wish your comments to be included in the report, please submit them no later than Monday, September 12, 1994.

The Department of Commerce and Consumer Affairs, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

JOHN WAIHEE
GOVERNOR



CLIFFORD K. HIGA
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

MOTOR VEHICLE INDUSTRY LICENSING BOARD
STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. BOX 3469
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September 12, 1994

Marion H. Higa, State Auditor
Office of the Auditor
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465 S. King Street, Room 500
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STATE OF HAWAII

Dear Mrs. Higa:

The Motor Vehicle Industry Licensing Board ("Board") thanks you for the opportunity to provide comment on the Sunset Evaluation Update for Motor Vehicle Industry Licensing. We will comment on the recommendations as they appear chronologically on pages 8 and 9 of the report:

1. The Legislature should continue to regulate the motor vehicle industry.

The Board agrees that motor vehicle industry should continue to be regulated for the protection of the consuming public.

2. The Legislature should consider amending Chapter 437 as follows, to:

- a. Repeal all licensing requirements for motor vehicle salespersons, auctioneers, manufacturers, factory branches and representatives, distributors, distributor branches, and representatives.

Except for the repeal of requirements for salespersons' licenses, the board concurs with the recommendation to repeal licensing requirements for auctioneers, manufacturers, factory branches and representatives, distributors, distributor branches and representatives.

The Board feels that because the salesperson generally is the dealers first line of contact with the consumer and has a great amount of influence on a sales transaction, some form of licensing or regulation should be maintained over salespersons for the protection of the public.

To allow any person to act as a salesperson without regulation or registration could lead to "fly by night" operators, who come to town, hook up overnight with a dealership, perform unscrupulous, illegal or fraudulent acts, and then disappear without any trace or record.

The licensing of salespersons currently serves as a deterrent to that sort of unscrupulous activity and provides a degree of accountability for the salesperson.

- b. Allow licensees to conduct business outside the county for which the license is issued.

The Board does not totally agree with this recommendation but has no objection to allowing licensees to conduct business outside the county for which the license is issued, provided said licensees have branch offices or maintenance facilities in those counties to service clients.

Protection for the consumer would be afforded if the above branch or service facilities are required.

- c. Repeal the provisions requiring motor vehicle salespersons to be employed full-time and work for only one motor vehicle dealer; and

The Board agrees with repeal of the provision requiring salespersons to be employed full-time.

The Board does not agree with the repeal of the requirement that a salesperson work for only one dealer primarily because of the potential for conflict of interest situations.

A more reasonable solution would permit a salesperson to work for dealerships owned by the same dealer.

- d. Repeal the provisions for a Motor Vehicle Industry Licensing Board.

The Board is divided on this recommendation. However, it is strongly felt that the members add both public and an industry perspectives, and bring different viewpoints and ideas to the Board. A number of members feel the Board serves as the one direct avenue for public input,

Marion H. Higa, State Auditor
September 12, 1994
Page 3

and provides members of the public and industry with a forum in which to participate and be heard. It was concluded that maintaining the Board keeps government accessible and responsive to everyone.

Again, we thank you for the opportunity to provide comments.

Very truly yours,


for Gary A. Wassel

Chairman
Motor Vehicle Industry Licensing Board

Proposed Legislation

EIGHTEENTH LEGISLATURE, 1995
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO MOTOR VEHICLE INDUSTRY LICENSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 437-1, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "[[§437-1]] Legislative findings and declaration. The
4 legislature finds that the manufacture, distribution, and sales
5 of motor vehicles in the State vitally affects the general
6 economy of the State and the public interest and public welfare;
7 [that the manufacturers of motor vehicles, whose physical
8 manufacturing facilities are not located within the State, and
9 distributors are doing business in the State through their
10 control and relationship and transactions with their dealers,
11 branches, and representatives;] that the geographical location of
12 Hawaii makes it necessary to insure the availability of motor
13 vehicles and parts and dependable service therefor within the
14 State to protect and preserve the transportation system and the
15 investments of its residents. The legislature declares, on the
16 basis of the foregoing findings, that it is necessary to regulate
17 and to license [motor vehicle manufacturers and distributors and
18 their branches and representatives,] motor vehicle dealers[,
19 salesmen,] and auctions[, and auctioneers and any other person

1 engaged in the business of selling or purchasing motor vehicles]
2 in the State, in order to prevent frauds, impositions, and other
3 abuses against its residents and to protect and preserve the
4 economy and the transportation system of the State."

5 SECTION 2. Section 437-1.1, Hawaii Revised Statutes, is
6 amended as follows:

7 1. By deleting the definition of "board" to read:

8 ["Board" means the motor vehicle industry licensing board
9 created by this chapter."]

10 2. By adding two new definitions to be appropriately
11 inserted and to read:

12 "Department" means the department of commerce and consumer
13 affairs.

14 "Director" means the director of commerce and consumer
15 affairs."

16 3. By amending the definition of "dealer" to read:

17 "Dealer" includes "auction" as defined in this section or
18 any person not expressly excluded by this chapter engaged in the
19 business of selling, soliciting, offering, or attempting to
20 negotiate sales, purchases, or exchanges of motor vehicles or any
21 interest therein, including options to purchase motor vehicles.

22 "New motor vehicle dealer" means a dealer who engages in the

1 business of selling at wholesale or retail, or both, new motor
2 vehicles or new and used motor vehicles. "Used motor vehicle
3 dealer" means a dealer who engages in the business of selling at
4 wholesale or retail, or both, only used motor vehicles. The term
5 "dealer" excludes a person who sells or purchases motor vehicles
6 in the capacity of:

- 7 (1) A receiver, trustee, personal representative, guardian,
8 or any other person appointed by or acting under a
9 judgment or order of any court;
- 10 (2) A public officer while performing official duties;
- 11 (3) A holder of [a] an auction license issued under this
12 chapter[, other than a dealer,] when acting within the
13 scope of the license;
- 14 (4) An insurance company, finance company, bank, or other
15 financial institution selling or offering for sale
16 motor vehicles repossessed or foreclosed by it under
17 the terms of a credit sale contract or security
18 agreement; or
- 19 (5) A person not engaged in the business of selling or
20 purchasing motor vehicles when acquiring or disposing
21 of motor vehicles for the person's own personal,
22 family, or business use; provided the vehicles are

1 acquired or disposed of for the person's use in good
2 faith and not for the purpose of evading any provision
3 of this chapter."

4 SECTION 3. Section 437-2, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§437-2 Licenses. (a) No person shall engage in the
7 business as or serve in the capacity of, or act as a motor
8 vehicle dealer[, motor vehicle salesperson,] or motor vehicle
9 auction[, motor vehicle auctioneer, manufacturer, factory branch,
10 factory representative, distributor, distributor branch, or
11 distributor representative in this State or otherwise engage in
12 business of selling or negotiating for the purchase of motor
13 vehicles] in this State without being licensed as provided in
14 this chapter. A license issued under this chapter shall
15 authorize the holder to engage in the business or activities
16 permitted by the license[, only] in [the] any county [for which
17 the license is issued.] of the State.

