

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 86

MOTOR VEHICLE DEALERS AND SALESPERSONS

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-86-1 Objective. This chapter is intended to clarify and implement chapter 437, Hawaii Revised Statutes, to the end that the provisions thereunder may be most effectual and the public interest most effectively served. [Eff 6/22/81; am and comp 9/1/88; am and comp 4/29/93] (Auth: HRS §437-6) (Imp: HRS §437-6)

SUBCHAPTER 2

DEFINITIONS

§16-86-2 Repealed [R 9/1/88]

§16-86-3 Definitions. As used in this chapter:

"Board" means the motor vehicle industry licensing board established under chapter 437, HRS.

"Charity auction" means an auction held by a bona fide charitable organization which holds a federal tax exempt status as a nonprofit organization and meets the criteria set forth in subchapter 7.

"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 as tracks and mopeds. [Eff and comp 9/1/88; am and comp 4/29/93] (Auth: HRS §437-6) (Imp: HRS §§437-1.1, 249-1, 249-2)

SUBCHAPTER 3

LICENSING

§16-86-6 Licensing requirements. (a) Any person who engages in the business as or serves in the capacity of, or acts as a motor vehicle dealer, motor vehicle salesperson, motor vehicle auction, motor vehicle auctioneer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative in this State or otherwise engages in the business of seeing or negotiating for the purchase of motor vehicles in this State are required to be licensed as provided for in chapter 437, HRS, and this chapter.

(b) A motor vehicle manufacturer factory branch, factory representative, distributor, distributor branch, or distributor representative who pays the applicable fee(s) for one county shall not be assessed additional license fee(s) to operate in other counties in this State. Applicant desiring to operate in more than one county shall indicate this in the original application or advise the board in writing and the information shall be reflected on the license certificate.

(c) Licenses issued under the provisions of chapter 437, HRS, shall be nontransferable. [Eff 10/26/70; am and ren §16-86-6, 6/22/81; am and comp 9/1/88; am and comp 4/29/93] (Auth: HRS §437-6) (Imp: HRS §§437-2, 437-7)

SUBCHAPTER 4

APPLICATION

§16-86-10 Application for license. Applications for licenses shall be filed on forms prescribed by the board, accompanied by the application fee which shall be nonrefundable. [Eff and comp 9/1/88; comp 4/29/93] (Auth: HRS §437-6) (Imp: HRS §§437-7, 437-11)

§16-86-11 Exhibits required. (a) Applicants for the issuance of a dealer's or auction's license shall file:

- (1) Floor plans showing measurements for all facilities, including

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- boundaries of the proposed premises and sanitary facilities;
- (2) Tenancy or lease agreement with landlord which shall include certification of landlord stating whether the property is being rented or leased and whether the property is located in a business zone;
 - (3) Confirmation letter signed by an official of a federally insured financial institution certifying that an inventory or flooring line of credit has been secured in the required amount indicated in section 437-7, HRS;
 - (4) Photocopy of the financing statement filed at the bureau of conveyances of the department of land and natural resources, securing the inventory or flooring line of credit;
 - (5) Financial statement that is current and prepared by a registered certified public accountant or public accountant which need not be audited;
 - (6) Franchise agreement for new vehicle dealers only, attesting that applicant is authorized to sell or distribute new motor vehicles in the respective county; and
 - (7) Proof from the business registration division (BREG) of the department of commerce and consumer affairs that the partnership or corporation is properly registered with the State.
- (b) Motor vehicle salespersons shall submit a separate application form which includes an affidavit by the dealer certifying that the salesperson is employed by and under the supervision of the dealer. [Eff and comp 9/1/88; am and comp 4/29/93] (Auth: HRS §437-6) (Imp: HRS §§437-7, 437-11)

§16-86-12 Alternative form of security. (a) Where an inventory or flooring line of credit cannot reasonably be obtained by a dealer, the board may provide that a bond, for one of the following amounts, be obtained as an alternative form of security:

- (1) \$200,000 for new vehicle dealers selling ten or more new motor vehicle units a month on an annual basis;
 - (2) \$50,000 for new vehicle dealers selling less than ten new motor vehicle units per month on an annual basis;
 - (3) \$100,000 for used motor vehicle dealers selling sixty or more motor vehicle units per month on an annual basis;
 - (4) \$25,000 for a used motor vehicle dealer selling less than sixty units a month on an annual basis; and
 - (5) \$10,000 for motorcycle and motor scooter dealers.
- (b) More than one bond may be furnished by the same applicant, provided they aggregate the full amount prescribed by this section.

- (c) The bond must be:
 - (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. Interest earned on a cash deposit while in the possession of the director shall belong to the licensee or trustee.
- (d) The bond shall be conditioned:
 - (1) That the dealer will faithfully and truly comply with chapter 437, HRS, as the same now is or may be amended, and with any rules as may be promulgated by the board pursuant to chapter 437, HRS;
 - (2) That the dealer 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 that the dealer will satisfy all judgments rendered against the dealer 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 dealer will protect 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 encumbrances upon the title of any motor vehicle, registered in reliance upon any certificate, affidavit, or other representation of the dealer, or registration or transfer of registration procured by the dealer.

