

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

MINUTES OF MEETING

Date: April 4, 2023

Time: 9:00 a.m.

In-Person Meeting Location: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii 96813

Virtual Participation: Virtual Videoconference Meeting – Zoom Webinar (use link below)
<https://dcca-hawaii-gov.zoom.us/j/94140614674>

Present: John Uekawa, Chairperson
Steven Chow, Vice-Chairperson
Russell Wong, Industry Member
Byron Hansen, Public Member
John Caudell, Industry Member
Marie Weite, Public Member
Ahlani K. Quiogue, Licensing Administrator
Candace Ito, Executive Officer (“EO Ito”)
Hector B. West, Executive Officer (“EO West”)
Christopher Leong, Deputy Attorney General (“DAG Leong”)
Chiara Latini, Secretary
Mia Hoang, Technical Support

Guests: Danny Cup Choy

Agenda: The agenda for this meeting was posted on the State electronic calendar as required by Hawaii Revised Statutes (“HRS”) section 92-7(b).

A short video was played to explain the procedures for this virtual meeting and how members of the public can participate and interact with the Board during the meeting.

Call to Order: Chairperson Uekawa called the meeting to order at 9:09 a.m. at which time quorum was established. All Board members participating virtually confirmed that they were present and alone; Mr. Chow attended the meeting in person.

Amendments to the Agenda: Chairperson Uekawa informed the Board members that agenda item number 2 incorrectly states “Approval of the Open and Executive Session Meeting Minutes of the October 11, 2022 Meeting”.

It was moved by Mr. Wong, seconded by Mr. Chow, and unanimously carried to amend agenda item 2 to “Approval of the Open and Executive Session Meeting Minutes of the December 6, 2022 Meeting”.

Approval of the
December 6, 2022
Meeting Minutes:

It was moved by Mr. Wong, seconded by Mr. Chow, and unanimously carried to approve the meeting minutes of the open session and executive session of the December 6, 2022 meeting as circulated.

Executive Session:

At 9:15 a.m., it was moved by Chairperson Uekawa, seconded by Vice Chairperson Chow, and unanimously carried to enter into executive session pursuant to HRS section 92-5(a)(1) to consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in HRS section 26-9, and pursuant to HRS section 92-5(a)(4), to consult with Christopher Leong, Deputy Attorney General, on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities. (Note: Board members and staff entered into Microsoft Teams). Chairperson Uekawa proceeded with a roll call of the Board members in Microsoft Teams. All Board members confirmed that they were present and alone.

It was moved by Vice Chairperson Chow, seconded by Chairperson Uekawa, and unanimously carried to return to the open session meeting at 11:05 a.m. Board members and staff returned to the Zoom meeting. All Board members confirmed that they were present and alone.

Applications:

A. Motor Vehicle Salesperson

i. Jorge M. Mahilum

After due consideration of the information received, it was moved by Mr. Chow, seconded by Ms. Weite, and unanimously carried to approve Jorge M. Mahilum's application subject to reporting, including but not limited to, annual progress reports in accordance with HRS section 436B-19(1).

ii. Brian J. Asuncion

After due consideration of the information received, it was moved by Mr. Chow, seconded by Ms. Weite, and unanimously carried to approve Mr. Asuncion's application.

B. Motor Vehicle Dealer

i. Aloha Motorsports Maui, Inc.

After due consideration of the information received, it was moved by Vice Chairperson Chow, seconded by Ms. Weite, and unanimously carried to defer Aloha Motorsports Maui, Inc's application pending the submittal of a current financial statement that is performed and signed by an accountant that is licensed to practice accountancy in Hawaii.

ii. Cherry Whips LLC

After due consideration of the information received, it was moved by Vice Chairperson Chow, seconded by Ms. Weite, and unanimously carried to defer Cherry Whips LLC's application pending the submittal of: (1) a

current certificate of good standing; (2) a current financial statement which includes an income statement that is performed and signed by an accountant that is licensed to practice accountancy in Hawaii; and (3) a revised detailed description of the premises and surroundings including drawings and photographs of the warehouse/showroom. Also include photographs of the secured office with the detailed description of the premises if Cherry Whips LLC is sharing space with another business on the premises.

C. Motor Vehicle Dealer - Branch

Tong & Zeng Corporation

After due consideration of the information received, it was moved by Vice Chairperson Chow, seconded by Ms. Weite, and unanimously carried to defer Tong & Zeng Corporation's application pending the submittal of: (1) a photograph of the business sign with Tong & Zeng Corporation's registered trade name; (2) a copy of the master lease agreement; (3) a drawing of the floor plan for the 609 Ahua Street location that includes measurements for all facilities, including boundaries of the proposed premises; (4) verification that the property is located in a business zone; (5) an updated description, drawings, and photographs of the business location which includes the additional lots (i.e. on Kilihau Street) will be used by Tong & Zeng Corporation; and (6) documentation of the name change for Tong & Zeng Corporation's President.

