

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, December 17, 2019
Time: 9:00 a.m.
Place: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813

Present: Wayne De Luz, Industry Member, Chairperson
Byron Hansen, Public Member
Larry Ignas, Public Member
John Uekawa, Industry Member
Russell Wong, Industry Member
Kedin C. Kleinhans, Executive Officer (“EO”)
Christopher J. I. Leong, Deputy Attorney General (“DAG”)
LaJoy Lindsey, Secretary

Excused: Steven J. T. Chow, Esq., Public Member, Vice-Chairperson

Guests: Lei Fukumura, PVL Special Deputy Attorney General
Dave Rolf, Hawaii Automobile Dealer’s Association (“HADA”)
Denise Soderholm, Soderholm Sales and Leasing Inc
Erik Soderholm, Soderholm Sales and Leasing Inc

Call to Order: Chairperson De Luz called the meeting to order at 9:12 a.m. at which time a quorum was established.

Approval of Minutes of October 15, 2019, meeting: It was moved by Mr. Hansen, seconded by Mr. Wong and unanimously carried to accept both the open and executive session minutes of October 15, 2019.

RECESS IN: 9:15 a.m. RECESS OUT: 9:20 a.m.

Chapter 91, HRS, Adjudicatory Matters: In the Matter of the Motor Vehicle Dealer License of Waipahu Auto Sales LLC dba Shaka Boyz Auto Sales; MVI 2014-28-L

It was moved by Mr. Wong, seconded by Mr. Hansen and unanimously carried to approve settlement agreement MVI 2014-28-L

In the Matter of the Motor Vehicle Dealer License of Waipahu Auto Sales LLC dba Shaka Boyz Auto Sales; MVI 2015-28-L

It was moved by Mr. Uekawa, seconded by Mr. Ignas and unanimously carried to approve settlement agreement MVI 2015-28-L.

In the Matter of the Motor Vehicle Dealer Salesperson's License of Terry A. Martinez, In the Matter of the Motor Vehicle Dealer Salesperson's License of Terry A. Martinez; In the Matter of the Motor Vehicle Salesperson's License of Johnny H. Martinez, and In the Matter of the Motor Vehicle Dealer's License of South Maui Motors, Inc. MVI 2017-57-7; MVI 2018-26-L [CONSOLIDATED]

It was moved by Mr. Wong, seconded by Mr. Uekawa and unanimously carried to approve settlement agreements MVI 2018-57-7 and MVI 2018-26-L [CONSOLIDATED].

Licensing:

a. Ratifications

Motor Vehicle Salesperson Transfers
Motor Vehicle Salesperson License
Motor Vehicle Branch License - Relocation
Motor Vehicle Dealer License

It was moved by Mr. Wong, seconded by Mr. Ignas and unanimously carried to ratify the above lists.

b. Applications

None

Revisions to
Chapter 86,

Rules 1

EO asked if members had enough time to review the Draft 1 rule packet and asked if there were any concerns. Dave Rolf reported that HADA reviewed the rules at their board meeting last week and also forwarded the rules to their national organization for additional review. Mr. Rolf asked if the Board can set up a process to involve all stakeholders.

Mr. Rolf further reported that one of the concerns that caught their attention was language stating that the laws would only apply to a person "within the purview of this chapter". He noted that this may exempt, for example, an out-of-State broker that does not have a Hawaii license from running ads in this State.

Chairperson De Luz recommended that Mr. Rolf submit his comments and questions in writing to the Board. He added that the process will be very time consuming for as the process will occur over the course of several meetings to address the feedback and input of all stakeholders.

Mr. Soderholm asked what is the purpose of the changes and who wants to make the changes? EO Kleinhans replied that the proposed rule revision package is mainly housekeeping updates as the rules have not been updated for many years; the rules need to be kept up to date as the Board's rules are its greatest tool to keep up with modern trends.

Mr. Soderholm's stated that all the stakeholders should be brought in to provide their input. The Board should go beyond HADA and include used car Dealers and motorcycle Dealers as well.

Chairperson De Luz commented that the proposed rules are meant to further clarify the statute. Mr. Soderholm stated that he did not want the Board to change the law as not all commercial Dealers can offer warranty for the entire vehicle.

Mr. Uekawa stated that the proposed changes are based from the statute and the Board is trying to provide further clarity to the statute. Chairperson De Luz agreed.