(e) Suit on bond. The board, director of commerce and consumer affairs, or any person who has been or claims to have been injured by the conduct of the dealer 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 chapter 437, HRS, or the rules promulgated pursuant thereto, 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. [Eff and comp 4/29/93] (Auth: HRS §437-6) (Imp: HRS §§437-7, 26-9(j), 26-9(q))

SUBCHAPTER 5

LICENSE RENEWAL

§16-86-15 License renewal. (a) Each license shall be renewed on or before June 30 of each even-numbered year.

(b) Application for renewal shall be accompanied by the applicable fee.

(c) Failure, neglect, or refusal to pay the renewal fee shall constitute grounds for forfeiture of license. [Eff and comp 9/1/88; am and comp 4/29/93] (Auth: HRS §437-6) (Imp: HRS §§437-23, 437-24)

SUBCHAPTER 6

ADVERTISING

§16-86-19 Advertising. Advertising by any licensee shall be subject to the following conditions:

- (1) Statewide media (i.e., any media whose rate base includes statewide audiences) may be used by any licensee.
- (2) 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. Any additional charge items shall include all options required by law to make the vehicle street legal as well as all optional equipment already installed on the vehicle being offered for sale.
- (3) Transfer of title fees which may be excluded from a quoted price are limited to safety inspection fees and those fees imposed directly by some governmental authority. Dealership "documentary fees" or any other charges imposed by the seller shall be shown and the amount thereof quoted.
- (4) Unfair or deceptive advertising by a motor vehicle dealer shall be punishable as provided by statute or ordinance and shall be deemed a violation of this chapter. It shall be considered unfair or deceptive advertising for any new motor vehicle dealer, in any advertisement, to offer a discount on a motor vehicle (or any premium or incentive tantamount to a discount) unless the amount of the discount is calculated from the manufacturer's suggested retail price (MSRP) of the vehicle so advertised; provided that optional equipment or services actually installed or applied on or to the vehicle, but not supplied by the manufacturer, may be added

to the MSRP at the published retail price of the equipment. [Eff and comp 9/1/88; comp 4/29/93] (Auth: HRS §§437-6, 437-41) (Imp: HRS §437-4)

SUBCHAPTER 7

CHARITY AUCTION

§16-86-23 Charity auction. Any bona fide charitable organization which holds federal tax exempt status as a nonprofit organization may hold an auction for the benefit of charity provided that the following criteria are met:

- (1) Application to hold the auction is made to the board stating the date, time, and place of the auction;
- (2) No more than one auction shall be held in any county of the State by the same organization in one calendar year;
- (3) No vehicle to be auctioned shall be purchased by the organization (auctioned vehicles may be acquired only through donation of the vehicle to be auctioned); and
- (4) Total number of vehicles to be sold in any auction shall not exceed ten. [Eff and comp 9/1/88; am and comp 4/29/93] (Auth: HRS §437-6) (Imp: HRS §437-1)

SUBCHAPTER 8

ORAL TESTIMONY

§16-86-27 Oral testimony. (a) The board shall accept oral testimony on any item which is on the board's agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony is requested to so notify the board no later than forty-eight hours prior to the meeting, and at that time to state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;

- (4) Persons presenting oral testimony shall, at the beginning of the testimony, identify themselves and the organization, if any, that they represent;
 - (5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
 - (6) The board may refuse to hear any testimony which is irrelevant, or immaterial or duly repetitious to the agenda item on which it is presented.
- (b) Nothing herein shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another pending proceeding subject to the hearing relief, declaratory relief, or rule relief provisions of the rules of administrative procedure.
- (c) Nothing herein shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff and comp 9/1/88; am and comp 4/29/93] (Auth: HRS §437-6) (Imp: HRS §437-6)

SUBCHAPTER 9

SEVERABILITY

§16-86-31 Severability. If any section of this chapter is declared unconstitutional, or the applicability of the section to any person or circumstance is held invalid, the constitutionality of the remainder of this chapter and applicability of this chapter to other persons and circumstances shall not be affected. [Eff and comp 9/1/88; comp 4/29/93] (Auth: HRS §437-6) (Imp: HRS §437-6)

SUBCHAPTER 10

PRACTICE AND PROCEDURE

§16-86-35 Administrative practice and procedure. The rules of practice and procedure of motor vehicle dealers, salespersons, auctions, auctioneers, manufacturers, factory branches, factory representatives, distributors, distributor branches, and distributor representatives shall be as provided in chapter 16-201,

the rules of practice and procedure of the department of commerce and consumer affairs, which are incorporated by reference and made a part of this chapter. [Eff and comp 9/1/88; am and comp 4/29/93] (Auth: HRS §§91-2, 437-7) (Imp: HRS §§91-2, 437-7, 437-29)

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-86
Hawaii Administrative Rules

March 9, 1993

SUMMARY

1. §16-86-1 is amended.
2. §16-86-3 is amended.
3. §16-86-6 is amended.
4. §16-86-11 is amended.
5. §16-86-12 is added.
6. §16-86-15 is amended.
7. §16-86-23 is amended.
8. §16-86-35 is amended.
9. Chapter 86 is compiled.