

ACT 199

An Act to Amend Chapter 160, Part V, Revised Laws of Hawaii 1955, as Amended, Relating to Motor Vehicle Dealers' and Salesmen's Licensing Boards.

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

SECTION 1. Chapter 160, part V, Revised Laws of Hawaii 1955, as amended, is hereby further amended in the following respect:

a. By amending the thirteenth paragraph in section 160-160, thereof, as amended, relating to "Salesmen", and by adding a new paragraph immediately following, defining "Premises or licensed premises" so that the amended and new paragraphs will read as follows:

" 'Salesman' includes any person who, as his principal occupation, for a commission, compensation, or other valuable consideration, is employed, either directly or indirectly, by a dealer to sell, display and offer for sale, or deal in, or otherwise engage in the business of selling motor vehicles, at retail or wholesale;

'Premises or licensed premises' means the premises in connection with which a license has been, or is proposed to be issued, including branch locations. The terms 'premises' or 'licensed premises' are hereby substituted for the term 'place of business' wherever found in this part."

b. By amending section 160-161 thereof, to read as follows:

"**Section 160-161. Unlicensed person not to engage in business.** It shall be unlawful for any person not duly licensed under this part to engage in the business of selling or negotiating for the purchase of motor vehicles at wholesale or at retail within this State, except as provided herein."

c. By adding thereto a new section to be numbered and to read as follows:

"**Section 160-161.1. Prohibited acts for used car dealer.** No used car dealer shall sell or bring or cause to be brought into this State for purposes of sale any new motor vehicle."

d. By adding thereto a new section to be numbered and to read as follows:

"**Section 160-161.2. Advertising.**

(a) Motor vehicle, availability of. No new or used motor vehicle dealer shall advertise or offer for sale or exchange in any newspaper, or through any other medium, any motor vehicle not actually for sale at the premises of such dealer or available to such dealer from the manufacturer, or authorized new car distributor of such automobile at the time the advertisement or offer is made;

(b) False advertising.

(1) False advertising by a motor vehicle dealer shall be punishable as provided by statute or ordinance.

(2) The term 'wholesale' shall not be used in retail automobile advertising.

(3) No motor vehicle shall be advertised or offered for sale or exchange or offered to be purchased under the representation that is a new motor vehicle, unless such motor vehicle conforms to the definition

of 'new motor vehicle' contained in section 160-160.

(c) Procedure relative to advertising of a specific motor vehicle.

(1) No new or used motor vehicle dealer shall advertise the sale of a specific motor vehicle without setting forth:

(a) The year;

(b) The make of the motor vehicle; and

(c) In the case of a used car, the license plate number of the motor vehicle.

(2) If a motor vehicle has been advertised as set forth above and has been sold, the motor vehicle dealer shall have in his or its office a copy of the retail sale contract or a copy of a bill of sale for the motor vehicle which shows the buyer's signature thereon.

(3) No new or used motor vehicle dealer shall in any advertisement designate the price of a motor vehicle without stating the make, the body type and the manufacturer's classification and/or series of the motor vehicle, except that the classification or series need not be designated for used cars, and whether or not other charges in addition to the quoted price will be assessed; provided that the gross income tax and transfer of title fees may be excluded from such other charges.

(d) Display of motor vehicle at unlicensed premises.

All dealers or salesmen shall obtain prior approval of the board to display motor vehicles for advertising purposes at or on any place other than the licensed premises.

(e) Advertising by salesman prohibited. No salesman shall advertise the sale of a motor vehicle in or through any advertising medium without designating the name of his employer; provided that this provision shall not apply when a salesman advertises to dispose of a motor vehicle registered under his name.

e. By amending section 160-163 thereof to read as follows:

"Section 160-163. Jurisdiction and powers of the board.

The board, within its own county, shall have the sole jurisdiction, power and authority and discretion, subject only to the provisions of this part, to:

(a) Rules and regulations. Make, amend and repeal from time to time such rules and regulations not inconsistent with this part, as the board deems appropriate for the carrying out of the provisions and purposes of this part and for the efficient administration thereof, and the proper conduct of the business which are subject to the provisions of this part, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of, or as prescribed by the board, which rules and regulations, when promulgated and filed as provided in chapter 6C, Revised Laws of Hawaii 1955, shall have the effect of law.

(b) Licenses. Grant, deny, suspend or revoke licenses which are authorized by the provisions of this part and impose such conditions as may be set forth in the rules and regulations of the board in connection with the granting of licenses.

