

SUNSET EVALUATION REPORT
REGULATION OF MOTOR VEHICLE REPAIRS
Chapter 437B, Hawaii Revised Statutes

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by the
Legislative Auditor of the State of Hawaii

Report No. 86—4
January 1986

FOREWORD

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specified times unless they are reestablished by the Legislature. Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, scheduled for termination 38 occupational licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report evaluates the regulation of auto repair under Chapter 437B, Hawaii Revised Statutes. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate auto repair to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed.

We acknowledge the cooperation and assistance extended to our staff by the Motor Vehicle Repair Industry Board, the Department of Commerce and Consumer Affairs, and other officials contacted during the course of our examination.

Clinton T. Tanimura
Legislative Auditor
State of Hawaii

January 1986

TABLE OF CONTENTS

<i>Chapter</i>		<i>Page</i>
1	INTRODUCTION	1
	Objective of the Evaluation.	1
	Scope of the Evaluation	1
	Organization of the Report.	2
	Framework for Evaluation	2
2	BACKGROUND	7
	Occupational Characteristics	7
	Legislative History of Hawaii's Law.	15
	Summary of Hawaii's Law.	17
3	EVALUATION OF THE REGULATION OF THE MOTOR VEHICLE REPAIR INDUSTRY.	25
	Summary of Findings	25
	Need for Regulation	26
	Regulation of Auto Mechanics	29
	Regulation of Auto Repair Dealers	46
	The Motor Vehicle Repair Industry Board	56
	Consumer Complaints	58
	Recommendations.	59
	Appendix: Responses of Affected Agencies	63

LIST OF TABLES

<i>Table</i>		<i>Page</i>
3.1	Categories of Auto Mechanics	34
3.2	Categories of Auto Repair Dealers.	51

Chapter 1

INTRODUCTION

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 occupational licensing programs over a six-year period. Each year, six to eight licensing statutes are scheduled to be repealed unless specifically reenacted by the Legislature.

In 1979, the Legislature amended the law to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. In 1980, the Legislature further amended the law to require the Legislative Auditor to evaluate the effectiveness and efficiency of the licensing program, even if he determines that the program should not be reenacted.

Objective of the Evaluation

The objective of the evaluation is: To determine whether, in light of the policies set forth in the Sunset Law, the public interest is best served by reenactment, modification, or repeal of Chapter 437B, Hawaii Revised Statutes.

Scope of the Evaluation

This report examines the history of the statute on the regulation of automobile repairs and the public health, safety, or welfare that the statute was designed to protect. It then assesses the effectiveness of the statute in preventing public injury and the continuing need for the statute.

Chapter 2

BACKGROUND

Chapter 437B, Hawaii Revised Statutes, requires the licensing of motor vehicle repair mechanics and shops. A brief description of these occupations and a summary of Chapter 437B, HRS, are provided in this background chapter.

Occupational Characteristics

The automobile may well have more impact on consumers' lives than any other consumer product. Americans drive an estimated 147.1 million cars and trucks,¹ and expenditures for repair and maintenance exceed \$50 billion per year. About 40 percent of these expenditures, or \$20 billion, is for improper or unnecessary auto repair and maintenance services. Problems with unethical or incompetent auto repair and maintenance services rank as the nation's number one consumer complaint, and account for about half of the avoidable costs.² The remaining losses stem from car owners' failure to properly maintain their cars and other aspects of the auto repair industry—for example, automobile designs that place priority on ease of manufacture over ease of repair.³

1. U.S., Department of Commerce, *Statistical Abstract of the United States 1985*, Washington, D.C., U.S. Government Printing Office, 1984.

2. U.S., Congress, House, Committee on Interstate and Foreign Commerce, Subcommittee on Consumer Protection and Finance, *Automobile Repairs: Avoidable Costs, Staff Report*, 96th Cong., 1st sess., 17 May 1979, p. vi.

3. U.S., Congress, House, Committee on Interstate and Foreign Commerce, *Auto Repair, Hearings Before the Subcommittee on Consumer Protection and Finance*, 95th Cong., 2d sess., 14, 20, 21, 25 September, 19 October, and 4 December 1978, p. 5.

The auto repair industry is large and complex. It includes the automakers who are responsible for the design and production of automobiles, the manufacture and distribution of replacement parts, and the development and honoring of warranty policies. Manufacturers and distributors of replacement parts for vehicles that are malfunctioning or damaged in crashes are also part of the industry. Thousands of auto mechanics and auto repair shops, including new car dealers with repair shops and auto body shops, deal directly with consumers. All are linked in an elaborate network affecting consumers.⁴

Congress, federal agencies (in particular, the Federal Trade Commission and the National Highway Safety Administration), various states, and private consumer-oriented organizations such as the Center for Auto Safety and the American Automobile Association, have been studying the auto repair industry since the 1960s to identify the nature and sources of consumers' problems and develop remedies for these problems.

These studies have focused on the full spectrum of the auto repair industry including the manufacturers, parts distributors, repair shops, and mechanics training, as well as regulations and programs designed to reduce consumers' problems with the auto repair industry.

These studies make clear that there are multiple, interacting causes of consumers' problems and no simple solutions. The most direct sources of consumers' problems are the auto mechanics and auto repair dealers.

Automotive mechanics. Motor vehicle mechanics perform repair and maintenance work on cars, trucks, buses, or motorcycles. Their work generally begins with a review of the symptoms of malfunctioning and may involve a test

4. *Ibid.*

drive of the motor vehicle to locate the source of a problem. Mechanics may also use testing equipment such as spark plug testers, compression gauges, and motor analyzers. The mechanic then makes adjustments or repairs or replaces a part. Mechanics use a variety of tools including screwdrivers, pliers, and wrenches for work on small parts; welding and flame-cutting equipment to remove and repair exhaust systems or other parts; and power tools such as pneumatic wrenches to remove bolts quickly.

Some mechanics specialize in particular systems such as automatic transmissions, automotive air-conditioning systems, brakes, or radiators. Others perform a variety of repair and diagnostic work.

There are no formal educational requirements for entry into automotive mechanics, and many mechanics still learn their trade primarily on the job. Training in automotive mechanics at a community college or a vocational or technical school is available, and limited apprenticeship programs may be offered by dealers or independent repair shops. Employers may also send their mechanics to factory training centers or programs.⁵

Instructional programs in automotive mechanics are offered by public and private educational institutions in Hawaii. The Department of Education has courses in 35 out of the 39 public high schools providing classroom and shop experiences in maintenance work and the design and functioning of automotive power systems. Six University of Hawaii community colleges provide instruction in the maintenance and repair of automotive engines and fuel, ignition, brake, and other systems. The University's Employment Training Office, the New York

5. U.S., Bureau of Labor Statistics, *Occupational Outlook Handbook, 1984-85 Edition*, Washington, D.C., U.S. Government Printing Office, April 1984, pp. 256-258.

Technical Institute, a private trade school, and the Brigham Young University—Hawaii Campus also offer courses of varying lengths.

The Department of Labor and Industrial Relations reports that there are 27 employers with four-year apprenticeship programs in automotive mechanics and 18 in two-year programs for servicing mechanics who perform light maintenance work such as tune-ups and lubrication of automobiles. However, enrollment in these apprenticeship programs has been low. As of June 1985, there were only 35 apprentices in these programs.

The National Institute for Automotive Service Excellence, a nonprofit organization established in 1972 with industry support, offers nationwide voluntary certification for auto technicians in one or more of eight different service areas: engine repair, automatic transmission/transaxle, manual drive train and axles, suspension and steering, brakes, electrical systems, heating and air conditioning, and engine performance.

For certification in each area, mechanics must have at least two years of experience and pass a written examination. Completion of an automotive mechanic program in high school, vocation or trade school, or community or junior college may be substituted for one year of experience. Certified mechanics must retake the examination at least once every five years.⁶

Motor vehicle repair dealers. Motor vehicle mechanics are employed in various types of auto repair shops. One study has identified six types of shops which serve the general public: (1) the new car dealerships with attached service and parts departments that do most of the warranty repair work and are paid for this work by

6. National Institute for Automotive Service Excellence, *The ASE Story*, November 1984.

manufacturers according to manufacturers' policies; (2) the large independent general repair garages with at least a dozen service stalls; (3) the small one or two man garage where the proprietor is usually the mechanic; (4) the many thousands of gas stations with their one or two service stalls that are responsible for most of the minor repairs and adjustments made on today's automobiles; (5) the specialty shops franchised by national companies such as Midas Muffler Shops which specialize in selling and installing the parent company's transmissions, brakes, mufflers, or rebuilt engines; and (6) the automobile analysis or diagnostic centers which give electronic tests and report faults the car may have for a fee.⁷ Another study has identified still another type of repair dealer, the large department store chains (e.g., Sears, Roebuck and Company) with automotive service departments.⁸

Mechanics are also employed by the federal, state, and local governments, taxicab and automobile leasing companies, and other enterprises that repair their own fleets of cars or trucks.⁹

Regulation of mechanics and shops. There are three basic types of state or local auto repair regulations specifically directed at reducing consumers' auto repair problems: (1) disclosure laws; (2) facility or shop licensing laws; and (3) mechanics licensing laws.