18 (b) A license issued under this chapter shall authorize the
19 holder to engage in the same business at branch locations in [the
20 same] any county [for which the license is issued] of the State
21 during the term thereof; provided that each [of such] branch
22 [locations] location is approved by the [board.] department.

1 [(c) A dealer's license or auction's license issued to a
2 sole proprietorship or partnership shall authorize the sole
3 proprietor or general partner to engage in the business of
4 salesperson or auctioneer, respectively, without a license
5 therefor, only for and in the business of the holder of the
6 dealer's license or auction's license, as the case may be, and
7 only for the county in which the license is issued.

8 (d)] (c) In the event of the dissolution of a partnership,
9 holding a current license issued under this chapter, due to the
10 death of one or more partners, the surviving partners may operate
11 the business under the license for the remaining effective term
12 of the license but not to exceed sixty days. In the event of the
13 death or bankruptcy of the holder of a current license issued
14 under this chapter, the duly appointed personal representative or
15 receiver or trustee in bankruptcy, whichever the case may be, may
16 operate the business under the license for the remaining
17 effective term of the license.

18 [(e)] (d) Notwithstanding any provisions of this chapter,
19 the authority of any state or county agency to purchase motor
20 vehicles for state or county use from any dealer licensed under
21 this chapter shall not be limited or conditioned. Any dealer
22 licensed under this chapter may sell vehicles to any state or

1 county agency [notwithstanding subsection (b)]."

2 SECTION 4. Section 437-4, Hawaii Revised Statutes, is
3 amended by amending subsection (d) to read as follows:

4 "(d) Display of motor vehicle at unlicensed premises. All
5 dealers or salespersons shall obtain prior approval of the
6 [board] department to display motor vehicles for advertising
7 purposes at or on any place other than the licensed premises."

8 SECTION 5. Section 437-6, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§437-6 Powers and duties of the [board.] department. In
11 addition to any other powers and duties authorized by law, the
12 [board] department shall:

13 (1) Adopt, amend, and repeal from time to time rules [not
14 inconsistent with this chapter, as the board deems
15 appropriate for the carrying out of the provisions and
16 purposes of this chapter and for the efficient
17 administration thereof, and the proper conduct of the
18 business that is subject to this chapter, including
19 every matter or thing required to be done or which may
20 be done with the approval or consent or by order or
21 under the direction or supervision of, or as prescribed
22 by the board, which rules, when adopted under] in

- 1 accordance with chapter 91[,] to carry out the purposes
2 of this chapter, which shall have the effect of law;
- 3 (2) Grant, deny, suspend, or revoke licenses that are
4 authorized by this chapter, fine licensees, and impose
5 conditions as may be set forth in the rules of the
6 [board] department in connection with the granting of
7 licenses;
- 8 (3) Prescribe the nature of the proof to be furnished, the
9 notices to be given, and the conditions to be met or
10 observed for the issuance of a duplicate license in
11 place of one alleged to have been lost or destroyed,
12 including a requirement for any indemnity deemed
13 appropriate to the case;
- 14 (4) Prescribe all forms to be used for the purposes of this
15 chapter not otherwise provided for;
- 16 (5) Establish, by rules, minimum qualifications for
17 [salespersons or] dealers which must be met by
18 applicants prior to the issuance of any license; and
- 19 (6) [The exercise by the board of power, authority, and
20 discretion in it so vested shall be final in each case
21 and shall not be reviewable by or appealable to any
22 court or tribunal, except as otherwise provided in

1 chapter 91 or in this chapter.] Perform all other
2 actions that are reasonable and necessary for the
3 efficient enforcement and administration of this
4 chapter and the rules adopted pursuant to chapter 91,
5 including conducting contested case hearings pursuant
6 to chapter 91."

7 SECTION 6. Section 437-7, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§437-7 Application for issuance or renewal of license.**

10 (a) [Application.] Any person desiring the issuance of a license
11 under this chapter shall file an application therefor with the
12 [motor vehicle industry licensing board.] director. Prior to the
13 expiration of the term of a license, the holder shall file an
14 application for renewal of the license. The [board] director
15 shall prescribe the form, information required, manner, and time
16 for presentation of applications for issuance or renewal of
17 licenses issued under this chapter, except as otherwise provided
18 in this chapter.

19 [(b) A person applying for a salesperson's license or an
20 auctioneer license under this section shall be granted a
21 temporary license by the executive secretary of the board,
22 provided no patent disqualification of the applicant is disclosed

1 or no valid objection to the granting of the temporary license is
2 apparent and if all requirements relative to the filing of the
3 application appear to have been met and the dealer or auction
4 files an affidavit certifying that this person is employed by and
5 under the supervision of the dealer or auction. A fee shall be
6 charged for the issuance of the temporary license, as provided in
7 rules adopted by the director of commerce and consumer affairs
8 pursuant to chapter 91, and the license shall remain in effect
9 until the board approves or denies the application for a
10 permanent license.

11 (c)] (b) Financial reviews or financial statements.

12 (1) Applicants for the issuance of a dealer's or auction's
13 license shall furnish the following financial review or
14 financial statement to the [board:] director:

15 (A) Sole proprietorship. An applicant proposing to
16 operate as a sole proprietorship shall furnish a
17 personal financial review or financial statement
18 and a financial review or financial statement of
19 the proposed business.

20 (B) Partnership. An applicant proposing to operate as
21 a partnership shall furnish a personal financial
22 review or financial statement for each general

1 partner and a financial review or a financial
2 statement of the partnership.

3 (C) Corporation. A corporate applicant shall submit a
4 corporate financial review or financial statement.

5 [(2) The board shall determine and prescribe the requirement
6 of, form, and information required in financial reviews
7 and financial statements for applicants for other
8 licenses.

9 (3)] (2) All financial reviews and financial statements
10 shall be certified as to accuracy by a public or
11 certified public accountant.

12 [(4)] (3) The purpose of the financial review and the
13 financial statement is to provide the [board] director
14 with information to assist [it] the director in
15 determining the financial capability and integrity of
16 the applicant.

17 [(d)] (c) Line of credit.

18 (1) Applicants for issuance of a dealer's license shall
19 obtain an inventory or flooring line of credit from a
20 federally insured financial institution or from a
21 financing source having a net worth of at least
22 \$50,000,000. The line of credit shall be in the

1 following amount:

2 (A) For new motor vehicle dealer applicants, \$500,000
3 or the amount required in the applicant's dealer
4 sales and service agreement, whichever is less;

5 (B) For used motor vehicle dealer applicants, \$50,000;
6 and

7 (C) For new and used motorcycle and motor scooter
8 dealer applicants, \$50,000.

