

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

MINUTES OF MEETING

Date: June 8, 2021

Time: 9:00 a.m.

Place: Virtual Videoconference Meeting – Zoom Webinar  
<https://dcca-hawaii-gov.zoom.us/j/99296895207>

Present: Wayne K. De Luz, Industry Member, Chairperson  
Steven J. T. Chow, Esq., Public Member, Vice-Chairperson  
John Uekawa, Industry Member  
Russell M. K. Wong, Industry Member  
Kedin C. Kleinhans, Executive Officer (“EO”)  
Jenny M. Yam, EO  
Christopher J. I. Leong, Deputy Attorney General (“DAG”)  
LaJoy A. Lindsey, Secretary  
Christine V. Dela Cruz, Office Assistant  
Stephanie M. Karger, Office Assistant

Excused: Byron A. Hansen, Public Member

Guests: Dave Rolf, Hawaii Auto Dealers Association (“HADA”)

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

A short video was played to explain the meeting procedures and how members of the public could participate in the virtual meeting.

Call to Order: Chairperson De Luz called the meeting to order at 9:06 a.m., at which time quorum was established. All Board members confirmed that they were present, with the exception of Mr. Hansen who was excused from the meeting.

Approval of the February 9, 2021 and April 13, 2021 Minutes: It was moved by Mr. Wong, seconded by Mr. Chow, and unanimously carried to approve the minutes of the February 9, 2021 and April 13, 2021 meeting.

Licensing: A. Applications

It was moved by Mr. Chow, seconded by Mr. Uekawa, and unanimously carried to enter into executive session at 9:09 a.m., pursuant to HRS §92-5(a)(1), to consider and evaluate personal

information relating to individuals applying for professional licenses cited in HRS §26-9, and, pursuant to HRS §92-5(a)(4), to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

- (i) Motor Vehicle Salesperson
  - a. Edwin Auld
  - b. Nelson Masaki Kiyota

It was moved by Mr. Wong, seconded by Mr. Chow and unanimously carried to return to the open meeting at 9:32 a.m.

Licensing:

- A. Applications
  - (i) Motor Vehicle Salesperson
    - a. Edwin Auld

It was moved by Mr. Chow, seconded by Mr. Uekawa and unanimously carried to approve Mr. Auld's application subject to compliance with terms of his probation and that he notifies dealers of his conviction history.

- b. Nelson Masaki Kiyota

Chairperson De Luz stated that he will abstain from voting on this application. Due to lack of quorum, the application is deferred.

- B. Ratifications
  - Motor Vehicle Salesperson Transfers
  - Motor Vehicle Salesperson Licenses
  - Motor Vehicle Dealer Licenses
  - Motor Vehicle Branch Licenses
  - Motor Vehicle Manufacturer Licenses

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

Hawaii  
Administrative  
Rules Chapter 86  
Amendments:

EO Kleinhans asked if there was public comment and there was none.

a. Subchapters Previously Discussed and Revisions Added

- (i) Subchapter 1 – General Provisions
- (ii) Subchapter 2 – Definitions
- (iii) Subchapter 3 – Licensing

EO Kleinhans reported additional proposed amendments:

- Proposing new section in Subchapter 1 to address the issue of yo-yo financing by requiring a Dealer to return all consideration, including a trade-in vehicle, should a buyer's financing agreement fall through.:

§16-86-1.2 Motor vehicle sales contracts. With regard to dealer-assisted financing, in the event that financing arrangements and terms agreed to by the consumer and the dealer are not obtained by the dealer within the days specified on a contract, and when the consumer complies with all the provisions relating to the vehicle purchased, the dealer must give the consumer back all consideration received in connection with the contract, including a trade-in vehicle taken in, if any.

- Adding a definition to §16-86-3: "Department" means the department of commerce and consumer affairs, which helps to provide clarity in §§16-86-11, 16-86-11.2, 16-86-11.3, and 16-86-35.

b. Subchapters for New Discussion

EO Kleinhans reported the following proposed amendments:

(iv) Subchapter 4 – Application

- Removing abbreviations in accordance with the updated Hawaii Administrative Rules Drafting Manual.: §§16-86-11, 16-86-11.2, 16-86-11.3: [(BREG)] // §16-86-11: [(UCC-1)] // §16-86-19: [(MSRP)]
- Removing rule language that regurgitates statutory language to prevent conflict between statutes and rules should statutory language were to change.
- Adding a paragraph in §§16-86-11, 16-86-11.1, 16-86-11.2: A signed statement that the applicant has met the requirements of sections 437-7 and 437-11 as amended.