D. Motor Vehicle Dealer - Relocation

Paradise Cruise, Ltd.

After due consideration of the information received, it was moved by Vice Chairperson Chow, seconded by Ms. Weite, and unanimously carried to defer Paradise Cruise Ltd.'s application pending the submittal of: (1) a floor plan showing the measurements for all facilities and boundaries of the premises; (2) a current line of credit which specifies the dollar amount of the line of credit; (3) a copy of the financing statement securing the line of credit that was filed at the Bureau of Conveyances; (4) verification that the property is located in a business zone; and (5) a statement that the applicant has met the requirements under Hawaii Revised Statutes section 437-11.

E. Ratifications List of April 4, 2023 (see attached)

It was moved by Vice Chairperson Chow, seconded by Ms. Weite to approve the ratification list of April 4, 2023.

Correspondence:

A. Hannah Butler

- i. Requests a determination on whether a motor vehicle dealer's license is required to host a marketplace for the sale of ATVs.

- ii. Requests a determination on whether a vehicle dealer's license is required for a retailer who has partnered with an online car service that runs a website.

Chairperson Uekawa asked DAG Leong whether ATVs are motor vehicles. DAG Leong stated that there is no law or rule that specifically states that ATVs are or are not authorized to be on the road. He stated that HRS section 286-12 specifically allows the operation of ATVs or UTVs on the street in certain circumstances. HRS section 286-12(a) states: All-terrain vehicles and utility-terrain vehicles may be operated on a street, as defined in section 291C-1; provided that the all-terrain vehicle or utility-terrain vehicle is:

- (1) Used as farm equipment, or used by a city, county, or state worker while acting within the scope of that person's official duties;
- (2) Operated by a person who holds a current category (3) driver's license under section 286-102 or a commercial driver's license under part XIII;
- (3) Driven on streets that are no more than two lanes, with posted speed limits of no more than thirty-five miles per hour;
- (4) Used to travel between properties zoned for agriculture, or used by a city, county, or state worker while acting within the scope of that person's official duties to travel between properties under the jurisdiction of the city, county, or State;
- (5) Used in counties with populations of less than five hundred thousand residents; and
- (6) Driven on streets during daylight hours; provided further that while in operation, any operator and passenger of an all-terrain vehicle or utility-terrain vehicle shall wear a safety helmet with a securely fastened chin strap that meets the specifications and requirements established by rules adopted by the director.

DAG Leong stated that if ATVs and UTVs are not considered as motor vehicles in certain circumstances, a dealership license would not be required. EO Ito asked DAG Leong to review the definition of motor vehicle in HRS section 437-1.1 which states: "Motor vehicle" includes any vehicle, motor vehicle, or truck, as defined in sections 249-1 and 249-2, except for tractors, trailers, and amphibious vehicles.

DAG Leong stated that the definition of motor vehicle in HRS section 437-1.1 is very broad and also reviewed the definitions of motor vehicle and vehicle in HRS section 249-1:

"Motor vehicle" means 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.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, but excludes devices moved by human power or devices used exclusively upon stationary rails or tracks and mopeds.

DAG Leong stated it appears that ATVs and UTVs are not intended to be classified and regulated as motor vehicles except for a specific circumstance cited in HRS section 286-12. However, the definitions of motor vehicle and vehicle in HRS section 437-1.1 are very broad as to what it includes. There is no other indication whether ATVs and UTVs are allowed on the road. Mr. Hansen stated that ATVs and UTVs may not be able to pass a safety check inspection. He inquired whether farm equipment dealers such as John Deere tractors would require a license. DAG Leong stated that tractors are excluded in the definition of motor vehicle in HRS section 437-1.1. EO Ito added that if ATVs and UTVs are used as farm equipment, they would be allowed to operate on the street in certain circumstances and would be included in the definition of motor vehicle and vehicle under HRS section 249-1.