9 (2) Applicants for issuance of a dealer's license shall
10 provide the [board] director with a photocopy of the
11 financing statement filed at the bureau of conveyances
12 of the department of land and natural resources,
13 securing the line of credit.

14 (3) Applicants for the issuance of an auction license shall
15 obtain a secured line of credit in the amount of
16 \$100,000 from a federally insured financial
17 institution.

18 (4) When an inventory or flooring line of credit cannot
19 reasonably be obtained by a dealer, the [board]
20 director may provide that a bond, in an amount set
21 forth in the [board's] department's rules, be obtained
22 as an alternative form of security for the inventory or

1 flooring line of credit.

2 ~~[(e)]~~ (d) Applicants for issuance of an auction license
3 shall provide a written statement from a federally insured
4 financial institution verifying that the applicant has a customer
5 trust account for the auction with that financial institution.

6 ~~[(f)]~~ (e) All applicants for the issuance of a new license
7 shall pay a fee concurrently with each application[, except the
8 application fee for a new salesperson's or auctioneer's license
9 shall be a lesser amount than the fee for other licenses issued
10 under this chapter].

11 ~~[(g) Investigation and report.]~~ (f) Upon the filing of any
12 application, a staff member shall [~~indorse~~] endorse on it the
13 date of filing. If no patent disqualification of the applicant
14 is disclosed or no valid objection to the granting of the
15 application is apparent and if all requirements relative to the
16 filing of the application appear to have been complied with, the
17 [~~chairperson of the board or executive secretary~~] director shall
18 refer the application to a staff member for investigation and
19 report. The report shall include:

20 (1) A statement as to whether or not the applicant is for
21 any reason disqualified by this chapter from obtaining
22 or exercising a license; and whether or not the

- 1 licensee has complied with all the requirements of this
2 chapter relative to the making and filing of the
3 licensee's application; and
- 4 (2) Information relating to any and all other matters and
5 things which in the judgment of the staff member
6 pertain to or affect the matter of the application or
7 the issuance or the exercise of the license applied
8 for; and
- 9 (3) In the case of an application for a dealer's or
10 auction's license in addition to the foregoing:
- 11 (A) A description of the premises intended to become
12 the licensed premises, and the equipment and
13 surrounding conditions; and
- 14 (B) If the applicant has held a prior dealer's or
15 auction's license for the same or any other
16 premises within two years past, a statement as to
17 the manner in which the premises have been
18 operated and the business conducted under the
19 previous license.
- 20 (4) In the case of an application for a dealer's license,
21 if the applicant proposes to engage in the business of
22 selling new motor vehicles, a copy of the dealer sales

1 and service agreement from the applicable manufacturer,
2 factory branch, factory representative, distributor,
3 distributor branch, or distributor representative.

4 [(h)] (g) Notice of interview. After the filing of the
5 report, the [board] director may interview the applicant and upon
6 the interview and other information that is before the [board,
7 it] director, the director may grant or deny the license.

8 [(i)] (h) Prior inspection of premises. No dealer's or
9 auction's license shall be issued under this chapter unless [and
10 until] the [board] director has caused to be made a thorough
11 inspection of the premises upon which the proposed business is to
12 be conducted and is satisfied that it has met all the
13 requirements as provided in this chapter and that all other
14 general conditions and proposed methods of operation under the
15 license are such as are suitable for carrying on the business in
16 a reputable manner.

17 [(j)] (i) Limitation on license. [(1)] A dealer's or
18 auction's license issued under this chapter shall authorize the
19 doing of the business at the licensed premises, the boundaries of
20 which shall be determined by the map or plan submitted together
21 with the application for license approved by the [board;]
22 director; except in the case of an enlargement or reduction of

1 the licensed premises with the approval of the [board] director
2 [indorsed] endorsed on an amended map or plan.

3 [(2) A license issued under this chapter shall authorize the
4 doing of a business thereunder only for the county in
5 which the license has been issued; and in the case of a
6 salesperson or auctioneer, the license shall authorize
7 the salesperson or auctioneer to be a salesperson or
8 auctioneer only for the dealer or auctions respectively
9 named in the application for a license or an amended
10 license.

11 (k)] (j) Motorcycles and motor scooters. A used motor
12 vehicle dealer's license shall authorize the holder to sell new
13 motorcycles and motor scooters if the licensee is franchised
14 therefor."

15 SECTION 7. Section 437-11, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) Requirements to be met before issuance of dealer's and
18 auction's license.

19 (1) The following requirements shall be met by an applicant
20 for a dealer's license before a license may be issued
21 by the [motor vehicle industry licensing board:]
22 director:

- 1 (A) The applicant has a site which will be used
2 primarily for the purpose of selling, displaying,
3 offering for sale, or otherwise dealing in motor
4 vehicles;
- 5 (B) The site has a permanent building thereon suitable
6 for the display at any one time of at least three
7 motor vehicles having an average base of at least
8 ninety inches;
- 9 (C) The site has suitable sanitation facilities
10 thereon; and
- 11 (D) The applicant has entered into, and provided the
12 [board] director with a copy of, a lease or rental
13 agreement for the site. The lease or rental
14 agreement shall be for a minimum term of one year.
- 15 (2) The following requirements shall be met by an applicant
16 for an auction's license before a license may be issued
17 by the [motor vehicle industry licensing board:]
18 director:
- 19 (A) The applicant has a permanent site which will be
20 used primarily for the purpose of selling,
21 displaying, offering for sale, or otherwise
22 dealing in motor vehicles;

- 1 (B) The site has suitable sanitation facilities
2 thereon; and
3 (C) The applicant has entered into, and provided the
4 [board] director with a copy of, a lease or rental
5 agreement for the site. The lease or rental
6 agreement shall be for a minimum term of one
7 year."

8 SECTION 8. Section 437-13, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§437-13 Disclosure of dealer. Where a person licensed
11 according to this chapter represents a buyer in the State in
12 purchasing or attempting to purchase a motor vehicle from or
13 through a dealer or broker not licensed in the State (hereinafter
14 called "nonresident") residing or doing business without the
15 State the person shall file with the [motor vehicle industry
16 licensing board] director each month a statement showing the name
17 and address of all such nonresidents with whom the person has
18 actually negotiated any such sale for the past month and with
19 whom the person is authorized in writing to negotiate or continue
20 to negotiate or to make such sales. All such statements shall be
21 under oath."

22 SECTION 9. Section 437-15, Hawaii Revised Statutes, is

1 amended to read as follows:

2 "**§437-15 Principals held responsible.** Every holder of a
3 license issued under this chapter may be held responsible for the
4 conduct of the holder's agents and employees in all transactions
5 regarding motor vehicles, motor vehicle parts, franchises, and
6 transactions involving a subject or matter within the
7 jurisdiction of the [board.] department. No licensee shall
8 permit any person not licensed under this chapter to sell or
9 exchange or offer to sell or exchange any motor vehicle on the
10 premises specified in the license or to sell or exchange any
11 motor vehicle on behalf of the licensee off the premises
12 specified in the license."

