

ACT 153

S.B. NO. 2438

A Bill for an Act Relating to the Motor Vehicle Industry Licensing Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 437-1.1, Hawaii Revised Statutes, is amended:

1. By amending the definition of “auction” to read as follows:

““Auction” means any person engaged in the business of selling only motor vehicles by means of bidding at a public or private sale, but excludes an auctioneer and any person referred to in paragraph (1), (2), (4), or (5) in the definition of dealer, or any person auctioning motor vehicles incidental to an auction of other assets, when the auctioneer or person acts in the respective capacity described in this section.

2. By amending the definition of “auctioneer” to read as follows:

“Auctioneer” means a person who, for gain or compensation of any kind, sells or offers for sale or exchange, motor vehicles or any interest therein by means of soliciting bids on behalf of an auction[.], from a fixed location, and who sells motor vehicles exclusively.”

SECTION 2. Chapter 437, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§437- Compliance by prior licensees. Licensees licensed under this chapter prior to July 1, 1990, are subject to all provisions of this chapter, except that those licensees shall have until January 1, 1993, in which to submit to the

board proof of compliance with sections 437-7(d) and 437-11(a)(1)(B), (C), and (D).”

SECTION 3. Section 437-7, Hawaii Revised Statutes, is amended to read as follows:

“§437-7 Application for issuance or renewal of license. (a) Application. Any person desiring the issuance of a license under this chapter shall file an application therefor with the motor vehicle industry licensing board. Prior to the expiration of the term of a license, the holder shall file an application for renewal of the license. The board shall prescribe the form, information required, manner, and time for presentation of applications for issuance or renewal of licenses issued under this chapter, except as otherwise provided [herein.] in this chapter.

(b) A person applying for a [salesman’s] salesperson’s license or an auctioneer license under this section shall be granted a temporary license by the executive secretary of the board, provided no patent disqualification of the applicant is disclosed or no valid objection to the granting of the temporary license is apparent and if all requirements relative to the filing of the application appear to have been met[, including compliance with section 437-21,] and the dealer or auction files an affidavit certifying that this person is employed by and under the supervision of the dealer[.] or auction. A fee shall be charged for the issuance of the temporary license, as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and the license shall remain in effect until the board [acts on] approves or denies the application for a permanent license.

(c) Financial reviews or financial statements.

(1) Applicants for the issuance of a dealer’s or auction’s license shall furnish the following financial review or financial [statements] statement to the board:

(A) Sole proprietorship. An applicant proposing to operate as a sole proprietorship shall furnish a personal financial review or financial statement and a financial review or financial statement of the proposed business.

(B) Partnership. An applicant proposing to operate as a partnership shall furnish a personal financial review or financial statement for each general partner and a financial review or a financial statement of the partnership.

(C) Corporation. A corporate applicant shall submit a corporate financial review or financial statement.

(2) The board shall determine and prescribe the requirement of, form, and information required[, in financial reviews and financial statements for applicants for other licenses.

(3) All financial reviews and financial statements shall be certified as to accuracy by a public or certified public accountant [or verified as to accuracy by the applicant under oath].

(4) The purpose of the financial review and the financial statement is to provide the board with information to assist it in determining the financial capability and integrity of the applicant.

(d) Line of credit.

(1) Applicants for issuance of a dealer’s license shall obtain an inventory or flooring line of credit from a federally insured financial institution. The line of credit shall be in the following amount:

(A) For new motor vehicle dealer applicants, \$500,000 or the amount required in the applicant's dealer sales and service agreement, whichever is less;

(B) For used motor vehicle dealer applicants, \$50,000; and

(C) For new and used motorcycle and motor scooter dealer applicants, \$50,000.

(2) Applicants for issuance of a dealer's license shall provide the board with a photocopy of the financing statement filed at the bureau of conveyances of the department of land and natural resources, securing the line of credit.

(3) Applicants for the issuance of an auction license shall obtain a secured line of credit in the amount of \$100,000 from a federally insured financial institution.

(e) Applicants for issuance of an auction license shall provide a written statement from a federally insured financial institution verifying that the applicant has a customer trust account for the auction with that financial institution.