(c) Appointment of staff. Appoint and remove an executive secretary and such investigators or inspectors and clerical or other assistants as its business may from time to time require and to prescribe their duties and fix their compensation. In addition thereto, the board may

engage the services of experts and persons engaged in the practice of a profession, if deemed expedient.

(d) Duplicate licenses. Prescribe the nature of the proof to be furnished, the notices to be given and the conditions to be met or observed for the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement for any indemnity deemed appropriate to the case.

(e) Forms. Prescribe all forms to be used for the purposes of this part not otherwise provided for herein.

(f) Investigations, witnesses, and subpoenas.

(1) Investigate violations through its investigators or inspectors or otherwise, and to report such violations to the prosecuting officer for prosecution; to hear and determine verified complaints against any licensee; to subpoena and examine witnesses under oath and require the production of, and examine any of the books, papers and records of any licensee which may pertain to his business under his license or which shall or may pertain to any matter being considered, or any hearing or investigation being conducted, by or before the board. Each board may investigate any matter of which the board may take cognizance, and take testimony in the same manner as any court and neither the board nor any member shall be bound by the strict legal rules of evidence.

(2) The fees and mileage of witnesses shall be the same as that allowed in the circuit courts and shall be paid in the same manner as other expenses of the board.

(3) Depositions of witnesses residing within or without the State may be taken by the board in the manner prescribed by law for like depositions in civil actions. In any case of disobedience to, or neglect of any such subpoena served on any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated by the board, any circuit judge of any judicial circuit wherein such disobedience, neglect, or refusal occurs, on application of the executive secretary or any person so authorized by the board may compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

(4) In addition to, but not in derogation of, the provisions of this section, the provisions of section 7-27 shall be applicable to the board and to proceedings by or before or under the jurisdiction of the board.

(g) Minimum qualifications. Establish, by rules and regulations, minimum qualifications for salesmen or dealers which must be met by applicants prior to the issuance of any license.

(h) Oaths. The board shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses, the production of documentary evidence and examination of witnesses as are possessed by a circuit judge at chambers.

(i) Decisions of board. The exercise by the board of power, authority and discretion in it so vested shall be final in each case and shall not be reviewable by or appealable to any court or tribunal, except as otherwise provided in Act 103, Session Laws of Hawaii 1961, or in this part."

f. By amending section 160-164 thereof to read as follows:

“Section 160-164. Application for license.

(a) Application. Any person desiring a dealer’s or salesman’s license shall file an application therefor with the board.

(b) Financial statements. When an application is made for a dealer’s license by an individual or partnership, a personal financial statement and a financial statement of the proposed business, both of which shall have been certified by a public or certified public accountant, shall accompany a new application for a dealer’s license. If the applicant is a corporation, a certified corporate financial statement shall accompany the application.

(c) Filing fees.

(1) A filing fee of \$25.00 shall be paid for any new application for a dealer’s license, and a filing fee of \$5.00 shall be paid for any new application for a salesman’s license.

(2) When a license is granted, the filing fee deposited with the application shall become part payment of the fee required for a particular class of license as provided in this part. When an application is denied or withdrawn, the filing fee paid shall become a realization of the board.

(d) Investigation and report. Upon the filing of any application, a staff member shall indorse thereon the date of filing thereof. 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 of the board or executive secretary shall refer the application to a staff member for investigation and report. Such report shall include:

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

(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 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 application is made by a person who has held a prior 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 such previous license.

(e) Notice of interview. After the filing of the inspector’s report upon any application the board may interview the applicant and upon such interview and other information that is before the board, it may grant or deny the application.

(f) Prior inspection of premises. No new dealer’s license shall be issued under this part 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 part 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 way.

(g) Limitation on license.

(1) A dealer's license issued under this part shall authorize the doing of the business at licensed premises, the boundaries of which shall be determined by the map or plan submitted together with an application for a dealer's license and which have been approved by the board, except in case of an enlargement or reduction of the licensed premises with the prior approval of the board indorsed on an amended map or plan.

(2) A license issued under this part shall authorize the doing of a business thereunder only in the county in which the same has been issued; and in the case of a salesman, the license shall authorize him to be a salesman only for the dealer named in an application for a license or an amended license."

g. By amending section 160-167 thereof to read as follows:

"Section 160-167. Application for dealer's license denied, when.