13 SECTION 10. Section 437-16, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§437-16 Records to be kept.** Every motor vehicle dealer
16 shall keep a record of the purchases, consignments, sales and
17 exchanges, moneys, commissions, or any other thing of value paid
18 or agreed to be paid to any person for each motor vehicle
19 purchased, sold, consigned to be sold, or exchanged, and the
20 record shall be at all times open to the inspection of the [motor
21 vehicle industry licensing board] director or any peace officer
22 designated by the [board] director to inspect the record. The

1 record shall contain:

2 (1) The names and addresses of all persons from whom any
3 motor vehicle is purchased or received;

4 (2) The names and addresses of all persons to whom any
5 motor vehicle is sold, consigned to be sold, or
6 exchanged;

7 (3) The names and addresses of all persons who have
8 received any moneys, commissions, or any other thing of
9 value, or to whom the same is due and owing, in
10 connection with the sale of any motor vehicle; and

11 (4) The license number, motor number, serial number, and
12 style of any such motor vehicle."

13 SECTION 11. Section 437-18, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By amending subsection (a) to read:

16 "(a) Each broker receiving a license shall give to the
17 [motor vehicle industry licensing board] department and keep in
18 force a bond or bonds in the penal sum totaling not less than
19 \$200,000."

20 2. By amending subsections (c) and (d) to read:

21 "(c) If the applicant maintains an established place of
22 business in a county which is used, or will be used, for the

1 purpose of selling, displaying, or offering to negotiate for the
2 purchase of motor vehicles, the market value of which, over and
3 above all liens, charges, and encumbrances thereon, is equal to
4 or greater than ninety per cent of the amount of bond required by
5 this section, and the financial condition of the applicant is
6 such that, in the judgment of the [board,] director, the excess
7 over ten per cent of the bond may be waived without unduly
8 jeopardizing the rights and interests of present and prospective
9 claimants against the applicant, then the amount of the bond may
10 be reduced at the discretion of the [board.] director.

11 (d) The bond shall be subject to the following conditions:

12 (1) That the broker will faithfully and truly comply with
13 [all the valid provisions of] this chapter [as the same
14 now are or may hereafter be amended], and with any rule
15 adopted by the [board] department pursuant to [this]
16 chapter[;] 91;

17 (2) That the broker will not be guilty of fraud,
18 misrepresentation, or other improper business conduct
19 in connection with the selling, purchasing, negotiating
20 for purchase, or otherwise dealing with motor vehicles
21 or any other property related thereto, and will satisfy
22 all judgments rendered against the broker based in

1 whole or in part upon representations or warranties
2 made in connection with any retail sale or negotiation
3 for the purchase of a motor vehicle; and

4 (3) That the broker will protect the treasurer of the
5 county and any purchaser of any vehicle or any person
6 acquiring any lien thereon or successor in interest of
7 any such person against any loss on account of any
8 defect in or undisclosed encumbrance upon the title of
9 any motor vehicle, registered by the treasurer in
10 reliance upon any certificate, affidavit, or other
11 representation of the dealer, or registration or
12 transfer of registration procured by the broker."

13 SECTION 12. Section 437-21.1, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§437-21.1 Bonds of auctions. The bond of an auction shall
16 be in the same amount and under the same terms and conditions as
17 required for a new motor vehicle dealer [under section 437-17.]
18 in accordance with rules adopted by the department pursuant to
19 chapter 91."

20 SECTION 13. Section 437-23, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:

22 "(b) Reapplication. If a licensee fails to renew the

1 licensee's license on or before June 30 of each even-numbered
2 year and desires to continue in the business or activity for
3 which the license was issued, the licensee shall file a new
4 application for a license and shall pay in addition to the
5 license and filing fee a penalty of twenty-five per cent of the
6 original license fee; provided that the [board] director may for
7 good cause waive the collection of all or a part of the penalty;
8 and provided that nothing contained in this section shall limit
9 the power of the [board] director to deny any application on the
10 grounds provided in this chapter."

11 SECTION 14. Section 437-24, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§437-24 Licenses terminate, when. (a) [General.] Any
14 license issued pursuant to this chapter shall terminate upon the
15 permanent or temporary cessation of the business or activity for
16 which it was issued.

17 [(b) Salesman's or auctioneer's license. A salesman's or
18 auctioneer's license shall terminate upon the termination of the
19 license of the dealer or auction, respectively, by whom the
20 salesman or auctioneer is employed (if employed by only one
21 auction) or upon the termination of the salesman's or
22 auctioneer's employment (if employed by only one auction).

1 (c)] (b) [Delivery to board of license.] Upon the
2 termination, suspension, or revocation of a license, the holder
3 shall deliver it to the [board.] director.

4 [(d) License reissued, when.] (c) Where the termination is
5 not the result of suspension or revocation by the [board]
6 director for cause, the [board] director shall reissue the
7 license to the holder without cost if the holder resumes the
8 holder's business or employment within the term for which it was
9 issued."

10 SECTION 15. Section 437-26, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§437-26 License not transferable; other requirements.** (a)
13 [Nontransferable.] No license issued under this chapter shall be
14 transferable.

15 (b) [License to be posted.] Each dealer shall keep the
16 license or a certified copy thereof posted in a conspicuous place
17 on each premises.

18 [(c) License on person. Each salesman shall carry the
19 salesman's license on the salesman's person or a certified copy
20 thereof and shall exhibit such license or certified copy thereof
21 upon demand by any person with whom the salesman seeks to
22 transact business as a motor vehicle salesman.]"

1 SECTION 16. Section 437-27, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§437-27 Change of status, notice. If the status of any
4 licensee changes during the period for which the license is
5 issued in respect to:

- 6 (1) Changes in officers, directors, or limited partners of
7 the licensee [or termination of the employment of any
8 licensed salesman or auctioneer]; [or]
- 9 (2) The transfer of more than ten per cent of the ownership
10 of the licensee to one person; [or]
- 11 (3) The termination of a licensed premises by a dealer or
12 auction or the acquiring or termination of a franchise;
13 or
- 14 (4) The assignment of any part of the licensee's assets for
15 the benefit of creditors;

16 the licensee shall within fifteen days thereafter file with the
17 [board] director notice of such change containing such
18 information as may be required by the [board;] director; provided
19 that nothing contained in this section shall limit the power of
20 the [board] director to suspend, revoke, or deny the renewal of
21 such license or impose any other penalty authorized by this
22 chapter."

1 SECTION 17. Section 437-27.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§437-27.5 Requirements to maintain license. (a) A broker
4 shall have and maintain in full force and effect a bond as
5 required under section 437-18. Failure, refusal, or neglect to
6 maintain in full force and effect a bond shall cause the
7 automatic suspension of the license effective as of the date of
8 expiration or cancellation of the bond. The license shall not be
9 reinstated until a bond as required under section 437-18 is
10 received by the [board.] director.

