

ACT 82

H. B. NO. 2146-70

A Bill for an Act Relating to Motor Vehicle Industry, Dealer and Salesman Licensing Laws.

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

SECTION 1. Chapter 437, Hawaii Revised Statutes, as amended, is further amended as follows:

(1) By amending Section 437-6 to read:

“Sec. 437-6. Jurisdiction and powers of the board. Neither the motor vehicle industry licensing board nor its members shall in any way interfere with the administrative affairs of the department to which it is assigned. However, the board shall have the sole jurisdiction, power, and authority, and discretion, subject only to this chapter, to:

“(1) Rules and regulations. Make, amend, and repeal from time to time such rules and regulations not inconsistent with this chapter, as the board deems appropriate for the carrying out of the provisions and purposes of this chapter and for the efficient administration thereof, and the proper conduct of the business which are subject to this chapter, including every matter or thing required to be done or which may

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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 91, shall have the effect of law.

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

“(3) 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.

“(4) Forms. Prescribe all forms to be used for the purposes of this chapter not otherwise provided for herein.

“(5) Investigations, witnesses, and subpoenas.

“(A) 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. The 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.

“(B) 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.

“(C) 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 the court or a refusal to testify therein.

“(D) In addition to, but not in derogation of, this section, section 92-12 shall be applicable to the board and to proceedings by or before or under the jurisdiction of the board.

“(6) 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.

“(7) 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.

“(8) 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 chapter 91 or in this chapter.”

(2) By amending Section 437-8(a) to read:

“(a) Funds. All fees and other moneys collected or received under this chapter shall be deposited in the general fund of the state and no expenditure for the operation of the motor vehicle dealers licensing board shall be made unless there is an appropriation therefor as provided by law.”

(3) By amending Section 437-11(b) to read:

“(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.”

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(4) By amending Section 437-17(d) to read:

“(d) Suit on bond. The board, director of regulatory agencies, or the treasurer, 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 (to be allowed by the court, no other attorney’s fees shall be permitted from the bond proceeds) incurred to procure the recovery under the bond, but the aggregate liability of the surety or sureties to all such persons shall in no event exceed the amount of the bond. Nothing in this section or chapter shall be deemed to prohibit or prevent an independent action against the dealer 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 of action so joined or consolidated.”

(5) By amending Section 437-31 to read:

“**Sec. 437-31. Legal counsel.** The department of the attorney general shall serve as counsel for the board.”

SECTION 2. All fees and moneys collected by the board as of November 1, 1969, which is held in the department of regulatory agencies trust account No. 902, shall become the realization of the State.

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved June 13, 1970.)

* Edited accordingly