EO Kleinhans stated that the process would involve addressing concerns from both the public and the industry stakeholders. Chairperson De Luz suggested for EO Kleinhans to create a schedule to assign what section will be discussed at the following meetings. EO Kleinhans responded that he will work and provide a schedule at the next meeting.

Mr. Soderholm suggested that the process be transparent and that everyone who makes a suggestion should put their name on it. He also offered to assist with the rule revision process.

Break:

RECESS IN: 9:40 a.m. RECESS OUT: 9:45 a.m.

Chairperson De Luz advised EO Kleinhans that he has a conflict on February 18, 2020, and mentioned that the Board may need to defer any rules discussion until April 2020. He would like for people to provide input.

New
Business:

EO Kleinhans reported that Senator Shimabukuro is proposing legislation to ban "Yo-yo financing." Mr. Rolf explained that the process is called "Yo-yo financing" because a Dealer would sell a car via spot delivery, meaning that the sale would be finalized pursuant to the customer fully qualifying for financing from a lender, and when the customer returns home, the Dealer would call and advise the customer that they were not qualified for financing.

Mr. Rolf spoke with one of the Dealers and was told that this is very rare. He brought a magazine and said that to change the law would take the joy out of purchasing a vehicle if a Dealer could not spot deliver. There have been instances where the customer filed for bankruptcy yet did not to notify the Dealer during the application process. The customer would

eventually not qualify for the 4 percent loan; they would have to go with 8 percent loan. Mr. Rolf hopes that the Board will stand with the current process.

EO Kleinhans reported that Senator Shimabukuro currently does not have proposed language yet. Mr. Wong expressed concerns if legislation mandated for a Dealer to wait until a financing loan is fully approved and funded before releasing the vehicle to the customer – the process would certainly stop commerce.

Chairperson De Luz asked EO Kleinhans to explore the specific problem as there may be a better avenue.

Mr. Wong stated that the law was previously amended to allow spot delivery because today's environment involves many types of transactions, even online. Both the Dealer and consumer must rely on each other to make each transaction work. Mr. Wong also added that HRS Chapter 437.31-5 states the financing agreement is void if the consumer is unable to qualify for financing. Mr. Wong shared that it would be in the best interest of the Dealer to assist the consumer as much as possible, whether it's requiring a bigger down payment, dropping the price of said vehicle, or returning the consumer's payment in full.

EO Kleinhans stated that the concern may be due to a bad actor, for example: if a consumer trades in their vehicle, then the Dealer spot delivers the sale and shops for financing, but then the bank says the buyer is unable to qualify. In this case, the contract is void; however, the Dealer already sold the buyer's trade-in. Mr. Wong responded that the Dealer would need to buy back trade-in and return the vehicle to the buyer.

Mr. Rolf shared an example: Channel 2 Action Line called him and said that a 19-year old woman sold her car to a used car Dealer. She turned in her paystubs as required for financing, and they sold her car prior to the finance process being completed. It turned out that her pay stubs were false which voided the financing agreement. The woman wanted her car back, but it was already sold. Then, it was found that the buyer was not a 19-year old woman, but instead a 35-year old man who dressed as a young woman. Mr. Rolf noted that these are rare occurrences and can sometimes be very bizarre.

Chairperson De Luz stated that he has previously advised Dealers that if there is any question regarding the trade-in vehicle, don't sell it. Mr. Wong commented that Dealers are not always presented with accurate information from buyer's. Chairperson De Luz wants the Board to work with the senator to resolve any issues that exist.

Mr. Uekawa commented to put things into perspective: 55,000 new vehicles and 75,000 used vehicles are sold in a year, and only one or two of those transactions are problematic. Mr. Rolf responded that there are currently good laws in place.

EO Kleinhans stated that it appears the Board is in agreement that holding the trade-in vehicle until the financing process is complete is probably not the ideal solution.

Public Comment: None.

Next Meeting: Tuesday, February 18, 2020
9:00 a.m.
King Kalakaua Building
Queen Liliuokalani Conference Room
335 Merchant Street, 1st Floor
Honolulu, HI 96813

Adjournment: There being no further business to discuss, the meeting adjourned at 9:59 a.m.

Taken and recorded by:

/s/ LaJoy Lindsey

LaJoy Lindsey, Secretary

Reviewed and approved by:

/s/ Kedin C. Kleinhans

Kedin C. Kleinhans
Executive Officer

1/17/20

Minutes approved as is.

Minutes approved with changes. See Minutes of _____.