Auto repair disclosure laws. Auto repair disclosure laws establish a consumer right to information in auto repair transactions and usually contain one or more of

7. Anthony Till, *What You Should Know Before You Have Your Car Repaired*, Los Angeles, Sherbourne Press, Inc., 1976, pp. 18-19.

8. Margaret Bresnahan Carlson, *How To Get Your Car Repaired Without Getting Gyped - The Car Owner's Survival Manual*, New York, Harper & Row, 1973, p. 119.

9. U.S., Bureau of Labor Statistics, *Occupational Outlook Handbook*, p. 257.

the following kinds of provisions: (1) the repair shops must give the consumer a written estimate of the costs of repairing the vehicle; (2) the consumer must specifically authorize the repairs before work can begin; (3) the consumer is entitled to a written invoice detailing all parts used and all labor performed in the repair of the vehicle; (4) parts replaced in the consumer's vehicle must be returned to or be made available for the consumer's inspection; (5) express warranties must be in writing; (6) repair shops may neither refuse to return a consumer's vehicle because of a mechanics lien, nor enforce a lien, if they have failed to comply with the law's disclosure requirements; (7) repair shops are prohibited from making false or misleading statements to the consumer on any aspect of an auto repair transaction; (8) the disclosure requirements must be conspicuously posted in the shops; and (9) repair shops must retain records of all auto repair transactions.

The auto repair disclosure law is the most frequently adopted type of auto repair legislation. Fourteen states, the District of Columbia, and at least three local governments have laws or rules containing disclosure requirements relating to auto repair transactions. Eight of those states with disclosure laws have no additional facility or mechanics licensing provision. Disclosure laws may be enforced in conjunction with existing deceptive practices and consumer protection statutes.

Licensing of auto repair facilities. Seven states, the District of Columbia, and at least three local governments have consumer-oriented statutes or regulations requiring auto repair shops to obtain licenses to do business within their jurisdictions.

These regulations may be the responsibility of boards, bureaus, divisions, or commissions that are empowered to promulgate rules and regulations, process consumer complaints, conduct investigations and inspections, hold hearings, and impose penalties.

The licensing laws are designed to deal primarily with fraudulent and deceptive practices. The laws provide authorities with the power to temporarily or permanently halt business operations. Proponents of such laws say that this power improves the relative position of consumers in auto repair transactions.

Licensing of auto mechanics. Only two states, Michigan and Hawaii, along with the District of Columbia, license auto mechanics.

The District of Columbia's mechanics licensing provision is part of its disclosure and facility licensing law. It requires each repair dealer to be or to employ a licensed supervisory inspector whose duty it is to ensure that repair work has been performed properly. To become licensed as a supervisory inspector, an applicant must first pass a competency examination.

Michigan's auto repair law includes disclosure requirements, shop licensing, and auto mechanics licensing. Each shop must employ one specialty or master mechanic in each area of repair it provides, and any work performed by a noncertified mechanic must be inspected and approved by one who is certified in the pertinent specialty.

The Michigan statute further specifies that a mechanic who is unable to pass the certification test may work with a mechanic trainee permit under the supervision of a certified mechanic for a maximum period of two years.¹⁰

Hawaii's statute contains provisions for disclosure and the licensing of repair shops and auto mechanics.

Although Hawaii's law calls for the "registration" of dealers and mechanics, it would be more correct to call it a licensing program as it is unlawful for any person to engage in the repair of motor vehicles without "registering" as a dealer or

10. Ruth W. Woodling, "Auto Repair Regulation: An Analysis," *State Government*, v. 1, Winter 1977, pp. 35-45.

mechanic. In this report, we will refer to all those who have registered as "licensed" mechanics or dealers.

Any person performing repair work must be licensed unless the person is an apprentice supervised by a licensed mechanic. However, because Hawaii's grandfather clause permitted many mechanics to be licensed without testing, a licensed mechanic may be a person who has not passed a certification test.

Other laws and programs. In addition to auto repair disclosure and licensing laws and common law remedies available to consumers, there are other consumer-oriented laws applicable to auto repair problems: federal¹¹ and state¹² consumer protection laws prohibit unfair and deceptive business practices, state uniform commercial codes regulate business transactions and warranties, and the federal Magnuson-Moss Warranty Act sets standards for warranties on consumer products including automobiles.¹³ In addition, some states have enacted "lemon laws" which enable consumers to demand a refund or a replacement vehicle if certain warranty repair work is unsatisfactory or unsuccessful after several repair attempts.¹⁴

11. U.S., Comptroller General of the United States, *Public and Private Coordination Needed if Auto Repair Problems are to be Reduced*, Washington, D.C., January 11, 1980, pp. 140-141.

12. National Association of Attorneys General, *Legislation Regulating Auto Repair*, May 1976, pp. 13-15.

13. National Consumer Law Center, "Lemon Laws Should Be Written to Ensure Broad Scope and Adequate Remedies," *Clearinghouse Review*, v. 17, no. 3, July 1983, pp. 303-304.

14. Lynne Reaves, "Lemon Laws: Putting the Squeeze on Automobile Manufacturers," *Washington University Law Quarterly*, v. 61, Winter 1984, pp. 1125-1130.

Laws affecting warranty repairs are significant because many consumer problems involve warranty work. Nationally, the Better Business Bureau reports that more than half of auto-related complaints involved new vehicles still under warranty.¹⁵

Private efforts to aid consumers are also available in some states. For example, the auto industry encourages establishment of local AUTOCAPs, committees of new car dealers that mediate consumers' disputes with auto repair service providers. Some automakers have established their own arbitration procedures to deal with consumers' complaints. Also, the American Automobile Association operates a shop rating service based on facility and personnel qualification standards and customers' assessment of services to assist its members in their selection of auto repair shops.

Legislative History of Hawaii's Law

The Legislature established state regulation of the automobile repair industry in 1975 (Act 143, SLH 1975), after five years of legislative and public discussions on the issue of how best to reduce consumers' problems with the auto repair industry.

The Legislature had considered numerous proposals to improve automobile repair services. From 1970 through 1975, over 30 bills and resolutions were introduced in the Legislature. Legislators conducted many public hearings to air the views of the auto repair trade associations, government agencies, and consumers.

There was general agreement on the intent of proposed legislative measures—to help consumers in their dealings with the auto repair industry—but there was significant disagreement over how this should be achieved.

15. U.S., Congress, *Automobile Repairs: Avoidable Costs*, p. vi.

Summary of Hawaii's Law

Chapter 437B, HRS, mandates state regulation of the motor vehicle repair industry. Businesses and mechanics must be licensed in order to engage in the repair of motor vehicles for compensation. Exempt from regulation are employees of the state, county, or federal governments, or employees of enterprises repairing vehicles that are for their exclusive use and that are not leased or rented to others. Responsibility for regulation rests with the Motor Vehicle Repair Industry Board.

The Motor Vehicle Repair Industry Board. The board must consist of three industry members and four members who are not connected with the motor vehicle repair industry. Two of those from the industry must be registered auto mechanics.

The board is charged by law with specific responsibilities to: establish qualification standards for motor vehicle repair dealers and mechanics; inquire into and make rules relating to industry practices and policies; contract and cooperate with the State Director of Vocational Education in developing and administering the certification program; investigate and gather evidence on violations of regulatory requirements; and devise a classification of motor vehicle mechanics consistent with the certification program and limit activities of mechanics to areas for which they are certified.

The board is authorized to fine, order restitution, suspend, revoke, or refuse to renew the registration of dealers or mechanics for violation of Chapter 437B or its rules. The fines are: first offense, \$75; second offense, \$150; and subsequent offenses, \$300 to \$1,000.

The board may also seek a court injunction or other appropriate restraining orders for violations of Chapter 437B and its rules.

The board is placed within the Department of Commerce and Consumer Affairs for administrative purposes.

Licensing of auto mechanics. A motor vehicle mechanic is any person, self-employed or employed by another, who engages in the diagnosis or repair of malfunctions of motor vehicles for compensation and may be either an intermediate or journeyman mechanic. The terms intermediate and journeyman mechanics are not defined in the law.

Chapter 437B provides for the following licensing categories: "registered mechanic" and "registered-certified mechanic." "Registered mechanics" are those mechanics who were licensed to practice under a "grandfather clause" in Chapter 437B. Mechanics who were working for a period of at least two years prior to January 1, 1976 and who registered under Chapter 437B on or before June 30, 1976 are permitted to work as licensed mechanics without taking any certification tests.

"Registered-certified mechanics" are those licensees who have met the certification and testing standards of Chapter 437B, HRS.

"Mechanic apprentices or helpers" are those engaged in the diagnosis or repair of malfunctions of motor vehicles who are not registered or certified. They are required to work under the supervision of a licensed mechanic, and the employer is responsible for providing the required supervision.

