

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

MINUTES OF MEETING

Date: August 10, 2021

Time: 9:00 a.m.

Place: Virtual Videoconference Meeting – Zoom Webinar
<https://dcca-hawaii-gov.zoom.us/j/98717839348>

Present: Wayne K. De Luz, Industry Member, Chairperson
Byron A. Hansen, Public Member
John Uekawa, Industry Member
Marie H. Weite, Public Member
Randall N. Ball, D.D.S., M.S., Public Member
Russell M. K. Wong, Industry Member
Jenny M. Yam, Executive Officer
Kedin C. Kleinhans, Executive Officer (“EO”)
Christopher J. I. Leong, Deputy Attorney General (“DAG”)
LaJoy A. Lindsey, Secretary
Christine V. Dela Cruz, Technical Support
Lee Ann N. Teshima, Technical Support
Phyllis O’Donoghue, Secretary (Training)

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

Guests: Dave Rolf, Hawaii Automobile Dealers Association
Michael Lanelli

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 9:10 a.m., at which time quorum was established. All Board members confirmed that they were present, with the exception of Mr. Chow who was excused from the meeting and Ms. Weite who will be joining the meeting shortly.

By consensus, the Board moved these items out of order:

Ms. Weite entered the Zoom Webinar Meeting at 9:11 a.m.

Approval of the June 8, 2021 It was moved by Mr. Wong, seconded by Mr. Uekawa, and carried by the majority, with the exception of Ms. Weite who abstained from voting on

Minutes: this matter, to approve the minutes of the June 8, 2021 meeting as circulated.

Chapter 91, HRS, Adjudicatory Matters: Chairperson De Luz called for a recess from the meeting at 9:15 a.m., to discuss and deliberate on the following adjudicatory matter pursuant to Chapter 91, HRS (Note: Board members and staff entered into the Microsoft Teams meeting):

- a. In the Matter of Motor Vehicle Salesperson's License of John J. Peterson, Jr.; MVI 2018-23-L

Following the Board's review, deliberation, and decision on these matters pursuant to Chapter 91, HRS, Chairperson De Luz announced that the Board reconvene to its regular Chapter 92, HRS, meeting at 9: 27 a.m.

- a. In the Matter of Motor Vehicle Salesperson's License of John J. Peterson, Jr.; MVI 2018-23-L

It was moved by Mr. Wong, seconded by Mr. Hansen, and carried by the majority, with the exception of Ms. Weite who abstained from voting on this matter, to approve the Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Board's Final Order.

By consensus, the Board returned to the regular order of the agenda.

Welcome New Board Members / Election of Officers: Chairperson De Luz welcomed new public members Dr. Randall Ball and Ms. Marie Weite. He explained the general Board composition and meeting procedures, and Board members introduced themselves.

The floor was opened for nomination for the offices of Chairperson and Vice-Chairperson.

It was moved by Mr. Uekawa, seconded by Mr. Wong, and unanimously carried for Chairperson De Luz and Vice-Chairperson Chow to continue as Chairperson and Vice-Chairperson, respectively.

Regulated Industries Complaints Office ("RICO")

- a. Motor Vehicle Industry Advisory Committee Members

The Board reviewed the Regulated Industries Complaints Office ("RICO") Motor Vehicle Industry Committee List effective January 1, 2022.

After due consideration of this information, it was moved by Mr. Hansen, seconded by Mr. Uekawa, and unanimously carried to approve the RICO Motor Vehicle Industry Advisory Committee List with any additional interim appointees that RICO deems necessary to aid in its investigations.

Licensing:

a. Ratifications

Motor Vehicle Salesperson Licenses and Transfers
Motor Vehicle Dealer Licenses, Branch Licenses, and Relocations
Motor Vehicle Distributor Licenses
Motor Vehicle Manufacturer Licenses

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

Motor Vehicle Dealer Bond:

Chairperson De Luz asked if any public attendees would like to provide oral testimony on this agenda item, to which there were none.

EO Yam received an inquiry whether electronic signatures on a Motor Vehicle Dealer Bond is satisfactory proof of Bond execution. She reported HRS §§489E-5(b) and 489E-7(d) which respectively state:

This chapter shall apply only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

If a law requires a signature, an electronic signature satisfies the law.