[(d)] (f) All applicants for the issuance of a new license shall pay a fee concurrently with each application, except the application fee for a new [salesman's] salesperson's or auctioneer's license shall be a lesser amount than the fee for other licenses issued under this chapter. The application fees shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

[(e)] (g) Investigation and report. Upon the filing of any application, a staff member shall indorse on it the date of filing. If no patent disqualification of the applicant is disclosed or no valid objection to the granting of the application is apparent and if all requirements relative to the filing of the application appear to have been complied with, the [chairman] chairperson of the board or executive secretary shall refer the application to a staff member for investigation and report. The report shall include:

(1) A statement as to whether or not the applicant is for any reason disqualified by this chapter from obtaining or exercising a license; and whether or not the licensee has complied with all the requirements of this chapter relative to the making and filing of the licensee's application; and

(2) Information relating to any and all other matters and things which in the judgment of the staff member pertain to or affect the matter of the application or the issuance or the exercise of the license applied for; and

(3) In the case of an application for a dealer's or auction's license in addition to the foregoing:

(A) A description of the premises intended to become the licensed premises, and the equipment and surrounding conditions; and

(B) If the applicant has held a prior dealer's or auction's license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license[; and].

[(C)] (4) In the case of an application for a dealer's license, [If] if the applicant proposes to engage in the business of selling new motor vehicles, a [written statement] copy of the dealer sales and service agreement from the applicable manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor

representative[, or such other evidence as prescribed by the board, that the applicant is authorized to sell or distribute such new motor vehicle in the county of licensing].

[(f)] (h) Notice of interview. After the filing of the report, the board may interview the applicant and upon the interview and other information that is before the board, it may grant or deny the license.

[(g)] (i) Prior inspection of premises. No [new] dealer's or auction's license shall be issued under this chapter unless and until the board has caused to be made a thorough inspection of the premises upon which the proposed business is to be conducted and is satisfied that it has met all the requirements as provided in this chapter and that all other general conditions and proposed methods of operation under the license are such as are suitable for carrying on the business in a reputable manner.

[(h)] (j) Limitation on license.

- (1) A dealer's or auction's license issued under this chapter shall authorize the doing of the business at the licensed premises, the boundaries of which shall be determined by the map or plan submitted together with the application for license approved by the board; except in the case of an enlargement or reduction of the licensed premises with the approval of the board indorsed on an amended map or plan.
- (2) A license issued under this chapter shall authorize the doing of a business thereunder only for the county in which the license has been issued; and in the case of a [salesman] salesperson or auctioneer, the license shall authorize the [salesman] salesperson or auctioneer to be a [salesman] salesperson or auctioneer only for the dealer or auctions respectively named in the application for a license or an amended license.

[(i)] (k) Motorcycles and motor scooters. A used motor vehicle dealer's license shall authorize the holder to sell new motorcycles and motor scooters if the licensee is franchised therefor."

SECTION 4. Section 437-11, Hawaii Revised Statutes, is amended to read as follows:

"§437-11 Additional requirements for dealer's and auction's license.

(a) Requirements to be met before issuance of dealer's and auction's license.

- (1) The following requirements shall be met by an applicant for a dealer's license before a license may be issued by the motor vehicle industry licensing board;
 - (A) The applicant has a site which will be used[,] primarily[,] for the purpose of selling, displaying, offering for sale, or otherwise dealing in motor vehicles;
 - (B) The site has a permanent building thereon suitable for the display at any one time of at least three motor vehicles having an average base of at least ninety inches; [and]
 - (C) The site has suitable sanitation facilities thereon[.]; and
 - (D) The applicant has entered into, and provided the board with a copy of, a lease or rental agreement for the site. The lease or rental agreement shall be for a minimum term of one year.
- (2) [The foregoing requirements shall be applicable to branch locations of a dealer.] The following requirements shall be met by an appli-

cant for an auction's license before a license may be issued by the motor vehicle industry licensing board:

- (A) The applicant has a permanent site which will be used primarily for the purpose of selling, displaying, offering for sale, or otherwise dealing in motor vehicles;
- (B) The site has suitable sanitation facilities thereon; and
- (C) The applicant has entered into, and provided the board with a copy of, a lease or rental agreement for the site. The lease or rental agreement shall be for a minimum term of one year.

[(b) Building requirement as to used motor vehicle dealers waived, when.

- (1) If the board finds upon investigation that the foregoing requirement of a permanent building will impose undue hardship upon used motor vehicle dealers due to scarcity of available sites, or the unwillingness of the landowner to grant leases for reasonably long terms, or permit the erection of permanent buildings suitable for display purposes as required herein, or the like, which render it impossible, economically unfeasible, or impracticable to enforce the requirement of a permanent building against used motor vehicle dealers, the board may waive the requirement as to all used motor vehicle dealers; provided that the waiver shall be made only after a public hearing is held thereon, for which notice has been published at least one week prior to the public hearing in a newspaper of general circulation in the county concerned; provided further that the waiver may continue until such time as the board finds after investigation and public hearing thereon as provided herein that such conditions have ceased to exist or diminished to the extent that the building requirement may be enforced without imposing undue hardship upon used motor vehicle dealers; and provided further that if there is such waiver in effect, the site has suitable sanitation facilities thereon or suitable sanitation facilities within a reasonable distance as determined by the board from the site.
- (2) The foregoing waiver and conditions shall be applicable to branch locations.