The rules add another licensing category of "registered-certified-general mechanic." This is a mechanic who has been certified in all specialties of automotive repair work.

Mechanics' certification program. The law requires the board to contract with the office of the State Director of Vocational Education to develop and administer a certification program for mechanics. The certification program for motor vehicle mechanics requires mechanics to meet minimum training standards and pass certification tests in different aspects or specialties of automotive repair work.

A mechanic who passes the appropriate tests qualifies for licensing as a registered-certified mechanic.

Motor vehicle mechanics may be certified to work in one or more of the ten following categories: (1) automotive engine, (2) tune-up, (3) automatic transmission, (4) brakes, (5) electrical systems, (6) front suspension and wheel alignment, (7) air conditioning, (8) standard transmission/rear axle, (9) diesel engine, and (10) motorcycle and motor scooter.

Each specialty has a certification test consisting of two parts, a written part and a performance part. To become licensed, candidates must pass both parts of the test. Candidates may test and retest any number of times.

To be eligible to take the certification tests, candidates must meet minimum training and work experience requirements.

The requirements for the automotive engine, tune-up, brakes, electrical systems, standard transmission/rear axle, and diesel engine tests are: two years of vocational academic schooling in automotive repair and one year of experience "largely" in the specialty area under an intermediate, journeyman, registered, or registered-certified mechanic; or one year of schooling and two years of relevant, supervised work experience; or three years of relevant, supervised work experience.

The requirements for the front suspension and wheel alignment, air conditioning, automatic transmission, and motorcycle and motor scooter tests are: one year of vocational academic schooling in automotive repair and one year of relevant, supervised work experience; or two years of relevant, supervised work experience.

Regulation of dealers. Motor vehicle dealers are those in the business of diagnosing or repairing malfunctions of motor vehicles.

Dealers fall into the following licensing categories: "motor vehicle repair dealer," "certified repair dealer," or "motor vehicle repair salvage dealer." A "motor vehicle repair dealer" is one who is or who employs a licensed motor vehicle mechanic. A "certified repair dealer" is one whose full-time crew of mechanics includes a minimum of 50 percent who are "registered-certified mechanics." A "salvage" dealer is one engaged in the business of restoring or rebuilding salvaged, wrecked, or dismantled vehicles declared a total loss by a police officer or an insurer.

Licensed auto repair dealers include new car dealerships and department stores with service departments, large and small service garages, gas stations, specialty repair shops like Midas Muffler Shops of Hawaii and AAMCO Transmissions of Honolulu, and diagnostic centers. By rule, auto body, paint, glass, and other auto-related shops engaging in certain auto mechanical work are also subject to licensure.

Prohibited acts. Dealers are prohibited from engaging in the following acts or omissions:

- . Making or authorizing any statement which is known to be untrue or misleading;
- . Causing or allowing a customer to sign any work order which does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair;
- . Failing or refusing to give to a customer a copy of any document requiring his signature, as soon as the customer signs such document;
- . Any other conduct which constitutes fraud;
- . Conduct constituting gross negligence;

- . Failure to comply with Chapter 437B or regulations adopted pursuant to it;
- . Any wilful departure from or disregard of accepted practices or workmanship;
- . Making false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle;
- . Having repair work subcontracted without the knowledge or consent of the customer unless it can be demonstrated that the customer could not reasonably have been notified;
- . Conducting the business of motor vehicle repair in a place other than that stated on the registration except that mobile repair facilities may be permitted if the registration so indicates; and
- . Rebuilding or restoring a rebuilt vehicle in such a manner that the vehicle does not conform to the original manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year.

Disclosure requirements. Dealers must also comply with the following requirements in their transactions with customers. *First*, dealers must provide each customer with a written estimate before performing any repair work, unless a customer signs a written waiver.

Second, dealers may charge no more than 15 percent of the estimated price if the estimate is less than \$100, or no more than 10 percent of the estimate if the estimate is over \$100. This requirement may be waived if the customer gives the dealer a written or oral consent after the dealer determines that the estimate is insufficient and before the repair work is done.

Third, dealers must provide each customer with an invoice listing separately the description and charges for labor and parts and specifying if any used, rebuilt, or reconditioned parts were used. A copy of the invoice must be retained by the dealer.

Fourth, upon a customer's request at the time a work order is placed, a dealer must return replaced parts to the customer. If the parts are to be returned to the manufacturer or distributor under a warranty agreement, or if the size, weight, or similar factors make it impractical to return the part to the customer, the dealer is required to offer to show the part to the customer. This requirement applies only if the customer is charged for the replacing part.

Fifth, dealers must post a notice, supplied by the board, informing customers that they are entitled to a written estimate for repair work, a detailed invoice of work done and parts supplied, and the return of certain replaced parts. The notice must also state that questions concerning these entitlements should be directed to the manager of the repair facility, and that unresolved questions regarding service work may be submitted to the board. The location and telephone number for the board's office on each island are on the notice.

Sixth, dealers are also required to maintain records of all invoices, including invoices received from other sources, for parts and/or labor and invoices for all warranty work showing the terms of the warranty. Records of all work orders and/or contracts for repairs, parts, and labor must also be kept.

Registration condition precedent to lien. Persons required to register under Chapter 437B do not have the benefit of any lien for labor or materials or the right to sue on contract for motor vehicle repairs they have done unless they were registered at the time the contract was performed.

Suits. Nothing in Chapter 437B prevents the Office of Consumer Protection from filing suit against any dealer, mechanic, or apprentice for violation of Section 480-2, HRS, relating to unfair and deceptive acts, and nothing in Chapter 437B prohibits an individual from bringing civil action against a dealer, mechanic, or apprentice. A violation of Chapter 437B and its rules is a misdemeanor.

Licensees. As of October 1985, there were 2,864 mechanics licensed to practice under the grandfather clause, 54 mechanics who were originally grandfathered and subsequently completed the certification and testing requirements, 369 mechanics that have met the certification and testing standards, and 1,004 registered auto repair dealers.¹⁷

17. Hawaii, Department of Commerce and Consumer Affairs, *Geographic Report*, Honolulu, October 9, 1985.

Chapter 3

EVALUATION OF THE REGULATION OF THE MOTOR VEHICLE REPAIR INDUSTRY

This chapter contains our evaluation of the regulation of the motor vehicle repair industry under Chapter 437B, Hawaii Revised Statutes. It includes our assessment of the need for regulation and the efficiency and effectiveness of the regulatory program.

Summary of Findings

We find that:

1. There is sufficient potential harm to consumers in the motor vehicle repair industry to warrant state regulation. However, significant changes must be made in the law to remove ineffective and unenforceable provisions and to strengthen regulations to protect consumers.
2. State regulation of automotive mechanics has been ineffective. Licensing of mechanics has not achieved the objective of ensuring competent auto repair and maintenance work and should be eliminated.
3. State regulation of auto repair dealers has benefited the public and should be continued. However, it can be improved by: (a) clarifying the kinds of auto repair dealers that are subject to regulation; (b) establishing realistic licensing requirements; and (c) adding provisions to increase dealers' accountability for proper performance of repair work.
4. The Motor Vehicle Industry Repair Board is no longer necessary for effective regulation and should be eliminated. Moreover, the current composition of the board does not appear to conform to statute.

5. There is a need for the Department of Commerce and Consumer Affairs (DCCA) to make the public more aware of its rights under the auto repair laws and more cognizant of the State's role in resolving complaints.

Need for Regulation

Potential harm. Consumer complaints about auto repair services rank one in the nation¹ and high on the list of complaints filed with the State.² Consumers of motor vehicle repair services suffer considerable economic loss, aggravation, and sometimes bodily injury, because of faulty or unsuccessful repairs, and unfair, deceptive, or poor business practices of the motor vehicle repair industry.

Auto repair shops can easily confuse, mislead, or deceive consumers who are at a disadvantage in their dealings with the motor vehicle repair industry. Most consumers lack sufficient knowledge of the parts and the functioning of their automobiles and business practices of the industry. They have difficulty identifying competent, reliable, and honest repair shops and assessing the soundness of repairs and prices.

Repair services may be unnecessary, unskilled, fraudulent, unsatisfactory, or sometimes even futile as when a car is a "lemon." Because of their lack of knowledge, consumers are susceptible to such fraudulent or questionable business practices as:

- . intentionally writing repair estimates lower than the final repair bill to get a customer's business;

1. U.S., Congress, House, Committee on Interstate and Foreign Commerce, Subcommittee on Consumer Protection and Finance, *Automobile Repairs: Avoidable Costs, Staff Report*, 96th Cong., 1st sess., 17 May 1979, p. v.

2. Hawaii, Department of Commerce and Consumer Affairs, untitled, undated report on the Compliance Resolution Fund.

- . charging a flat rate for different classes of repairs regardless of the actual time the job may take;
- . installing used parts while charging the customer for new ones;
- . performing work or installing parts that a car did not need;
- . obtaining blanket authorization from a customer to perform whatever work the shop decides on without the customer's prior approval;
- . making misleading claims such as exaggerating the guarantee or warranty or advertising tune-ups for low amounts when average bills are considerably higher; and
- . making temporary or minor or no adjustments on new car defects that are under warranty, then doing the major repair work later at the customer's expense when the warranty expires.³

Consumers' problems stem in part from a general shortage of skilled auto mechanics to meet the demand for repair and maintenance services.⁴ Repair businesses compete for a limited pool of experienced, skilled mechanics and may hire less well-trained or inexperienced mechanics to meet the demand for services.