*Mr. Wong experienced technical difficulties and left the meeting at 9:40 a.m. and returned to the meeting at 9:41 p.m.*

- Prior to the photographs requirement, DCCA conducted physical inspections of the premise. Adding language regarding the photographs requirement in §§16-86-11, 16-86-11.1, 16-86-11.2 to further capture the intent of the photographs requirement:

Hallways or walkways between the office, restroom facilities, and showroom or three display stalls.

- Technical non-substantive amendments to §16-86-11.3 Exhibits required, motor vehicle manufacturer or distributor:

Removing (3)-(6) from subsection (a) that regurgitates statutory language.

Adding additional language to subsection (b) for clarity:

If the agreement granting a distributor applicant the franchise to distribute motor vehicles in the State is in a foreign language, the applicant shall submit a certified copy [~~that is~~] translated into the English language.

Chairperson De Luz asked whether the current statutes or rules clearly captures the intent that manufacturers or distributors only requires one license for the sale of motor vehicles to any franchised motor vehicle dealer and motor vehicle dealers must obtain a license in each county to operate.

Mr. Uekawa recommended to use the term wholesale rather than sale for manufacturers or distributors.

The Board recognized Mr. Rolf to provide his public comment.

Mr. Rolf concurred with Chairperson De Luz and Mr. Uekawa's recommendations.

EO Kleinhans stated that he will draft additional rule language as §16-86-9 for board approval at the next meeting.

- Technical non-substantive amendments to §16-86-11.4 Motor vehicle consumer consultant for clarity.

Mr. Rolf stated that there have been instances where consumer consultants are providing after-sale services, which may include providing advice to help clients interpret and amend their sales contract. Based on his understanding, a consumer consultant provides consultation for a customer on a pending purchase of motor vehicle. Mr. Rolf asked the Board whether this activity is within the practice of law or within the purview of a consumer consultant.

EO Kleinhans stated that HRS §437-1.1 defines consumer consultant as:

A consumer consultant who is not engaged in the business of selling, soliciting, offering, or attempting to negotiate sales or exchanges of motor vehicles or any interest therein for any dealer, and **who for a fee provides specialized information and expertise in motor vehicle sales transactions to consumers who wish to purchase or lease motor vehicles**; provided that the consumer consultant shall register and pay a fee to the board prior to offering consultant services (emphasis added)

Mr. Kleinhans asked the Board whether the activity is considered negotiating sales.

Mr. Rolf clarified that the client already completed the sale and the consumer consultant is providing services to amend the sales contract or cancel certain terms.

Mr. Wong concurred and stated that some consumer consultants are assisting clients with restructuring, refinance, and cancel an agreement after the sale has been completed in order to lower the payment of a vehicle.

Chairperson De Luz is of the opinion that the intended scope of practice for a consumer consultant is to provide consultation on a pending purchase of a vehicle.

Mr. Uekawa stated that he will work with Mr. Rolf to research on past legislative matters on the intended scope of practice of a consumer consultant.

EO Kleinhans stated that he will also research on this matter and the Board can further define the scope of practice for a consumer consultant.

(v) Subchapter 5 – License Renewal

EO Yam reported that the Board received written testimony from Mr. Rolf:

There is no provision for a license remaining in effect during the period following a renewal that allows for the resolution of problems in the renewal. In the past, the language provided that failure to renew “shall constitute grounds for forfeiture of license.” The “grounds” provision allowed for some time to work out any discrepancy, technical problems, or oversight in renewal while the board takes up the issues.

EO Kleinhans stated HRS §437-23 provides that:

- (a) Expiration. All licenses issued pursuant to this chapter shall expire on June 30 of each even-numbered year unless sooner terminated, suspended, or revoked. All applications for renewal of license shall be filed on or before June 30 of each even-numbered year together with the applicable fees.
- (b) Reapplication. If a licensee fails to renew the licensee's license on or before June 30 of each even-numbered year and desires to continue in the business or activity for which the license was issued, the licensee shall file a new application for a license and shall pay in addition to the license and filing fee a penalty of twenty-five per cent of the original license fee; provided that the board may for good cause waive the collection of all or a part of the penalty; and provided that nothing contained in this section shall limit the power of the board to deny any application on the grounds provided in this chapter.