11 (b) Failure to effect a reinstatement of a suspended
12 license within sixty days of the suspension shall cause the
13 license and all fees to be forfeited.

14 (c) A licensee [may], within fifteen calendar days after
15 receipt of notification of the license forfeiture, may request an
16 administrative hearing pursuant to chapter 91 to review the
17 forfeiture."

18 SECTION 18. Section 437-28, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§437-28 Suspension; revocation; fine; denial of issuance
21 or renewal of a license. (a) In addition to any other actions
22 authorized by law, the [board,] director, after notice and

1 hearing and subject to appeal as provided in chapter 91, [and
2 subject to appeal to the circuit court of the circuit in which
3 the board has jurisdiction under the procedure and rules
4 prescribed by the laws of the State or the applicable rules of
5 the courts pertaining to appeals to circuit courts,] may suspend,
6 revoke, fine, or deny the renewal of any license, or prior to
7 notice and hearing deny the issuance of any license for any cause
8 authorized by law, including but not limited to circumstances
9 where the [board] director finds that the applicant or holder, or
10 any officer, director, general manager, trustee, partner, or
11 stockholder owning more than ten per cent interest of the
12 applicant or holder:

13 (1) Has intentionally made a false statement of a material
14 fact in the application for a license or in any other
15 statement required by this chapter or has obtained or
16 attempted to obtain a license by fraud or
17 misrepresentation;

18 (2) Has failed to comply, observe, or adhere to any
19 provision of this chapter or any other law relating to
20 the sale, taxing, or licensing of motor vehicles or any
21 rule or order made pursuant to this chapter;

22 (3) Has committed a fraudulent act in selling, purchasing,

- 1 or otherwise dealing in motor vehicles or has
2 misrepresented the terms and conditions of a sale,
3 purchase, or contract for sale or purchase of a motor
4 vehicle or any interest therein including an option to
5 purchase motor vehicles;
- 6 (4) Has engaged in business under a past or present license
7 issued pursuant to this chapter, in a manner as to
8 cause injury to the public or to those with whom one is
9 dealing;
- 10 (5) Has failed to comply, observe, or adhere to any law in
11 any other respect on account whereof the [board]
12 director may deem the applicant or holder to be an
13 unfit or improper person to hold a license;
- 14 (6) Has failed to meet or maintain the conditions and
15 requirements necessary to qualify for the issuance of a
16 license;
- 17 (7) Is insolvent or has filed or is the subject of petition
18 for bankruptcy, wage earner's plan, or financial
19 reorganization plan; or has made or proposes to make an
20 assignment for benefit of creditors;
- 21 (8) In the case of an individual applicant or holder of a
22 license, if the applicant or holder is not at least

1 eighteen years of age; in the case of a partnership
2 applicant or holder of a license, if any general or
3 limited partner thereof is not at least eighteen years
4 of age;

5 (9) Has charged more than the legal rate of interest on the
6 sale or purchase or attempted sale or purchase or in
7 arranging the sale or purchase of a motor vehicle or
8 any interest therein including an option to purchase;

9 (10) Has violated any of the laws pertaining to false
10 advertising or to credit sales in the offering,
11 soliciting, selling, or purchasing, or arranging to
12 sell or purchase a motor vehicle or any interest
13 therein;

14 (11) Has wilfully failed or refused to perform any
15 unequivocal and indisputable obligation under any
16 written agreement involving the sale or purchase of a
17 motor vehicle or any interest therein including an
18 option to purchase;

19 (12) Has been denied the issuance of a license under this
20 chapter for substantial culpable cause or for having
21 had a license issued under this chapter suspended,
22 revoked, or the renewal thereof denied for substantial

1 culpable cause;

2 (13) Has entered or has attempted to enter or proposes to
3 enter into any contract or agreement contrary to this
4 chapter or any rule adopted thereunder;

5 (14) Has been or is engaged or proposes to engage in the
6 business of selling new motor vehicles as a dealer or
7 auction without a proper franchise therefor;

8 (15) Has at any time employed or utilized or attempted or
9 proposed to employ or utilize any person not licensed
10 under this chapter who is required to be so licensed;

11 (16) Has entered or attempted to enter any one-payment
12 contract, where the contract is required to be signed
13 by the purchaser prior to removal of the motor vehicle
14 for test driving from the seller's premises;

15 (17) Being [a salesperson or dealer:] an applicant or holder
16 of a dealer's license:

17 (A) Has required a purchaser of motor vehicles as a
18 condition of sale and delivery thereof to purchase
19 special features, appliances, accessories, or
20 equipment not desired or requested by the
21 purchaser; provided that this prohibition shall
22 not apply as to special features, appliances,

1 accessories, or equipment which are ordinarily
2 installed on the vehicle when received or acquired
3 by the dealer;

4 (B) Has represented and sold as an unused motor
5 vehicle any motor vehicle which has been operated
6 as a demonstrator, leased, or U-drive motor
7 vehicle;

8 (C) Has sold a new motor vehicle without providing or
9 securing for the purchaser the standard factory
10 new car warranty for the vehicle, unless the
11 dealer [or salesperson] clearly notes in writing
12 on the sales contract that the new motor vehicle
13 is sold without the standard factory warranty;

14 (D) Has sold a new motor vehicle covered by a standard
15 factory warranty without informing the purchaser
16 in writing that any repairs or other work
17 necessary on any accessories which were not
18 installed by the manufacturer of the vehicle may
19 not be obtainable in a geographic location other
20 than where the purchase occurred; provided that
21 the notice required by this section shall conform
22 to the plain language requirements of section

- 1 487A-1, regardless of the dollar amount of the
2 transaction; or
- 3 (E) Has engaged in any improper business conduct;
- 4 [(18) Being an applicant or holder of a dealer's license:
- 5 (A)] (F) Has sold or proposed to sell new motor
6 vehicles without providing for the maintenance of
7 a reasonable inventory of parts for new vehicles
8 or without providing and maintaining adequate
9 repair facilities and personnel for new vehicles
10 at either the main licensed premises or at any
11 branch location; or
- 12 [(B) Has employed or proposed to employ any salesperson
13 who is not duly licensed under this chapter; or
- 14 (C)] (G) Has sold or proposed to sell new motor
15 vehicles without being franchised therefor; or
- 16 [(19)] (18) Being an applicant or holder of an auction's
17 license[:
- 18 (A) Has employed or proposed to employ any auctioneer
19 who is not licensed under this chapter; or
- 20 (B) Has] has sold or proposed to sell new motor
21 vehicles without being franchised therefor[;].
- 22 [(20) Being an applicant for a salesperson's license:

- 1 (A) Does not intend to be employed as a salesperson
2 for a licensed motor vehicle dealer;
- 3 (B) Does not intend to be employed as a salesperson as
4 the principal occupation; or
- 5 (C) Intends to be employed as a salesperson for more
6 than one dealer;
- 7 (21) Being a motor vehicle auctioneer, does not intend to be
8 employed as such by a licensed auction under this
9 chapter; or
- 10 (22) Being a manufacturer, factory branch, factory
11 representative, distributor, distributor branch, or
12 distributor representative:
- 13 (A) Has attempted to coerce or has coerced any dealer
14 in this State to enter into any agreement with the
15 manufacturer, factory branch, factory
16 representative, distributor, distributor branch,
17 or distributor representative, or any other party,
18 to perform any act not required by or to refrain
19 from performing any act not contrary to the
20 reasonable requirements of the franchise agreement
21 with the dealer, by threatening to cancel the
22 franchise agreement or by threatening to refuse,

1 at the expiration of the current franchise
2 agreement, to enter a new franchise agreement with
3 the dealer;

4 (B) Has attempted to coerce or coerced any dealer in
5 this State to enter into any agreement with the
6 manufacturer, factory branch, factory
7 representative, distributor, distributor branch,
8 or distributor representative, or any other party,
9 to perform any act not required by or to refrain
10 from performing any act not contrary to the
11 reasonable requirements of the franchise agreement
12 with the dealer, by awarding or threatening to
13 award a franchise to another person for the sale
14 of the same make of any motor vehicle in the same
15 sales area of responsibility covered by the
16 existing franchise agreement of the dealer;

17 (C) Has attempted to or has canceled or failed to
18 renew the franchise agreement of any dealer in
19 this State without good faith, as defined herein.
20 Upon the cancellation or failure to renew the
21 franchise agreement, the party canceling or
22 failing to renew the franchise agreement, at the

1 dealer's option, shall either compensate the
2 dealer at the fair market going business value for
3 the dealer's capital investment, which shall
4 include but not be limited to the going business
5 value of the business, goodwill, property, and
6 improvement owned or leased by the dealer for the
7 purpose of the franchise, inventory of parts, and
8 motor vehicles possessed by the dealer in
9 connection with the franchise, plus reasonable
10 attorney's fees incurred in collecting
11 compensation; provided that the investment shall
12 have been made with reasonable and prudent
13 judgment for the purpose of the franchise
14 agreement; or compensate the dealer for damages
15 including attorney's fees as aforesaid, resulting
16 from the cancellation or failure to renew the
17 franchise agreement. As used in this paragraph,
18 "good faith" means the duty of each party to any
19 franchise agreement fully to comply with that
20 agreement, or to act in a fair and equitable
21 manner towards each other;

22 (D) Has delayed delivery of or refused to deliver

1 without cause, any new motor vehicle to a dealer,
2 franchised to sell the new motor vehicle, within a
3 reasonable time after receipt of a written order
4 for the vehicle from the dealer. The delivery to
5 another dealer of a motor vehicle of the same
6 model and similarly equipped as the vehicle
7 ordered by a dealer who has not received delivery
8 thereof, but who had placed the written order for
9 the vehicle prior to the order of the dealer
10 receiving the vehicle, shall be prima facie
11 evidence of a delayed delivery of, or refusal to
12 deliver, a new motor vehicle without cause. The
13 nondelivery of a new motor vehicle to a dealer
14 within sixty days after receipt of a written order
15 for the vehicle from a dealer shall also be prima
16 facie evidence of delayed delivery of, or refusal
17 to deliver, a new motor vehicle without cause;
18 provided that the delayed delivery of, or refusal
19 to deliver, a motor vehicle shall be deemed with
20 cause if the manufacturer establishes that the
21 delay or refusal to deliver is due to a shortage
22 or curtailment of material, labor, transportation,

1 utility service, labor or production difficulty,
2 or other similar cause beyond the reasonable
3 control of the manufacturer;
4 (E) Has discriminated against any of their franchised
5 dealers in this State by directly or indirectly
6 charging the dealer more for a new motor vehicle
7 or services, parts, or accessories or a higher
8 rate of transportation for transporting the
9 vehicle from the manufacturing or assembly plant
10 to the dealer or any portion of the distance, than
11 is charged to any other of their franchised
12 dealers in other states for the same make, model,
13 and year of a new motor vehicle or for the same
14 services, parts, or accessories or for similar
15 transportation for the vehicle during the same
16 period. A manufacturer, factory branch, factory
17 representative, distributor, distributor branch,
18 or distributor representative who provides or
19 causes to be provided greater transportation
20 benefits for a new motor vehicle as aforesaid to
21 any of their franchised dealers in other states
22 than is provided to any of their franchised

1 dealers in this State for the same or lesser price
2 or charge than that imposed upon the franchised
3 dealer in this State during the same period is
4 deemed to have so discriminated against the
5 franchised dealer in this State. Evidence of
6 similar discriminatory practice against franchised
7 dealers in other states shall not constitute a
8 defense to or justification of the commission of
9 the discriminatory act against the franchised
10 dealer in this State. The intent and purpose of
11 this subparagraph is to eliminate inequitable
12 pricing policies set by manufacturers, factory
13 branches, factory representatives, distributors,
14 distributor branches, or distributor
15 representatives which result in higher prices of
16 new motor vehicles to the consumer in this State.
17 This subparagraph shall be liberally interpreted
18 to effect its intent and purpose and in the
19 application thereof, the substance and effect and
20 not the form of the acts and transactions shall be
21 primarily considered in determining whether a
22 discriminatory act has been committed. Nothing

1 contained in this subparagraph shall prohibit
2 establishing delivered prices or destination
3 charges to dealers in this State which reasonably
4 reflect the seller's total transportation costs
5 incurred in the manufacture or delivery of
6 products to the dealers, including costs that are
7 related to the geographical distances and modes of
8 transportation involved in shipments to this
9 State, or which meet those lower prices
10 established by competitors;

11 (F) Has required a dealer of new motor vehicles in
12 this State as a condition of sale and delivery of
13 new motor vehicles to purchase special features,
14 appliances, accessories, or equipment not desired
15 or requested by the dealer; provided that this
16 prohibition shall not apply to special features,
17 appliances, accessories, or equipment, except
18 heaters, that are regularly installed on that
19 particular model of new motor vehicles as
20 "standard" equipment or to special features,
21 appliances, accessories, or equipment that are an
22 integral part of the new motor vehicles and cannot

1 be removed therefrom without substantial expense;
2 (G) Has failed to adequately and fairly compensate its
3 dealers for labor, parts, and other expenses
4 incurred by the dealer to perform under and comply
5 with manufacturer's warranty agreements. In no
6 event shall any manufacturer, factory branch,
7 factory representative, distributor, distributor
8 branch, or distributor representative pay its
9 dealers a labor rate per hour for warranty work
10 that is less than that charged by the dealer to
11 the retail customers of the dealer nor shall the
12 rates be more than the retail rates. All claims
13 made by dealers for compensation for delivery,
14 preparation, and warranty work shall be paid
15 within thirty days after approval and shall be
16 approved or disapproved within thirty days after
17 receipt. When any claim is disapproved, the
18 dealer shall be notified in writing of the grounds
19 for disapproval;
20 (H) Has wilfully failed to affix the vehicle bumper
21 impact notice pursuant to section 437-4.5(a), or
22 wilfully misstated any information in the notice.