Most of the complaints filed with the State allege improper repairs and frustration or anger over the repeated failure of auto repair shops to correct continuing problems. Some complaints relate to poor or dishonest business practices on the part of auto repair shops. Other complaints arise from misunderstandings between customers and shops.

3. U.S., Congress, *Automobile Repairs: Avoidable Costs*, pp. v-xi; Margaret Bresnahan Carlson, *How To Get Your Car Repaired Without Getting Gypped - The Car Owner's Survival Manual*, New York, Harper & Row, 1973, pp. 3-23; and Illinois Legislative Investigating Commission, *Auto Repair Abuses, A Report To The Illinois General Assembly*, June, 1975, pp. 108-109.

4. U.S., Congress, *Automobile Repairs: Avoidable Costs*, p. v; and U.S., Comptroller General of the United States, *Public and Private Coordination Needed if Auto Repair Problems are to be Reduced*, January 11, 1980, p. 11.

It is difficult sometimes to determine whether a consumer's problem is the result of ineptitude or deceptive business practices on the part of auto repair shops. For example, a shop may repair more than the malfunctioning part of an engine because of incompetence in diagnosing the problem, or the shop may intentionally do unnecessary work to charge more.

There is sufficient potential harm to the public to conclude that the auto repair industry warrants continued state regulation. However, significant changes must be made to Chapter 437B to delete those provisions that are unnecessary, unenforceable, or counterproductive, and to strengthen those provisions that enhance consumer protection.

Shift focus of regulation. Chapter 437B, HRS, was enacted to assist consumers in resolving complaints regarding unsatisfactory repairs and excessive charges. It was hoped that the law would alleviate the problem of repairs performed by those without proper training and experience and help consumers to identify facilities that would offer satisfactory repair services.⁵

To accomplish the foregoing, the law established the licensing of auto repair mechanics, a program to certify to the competency of auto repair mechanics, the licensing of auto repair dealers, regulations governing dealer practices and transactions between dealers and their customers, and a means to resolve complaints. These regulatory responsibilities were vested in a Motor Vehicle Repair Industry Board.

We find that the licensing of auto mechanics and the certification program have proven to be ineffective. Licensing and certification of auto mechanics have

5. Senate Standing Committee Report No. 66 on Senate Bill No. 94, S.D. 1, Regular Session of 1975; Senate Standing Committee Report No. 99 on Senate Bill No. 91, Regular Session of 1975; and Senate Standing Committee Report No. 535 on Senate Bill No. 91, S.D. 2, Regular Session of 1975.

not promoted or ensured competent work in the auto repair industry. They may even have had an opposite effect. On the other hand, many of the requirements that are aimed at establishing auto repair dealers' accountability and responsibility for satisfactory repair work have been beneficial to the public. Regulations relating to dealer practices should be continued and strengthened.

In the next sections, we will discuss some of the reasons why the regulation of auto *mechanics* has not been successful and why there is a need to shift the focus of regulation to auto repair *dealers*.

Regulation of Auto Mechanics

Chapter 437B was enacted in 1975. After ten years of experience, it has become clear that state regulation of auto mechanics has had little impact on increasing the supply of auto mechanics or ensuring their competency. In addition, the licensing categories for auto mechanics are confusing, and the state certification program has been of questionable value.

Lack of impact on supply of skilled mechanics. The law sought to ensure that all auto repair work is done by trained mechanics by requiring all auto repair to be performed either by licensed mechanics or under the supervision of licensed mechanics. Except for the large number of mechanics who obtained their licenses by being grandfathered under the law, all licensed mechanics must be certified under the state certification program by passing a written and a practical test.

Today, only 423 of the total of 3,287 *licensed* mechanics have met qualification standards and passed certification tests.⁶ They constitute merely

6. Hawaii, Department of Commerce and Consumer Affairs, *Geographic Report*, Honolulu, October 9, 1985.

5 percent of the estimated 8,000 auto mechanics in the industry's work force.⁷ It is evident that state licensing has not significantly increased the supply of skilled auto repair mechanics. In fact, licensing may have had the opposite effect by discouraging experienced mechanics from coming to work in Hawaii.

Chapter 437B also sought to increase the supply of skilled mechanics by requiring the establishment of an apprentice program. Such a program was never established although there is a definite need for apprenticeship programs. Requiring one under Chapter 437B has obviously had little impact.

A recent report for the State Commission on Manpower and Full Employment on auto mechanics' supply and demand states that there is a surplus of entry-level automotive mechanics in Hawaii.⁸ However, there is a shortage in the number of experienced and skilled mechanics. There are numerous reasons for this. According to some, wages and conditions in the industry are not sufficiently attractive to retain workers. Others say that employers do not want to spend money on training programs, and factory training opportunities are limited because of Hawaii's distance from factory training centers. The technology of the industry is also changing rapidly with the increasing use of on-board computers and electronic components. All of these reasons affecting the supply of skilled mechanics have little to do with licensing.

A licensing program is aimed at requiring a minimum level of competence for those who wish to practice an occupation. It does not increase the supply of skilled mechanics.

7. Hawaii, State Commission on Manpower and Full Employment and State Advisory Council on Vocational Education, *The Impact of Technology on Hawaii's Automotive Mechanics: An Analysis With Recommendations*, September 1984, p. 12.

8. *Ibid.*

Standard of competency not established by licensing. In most licensing programs, those who are eligible for licensing must meet standardized requirements so that there is some assurance that licensed practitioners possess comparable, minimal levels of skills. In the case of licensed auto mechanics, there is no such assurance. Those licensed to practice vary considerably in their qualifications and skills.

Licensed mechanics consist of those who were grandfathered and those who were certified under the state certification program by passing written and practical tests. Of the total of 3,287 licensed auto mechanics, 2,864 or 87 percent became licensed by being grandfathered.⁹

The "grandfather" clause allowed mechanics working for at least two years by January 1, 1976, and registering with the State by June 30, 1976, to be officially licensed regardless of training, experience, or competence. Although the level of training, skills, or knowledge of auto mechanics of these licensed mechanics are unknown, they are allowed to perform the full range of repair services.

At the same time, the law requires all other mechanics to meet formal training and/or work experience standards and pass state written and practical certification tests in one or more of ten specialty areas of auto repair to become licensed. These mechanics become licensed in the specialty tested and passed and are permitted to practice *only* those specialties for which they have been certified. For example, if a mechanic passes the certification test in brake systems, then the mechanic is certified to work on brake systems only.

Nearly half of the 423 certified mechanics are certified in only one specialty. One-fourth are certified in only two areas. Another fourth has passed tests in three

9. Hawaii, *Geographic Report*.

or more categories, and only two individuals in the entire State are certified in all ten specialties.

The number of mechanics certified in the specialty areas are as follows: brake systems, 265; tune-ups, 131; engines, 118; front suspension and wheel alignment, 100; air conditioning, 80; electrical systems, 71; automatic transmission, 65; standard transmission, 39; motorcycle, 22; and diesel engines, 6.¹⁰

These conditions create a paradoxical situation in which grandfathered mechanics who did not have to meet any performance standards are allowed to perform the full range of repair work while certified mechanics are allowed to work only in those areas for which they are certified.

Since all auto repair shops are required to employ a full-time licensed mechanic, this means that a repair shop with one mechanic with a grandfathered license may engage in the full range of repair activities. However, a repair shop with a mechanic certified in brakes and transmission may legally perform only brakes and transmission services but no tune-ups, air conditioning, electrical system, or any other service.

These requirements create an undue hardship, particularly for small repair shops that cannot afford to employ several mechanics, each of whom is certified in only one or two specialties. It severely limits the kinds of repair services they can offer.

In fact, a shop with only one licensed mechanic may engage in the full range of auto repair and maintenance services only if it has a mechanic with a grandfathered license or one of the two mechanics in Hawaii certified in all of the specialty areas.

10. Hawaii, Department of Commerce and Consumer Affairs, *Alphabetic Roster for Motor Vehicle Repair Industry Board*, Honolulu, September 26, 1985.

Licensed repair shops are also responsible for ensuring that all unlicensed mechanics work only under the supervision of appropriately licensed mechanics.¹¹ This means that a mechanic certified only in automatic transmission work may not supervise an unlicensed mechanic working on a standard transmission, and an unlicensed mechanic may not legally perform any repair and maintenance services without proper supervision.

With only 423 certified mechanics and a work force of 8,000, it is unrealistic to expect the full range of mechanical work in Hawaii to be performed or supervised by certified mechanics. In addition, because of the questionable validity of the state certification program, it is not clear how much reliance can be placed on the competency of certified mechanics. Representatives of the industry acknowledge that many unlicensed mechanics perform work similar to that performed by licensed mechanics without the required supervision and that many certified mechanics regularly perform auto repair tasks in specialties for which they are not certified.