Mr. Caudell stated that motorcycle dealerships sell ATVs and UTVs and finance the sale in the same way as a motor vehicle. ATVs and UTVs should be sold by dealerships for consumer protection. The Board, Executive Officers and DAG Leong are not aware of any dealership that sells only ATVs. Mr. Chow asked if the Board needs to amend the statutes to clarify whether an ATV and UTV is or is not a motor vehicle. Mr. Wong stated that currently, the Board cannot answer this question. He believes this issue will get more intense as more UTV type vehicles such as golf carts are being driven on the streets. The issue for the Board is to protect consumers from unscrupulous people. It appears that ATVs and UTVs should be sold by motorsports dealers. With the legislation in 1961, only new car brokers should not be regulated. Thus, he believes that a legislative amendment is needed. DAG Leong stated that from 1955 through 1961, brokers were regulated, and the legislature repealed the regulation of brokers in 1961. Mr. Wong stated that consumers that purchase untitled vehicles have no recourse against an unscrupulous seller. DAG Leong stated that there is no registration required for ATVs and UTVs. Mr. Wong stated that there are more imported ATV type vehicles that don't meet safety standards being sold. However, this inquiry does not appear to be under the Board's jurisdiction. EO Ito asked the Board whether ATVs and UTVs are encompassed in the definition of motor vehicle under HRS section 437-1.1. Mr. Wong stated that the definition of motor vehicle under HRS section 437-1.1 is broad and appears to include ATVs and UTVs, however, he deferred to DAG Leong to advise the Board. Mr. Chow stated that HRS section 437-1.1 does not specifically exclude ATVs and UTVs as a motor vehicle; only tractors, trailers, amphibious vehicles, and mopeds are specifically excluded.

Mr. Caudell stated that it could be that the definition does not specifically include ATVs and UTVs because they were not invented at the time. DAG Leong stated that the legislature last amended HRS section 437-1.1 in 2021 and HRS section 249-1 was last amended in 2022. The legislature could amend the statute to include or exclude ATVs and UTVs from these definitions. Mr. Wong stated that he is not opposed to requiring a motor vehicle dealer's license to host a marketplace for the sale of ATVs. He asked DAG Leong if that position is defensible. Mr. Chow stated that the threshold question is the protection of the public health, safety, and welfare. The sale of ATVs by a dealership protects the public. Mr. Wong stated that the licensing requirements are thorough to ensure that the consumers are protected. DAG Leong stated that HRS section 286-12(d) states, "All-terrain vehicles and utility-terrain vehicles used as farm equipment shall be regulated as farm equipment and not as motor vehicles". This means that if the "vehicle" is not under this statute and not being used as farm equipment, it is regulated as a motor vehicle.

Ms. Weite asked whether the intent of the Motor Vehicle Industry Board only includes those motor vehicles that are licensed to be on the roadway. Other statutes include in the definition of motor vehicle and motorcycle that they are licensed to be on public roadways. EO Ito agreed that it would make sense that the Motor Vehicle Industry Licensing Board would regulate vehicles that are licensed to be on public roadways; however, she could not find a statute that would tie the regulation to vehicles that are licensed to be on public roadways.

EO Ito related that Ms. Butler stated in her email to the Board that her client will not own or have possession of the ATVs; all of the ATVs will be sold, shipped, and handled by a third-party seller. The business model is as follows: a third party will list the ATV for sale on her client's website and, once the ATV is purchased, the third-party seller will ship the ATV to the purchaser. Her client will receive a referral fee per completed transaction.

EO Ito stated that the definition of sale, selling, and equivalent expressions in HRS section 437-1.1 means the act or attempted act, either as principal or an agent or in any capacity whatsoever, of selling, bartering, exchanging, or otherwise disposing of, or negotiating, or offering, or attempting to negotiate the sale, purchase, or exchange of, or interest in, a motor vehicle, including an option to purchase a motor vehicle. Further, the definition of dealer in HRS section 437-1.1 includes "auction" as defined in this section or any person or entity not expressly excluded by this chapter who sells three or more vehicles within a calendar year, or who is engaged in the business of selling, soliciting, offering, or attempting to negotiate sales, purchases, or exchanges of motor vehicles or any interest therein, including options to purchase motor vehicles.

Ms. Butler's description of what her client intends to do seems to be encompassed in the definition of sale. Mr. Wong agreed and stated that it appears that they are trying to find a way to circumvent Hawaii law to give distributors and manufacturers direct access to Hawaii consumers. It is

important to have a dealer that has an investment in the community and provides repair services for their products.

Based upon HRS sections 437-1.1 and 286-12(d), ATVs and UTVs are motor vehicles and any person or entity who is engaged in the business of selling, soliciting, offering, or attempting to negotiate sales, purchases, or exchanges of motor vehicles or any interest therein, including options to purchase motor vehicles, requires a motor vehicle dealer license.

It was moved by Mr. Wong, seconded by Mr. Chow, and unanimously carried that a motor vehicle dealer license is required in Hawaii to host a marketplace for the sale of ATVs and for a retailer who has partnered with an on-line car service to sell motor vehicles.

