

MOTOR VEHICLE INDUSTRY LICENSING BOARD
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by §92-7(b), Hawaii Revised Statutes (HRS).

Date: Tuesday, February 2, 2016
Time: 9:00 a.m.
Place: King Kalakaua Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813

Present: Wayne De Luz, Industry Member Chairperson
Russell Wong, Industry Member Vice Chairperson
Carl D. Johnsen, Public Member
Byron Hansen, Public Member
Dennis Short, Industry Member

Christine Rutkowski, Executive Officer
Christine Hironaka, Secretary
Rodney J. Tam, Deputy Attorney General

Excused: None

Guests: Daniel Asao, Honolulu Ford
Blake Bushnell, HSV, LLC/Bushnell Law Group
Bruce Coppa, Capitol Consultants
Eric Enjada, H T & T Truck Center
Eddie Fernandez, International Trucks of Hawaii
Ian Fernie, International Trucks of Hawaii
Chuck Haneberg, H T & T Truck Center
Richard Heinze, Freightliner of Hawaii
Frederick Kubota, H T & T Truck Center
Bill Lindsay, Cutter Ford, Inc.
Anna Oshiro, Damon Key (law firm) for H T & T Truck Center
Nathan Reyes, Hawaii Specialty Vehicles, LLC
David Rolf, Hawaii Automobile Dealers Association ("HADA")
Gary Scheuring, Cutter Automotive
Loren Seehase, Damon Key (law firm)
Denise Soderholm, Soderholm Sales

Call to Order: Vice Chairperson Wong called the meeting to order at 9:08 a.m. at which time quorum was established.

Chairperson De Luz joined the meeting at 9:09 a.m.

2016 Legislation: Chairperson De Luz informed the guests that this meeting was convened to discuss legislative issues that will affect Hawaii Revised Statutes (“HRS”) Chapter 437 and franchise dealers.

- a. HB2098 – Relating to the Motor Vehicle Industry Licensing Act

House Bill No. 2098 has been referred to the House Committees on Transportation and Consumer Protection and Commerce. No hearing date has been scheduled.

- b. SB2525 – Relating to the Motor Vehicle Industry Licensing Act.

Senate Bill No. 2525 has been referred to the Senate Committee on Commerce, Consumer Protection, and Health.

Soderholm Sales and Leasing, Inc. submitted additional information.

Chairperson De Luz announced he was taking the agenda out of order to proceed with the discussion of the December 11, 2015 letter from Ann H. Oshiro, Esq.

Discussion: a. Franchise requirements for motor vehicle dealers – December 11, 2015 letter from Anna H. Oshiro, Esq. (Deferred from the December 15, 2015 meeting.)

In her letter, Ms. Oshiro posed the following question:

“H T & T asks whether the Board will allow a dealer who lacks a franchise or franchise agreement with a manufacturer or distributor of new motor vehicles to nevertheless sell such new motor vehicles because they have been combined with a body or body part for which the dealer has a franchise agreement with a different manufacturer?”

Ms. Oshiro cited to the minutes of the Motor Vehicle Industry Licensing Board’s (“Board”) August 28, 2007 meeting stating that “The impact of these minutes is growing and causing increasing confusion in the industry. Indeed, there are those in the industry who would seek to improperly rely on these minutes as justification for what H T & T believes are clear violations of Hawaii’s licensing laws.”

Ms. Oshiro requested for the Board to “...declare that the franchise agreement requirement of Chapter 437 for new motor vehicle dealers is interpreted to mean that a dealer who lacks a franchise or franchise agreement with a manufacturer or distributor of new motor vehicles may not lawfully sell such new motor vehicles simply because they have been supplemented with a body, body part, or other component for which the dealer has a franchise agreement with a different manufacturer.”

The Vice Chairperson asked how the proposed bills address the issue. Ms. Oshiro asked if a dealer has to be a franchisee of a manufacturer in order to sell new motor vehicles. Ms. Oshiro added that her client is of the opinion that a dealer must be a franchisee to sell and repair or do warranty work on a new motor vehicle. She cited to the definition of HRS Chapter 437-1.1 "new motor vehicle" and the law that requires dealers to have the franchise agreement, if they are going to sell new motor vehicles.

Mr. Asao from Honolulu Ford stated that upfitters coordinate repairs with dealers. Motor vehicle dealers and repair dealers usually have an agreement regarding warranty repair. Non franchise dealers do not participate in the 126 report to the consumer's detriment.

Vice Chairperson Wong asked "How incomplete vehicles would be addressed?" The Executive Officer stated that the Federal law recognizes vehicles manufactured in two or more stages; there are certification requirements that the manufacturer must comply with.

Vice Chairperson Wong suggested that the Board look at the bills and come up with a position regarding the proposed changes.

Nathan Reyes from Hawaii Specialty Vehicles, LLC said that the bill would close his company because he would be banned from bidding because as a dealer, he is not franchised by the chassis manufacturer. Mr. Reyes added that vehicles can be built with parts from various manufacturers. He said that Allison transmissions are found in medium and heavy-duty commercial vehicles, and that his repair facility, Matt's Transmission, is the authorized repair dealer for Allison. He further stated that, regardless who the dealer is, he always repairs these transmissions.

Fred Kubota from H T & T Truck Center commented that HRS Chapter 437 addresses the motor vehicle but no mention of incomplete/complete vehicles. He said that the proposed bill focuses on the dealer providing warranty work if you are the selling dealer, you need to provide the warranty of the whole vehicle.

