

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, October 27, 2020

Time: 9:00 a.m.

Place: Virtual via Zoom

Present: Wayne De Luz, Industry Member, Chairperson  
Steven J. T. Chow, Esq., Public Member, Vice-Chairperson  
Byron Hansen, 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  
Kelly Wei, Secretary  
Terry Akasaka-Toyama, Deputy Director’s Secretary  
Karyn Takahashi, Director’s Secretary  
Kellie Teraoka, PVL Secretary  
Charlene L.K. Tamanaha, Licensing Administrator

Guests: Dave Rolf, Hawaii Automobile Dealer’s Association  
Erik Soderholm, Soderholm Sales and Leasing Inc  
Jeffrey Miller, Attorney for Soderholm Sales and Leasing Inc

Call to Order: Chairperson DeLuz called the meeting to order at 9:16 a.m. Roll call was taken and Messrs. DeLuz, Chow, Hansen, Uekawa and Wong were all present.

Election of Officers: It was moved by Mr. Wong and seconded by Mr. Hansen to nominate Chairperson DeLuz to again serve as Chairperson and Vice-Chairperson Chow to again serve as Vice-Chairperson through June 30, 2021. A roll call vote was taken and Messrs. DeLuz, Chow, Hansen, Uekawa and Wong voted unanimously to elect Chairperson DeLuz and Vice-Chairperson Chow to retain their positions on the board.

Approval of Minutes of August 18, 2020 meeting: It was moved by Vice-Chairperson Chow, and seconded by Mr. Hansen to approve the minutes of the August 18, 2020 meeting. A roll call vote was taken and Messrs. Chow, DeLuz, Hansen, Uekawa and Wong voted unanimously to approve the minutes.

Licensing:

a. Ratifications

Motor Vehicle Salesperson Transfers  
Motor Vehicle Salesperson License  
Motor Vehicle Dealer License  
Motor Vehicle Manufacturer License

It was moved by Mr. Wong and seconded by Mr. Hansen to approve ratification lists. A roll call vote was taken and Messrs. DeLuz, Chow, Hansen, Uekawa and Wong voted unanimously to ratify list.

b. Applications

(1) D.K. LLC – Motor Vehicle Dealer

At 9:27 a.m. it was moved by Chairperson DeLuz and seconded by Mr. Uekawa to move into Executive Session to consider and evaluate personal information relating to individuals applying for licensure in accordance with Hawaii Revised Statutes (“HRS”) chapter 92-5(a)(1), and 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 chapter 92-5(a)(4). A roll call was taken and Messrs. Chow, DeLuz, Hansen, Uekawa and Wong unanimously voted to enter into Executive Session.

EXEC SESSION IN: 9:27 a.m.

EXEC SESSION OUT: 9:46 a.m.

At 9:46 a.m. it was moved by Mr. Wong, seconded by Vice Chairperson Chow to exit Executive Session. Roll call was taken and Messrs, DeLuz, Chow, Hansen, Uekawa and Wong voted unanimously to exit Executive Session.

It was moved by Vice-Chairperson Chow, and seconded by Mr. Uekawa to approve D.K. LLC’s application. A roll call vote was taken. Messrs Chow and Uekawa voted yes, while Messrs. DeLuz, Hansen and Wong voted not to approve application. The motion did not pass. EO Kleinhans suggested the Board further discuss the application in Executive Session.

At 9:54 a.m. it was moved by Vice-Chairperson Chow, and seconded by Mr. Wong seconded to move into Executive Session to consider and evaluate personal information relating to individuals applying for licensure in accordance with Hawaii Revised Statutes (“HRS”) chapter 92-5(a)(1), and 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 chapter 92-5(a)(4).. A roll call vote was taken. Messrs. DeLuz, Chow, Hansen, Uekawa and Wong voted unanimously to enter executive session.

EXEC SESSION IN: 9:54 a.m.

EXEC SESSION OUT: 10:25 a.m.

At 10:25 a.m. it was moved by Mr. Wong, and seconded by Vice-Chairperson Chow to move out of Executive Session. A roll call vote was taken. Messrs. DeLuz, Chow, Hansen, Uekawa and Wong voted unanimously to exit Executive Session.

It was moved by Mr. Wong and seconded by Vice-Chairperson Chow to defer decision-making on the Motor Vehicle Dealer application for DK LLC. The Board requested for managing member Hudman to: (1) further clarify his job duties as an independent consultant and/or buyer in California; in particular, the discrepancy between the information reviewed by the Board at its August 18, 2020 meeting, and today’s meeting on October 27, 2020; and (2) provide an explanation of the cancellation of his Salesperson application in Sacramento, California, and if applicable, to provide the California or Sacramento law/rule/ordinance that exempts his current work as an independent consultant from licensure, certification, or registration in California. A roll call vote was taken. Messrs. DeLuz, Chow, Hansen, Uekawa and Wong voted unanimously to defer the application.

Executive Officer’s Report: EO Kleinhans provided Board members with the 2021 Meeting Schedule. For time being, board meetings will be held via Zoom and Teams until further notice. Chairperson DeLuz advised members to check their schedules and notify Secretary Lindsey of any scheduling conflicts.

Amendments to HAR EO Kleinhans clarified that the recommended rule revisions are from a 2009 draft rule package left in a pending status. At the time, the Board was unable to agree on rule language regarding advertising.