1 Each failure or misstatement is a separate
2 offense; or

3 (I) Has wilfully defaced, altered, or removed the
4 vehicle bumper impact notice required by section
5 437-4.5(a) prior to delivery of the vehicle, to
6 which the notice is required to be affixed, to the
7 registered owner or lessee. Each wilful
8 defacement, alteration, or removal is a separate
9 offense.]

10 (b) For disregard of an order suspending a license pursuant
11 to section 436B-23, the [board] director may summarily take
12 possession of and impound all motor vehicles belonging to or in
13 the possession of the licensee whether or not the vehicles are
14 situated upon the licensed premises, pending final action in this
15 case or, without taking possession of the motor vehicles, may
16 render them unusable; provided that the right of the [board]
17 director to take any action and any liens for towing or storage
18 or otherwise arising from the action are subject to and
19 subordinate to any security interest that has attached to the
20 motor vehicles prior thereto, and the [board,] director, prior to
21 taking any action, shall give notice thereof to any secured party
22 whose security interest in the motor vehicles is known to the

1 [board] director or who, prior to any action by the [board,]
2 director, had filed a financing statement covering the motor
3 vehicles or had noted the lien on the legal ownership
4 certificates thereof.

5 (c) Any fine imposed by the [board] director after a
6 hearing in accordance with chapter 91 shall be no less than \$100
7 nor no more than \$1,000 for each violation.

8 (d) In lieu of or in addition to the fine imposed under
9 this section, the [board] director may require the motor vehicle
10 dealer to make restitution to the customer. Restitution may be
11 imposed in lieu of a fine even though the amount may exceed the
12 fine set forth in subsection (c)."

13 SECTION 19. Section 437-29, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§437-29 Discretionary powers of [board.] director. (a)
16 Where any applicant for a license or stockholder owning more than
17 a ten per cent interest in the applicant or any officer,
18 director, trustee, employee, or partner of the applicant has been
19 guilty of any act or omission involving personal misconduct which
20 by this chapter is made ground for refusing to issue a license or
21 for revoking or suspending a license, such as the making of a
22 false statement of a material fact in an application, the

1 commission of a fraudulent act in connection with the sale or
2 negotiation for the purchase of motor vehicles, and the like, the
3 [board] director shall have discretion, nevertheless, to issue
4 the license or suspend or reject the revocation of the license,
5 upon such reasonable conditions, including the furnishing of an
6 additional bond not exceeding \$5,000, as to future good conduct
7 of the applicant and other person concerned, as the [board]
8 director determines, provided the [board] director finds:

9 (1) That there are extenuating circumstances that indicate
10 that the act or omission was not due to moral
11 turpitude; or

12 (2) That a reasonable time fixed by rule of the [board,]
13 department, not less than one year, has elapsed since
14 the act or omission occurred, together with evidence of
15 the person's rehabilitation or general good character,
16 sufficient to indicate that the person is not likely to
17 repeat the offense or engage in illegal, unlawful, or
18 unconscionable practices; or

19 (3) That the favorable action by the [board] director will
20 not jeopardize the public interest.

21 (b) [Notice to treasurer.] A copy of the application of
22 each dealer or auction executed and approved by the [board]

1 director or a report of the suspension, revocation, or change of
2 status of a dealer's or auction's license shall be furnished to
3 the treasurer promptly upon the granting, suspension, revocation,
4 or change of status of the license."

5 SECTION 20. Section 437-35, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§437-35 Penalty. Any person who violates any provision of
8 this chapter or rules of the [board,] department, or who engages
9 in the business as, or serves in the capacity of, or acts as a
10 motor vehicle dealer[, motor vehicle salesperson,] or motor
11 vehicle auction[, motor vehicle auctioneer, manufacturer, factory
12 branch, factory representative, distributor, distributor branch,
13 or distributor representative in the State or otherwise engages
14 in business or selling or negotiating for the purchase of motor
15 vehicles] in this State without being licensed as provided in
16 this chapter shall be fined not more than \$1,000 and each day's
17 violation or failure to comply shall be deemed a separate
18 offense."

19 SECTION 21. Section 437-35.5, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "[[]§437-35.5[[]] Misdemeanor. Any person who is convicted
22 of violating any provision of this chapter or rules of the

1 [board,] department, or who engages in the business as or serves
2 in the capacity of, or acts as a motor vehicle dealer[, motor
3 vehicle salesperson,] or motor vehicle auction[, motor vehicle
4 auctioneer, manufacturer, factory branch, factory representative,
5 distributor, distributor branch, or distributor representative in
6 the State or otherwise engages in business or selling or
7 negotiating for the purchase of motor vehicles] in this State
8 without being licensed as provided in this chapter shall have
9 committed a misdemeanor and be subject to a fine of not more than
10 \$1,000 or imprisoned not more than one year, or both."

11 SECTION 22. Section 437-36, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§437-36 Injunction; damages. The [motor vehicle industry
14 licensing board] director or any person, firm, or corporation or
15 any trade association may maintain a suit to enjoin the
16 performance or the continuance of any act or acts by a person
17 acting without a license where a license is required by this
18 chapter, and if injured thereby, for the recovery of damages. If
19 in the suit the court finds that the defendant has violated or is
20 violating any of the provisions of this chapter it may enjoin the
21 defendant from further violation thereof. It shall not be
22 necessary that actual damages to the plaintiff or petitioner be

1 alleged or proved. Plaintiff or petitioner shall be entitled, if
2 the plaintiff or petitioner procures a decree hereunder, to a
3 reasonable attorney's fee to be allowed by the court."

4 SECTION 23. Section 437-39, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§437-39 Enforcement. When necessary, the [board] director
7 may enforce [the provisions of] this [act] chapter, including any
8 rule [or regulation promulgated] adopted thereunder or decision
9 rendered thereunder by applying to the circuit court for any
10 relief which may be appropriate, including injunctive relief.
11 Further, the [board] director may apply to the circuit court for
12 any relief which may be appropriate including injunctive relief
13 to enjoin any licensee or other person who violates or threatens
14 to violate any provision of this chapter, including any rule [or
15 regulation promulgated] adopted thereunder."

16 SECTION 24. Section 437-40, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§437-40 Information in applications, confidential; penalty
19 for divulging. The applications for license and contracts
20 required by section 437-7 shall not be deemed a part of the
21 public records but shall be confidential information for use of
22 the treasurer and the [motor vehicle industry licensing board.]