The board and the department have not required mechanics or repair shops to comply with the regulations. They have not monitored compliance or enforced the regulations. The law and the regulations on licensed practice and the limitations on such practice are clearly unreasonable and unenforceable.

Confusing licensing categories. The licensing categories currently in use are confusing and inconsistent with those established by law. Table 3.1 compares the categories identified in Chapter 437B with the licenses currently being issued by DCCA.

11. Section 16-87-27, Hawaii Administrative Rules.

Table 3.1
Categories of Auto Mechanics

<i>Title</i>	<i>Description</i>	
	<i>Categories Defined in Chapter 437B</i>	<i>Licenses Issued by the Department of Commerce and Consumer Affairs</i>
Registered mechanic	One who has registered (grandfathered).	Grandfathered.
Registered-certified mechanic	One who is registered and certified by passing certification tests.	A mechanic who was grandfathered and subsequently became certified.
Certified mechanic	Not in statute or rules.	One who has passed state certification tests.

Source: Chapter 437B, HRS, and Department of Commerce and Consumer Affairs, Licensing Branch.

The statute established two categories of licensure, a "registered mechanic" and a "registered-certified mechanic." A "registered mechanic" is one who is licensed under the grandfather clause. A "registered-certified mechanic" is one who is registered and certified by passing the certification tests.

DCCA, on the other hand, has three categories of licensure. The department uses the title "registered mechanic" for those who were grandfathered. It licenses as "registered-certified mechanics" those who were originally grandfathered and then subsequently passed certification tests. It has a third license of "certified mechanic" that it issues to those who have passed certification tests. The "certified mechanic" license title is not authorized either by statute or by rule.

In addition to those licensing categories shown in Table 3.1, the board has established, by rule, the category of "registered-certified-general mechanic" to denote one who has passed the eight automotive specialty certification tests.¹²

12. Section 16-87-3, Hawaii Administrative Rules. Section 16-87-26 lists the eight *automotive* specialties as engine, tune-up, automatic transmission, brakes, electrical systems, front suspension and wheel alignment, air conditioning, and standard transmission and rear axle. The remaining two categories are diesel and motorcycle.

There is little rationale for the three different licenses being issued by DCCA since the department does not use the different categories of licensure to monitor the activities of licensees or to enforce regulatory provisions.

In addition to the licensing categories, Chapter 437B mentions three other categories of auto mechanics. However, the statute does not describe these categories fully or clarify the differences among them. It identifies "motor vehicle mechanics" and says that these may be either intermediate or journeyman motor vehicle mechanics. However, the difference between the two and what they are allowed to do is not described. The purpose of this distinction is unclear.

Certification program. The state certification program is of questionable value. To become certified, applicants must: (1) meet the qualification standards to be eligible to take the tests, and (2) pass the certification tests. There are problems with both the qualification standards and the tests.

Qualification standards. We find that the qualification standards are vague and have no demonstrated relationship to ensuring competency.

There are two sets of qualification standards. To qualify to take the certification tests in the six specialty areas of engine, tune-up, brake systems, electrical systems, standard transmission/rear axle, and diesel engine, an applicant must have two years of education in auto mechanics and one year of supervised pertinent work experience or various combinations of education and experience adding up to a total of three years.

For certification in the four specialty areas of front suspension and wheel alignment, air conditioning, automatic transmission, and motorcycle and motor scooter, an applicant must complete one year of education and/or work in auto

repair and one year of supervised experience in the specialty or two years of experience.¹³

The standards are defective in several respects. *First*, they are vague. The department has no guidelines for assessing the kinds of educational experiences that qualify. The application form merely says that education must consist of vocational academic schooling with credit courses. There are no standards on the level of courses, the kinds of courses, or the number of hours that must be taken to satisfy the educational requirement. Educational programs for auto mechanics include high school courses, courses in trade schools, and associate level degree programs in community colleges. The formal educational programs vary considerably in length and in substance.¹⁴

The nature of the work experience required is also vague. The rules call for work experience "largely in the specialty area of certification in which one has applied for certification."¹⁵ While the general nature and significance of this rule is readily understood, attempting to determine on a consistent basis whether an applicant's experience is "largely" in the specialty area can be difficult.

The department does not assess the nature of education and work experience. It merely checks the total number of years of reported education and experience. Neither does it verify any of the information reported by applicants.

Second, the standards are arbitrary. The work experience required of applicants may be under the supervision of either a registered or registered-certified mechanic. There is no assurance that applicants who work

13. Section 16-87-26(d), Hawaii Administrative Rules.

14. Hawaii, *The Impact of Technology*, pp. 9-11.

15. Section 16-87-26(d)(a)(A), Hawaii Administrative Rules.

under the supervision of a registered mechanic (one who has been grandfathered) or a registered-certified mechanic (one who has passed the certification tests) are being properly trained at a comparable, minimum standard of competency.

Third, these training and work standards apply only for the initial application to take a certification test in a specialty area. Applicants for the second or subsequent specialty tests may simply take the tests regardless of the lack of relevant training in the specialty areas. Thus, an applicant who graduates from a community college with training in auto mechanics may work for a year on brake systems, then be eligible to take the certification test for brake systems. Upon completion of that test, the applicant may, without any additional work experience, qualify to take certification tests on engines, air conditioning, or any other category of repair work.

Finally, these qualification standards are redundant and unnecessary if the certification tests are valid and reliable. This point was made in 1976 by the then director of the State Office of Vocational Education, the office responsible for the certification program, who recommended that the State not impose any training requirements to be eligible to take the tests.¹⁶ Michigan, the only other state certifying mechanics, does not have minimum educational and training requirements. It simply tests its applicants.¹⁷

Certification tests. The State Office of Vocational Education at the University of Hawaii is responsible for developing and administering the certification tests for mechanics.

16. Minutes of the Motor Vehicle Repair Industry Board, January 16, 1976.

17. Michigan Department of State, Bureau of Automotive Regulation, General Rules, as Amended, R 257-161.

There are written and practical tests for the following specialty areas: air conditioning, automatic transmission, brake systems, diesel engine, electrical systems, engine, front suspension and wheel alignment, motorcycle, standard transmission/rear axle, and tune-ups. Applicants must pass the written test before they are allowed to take the practical tests.

There are questions about the validity and reliability of the tests, the infrequency of the examinations, and the fairness of special certification tests.

Questions of validity and reliability. The original written tests were developed in 1976 by California educators experienced in test development. The practical tests were developed by different consultants over a period of several years. The records indicate that the written tests were subjected to validity and reliability testing. It is uncertain whether the practical tests were so tested.

A test of validity would indicate whether the certification tests predict competent and safe performance of a job or correlate with significant skills and knowledge of a job.

A test of reliability would indicate whether the certification tests measure knowledge and skills in a consistent way (i.e., a person scoring high on one form of the examination would likely score high on another form of the examination at a different time).

The original tests have been modified by committees of instructors from the community colleges and persons in the auto repair business, and the latest tests have not been tested for conformance to professional testing standards of validity and reliability.

The validity of the certification tests is being questioned by some board members, staff, and others from the industry. Critics say that the tests have not kept up with the times and changes in automotive technology. The tests cover

American cars and technology only. They do not cover foreign automobiles even though there are numerous Japanese and European cars in Hawaii today. They do not include items on recent techniques, skills, knowledge, equipment, or automotive parts that are part of today's automotive technology.

The examiners acknowledge that this is true. They say that the tests focus only on basic skills and auto parts. The critics contend that knowledge of foreign cars and recent technological developments such as electronic equipment are basic, and mechanics should have the skills and knowledge to repair and maintain them.

Some say that the tests of practical skills are unnecessary. Instead, a test of mechanics' ability to read, comprehend, and use technical manuals and related literature is more important because of the need for mechanics to learn new auto parts, techniques, tools, and technology. It is also acknowledged, however, that a person may pass a written test without being able to fix a car.

These views from persons familiar with the auto repair industry raise serious questions about whether the certification tests are measuring pertinent skills and knowledge in an appropriate way.

Infrequent examinations. Some in the auto repair industry complain about the infrequency of the practical examinations and the lack of practical examinations on the neighbor islands.

The written examinations are administered three times a year in February, June, and October. But the practical examinations, one for each specialty area, are given once a year on a rotating schedule—tune-ups in February, automatic transmissions in March, air conditioning in April, and so on. The examiners say that they can only give one test at a time because of limited equipment and space in the testing center. They are not able to lay out properly the equipment, auto parts, and motor vehicles for more than one specialty test at a time. However, in response to

complaints, they have made arrangements to offer the tests twice a year on a rotating schedule beginning in 1986.

Still, this often means a long wait between the written and practical tests and a long delay for certification. For example, someone taking and passing the written test for electrical systems in June or October of 1985 must wait until March 1986 to take the next scheduled practical test for electrical systems.