Chapter 86: Additionally, EO Kleinhans reported that the current rule package leaves little room to add new section members. Accordingly, some sections may be ordered as 10.1, 10.2, 10.3, etc. The Board may consider repealing the entire rule chapter and

replacing with a new “clean” chapter. Mr. DeLuz recommended that the current rule Chapter 86 be kept for later comparison of amendments.

In reference to HAR section 16-86-1.1 regarding retaining records, Mr. Uekawa mentioned that the rule requires a retention of records for five years whereas the federal requirement is seven years. Additionally, current records may be kept in an electronic format; however, the section does not provide an indication of a format to keep records..

In reference to HAR section 16-86-3 regarding definitions, Vice-Chairperson Chow suggested the definition of “motor vehicle” should be clearly defined. Mr. Wong added that the suggested amendment: “is self-propelled and propelled by electric power” may mean motor vehicles require both traits; thus, many motor vehicles would not qualify as motor vehicles.

Mr. DeLuz suggested it be made simple. Mr. Wong mentioned that HRS 437-1.1 defines motor vehicle and suggested the current rule section remain unamended.

Mr. Rolf shared that the definitions should be consistent and interconnect with the other statutes relating to motor vehicles. EO Kleinhans reported the law regarding “County Vehicular Taxes”, HRS section 249-1, defines motor vehicle as “every vehicle which is self-propelled and every vehicle which is propelled by electric power but which is not operated upon rails, but excludes mopeds.”

Regarding records, Mr. Rolf of recalled a question he was asked: If you exchange a vehicle with no transaction, is there cash value? Some issues in the industry are handled by the County DMVs. Mr. Uekawa mentioned that manufacturers and police departments request information regarding the value of a motor vehicle from the DMV. EO Kleinhans recommended the Board discuss finance and cash value at its next meeting, and rule revisions if necessitated.

Board members reviewed HRS section 437-16. Mr. Wong noted the suggested amendment to HAR section 16-86-1.1 was similar to the language in the statute. DAG Leong advised that the language of the rule amendment mostly duplicates the language of the statute, which may not be necessary.

## **Subchapter 2**

### Definitions

Mr. Chow recommended adding a definition for "Motor Vehicle Dealer" to clarify the HRS section 437-1.1 definition of "Dealer". Mr. Rolf stated that the language should be consistent. EO Kleinhans stated that several definitions in HRS section 437-1.1 may be combined to create a definition, such as "a dealer who engages in the business of selling at wholesale or retail, new motor vehicles or used motor vehicles."

Regarding Consumer Consultants, Mr. Rolf shared that some Consumer Consultants are re-negotiating financing deals which is out of the ordinary as there are no other states where this practice occurs. He reported that the KHON2 Action Line received a complaint, where a Consumer Consultant had suggested for a customer to contact the Better Business Bureau for a lower interest rate. Mr. Rolf suggested the role of a Consumer Consultant should be defined more clearly.

At 11:29 a.m. Chairperson DeLuz called for a short recess.

At 11:36 a.m. Chairperson DeLuz conducted a roll call to resume the meeting. Messrs. DeLuz, Chow, Hansen, Uekawa and Wong were all present.

Correspondence:

EO Kleinhans received an e-mail from Mr. Erik Soderholm asking: "Does the manufacturer of a licensed Motor Vehicle Distributor, where the Distributor possesses a franchise agreement with a licensed Motor Vehicle Dealer, need a Motor Vehicle Manufacturer license?"

Mr. Soderholm was present along with attorney Jeffrey Miller. Mr. Soderholm states HRS Chapter 437 requires that Manufacturers must be licensed yet, there are many who are not. Mr. Wong stated that Toyota Motor Corporation does not have a Manufacturer license in Hawaii. Mr. Miller responded that a Manufacturer involved in a franchise in Hawaii must have a Manufacturer license.

Mr. Wong added that when Volvo Cars of North America Inc. changed to Volvo Car USA LLC, its Distributor license moved from Sweden to the U.S. EO Kleinhans reported that when Volvo restructured a couple years ago, Volvo Car USA LLC applied for a Distributor license with Envy Hawaii LLC creating the franchise. Mr. Soderholm asserted that there needs to be a licensed Manufacturer. The law is clear and that all Manufacturers require a Manufacturer license. EO Kleinhans stated that the Board discussed a similar matter at its February 23, 2016 meeting, where the Board determined "that a dealer who sells a completed or new motor vehicle created by a final state manufacturer only needs a franchise agreement with that final stage manufacturer."

In that situation, the dealer does not need a franchise agreement with the manufacturer of the motor vehicle cab/chassis.” EO Kleinhans reported Chairperson DeLuz, Member Wong, Member Hansen, Mr. Rolf, and Mr. Soderholm were in attendance.

Mr. Wong commented that Nissan nor Kia have Manufacturer licenses. Kia Motors America Inc. holds a Distributor license.

The Board deferred further discussion on this matter, and Chairperson DeLuz instructed EO Kleinhans to conduct further research of the franchise law and its history.

Public Comment: None.

Next Meeting: Tuesday, December 15, 2020  
9:00 a.m.  
Virtual Videoconference Meeting  
Zoom Webinar

Adjournment: There being no further business to discuss, the meeting adjourned at 12:20 p.m.

Taken and recorded by:

/s/ LaJoy Lindsey

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LaJoy Lindsey, Secretary

Reviewed and approved by:

/s/ Kedin C. Kleinhans

\_\_\_\_\_  
Kedin C. Kleinhans  
Executive Officer

11/24/20

[ x ] Minutes approved as is.

[ ] Minutes approved with changes. See Minutes of \_\_\_\_\_.