Denise Soderholm informed the Board that 90% of their business is represented by second stage manufacturers, conversion companies that are licensed manufacturers in Hawaii. There are agreements between chassis manufacturers and second stage manufacturers to build conversion vehicles and as the dealer they are franchisees of the second stage manufacturers. Ms. Soderholm related that this issue is very involved and can be

extremely confusing. She summarized that the manufacturers make incomplete vehicles for a specific purpose. Further manufacturing by a second stage manufacturer is done and results in a completed vehicle; incomplete vehicles cannot be sold to consumers. Ms. Soderholm added that they instruct their customers to come to them whenever they have problems with their vehicles. They have diagnostic equipment, find out what the problems are, and then shepherd the repair work for their customers even when it may involve the dealer of the cab/chassis. She further stated that the bill has potential to shut down their business.

Bruce Coppa said he is a consumer interested in the topic. He posed this scenario: He just bought a Peterbilt mixer truck on the mainland, and wants to know who will do the warranty repair? Mr. Asao replied that the consumer must do their due diligence as to who in Hawaii will warranty the work. Denise Soderholm added that the consumer should go to where they bought the vehicle and ask to whom they should take it for repair. She added that the dealer for the body manufacturer should be able to assist in diagnosing the problem per their franchise agreement and to determine who should do the repairs.

Richard Heinze from Freightliner of Hawaii stated that the franchisee has the additional cost of supporting the manufacturer. The second stage manufacturer does not have this burden.

Blake Bushnell stated that he is an attorney representing Hawaii Specialty Vehicles ("HSV"). He said that H T & T previously had a monopoly on the sale of garbage trucks. He commented that it is interesting that H T & T's request comes at a time that his client prevailed on H T & T's bid protest on garbage trucks.

Mr. Bushnell added that the proposed legislation is anti-competitive under the guise of consumer protection.

Chairperson De Luz asked Mr. Bushnell to submit his concerns in writing to which he replied that he would.

Ms. Oshiro maintained that HSV is not the franchisee of the motor vehicle manufacturer. She reiterated that specialty vehicle dealers do not have to pay the cost of a franchise. She stated that her client cannot compete.

Ms. Soderholm responded that as a franchisee they are required to have certified trained technicians and tools from different manufacturers.

Vice Chairperson Wong commented that manufacturers may have concerns with the proposed bill which may result in unintended consequences.

Mr. Kubota stated that the VIN# identifies the manufacturer.

Chairperson De Luz called for a ten minute recess at 10:42 a.m. At 10:52 a.m. Chairperson De Luz reconvened the meeting.

Board members discussed the bill. Deputy Attorney General Tam asked Ms. Oshiro to comment on the proposed amendments.

Ms. Oshiro stated that dealers, government agencies, including RICO are relying upon the Board's August 2007 minutes, that the minutes require updating.

Board members discussed the bill. Deputy Attorney General Tam asked Ms. Oshiro to comment on the proposed amendments. Ms. Oshiro related the following:

Page 1, line 5 – “body, equipment” was added because the language is not used anywhere in the statutes.

Page 1, lines 15 and 16 and page 2, line 1 – This clarifies that the dealer must be a franchisee authorized to sell and provide the warranty.

Page 3, lines 18 and 19 – VIN dictates the manufacturer.

Page 1, lines 2 and 3 – As referred to in HRS Chapter 249.

Executive Session: At 11:04 a.m., it was moved by Chairperson De Luz, seconded by Mr. Wong, and unanimously carried to enter into Executive Session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities in accordance with HRS §92-5(a) (4), Hawaii Revised Statutes.

EXECUTIVE SESSION

At 12:12 a.m., it was moved by Mr. Johnsen, seconded by Mr. Wong, and unanimously carried to return to the agenda.

Mr. De Luz moved to oppose House Bill No. 2098 and Senate Bill No. 2525 as drafted. Mr. Wong seconded the motion.

Mr. De Luz stated that the final/end stage manufactured vehicles are important to the marketplace and to the health, safety, and welfare of the Hawaii consuming public. Stakeholders are significantly apart in their opinions. It is not the Board's desire or intention to put anyone out of business. In addition, Chairperson

De Luz stated that the subject matter is not unique to Hawaii. He encouraged the parties to engage in conversation that will address this segment of the motor vehicle market that is important to consumers. The motion was voted on and unanimously carried.

c. Delegation of Board Member for Legislative Matters

It was moved by Mr. Short, seconded by Mr. Hansen to appoint Mr. Wong as the Board's legislative representative and Mr. Short as the second legislative representative.

Discussion:

a. Franchise requirements for motor vehicle dealers – December 11, 2015 letter from Anna H. Oshiro, Esq.

It was moved by Mr. Johnsen, seconded by Mr. Wong and unanimously carried to defer the discussion of Ms. Oshiro's December 11, 2015 letter.

Next Meeting:

Tuesday, February 23, 2016
9:00 a.m.
Queen Liliuokalani Conference Room
335 Merchant Street, 1st Floor
Honolulu, HI 96813

Adjournment:

There being no further business to discuss, the meeting adjourned at 12:26 p.m.

Taken and recorded by:

/s/ Christine Hironaka
Christine Hironaka
Secretary

Reviewed and approved by:

/s/ Christine Rutkowski
Christine Rutkowski
Executive Officer

03/16

[X] Minutes approved as is.
[] Minutes approved with changes. See Minutes of _____.