For neighbor islanders, certification is further complicated because practical tests are not given on the neighbor islands. In 1983, the State Office of Vocational Education discontinued giving the practical tests on the neighbor islands, purportedly because of inadequate funds.¹⁸ This is seen as unfair and discriminatory by some neighbor island employers and candidates who are threatening to sue the State over this issue. DCCA, however, will not waive the requirement for the practical tests or pay air fare for candidates to come to Honolulu for the tests. This is a general departmental policy, not unique to the mechanics' certification program.

Special certification. Despite claims of inadequate funding and facilities, the State gave special, unscheduled, unannounced examinations in 1985 for a select group of individuals, including a board member. Their applications were also given special handling by DCCA staff. This preferential treatment is unfair to all others who are interested in certification.

In response to requests from the board member and two persons from the Auto Body and Paint Association, the Employment Training Office of the University of Hawaii's community college system ran two special classes. The classes were designed to prepare a group of auto body shopowners, managers, and auto body repairers to take and pass the State's certification tests for auto mechanics.

18. Minutes of the Motor Vehicle Repair Industry Board, March 3, 1983.

One, a 45-hour course on front suspension and wheel alignment, was given from June 24 through July 24. The other, a 72-hour course on brake systems, ran from August 19 through October 10. The classes had not been offered previously, and they were not advertised, announced, or offered to others in the auto body or auto repair businesses.

The board's executive secretary and the University of Hawaii's supervisor for the certification program authorized special certification tests for this group of people. Although the normal procedure is for the dates for all the certification tests to be announced and scheduled a year in advance, the special tests were added and were not announced to the general public.

The group took a specially scheduled written test for suspension and wheel alignment on July 29, five days after the end of their class. This specially added test was a full two and one-half months before the next regularly scheduled written examination which had been set for October 14.

Two practical tests on front suspension and wheel alignment were also specially added for this group.

The group was divided into two because of its size. The first group took the practical test on September 21. The second group was scheduled to take the test on September 28. However, word of the special class and tests got out, and a protest by other auto body shopowners was registered with the board's executive secretary, and the test for the second group was to have been cancelled. It was subsequently restored and administered on October 15. The test was taken only by those in the special group.

The *applications* for certification testing from the special group were also given special treatment.

First, they were submitted and approved only eight days before the test. All other applicants must adhere to DCCA's published deadlines for applications. DCCA requires all other applicants to submit their application 50 days before the certification tests.

Second, and more importantly, all applications were approved although most of the applicants from this group did not appear to meet training and experience standards to qualify to take the test.

All applicants must have one year of education and one year of experience or two years of supervised, relevant experience in the specialty to be eligible to take the front suspension and wheel alignment certification test. Only registered mechanics who were grandfathered are exempt from this requirement.

Only 4 of the 19 members of this group were registered mechanics and exempt from the two-year training and experience requirement. The remainder had to qualify. The information supplied on most of the applications do not substantiate their meeting the minimum qualifications of at least two years of training in automotive mechanics or experience under a registered or registered-certified mechanic working "largely" in the specialty area. Some of the members of this group are not trained or working automotive mechanics. They are primarily owners or managers of auto body shops and auto body repairmen.

Although the application forms clearly state that irregular or incomplete forms will not be accepted, many of the applications are missing adequate descriptions of relevant training or experience. Several show inappropriate work experience or no work experience description at all. Others are incomplete or improperly completed. Three applications are not properly signed by the applicants in the space where they are required to certify that the answers and statements on

the application are true and correct and that the applicant understands that any misrepresentation constitutes grounds for refusal or subsequent revocation of a license and is a misdemeanor.

Despite these substantive and technical irregularities, DCCA staff approved the applications.

These activities were carried out without prior approval or knowledge of the board. The board was not informed of these activities until its October 3, 1985 meeting after the key events were over, and it is not certain whether they were fully informed. The special classes and tests were reported to the board as "a special training program developed by the community colleges and the State Director for Vocational Education."¹⁹ However, both offices report that they did not initiate the special classes and tests. They indicate that they were simply responding to the requests of the board member speaking on behalf of his group and trade association.

At the October meeting, the board adopted policies suggested by DCCA staff for this "special training program" that are apparently directed at correcting some of the inequities of the special classes and tests. The board is now requiring all certification tests to be offered to all eligible applicants on file. All applicants taking special classes and tests must meet the qualification standards for mechanics and receive approval of the board. The board has authorized the State Office of Vocational Education to schedule special tests. The board is also requiring that all applicants passing the special or regular certification tests be licensed at the same time.²⁰

19. Minutes of The Motor Vehicle Industry Repair Board, October 3, 1985.

20. *Ibid.*

Ineffective oversight. One of the problems with the current certification program is that the statute gives the board overall responsibility for the certification program. However, the board is not in a position to oversee the program effectively. This is brought out by the preceding events in which the board had no foreknowledge of the specially scheduled examinations. It had to adopt policies after the fact.

The part-time board also lacks the technical knowledge of legal and professional testing requirements and the continuing contact with the State Office of Vocational Education that is needed for proper supervision of the certification program.

Discontinue the tests. The testing program is expensive. Since 1979, only 423 mechanics have been screened under the program, a small fraction of the work force of mechanics in the State. An average of only 60 mechanics are certified each year. At that rate, to certify even half of the estimated 8,000 mechanics working in the State will take another 66 years. To certify the entire work force will take approximately 133 years.

The current annual budget for the testing program is \$85,000. Expenditures in recent years have been at about the same level. These funds pay for personnel, facilities, auto parts, motor vehicles and their maintenance, testing equipment, and tools.

Additional funds would be needed for vehicles, parts, equipment, physical facilities, and technical assistance to develop and administer tests meeting professional standards of validity and reliability that incorporate a more diverse and contemporary technology. More funds would also be needed to increase the frequency of examinations.

Because the costs of a testing program are so high and the benefits so low, it should be discontinued under Chapter 437B.

Should state certification be discontinued, other avenues remain for attesting to the skill of a mechanic. Private organizations such as the National Institute for Automotive Service Excellence (NIASE) offer certification examinations for mechanics interested in certification.

Some employers and mechanics prefer the NIASE certification to state certification. It is recognized across the country and used by several private programs, such as the American Automobile Association Approved Shop program and the Shell Autocare program as an indicator of competence.

Conclusions regarding regulation of auto mechanics. The licensing of auto mechanics by the State has not ensured the public of competent auto repair and maintenance work. There are numerous problems with the program, and it has not achieved the desired objective.

Instead of licensing auto mechanics, the responsibility for competent auto repair work should be placed clearly on auto repair dealers. Auto repair dealers should be responsible for hiring and using qualified auto mechanics.

Employers are legally responsible for their employees' performance on the job. The doctrine of *respondeat superior* is a well-established principle of law. It means that an employer is strictly liable for the wrongful acts of any of the employees when the employees are acting within the course and scope of their employment. It also means that employers are responsible for ensuring that their employees are properly qualified and performing their work correctly.

Given this legal responsibility of employers for their employees' performance and the necessity of employers to assess the training, experience, and work performance of their employees, state licensure of auto mechanics is unnecessary.

In the next section, we discuss how the regulation of auto repair dealers can be improved to help to accomplish the objective of competent repair work.

Regulation of Auto Repair Dealers

State regulation of auto repair *dealers* is directed at establishing dealers' responsibility for their auto repair and maintenance services. It consists of the licensing of auto repair dealers and business regulations governing the business transactions of dealers and consumers.

We find that the regulations have not been strictly followed or enforced. While parts of the law are clearly unworkable, the thrust of the law is pertinent to consumer protection and can be made more effective.

To improve regulation, the following problems should be corrected.

- . The scope of regulation has been unnecessarily extended by the board, on the one hand, to cover auto body, glass, paint, and other auto-related specialty shops, and improperly restricted, on the other hand, by DCCA to exempt repairs under manufacturers' new car warranties.
- . Provisions relating to the licensing of auto repair dealers are unnecessarily complicated, and requirements for dealers to have all work done or supervised by licensed mechanics are unrealistic and unenforceable.
- . Stronger provisions are needed to ensure dealers' accountability for repair work.

Scope of regulation. Chapter 437B, HRS, defines repair work as maintenance of and repairs to motor vehicles excluding repairs to tires, lubricating vehicles, and minor services such as changing spark plugs and oil. There is a question as to whether regulation should: (1) cover auto body, paint, and glass shops; and

(2) exclude repairs performed under manufacturers' new car warranties. There is also a question whether the laws covering salvage dealers are adequate.

Auto body, paint, glass, and other repair shops. The board adopted a rule in 1976 to expand the scope of the law to cover auto body shops, auto paint shops, auto glass shops, auto machine shops, radiator shops, or other auto specialty shops, if they perform work involving "the removal, replacement, and/or repairing of any component of the motor vehicle's engine, automatic transmission, brakes, electrical systems, front and rear suspensions, air conditioner and standard transmission/rear axle."²¹

This rule means that these types of shops must be licensed with at least one licensed auto mechanic performing or supervising any mechanical work done in these shops. The shops must also comply with all the business regulations in Chapter 437B, including requirements for itemized invoices, written estimates, etc.