Mr. Wong is of the opinion that electronic signatures does not warrant any concern and it is becoming more widely accepted amongst businesses. He asked EO Yam of the anticipated effects should the Board approve the use electronic signatures on motor vehicle dealer bonds. EO Yam responded that it would likely facilitate the Dealer license application process.

Chairperson De Luz and Board members agreed that if the State allows for electronic signature as legally binding, then the Board does not have concerns with accepting motor vehicle dealer bonds with electronic signatures.

DAG Leong explained that the law states that electronic signatures are just as valid as a wet signature. He reiterated that HRS §489E-5(b) requires both parties to agree to accept electronic signatures, and with relation to the licensing boards attached to the Professional and Vocational Licensing Division, the provision applies on a board-by-board basis.

It was moved by Mr. Hansen, seconded by Mr. Wong, and unanimously carried to accept electronic signatures on Motor Vehicle Dealer Bonds.

EO Yam asked whether the Board still required the submission of an original bond. DAG Leong advised that the original bond should be submitted by the dealer applicants and held by the office.

Hawaii Administrative Rules Chapter 86 Amendments: Chairperson De Luz asked if any public attendees would like to provide oral testimony. Dave Rolf, Hawaii Automobile Dealers Association, asked to be recognized. Chairperson De Luz recognized Mr. Rolf.

Mr. Rolf thanked the Board and introduced himself as the Executive Director of the Hawaii Automobile Dealers Association. He reported the history of the consumer consultant registration and its intent to help people purchase vehicles. He asked whether HRS chapter 437 defined “consumer consultant”. EO Yam stated that “consumer consultant” is included in HRS §437-1.1 as an exclusion under the dealer definition.

HRS §437-1.1 Dealer (6) states that:

The term "dealer" excludes a person who sells or purchases motor vehicles in the capacity of:

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.

Mr. Rolf indicated the verbiage “who wish” means prior to the consumer’s purchase or Dealer’s sale of a motor vehicle. He requested whether the rules could provide further clarity on the consumer consultant’s scope of practice.

EO Kleinhans provided an example to amend proposed HAR §16-86-3:

“Consumer consultant” means an individual who, for a fee that is paid for by a consumer who wishes to purchase or lease motor vehicles, represents the consumer in any negotiations with a motor vehicle dealer, and advises the consumer about different types of vehicles and vehicle features to meet the needs of the consumer.

Mr. Wong concurred with Mr. Rolf and Mr. Kleinhans proposal to add “consumer consultant” definition in HAR §16-86-3.

EO Yam reported the following proposed amendments were discussed at its June 8, 2021 meeting:

After further research, it was noted that at its July 19, 1995 meeting, the Board determined that an 8 pt type would tend to standardize and clarify advertising requirement; however, given the advancement of technology

and varying advertising platform it may not be applicable to today's standards. The following amendment to HAR §16-86-19(2) may be more suitable:

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 electronic media]~~ a type style and type size that is clear and conspicuous.

The following language was added to further clarify that manufacturer and distributors only require one license to wholesale in the State of Hawaii:

*HAR §16-86-9 Manufacturers or distributors.
A manufacturer or distributor may wholesale a motor vehicle to any franchised motor vehicle dealer.*

"Grounds for forfeiture" was included in HAR §16-86-15 to offer due process of resolving any administrative issues that may arise during renewal:

*HAR §16-86-15 Renewal of license and registration.
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. Failure, neglect, or refusal to pay the renewal fee shall constitute grounds for forfeiture of license.*

Discussion ensued on subchapters 7-10. Board members did not have any proposed amendments regarding subchapters 7-10. DAG Leong stated that subchapters 7-10 are general rule language for boards attached to the Professional and Vocational Licensing Division.

EO Yam stated that the full draft rules containing the aforementioned amendments will be provided at the next meeting.

Public Comment: None.

Next Meeting: October 12, 2021
9:00 a.m.
Virtual Videoconference Meeting
Zoom Webinar

Adjournment: There being no further business to discuss, the meeting adjourned at 10:36 a.m.

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Reviewed and approved by:

Taken and recorded by:

/s/ Jenny M. Yam

/s/ LaJoy Lindsey

Jenny M. Yam
Executive Officer

LaJoy Lindsey
Secretary

9/7/21

Minutes approved as is.

Minutes approved with changes. See Minutes of _____.