(a) Specific causes. Except as otherwise provided or permitted by section 160-174, an application for a dealer's license shall be denied by the board, if it finds one or more of the following causes:

(1) That such applicant has intentionally made a false statement of a material fact validly required in his application or any supplementary statement required by this part;

(2) That such applicant has not complied with the valid applicable provisions of this part or with any valid applicable regulation of the board issued hereunder;

(3) That such applicant is engaged, or will engage, in the business of selling at retail or wholesale any new motor vehicles without having authority of a contract with the manufacturer or manufacturer's authorized representative thereof, in cases where such authority can validly be required by the State;

(4) That such applicant has been guilty of a fraudulent act in connection with selling or otherwise dealing in motor vehicles;

(5) That such applicant has entered into, or is about to enter into, a contract, or agreement with a manufacturer or distributor of motor vehicles which is contrary to any valid provision of this part or of any valid regulation of the board issued thereunder;

(6) That such applicant is insolvent;

(7) That such applicant has been convicted of a felony, or misdemeanor involving moral turpitude, and not pardoned; or

(8) That such applicant has not reached the age of twenty years.

(b) Corporation as applicant, when. In case the applicant is a corporation, copartnership, trust or other business association, the board may refuse to issue a license if any officer, director, trustee, employee or partner of the applicant has been guilty of any act or omission which would be cause for refusing or revoking a license issued to such officer, director, trustee, employee, or partner as an individual.

(c) Other information. The board's findings may be based on facts

contained in the application, or any other information it may have, or both.”

h. By adding thereto a new section to be numbered and to read as follows:

“Section 160-167.1. Additional requirements for dealer’s license.

(a) Requirements to be met before issuance of dealer’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 board;

(a) The applicant shall have 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 shall have a permanent building thereon suitable for the display at any one time of at least three motor vehicles having an average wheel base of at least ninety inches; and

(c) The site shall have suitable sanitation facilities thereon.

(2) The foregoing requirements shall be applicable to branch locations of a dealer.

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

(1) If the board in any county shall find 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 such requirement as to all used motor vehicle dealers; provided that such waiver shall be made only after a public hearing is held thereon, for which notice shall have been published at least one week prior to such public hearing in a newspaper of general circulation in the county concerned; provided further that such waiver may continue until such time the board shall find 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, such site shall have 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) Other related uses permissible. Such 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.”

i. By adding thereto a new section to be numbered and to read as follows:

“Section 160-167.5. Legal ownership certificates.

(a) Possession or proof of possession of legal ownership certificate.

No dealer shall sell or advertise for sale a motor vehicle unless the dealer has in his possession or proof of possession of the legal ownership certificate of the subject motor vehicle;

(b) Delivery of legal ownership certificate. The legal ownership certificate shall be delivered within the period as provided in section 160-10(b) hereof."

j. By adding thereto a new section to be numbered and to read as follows:

"Section 160-171.1. Term of license.

(a) Expiration date. Dealers' and salesmen's licenses shall expire on June 30 of each year unless sooner terminated, suspended or revoked. All applications for renewal of license shall be filed on or before June 30 of each year together with the applicable fees.

(b) Reapplication. If a duly licensed dealer or salesman fails to renew his license on or before June 30 of a fiscal year and desires to continue as a dealer or salesman, a new application for a dealer's or salesman's license, whichever the case may be, shall be filed thereafter and there shall be added to the license fee an amount equal to twenty-five per cent thereof as a penalty; provided that the application may be denied for good cause by the board."

k. By adding thereto a new section to be numbered and to read as follows:

"Section 160-171.2. Licenses terminate, when.

(a) Salesman's license. A salesman's license shall terminate upon the termination of the license of the dealer by whom he is employed or upon the termination of his employment with such dealer for any other reason;

(b) Dealer's license. A dealer's license shall terminate upon the permanent or temporary cessation of the business for which it was issued;

(c) Delivery to board of license. Upon the termination, suspension, or revocation of a dealer's or salesman's license, the holder shall deliver it to the board;

(d) License reissued, when. Where such termination is not the result of suspension or revocation by the board for cause, the board shall return the license to the holder without cost if he resumes his business or employment within the term for which it was issued."

l. By adding thereto a new section to be numbered and to read as follows:

"Section 160-171.3. Requirement for amended license.

(a) Application, when. Prior to entering the employ of a dealer, other than the one for whose employ his license was issued, a salesman shall apply to the board for an amended license authorizing such new employment. Unless good cause exists for refusal, the board shall issue such amended license for the period of the unexpired term of the original license. Failure to obtain a properly amended license prior to commencing such new employment shall constitute grounds for refusal to issue an amended salesman's license or revocation of the license.

(b) Executive secretary to issue. When an application is received for the first amended license during the term of the original license, the executive secretary or any person so authorized by the board shall

issue such license; provided the applicant is not disqualified under section 160-170 of this part.