While the rule sounds reasonable, it is neither necessary nor enforced.

There appears to be few problems for consumers from auto body, paint, glass, and other related services. There are only a few complaints each year about any work performed by these types of businesses. Moreover, requiring these shops to hire licensed auto mechanics provides little assurance that the mechanical work they perform will be satisfactory because the licensure of auto mechanics is, in itself, of questionable validity.

This rule has never been strictly followed by the shops or enforced by DCCA. A recent departmental review of auto body repairing and painting shops advertising in the yellow pages revealed that 103 of the 243 advertisers were licensed. The majority, 140, were not, and the department has not determined whether they should

21. Section 16-87-11(c), Hawaii Administrative Rules.

be licensed. The department only checks on these shops when there is a complaint, and there have been few complaints.

Also, for many of these shops, mechanical work is minor or incidental to their primary work. Some of the shops subcontract their mechanical work to auto repair shops. Others perform the mechanical work themselves. However, those performing structural and mechanical work that pose a high risk to the public are already subject to regulation as salvage dealers.

Salvage dealers. Auto body shops working on salvage, wrecked, or dismantled motor vehicles that have been declared total losses by a police officer or an insurer must be licensed.

This type of salvage work requires registration of the vehicle with the county director of finance, licensure as an auto repair dealer that includes being or employing a licensed mechanic, posting a performance bond of not less than \$25,000, and certification by a licensed repair dealer that the rebuilt vehicle conforms to "the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year."²² As of September 1985, eight shops were registered and bonded with the State.

Current regulation appears for the most part to be adequate. However, there is one loophole in the law that should be closed. The strength of the regulation lies in the requirement that the rebuilt vehicle be certified by a licensed repair dealer as conforming to the manufacturer's standards. Without this certification, the vehicle cannot be registered to operate on the highways, and ownership cannot be transferred to the buyer. Unfortunately, the law does not clearly require the

22. Section 7, Act 276, SLH 1984.

certification of conformance to be issued by the *rebuilder* of the vehicle before selling the vehicle. The law states that a certificate must be signed by "a registered or certified motor vehicle repair dealer," not specifically the dealer who did the rebuilding. This permits the rebuilder to sell a rebuilt vehicle without certifying conformance to manufacturer's standards. The unknowing buyer would then be faced with the formidable task of finding a licensed dealer willing to sign the required certificate so that the rebuilt vehicle can be registered. Other dealers are generally not willing to certify to the conformance to standards, because it means assuming legal liability for safe performance of the rebuilt vehicle. Under such circumstances, the buyer would find it difficult or impossible to register the car and may be left with a car that is illegal to drive.

Clarifying the law to require the *rebuilder* to certify conformance to manufacturer's standards before the rebuilt car can be sold would be a more reasonable and effective approach to curbing the sale of nonconforming rebuilt vehicles.

Warranty repairs. Chapter 437B, HRS, does not exempt repair and maintenance work on new vehicles under manufacturers' warranties. Although such repair and maintenance are clearly within the scope of this law, they have been excluded by DCCA.

All new automobile sales dealerships have servicing departments engaged in warranty and nonwarranty automobile repairs. This makes them subject to licensure as auto repair dealers.

As auto repair dealers, they should comply with all the provisions of Chapter 437B, including those relating to workmanship and disclosures in consumer transactions. The department has exempted auto dealers from these workmanship and disclosure laws when they perform auto repairs under warranties. Complaints

involving warranty repairs are routinely referred to the motor vehicle *industry* regulatory program which operates under Chapter 437, HRS.

The motor vehicle *industry* regulatory program is responsible for enforcing contractual agreements between purchasers of new cars and the auto sales dealers. The State's 1984 "lemon law," entitling consumers to a replacement vehicle or the return and refund on a "lemon" under specified conditions, is under this program.

The auto *repair* regulatory program should be responsible for ensuring satisfactory repairs and fair treatment of consumers who use the repair services of these dealers, regardless of whether the repairs are covered by warranty.

Consumers seeking repairs under new car warranties can be at a disadvantage as much as consumers seeking nonwarranty repairs when dealers fail to correct automobile problems after repeated attempts. They may also have the additional frustration and cost of paying for repairs when dealers fail to correct a problem before the warranty coverage expires.

Provisions of Chapter 437B, such as those relating to itemized invoices of labor and parts, the return of replaced parts, performance in accordance with workmanship standards, or the prohibition of false and misleading statements, should be applied to warranty repair cases.

The department should establish policies and procedures to ensure that consumer complaints involving warranty repairs are regularly investigated and reviewed for dealer's compliance with the regulations of both the auto *industry* and the auto *repair* regulatory programs.

Licensing of dealers. Any person or business engaging in auto repair and maintenance services for profit in this State, except those excluded by statute, must be licensed by the State and comply with several conditions of licensure. The licensing requirements established by law are unnecessarily complicated and unenforceable.

Table 3.2
Categories of Auto Repair Dealers

<i>Title</i>	<i>Description</i>	
	<i>Categories Defined in Chapter 437B</i>	<i>Licenses Issued by the Department of Commerce and Consumer Affairs</i>
Motor vehicle repair dealer	Any person who is, or has in his employ, a motor vehicle mechanic registered under Chapter 437B, and who, for compensation engages in the business of diagnosing or repairing malfunctions of motor vehicles.	A licensed dealer.
Certified repair dealer	A dealer is a registered and certified motor vehicle dealer if not less than 50 percent of the mechanics employed by him on a full-time basis are registered-certified mechanics.	Not used.
Motor vehicle repair dealer-salvage	Not specifically defined in statute.	A licensed dealer who has met additional licensing requirements to perform salvage work.

Source: Chapter 437B, HRS, and Department of Commerce and Consumer Affairs, Licensing Branch.

Unnecessary dealer licensing categories. Table 3.2 compares the categories identified in Chapter 437B with the licenses currently being issued by DCCA.

Chapter 437B establishes two categories of auto repair dealers, "motor vehicle repair dealer" and "certified repair dealer." A "motor vehicle repair dealer" is "any person who is, or has in his employ, a motor vehicle mechanic registered under this chapter, and who, for compensation engages in the business of diagnosing or repairing malfunctions of motor vehicles."

A dealer is a "certified repair dealer" if not less than 50 percent of the full-time mechanics are registered-certified mechanics.

DCCA also has two categories of licensure, "motor vehicle repair dealer" and "motor vehicle repair dealer-salvage." The department uses the title "motor vehicle repair dealer" to license all auto repair dealers. It uses the title "motor vehicle repair dealer-salvage" to license those dealers who are also authorized to rebuild

salvaged and wrecked vehicles. This term is not specifically authorized by statute, but it serves a legitimate purpose.

In addition to these licensing categories that are specified in the statute or in use by DCCA, the rules add another category of "registered motor vehicle repair dealer." This title is defined as a motor vehicle repair dealer who is registered with the board. It means the same as the title "motor vehicle repair dealer" as defined in the statute and used by the department.

The only titles necessary to license dealers are those in use by DCCA: "motor vehicle repair dealer" and "motor vehicle repair dealer-salvage." The other two, "certified repair dealer" and "registered motor vehicle repair dealer," serve no useful purpose and are a source of confusion. They should be deleted.

Unenforceable licensing requirements. Dealers are required to comply with three conditions to be licensed.

The first requirement is that the repair dealer be a licensed mechanic or employs one on a full-time employee basis. Compliance is routinely checked only at the time an application is submitted or when a complaint against a dealer is filed and the State conducts an investigation. DCCA does not monitor dealers for compliance with this provision following the initial licensure.

The other two requirements limit repair work to certified specialties and call for the supervision of all unlicensed mechanics by appropriately licensed mechanics. These requirements are also not monitored by the State, and it is doubtful that they are being adhered to by the industry. Considering the shortage of skilled and experienced mechanics generally and certified mechanics in particular, these requirements are unrealistic. The cost of compliance to the industry and enforcement by the State would exceed any benefit to consumers. Moreover, since the licensing of mechanics is of questionable value, there would still be no assurance

of competent auto repair and maintenance services even if the requirements could be enforced.

These requirements for the licensing of auto repair dealers should be eliminated. The State should simply require all auto repair dealers to file their names and addresses and the names of owners and service managers with DCCA as a condition for licensure. This will enable the department to identify dealers and the principals connected with the business in case of complaints.

Need to strengthen dealer accountability. Although the licensing requirements are unreasonable and have been ineffective, regulation of auto repair dealerships and their owners should be continued to establish accountability for consumers seeking redress and to facilitate state action in support of consumers.

In lieu of requirements relating to the hiring and use of licensed mechanics, regulations should focus on requiring repair dealers to assume greater responsibility for their employees and repair services.