B. Sharnae Diggs

Requests a determination on whether any license is required for a retailer that hosts an online marketplace where third parties can list dirt bikes or minibikes for sale.

The Board reviewed and discussed Sharnae Diggs' inquiry. Mr. Wong stated that motor sports dealers are licensed motor vehicle dealers. Mr. Caudell stated that dirt bikes and minibikes do not have title. Mr. Wong stated that they are over 50 cc and are motorcycles. The Board confirmed that dirt bikes are motorcycles and both dirt bikes and minibikes are not mopeds and are encompassed in the definition of motor vehicle.

The Board came to a consensus that a motor vehicle dealer license is required for a retailer that hosts an online marketplace where third parties can list dirt bikes or minibikes for sale.

C. Cynthia Hedrick

Requests a determination on whether a motor vehicle manufacturer's license is required for Off Highway Utility Terrain Vehicles ("UTV").

The Board reviewed and discussed Ms. Hedrick's inquiry. The Board came to a consensus that a motor vehicle manufacturer's license is required for Off Highway Utility Terrain Vehicles ("UTV").

D. Jim Gessford

Requests a determination whether The Toro Company must be licensed as a manufacturer in order for their commercial distributor in Hawaii to sell utility terrain vehicles ("UTV").

The Board reviewed and discussed Mr. Gessford's inquiry. The Board came to a consensus that a motor vehicle manufacturer's license is required in Hawaii to sell utility terrain vehicles ("UTV").

E. Jason Iseman

Requests a determination whether a license is required to do business as an auto broker in Hawaii.

The Board reviewed and discussed Mr. Iseman's inquiry. The Board was unclear as to the work Mr. Iseman will be performing. Based upon the information provided, the Board is unable to determine whether Mr. Iseman will be performing work as a consumer consultant or offering automobiles for sale. The Board came to a consensus to request that Mr. Iseman provide a more detailed description of the work he intends to perform.

F. Brandon Dobbs

Requests a determination on the following as it pertains to a "used car dealer":

- i. Does Hawaii offer Dealer Plates for use on unregistered vehicles during test drives or transportation?
- ii. If the vehicles being sold are from out of state, and are obviously without a Hawaii License Plate, can we sell the vehicle with Temporary plates (paper plates like new car dealers do) until the DMV gets the permanent ones to us? If so, is there a template that we must use?
- iii. What legal forms or sales contracts does the state require to be used during the sale of a motor vehicle from a dealer to a retail customer? I cannot find any information on this?
- iv. How long does a dealer need to retain these contracts? Do we need to remit copies to the DMV or to the state for any reason?

The Board reviewed and discussed Mr. Dobbs' inquiry.

Mr. Wong stated that used car dealers only have plated vehicles; dealer plates are for new cars that are run without previous registration. Mr. Caudell stated that used car dealers buy cars without plates and the dealer owns the vehicles and cannot take consumers out for test drives until the dealer gets the plates. Mr. Wong stated that if the vehicle has mainland plates, the dealer must turn in the plates to get Hawaii plates. At times when the county Division of Motor Vehicles is busy, it takes a month to get the Hawaii plates.

EO Ito asked the Board whether the first two questions regarding dealer plates are in the Board's jurisdiction? DAG Leong informed the Board that they may choose not to answer the question if it does not fall under their jurisdiction. Because it appears that dealer plates are addressed in HRS section 286-53, he stated that this matter would be under the Department of Transportation and the respective County.

The Board came to a consensus that based solely on the information provided, it is not with the Board's jurisdiction to make a determination on Mr. Dobbs' inquiry i and ii above.

Regarding Mr. Dobbs' third question, EO Ito stated that she could not find any legal form requirement for sales contracts or a retention period for the sales contracts. However, Mr. Dobbs must be in compliance with the requirements of HRS chapter 437 and 486J. The Board suggested that Mr. Dobbs consult his accountant and attorney. DAG Leong stated that as a used car dealer, Mr. Dobbs is required to have a sales contract; however, HRS chapter 437 does not require a form or a template and Mr. Dobbs must meet the legal requirements for the sale.

The Board came to a consensus that HRS chapter 437 does not require a form or a template for sales contracts; however, all sales contracts must be in compliance with the requirements of HRS chapters 437 and 486J.

With regard to Mr. Dobbs' fourth question, DAG Leong stated that there is no legal retention period for sales contracts. Mr. Hansen stated that there may be a statute that addresses the retention period for digital records. Ms. Weite stated that the Board should not provide a response to whether copies of the sales contracts are required to be submitted to the DMV; this question should be answered by the DMV.