1 department. Whoever, except in a report to the treasurer or the
2 [board] director or when called on to testify in any court or
3 proceeding, divulges any information contained in the
4 applications and acquired by the official or employee in the
5 official's or employee's capacity as an official or employee of
6 the county treasurer's office or of the [board] department shall
7 be fined not less than \$50 nor more than \$100[. Provided];
8 provided that the treasurer or the [board] director may permit
9 the inspection of any such applications by any other person upon
10 being satisfied that the inspection is desired for some lawful
11 and proper purpose."

12 SECTION 25. Section 437-42, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§437-42 Sections 445-171 and 445-172 not to apply.**
15 Sections 445-171 and 445-172 do not apply to dealers [and
16 salesmen] licensed under this chapter."

17 SECTION 26. Section 437-2.5, Hawaii Revised Statutes, is
18 repealed.

19 ["**§437-2.5 Compliance by prior licensees.** Licensees
20 licensed under this chapter prior to July 1, 1990, are subject to
21 all provisions of this chapter, except that those licensees shall
22 have until January 1, 1993, in which to submit to the proof of

1 compliance with sections 437-7(d) and 437-11(a)(1)(B), (C), and
2 (D)."]

3 SECTION 27. Section 437-5, Hawaii Revised Statutes, is
4 repealed.

5 ["§437-5 Board. A motor vehicle industry licensing board
6 is created and shall consist of seven members. Three of the
7 members shall be engaged in the motor vehicle industry and four
8 of the members shall be private citizens not connected with the
9 industry."]

10 SECTION 28. Section 437-25, Hawaii Revised Statutes, is
11 repealed.

12 ["§437-25 Amended licenses. (a) Application. Prior to
13 entering the employ of a dealer or auction, other than the one
14 for which the salesman's or auctioneer's license was issued, a
15 salesman or auctioneer, respectively, shall apply to the board
16 for an amended license authorizing the new employment. Prior to
17 moving or amending the premises or adding branch locations of a
18 business for which a license was issued under this chapter, the
19 holder shall apply for an amended license authorizing the change.

20 (b) Issuance. The executive secretary of the board is
21 authorized to issue the amended license of a salesman or
22 auctioneer subject to the ratification by the board for the first

1 three amendments to a license during the original term thereof.
2 The board shall issue the fourth and following amendments to such
3 license during the term of the original license. The executive
4 secretary is authorized to issue an amended license for new or
5 amended premises or for additional branch locations of the
6 business under a license subject to the board's ratification;
7 provided that the executive secretary shall not issue an amended
8 license when a prior amendment to the same license has not been
9 acted upon by the board. Unless good cause exists, the amended
10 license shall be freely issued for the remainder of the original
11 term.

12 (c) The fees for amended licenses shall be as provided in
13 rules adopted by the director of commerce and consumer affairs
14 pursuant to chapter 91."]

15 SECTION 29. Section 26-9, Hawaii Revised Statutes, is
16 amended by amending subsection (c) to read as follows:

17 "(c) The board of acupuncture, board of public accountancy,
18 board of barbers, board of cosmetology, boxing commission, board
19 of chiropractic examiners, contractors license board, board of
20 dental examiners, board of electricians and plumbers, elevator
21 mechanics licensing board, board of professional engineers,
22 architects, surveyors, and landscape architects, board of hearing

1 aid dealers and fitters, board of massage therapy, board of
2 medical examiners, [motor vehicle industry licensing board,]
3 motor vehicle repair industry board, board of examiners in
4 naturopathy, board of nursing, board of examiners of nursing home
5 administrators, board of dispensing opticians, board of examiners
6 in optometry, board of osteopathic examiners, pest control board,
7 board of pharmacy, board of physical therapy, board of
8 psychology, board of private detectives and guards, real estate
9 commission, board of veterinary examiners, board of speech
10 pathology and audiology, and any board, commission, program, or
11 entity created pursuant to or specified by statute in furtherance
12 of the purpose of this section including but not limited to
13 section 26H-4, or chapters 484, 514A, and 514E shall be placed
14 within the department of commerce and consumer affairs for
15 administrative purposes."

16 SECTION 30. All rights, powers, functions, and duties of
17 the motor vehicle industry licensing board are transferred to the
18 department of commerce and consumer affairs.

19 All officers and employees whose functions are transferred
20 by this Act shall be transferred with their functions and shall
21 continue to perform their regular duties upon their transfer,
22 subject to the state personnel laws and this Act.

1 No officer or employee of the State having tenure shall
2 suffer any loss of salary, seniority, prior service credit,
3 vacation, sick leave, or other employee benefit or privilege as a
4 consequence of this Act, and such officer or employee may be
5 transferred or appointed to a civil service position without the
6 necessity of examination; provided that the officer or employee
7 possesses the minimum qualifications for the position to which
8 transferred or appointed; and provided that subsequent changes in
9 status may be made pursuant to applicable civil service and
10 compensation laws.

11 An officer or employee of the State who does not have tenure
12 and who may be transferred or appointed to a civil service
13 position as a consequence of this Act shall become a civil
14 service employee without the loss of salary, seniority, prior
15 service credit, vacation, sick leave, or other employee benefits
16 or privileges and without the necessity of examination; provided
17 that such officer or employee possesses the minimum
18 qualifications for the position to which transferred or
19 appointed.

20 In the event that an office or position held by an officer
21 or employee having tenure is abolished, the officer or employee
22 shall not thereby be separated from public employment, but shall

1 remain in the employment of the State with the same pay and
2 classification and shall be transferred to some other office or
3 position for which the officer or employee is eligible under the
4 personnel laws of the State as determined by the head of the
5 department or the governor.

6 SECTION 31. All appropriations, records, equipment,
7 machines, files, supplies, contracts, books, papers, documents,
8 maps, and other personal property heretofore made, used,
9 acquired, or held by the motor vehicle industry licensing board
10 relating to the functions transferred to the department of
11 commerce and consumer affairs shall be transferred with the
12 functions to which they relate.

13 SECTION 32. All rules, policies, procedures, guidelines,
14 and other material adopted or developed by the motor vehicle
15 industry licensing board shall remain in full force and effect
16 until amended or repealed by the department of commerce and
17 consumer affairs pursuant to chapter 91, Hawaii Revised Statutes.
18 In the interim, every reference to the motor vehicle industry
19 licensing board in those rules, policies, procedures, guidelines,
20 and other material is amended to refer to the department of
21 commerce and consumer affairs or director of commerce and
22 consumer affairs as appropriate.

1 SECTION 33. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

4 SECTION 34. Statutory material to be repealed is bracketed.
5 New statutory material is underscored.

6 SECTION 35. This Act shall take effect upon its approval.

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INTRODUCED BY: _____