(c) Board to issue. When an application is received for a second amended license or any amended license thereafter during the term of the original license, the board shall first interview the applicant prior to granting or denying of the application.

(d) Fees for amended license. The fees for an amended license within a term of the original license shall be as follows:

- (1) First amended license.....\$1.00;
- (2) Second amended license.....\$2.00; and
- (3) Any amended license thereafter.....\$5.00.”

m. By adding thereto a new section to be numbered and to read as follows:

“Section 160-171.4. License not transferable; other requirements.

(a) Nontransferable. No license issued under this part shall be transferable;

(b) License to be posted. Each dealer shall keep the license or a certified copy thereof posted in a conspicuous place on each premises;

(c) License on person. Each salesman shall carry his license on his person or a certified copy thereof and shall exhibit such license or certified copy thereof upon demand by any person with whom he seeks to transact business as a motor vehicle salesman.”

n. By amending section 160-173 thereof to read as follows:

“Section 160-173. Suspension; revocation; denial of renewal.

(a) Investigation by board, when. The board of its own motion whenever it has reason to believe cause therefor exists may, and upon the verified complaint in writing of any person shall, investigate the conduct of any licensee under this part and may suspend or revoke, or refuse to renew, any dealer’s or salesman’s license at any time in the manner and for any of the causes specified in this section or elsewhere in this part.

(b) Grounds for suspension, revocation or denial of renewal of license. The board may, after notice and hearing as provided in chapter 6C, Revised Laws of Hawaii 1955, and subject to appeal to the circuit court of the circuit in which such board has jurisdiction under the procedure and rules prescribed from time to time by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, suspend or revoke any license, or deny the renewal thereof, if it finds that the holder:

(1) Has made a false statement of a material fact in his application for a license or has obtained or attempted to obtain a license by fraud or misrepresentation;

(2) Has failed to comply, observe or adhere to any provision of this chapter or any other law relating to the sale, taxing or licensing of motor vehicles or any rule, regulation or order made pursuant to this part or chapter or such other law;

(3) Has been convicted of a felony, or misdemeanor involving moral turpitude, and has not been pardoned;

(4) Has committed a fraudulent act in selling, purchasing or otherwise dealing in motor vehicles or has misrepresented the terms and

conditions of a sale, purchase, or contract for sale or purchase of a motor vehicle;

(5) Has engaged in his business in such a manner as to cause injury to the public or to those with whom he is dealing.

(6) Has committed an act or failed to meet a condition which commission or failure would constitute grounds for refusing to issue a license.

(7) Has failed to comply, observe or adhere to any law in any other respect on account whereof the board may deem him to be an unfit or improper person to hold a license.

(c) Suspension pending hearing. When it is deemed urgent by the board, for the proper protection of the public, that a dealer's or salesman's license be immediately or summarily suspended pending a hearing of any charge against the licensee holding the same, the order of suspension shall be served upon the licensee at the same time as the notice of hearing on said charge. Any attempt of the licensee to continue his business or occupation, while his license is so suspended, shall of itself be sufficient to warrant a suspension or revocation of his license and shall also subject him to all the penalties by this part prescribed for the illicit sale of motor vehicles. For such disregard of an order suspending his license the board may summarily take possession of and impound all motor vehicles belonging to a dealer, whether or not the same are situated upon the licensed premises, pending final action in the case.

(d) In addition to criminal penalties. The suspension or revocation of a license by the board shall be in addition to any penalty that might be imposed upon any licensee upon a conviction at law for any violation of this part or chapter."

o. By amending section 160-174 thereof, by adding a new subsection thereto to be designated and to read as follows:

"(c) Notice to treasurer. A copy of the application of each dealer duly executed and approved by the board or a report of the suspension, revocation or change of status of a dealer's license shall be furnished to the treasurer promptly upon the granting, suspension, revocation or change of status of any dealer's license."

p. By amending section 160-175 thereof to read as follows:

"Section 160-175. Judicial review by circuit court.

(a) Judicial review of the records. Any person aggrieved by a final decision and order of the board in a 'contested case', as defined in chapter 6C, Revised Laws of Hawaii 1955, is entitled to judicial review thereof by the circuit court of the circuit in which the board making such final decision and order has jurisdiction. The review shall be as provided by said chapter 6C. It shall be conducted by the court without a jury and shall be confined to the record.

(b) Record of board's proceedings. The board shall keep a record of its hearings or proceedings in a 'contested case' either stenographically or by machine and shall provide a transcript of such hearings or proceedings to a licensee upon his request and at his expense."

SECTION 2. This Act shall take effect upon its approval.

(Approved June 5, 1963.) S.B. 480.