EO Kleinhans clarified that the proposed rule language was drafted in 2008 and the Board may amend §16-86-15(c) if it is inclined to consider Mr. Rolf's recommendation.

Mr. Rolf clarified that HAR §16-86-15(c) currently states:

(c) Failure, neglect, or refusal to pay the renewal fee shall constitute grounds for forfeiture of license.

He further clarified that the proposed rule language does not have provision for an expired license to remain in effect that allow licensees to resolve any problems that may arise during renewal.

EO Kleinhans commented that “grounds for forfeiture” may offer due process to resolve issues whereas the proposed language indicates that an expired license shall constitute automatically forfeiture on July 1.

DAG Leong stated that there should be a definitive license expiration date.

EO Kleinhans stated that the statutes provide a definitive license expiration date and recommended that the Board may include “grounds for forfeiture” and amend the proposed language as follow:

(c) The biennial renewal fee completed renewal application form and proof of satisfaction of current requirements, as applicable, shall be submitted on or before June 30, even-numbered years. Each licensee and registrant shall be responsible for timely renewing their license or registration. Renewal fees paid by mail shall be considered as paid when due, if the envelope bears a postmark of June 30, even-numbered year. Unless renewed, all licenses and registrations issued pursuant to this chapter and chapter 437, HRS shall expire on June 30 of each even numbered year and shall constitute grounds for forfeiture of license.

Mr. Wong and Mr. Uekawa concurred with EO Kleinhans recommendations.

(vi) Subchapter 6 – Advertising

EO Kleinhans stated that the Board was unable to reach a consensus on Subchapter 6 – Advertising, thus the rule amendments were deferred in 2008 for further discussion. He asked the Board if there were any concerns.

Mr. Rolf stated that HADA submitting written testimony regarding HAR §16-86-19(2) which states:

If charges in addition to the price quoted in any advertisement are to be assessed, the exact amount of the charges and what they are assessed for shall be **shown in**

**the advertisement in type size equal to the quoted price in printed media or with equal prominence to the quoted price in electric media.** Any additional charge items shall include all options required by law to make the vehicle street legal as well as all optional equipment already installed on the vehicle being offered for sale. (Emphasis added).

Mr. Rolf stated that this language requires all charges to be the same type size and font equal to the quoted price of the vehicle. He clarified that it is impractical to relay information to the consumer in an advertisement. He recommended the following amendments, which will still require dealers to fairly and non-deceptively disclose all charges:

If charges in addition to the price quoted in any advertisement are to be assessed, the exact amount of the charges and what they are assessed for shall be shown in the advertisement in ~~[type size equal to the quoted price in printed media or with equal prominence to the quoted price in electric media]~~ a type style and type size that is clear and conspicuous.

Mr. Chow asked whether the State have any statutes or rules that provide a minimum requirement for the font size in advertisements or publication.

EO Kleinhans stated that it may be provided in the buyer's guide.

Mr. Rolf stated that the buyer's guide does specify a font and size; however, "clear and conspicuous" are the terms used for advertising disclosures.

Mr. Chow stated that "clear and conspicuous" may be subjective and if the State already have statutes or rules that provides a minimum requirement for the font size in advertisements then the Board's proposed rules should be consistent and the font size shall not be less than those requirements.

DAG Leong and Mr. Rolf stated they were not familiar with any other statutes or rules that provide the minimum font size in advertisements.

Mr. Uekawa recommended to remove the language relating to the type size requirement, but still require all charges to be shown in the advertisement.

Mr. Chow stated that all charges of the vehicle should be legible for consumer protection.



EO Kleinhans stated that he will research on this matter and report to the Board at the next meeting.

EO Kleinhans stated that other technical non-substantive amendments were also made to the draft for clarity.

Public Comment: None.

Next Meeting: August 10, 2021  
9:00 a.m.  
Virtual Videoconference Meeting  
Zoom Webinar

Adjournment: There being no further business to discuss, the meeting adjourned at 10:52 a.m.

Reviewed and approved by:

Taken and recorded by:

/s/ Jenny M. Yam

/s/ LaJoy Lindsey

\_\_\_\_\_  
Jenny M. Yam  
Executive Officer

\_\_\_\_\_  
LaJoy Lindsey  
Secretary

JMY:ll  
7/2/21

[ x ] Minutes approved as is.  
[ ] Minutes approved with changes. See Minutes of \_\_\_\_\_.