(c) [(b) Other related uses permissible. The site may be used for other purposes which are accessory or customarily associated with the retail sale of motor vehicles, such as maintenance operation of a repair, accessories, gasoline and oil, storage, parts, service, or paint branch or department.”

SECTION 5. Section 437-18, Hawaii Revised Statutes, is amended to read as follows:

“§437-18 Bond of broker. (a) Each broker receiving a license shall give to the motor vehicle industry licensing board and keep in force a bond or bonds in the penal sum totaling not less than \$200,000.

(b) [All provisions contained in section 437-17 pertaining to reduction of bond, bond condition, and suit on bond for a used motor vehicle dealer shall be applicable to a broker.] More than one bond may be furnished by the same applicant, provided they aggregate the full amount prescribed by this section. If any bond is not (1) executed by a surety company authorized to do business in the State, or (2) secured by a deposit of cash with the board in lieu of surety, then sections 103-35 to 103-37 shall apply to the furnishing of the bond and the surety or sureties and the security thereof, with the substitution of the board hereunder

or the awarding officer mentioned in sections 103-35 and 103-37 as appropriate.

(c) If the applicant maintains an established place of business in a county which is used, or will be used, for the purpose of selling, displaying, or offering to negotiate for the purchase of motor vehicles, the market value of which, over and above all liens, charges, and encumbrances thereon, is equal to or greater than ninety per cent of the amount of bond required by this section, and the financial condition of the applicant is such that, in the judgment of the board, the excess over ten per cent of the bond may be waived without unduly jeopardizing the rights and interests of present and prospective claimants against the applicant, then the amount of the bond may be reduced at the discretion of the board.

(d) The bond shall be subject to the following conditions:

- (1) That the broker will faithfully and truly comply with all the valid provisions of this chapter as the same now are or may hereafter be amended, and with any rule adopted by the board pursuant to this chapter;
- (2) That the broker will not be guilty of fraud, misrepresentation, or other improper business conduct in connection with the selling, purchasing, negotiating for purchase, or otherwise dealing with motor vehicles or any other property related thereto, and will satisfy all judgments rendered against the broker based in whole or in part upon representations or warranties made in connection with any retail sale or negotiation for the purchase of a motor vehicle; and
- (3) That the broker will protect the treasurer of the county and any purchaser of any vehicle or any person acquiring any lien thereon or successor in interest of any such person against any loss on account of any defect in or undisclosed encumbrance upon the title of any motor vehicle, registered by the treasurer in reliance upon any certificate, affidavit, or other representation of the dealer, or registration or transfer of registration procured by the broker.

(e) Suit on bond. The director of commerce and consumer affairs, or any person who has been or claims to have been injured by the breach of the conditions, shall have the right of action to recover on any such bond, plus a reasonable attorney's fee incurred to secure the recovery under the bond; provided that the aggregate liability of the surety or sureties to all such persons shall in no event exceed the amount of the bond; and provided further that any award of attorney's fees shall be approved by the court and no other attorney's fees shall be permitted from the bond proceeds. Nothing in this section or chapter shall be deemed to prohibit or prevent an independent action against the broker and any other person from being joined or consolidated with an action on the bond, and the recovery of a larger amount than the amount of the bond founded upon any other cause or causes or action so joined or consolidated."

SECTION 6. Section 437-27.5, Hawaii Revised Statutes, is amended to read as follows:

"§437-27.5 Requirements to maintain license. A [new motor vehicle dealer, used motor vehicle dealer, motorcycle or motor scooter dealer,] broker[, and auction] shall have and maintain in full force and effect a bond as required under [sections 437-17,] section 437-18[, and 437-21.1]. Failure, refusal, or neglect to maintain in full force and effect a bond shall cause the automatic suspension of the license effective as of the date of expiration or cancellation of the bond. The license shall not be reinstated until a bond as required under section

[437-17,] 437-18[, or 437-21.1] is received by the board.

Failure to effect a reinstatement of a suspended license within sixty days of the suspension shall cause the license and all fees to be forfeited.

A licensee may, within fifteen calendar days after receipt of notification of the license forfeiture, request an administrative hearing pursuant to chapter 91 to review the forfeiture.”

SECTION 7. Section 437-17, Hawaii Revised Statutes, is repealed.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 9. This Act shall take effect upon its approval.

(Approved June 8, 1992.)

Note

1. Edited pursuant to HRS §23G-16.5.