The Board came to a consensus that HRS chapter 437 does not have a requirement for the retention period on sales contracts and Mr. Dobbs may wish to consult with his attorney and accountant on this matter. In addition, based solely on the information provided, it is not within the Board's jurisdiction to make a determination on whether sales contracts must be submitted to the DMV.

G. Niu Honolulu

Requests a determination on an alternative for filing the UCC1 with the Bureau of Conveyances.

The Board reviewed and discussed this inquiry. Mr. Wong stated that if the applicant is unable to provide a copy of the financing statement filed at the Bureau of Conveyances from a federally insured financial institution or a financing source with a net worth of at least \$50,000,000.00, the statute provides the alternative of submitting a bond. The Board stated that the filing of the UCC1 protects the bank's interest.

The Board came to a consensus that Niu Honolulu may submit a surety bond as an alternative to the copy of the financing statement filed at the Bureau of Conveyances.

H. Sasha Khosravani

Requests a determination on the process when a pre-existing auto dealership is acquired. In particular, must the seller's license be cancelled before the buyer's license can be issued? Also, must the seller return the dealer license and plate/tag inventory?

The Board reviewed and discussed Sasha Khosravani's inquiry.

EO Ito stated that HRS section 437-24(a) states, "Any license issued pursuant to this chapter shall terminate upon the permanent or temporary cessation of the business or activity for which it was issued". EO Ito asked whether the existing owner's business would terminate upon the issuance of a license to the new motor vehicle dealer for that premises. Mr. Wong stated that there is not enough information for the Board to provide a response. Mr. Chow stated that it appears that the question is whether they can convey an assignment of the license to buy a pre-existing dealership. DAG Leong stated that a license cannot be transferred to the new owner of the dealership; the new owner must apply for a new license. The Board cannot respond to questions pertaining to the transaction between the seller and the buyer. Once the seller has divested themselves from the business and is no longer operating the business for which its license was issued, HRS section 437-24(a) applies and in accordance with HRS section 437-24(c), upon the termination of the license, the holder shall deliver the license to the Board.

With regard to the second part of the question which asks, "Must the seller return the dealer license and plate/tag inventory?" Mr. Chow stated that it's assumed that the buyer will be purchasing the inventory. DAG Leong stated that would be in the parties' sales agreement which the Board does not regulate. Mr. Chow asked whether the dealer must register all the vehicles that they had with the DMV? Does this mean that the new buyer would have to change the ownership title and plate tags for all the vehicles purchased in the inventory? Mr. Wong stated that the new cars are not titled yet, but the titles on the used cars would have to be signed over to the new owner. Mr. Wong stated that there is not enough information for the Board to provide a response, for example, is it an asset purchase or sale of stock?

Mr. Hansen stated that the certificate of origin for new cars would have to be transferred over to the new owner. Mr. Chow stated that is a DMV issue, rather than a Board issue.

The Board came to a consensus that once the seller is no longer operating the business for which its license was issued, HRS section 437-24(a) applies and in accordance with HRS section 437-24(c), upon the termination of the license, the holder shall deliver the license to the Board. In addition, based solely on the information provided, it is not within the Board's jurisdiction to make a determination on whether the seller must return the dealer license and plate/tag inventory. It appears that this question should be addressed by the DMV.

Legislative Liaison: The Board stated that as the legislative session is ending in a month, it is not necessary to appoint a legislative liaison at this time.

2023 Legislation: S.B. 382, S.D. 2 Relating to Motor Vehicles

Prohibits motor vehicle manufacturers from charging subscription fees for certain services that employ equipment already installed in the motor vehicle at the time of sale as a new motor vehicle. Provides that the prohibition shall not apply to entertainment streaming subscription services, vehicle navigation, traffic information, and safety-related services.

S.B. 382, S.D.2 crossed over to the House and a hearing was not held by the House Committee on Transportation or Commerce and Consumer Protection.

S.B. 1164 Relating to Motor Vehicles

Requires dealers who sell new or used motor vehicles to display the protected lifetime operating cost of the vehicle with the listed purchase price.

S.B. 1164 was deferred by the Senate Committee on Transportation and Culture and the Arts on February 9, 2023.

Next Meeting: To be determined.

Adjournment: There being no further business to discuss, Chairperson Uekawa adjourned the meeting at 12:34 p.m.

Reviewed and Approved by:

Taken by:

/s/ Candace Ito
Candace Ito,
Supervising Executive Officer

/s/ Chiara Latini
Chiara Latini,
Secretary

CI:cl
04/04/23

Minutes approved as is.
 Minutes approved with changes; see minutes of _____