There is only one provision in the law focusing on dealers' accountability for shoddy workmanship. "Any wilful departure from or disregard of accepted practices or workmanship"²³ is prohibited and constitutes grounds for suspension, revocation, or other disciplinary action. This provision has been used in disciplinary actions taken by DCCA.²⁴

More specific and pointed regulations focusing on accountability for quality workmanship would provide consumers with greater leverage for transactions with dealers. More specific provisions may also give dealers greater incentives to hire,

23. Section 437B-11(7), HRS.

24. *Motor Vehicle Repair Board v. Taira's Automatic Transmission*, *Hawaii Legal Reporter*, 78-401; and *Motor Vehicle Repair Board v. Hi Performance Sportscar Technician Service*, *Hawaii Legal Reporter*, 78-893.

train, and employ more competent mechanics and ensure proper supervision of mechanics.

Some measures which the Legislature might consider include the following:

1. In cases of complaints, the burden of proof should be placed on dealers to demonstrate that the repair work was performed or supervised by someone with experience in that area of repair.

2. As part of any warranty for repairs, dealers should complete the repair work correctly the second time or refund the customer's money.

3. There could be provisions for more stringent disciplinary action such as higher fines that exceed the financial benefits to dealers of continuing poor services.

4. The board could be authorized to order dealers performing poorly to provide appropriate training for their mechanics.

These kinds of explicit provisions making auto repair dealers more accountable for their work may be more effective in the long run in encouraging satisfactory work than current regulations on the hiring and supervision of licensed mechanics. These provisions may stimulate dealers to screen their employees more carefully before hiring, sponsor apprenticeship programs, supervise workers more effectively, and provide more training for their employees.

Disclosure laws. The State's disclosure laws are designed to curb the most troublesome aspects of dealer transactions with consumers. They are intended to discourage dealers from poor or improper business practices such as unauthorized work or overcharges. They require repair shops to provide each customer with a written estimate before work is performed (unless a waiver is signed), charge no more than a set percentage over the estimate without express approval, give consumers detailed invoices itemizing parts and labor charges, offer the return of

most replaced parts, and post these consumers' rights in the shop. The law also requires that shops maintain certain records of auto repair services.

Prohibitions against a customer signing a work order which does not state the repair requested or the auto's odometer reading, failing to give customers a copy of any document they sign, and subcontracting for work without prior authorization are also part of the disclosure requirements. The law also contains more general prohibitions against misrepresentations and false and misleading statements or promises. These prohibitions have been used by DCCA in resolving consumer complaints.²⁵

However, there is no requirement for dealers to disclose their labor rates and methods of charging for repair work.

In the auto repair industry, labor rates may vary considerably from shop to shop. In addition, some shops may bill a customer for the actual time involved in a repair, and others may use a manual flat rate.

With the manual flat rate, a fixed amount of time is set for each type of repair work (e.g., an hour for relining brakes). This length of time, multiplied by the labor rate, is charged to the customer regardless of the actual time a mechanic may have spent on the repair. Because some repair shops use the manual flat rate and encourage their mechanics to "beat the clock," the actual time for a job may be less than the manual rate.

If customers were informed of labor rates and billing methods at the time a written estimate is prepared and, subsequently, of the actual time spent on the

25. Motor Vehicle Repair Board v. Hi Performance Sportscar Technician Service, *Hawaii Legal Reporter*, 78-893; and Motor Vehicle Repair Board v. Gerald Kesterman, *Hawaii Legal Reporter*, 82-0539.

repair in the invoice, customers would be able to make sounder judgments about a shop's charges. The incorporation of these kinds of disclosures should be considered.

Most consumers are not aware of their rights under the disclosure requirements, the State does not systematically monitor the shops for compliance, and many shops are reportedly not complying with these requirements.

However, violations of any of these rules, particularly the one requiring prior written estimates and authorization for work, are used by state complaints personnel to encourage dealers to settle consumers' complaints informally, without disciplinary hearings. As such, the disclosure laws are useful, and they can be more effective in reducing consumer problems if they are more vigorously enforced.

The Motor Vehicle Repair Industry Board

The board is not necessary for administering Chapter 437B, HRS, and it should be eliminated. In addition, a current problem is that it is an improperly constituted board.

Board is not needed. The functions of the board are no longer needed. The board was established to develop qualifications for the registration of licensees, inquire into the practices and policies of the industry, contract and cooperate with the State Director of Vocational Education for the certification program, and adopt rules.²⁶

Qualification standards are already established, the basic rules are already in place, and there is an ongoing certification program. These were all issues when the licensing program was first instituted and they no longer are significant functions of the board.

26. Section 437B-4, HRS.

The board meets regularly about once a month to approve applications for licensure of dealers upon the recommendation of staff, receive reports and act on complaint cases involving hearings and legal action, and discuss issues pertinent to the law and the industry.

The routine administrative functions relating to applications can readily be assumed by DCCA staff. Consumer complaints and hearings are already being handled by DCCA investigators and attorneys. The views of industry and industry members can easily be obtained without a board.

Nonconforming board composition. The present board is improperly constituted. The statute establishes a seven-member board appointed by the Governor. Three of the members must be persons connected with the industry, and at least two of the industry members must be licensed motor vehicle mechanics. The remaining four are not to be connected with the motor vehicle repair industry. The apparent intent of the statute was to ensure a consumer or general public majority on the board.

Instead of a public member majority, industry members now dominate the board. The board consists of three registered auto mechanics and two other industry members for a total of five persons connected with the industry. In addition to the registered mechanics, one member is an officer and manager of a body shop, and another runs an auto sales and servicing operation. Both are in family-owned businesses regulated by the board. There are only two public members on the board. Since the board's composition is not in compliance with Chapter 437B, HRS, all official actions of this board are open to question and could be challenged.

Consumer Complaints

State assistance to consumers with complaints about auto repair services and shops is the most significant and active part of the motor vehicle repair regulatory program.

Responsibility for the complaints program rests with the Regulated Industries Complaints Office (RICO) of the Department of Commerce and Consumer Affairs. RICO is performing its work for the motor vehicle repair industry satisfactorily, but there is one area where its services to auto repair consumers could be improved. More people should know about its services. RICO's program could be improved with greater consumer recognition of its function.

Greater public recognition. RICO is just one of several agencies in this State helping consumers to resolve their problems with auto repair services and charges.

In 1984, RICO handled 129 consumer complaints. The Better Business Bureau (BBB) received 184 requests for assistance and information relating to auto repair problems in the first half of 1984. And AUTOCAP, the complaints resolution program of the Hawaii Automobile Dealers Association, receives about ten calls a week relating to consumers' auto repair problems.

The activities of private agencies in helping to resolve consumer complaints is advantageous for this community because RICO's jurisdiction over auto repair services and practices is limited by the State's rules and regulations for auto repair. However, RICO also has the power of the State to give it greater leverage than private agencies to encourage settlement of disputes. Unfortunately, the general public is not sufficiently aware of this service. Many of the calls reaching RICO are referrals from the BBB or the State Office of Consumer Protection.

Consumers are generally uninformed of their rights to such items as written estimates and return of replaced auto parts that are established under the

regulatory law. It is likely that the majority of consumers' complaints never reach the State. Helping consumers to be aware of and to insist on their rights in their dealings with auto shops might encourage dealers to comply with the state regulations.

Simply requiring dealers to post a notice of customers' rights, as the rules now specify, has not worked. More assertive action is necessary. Some states print and distribute a brochure summarizing consumers' rights and informing them how to report violations and complaints. California publicizes a toll free number for auto complaints. DCCA should consider similar consumer education activities.

DCCA should publicize its auto repair regulations and complaint resolution services. Greater visibility and use of DCCA's regulations and complaint resolution services would benefit consumers unable to resolve complaints privately and may also encourage dealers to deal more fairly and quickly with unsatisfied customers.

Recommendations

We find that there is a need to continue state regulation of the auto repair industry to protect the public. However, major revisions should be made to the law to remove unnecessary or ineffective provisions and to strengthen provisions and operations that are pertinent to consumer protection.

We recommend that:

1. The Legislature amend Chapter 437B, Hawaii Revised Statutes, to focus regulation on the responsibilities of auto repair dealers by:

- . deleting the requirement for auto mechanics to be licensed or to work under the supervision of licensed mechanics;*
- . deleting the requirement for the board to contract with the State Director of Vocational Education to conduct a certification program;*

- . *deleting the Motor Vehicle Repair Industry Board;*
- . *deleting the requirement for auto repair dealers to use licensed mechanics to work or to supervise all auto repair work;*
- . *simplifying the licensing of auto repair dealers by licensing only the categories of "motor vehicle repair dealer" and "motor vehicle repair dealer-salvage" and only requiring them to register their business names, addresses, and the names of the owners and service managers;*
- . *clarifying the scope of regulation by deleting the requirement for auto body, paint, and glass shops to be licensed;*
- . *including under regulation the repair and maintenance of vehicles under manufacturers' warranty;*
- . *enacting new provisions to increase dealers' accountability for proper performance of repair work by: (a) placing the burden of proof on dealers that repair work was performed or supervised by experienced mechanics; (b) as part of any warranty for repairs, requiring dealers to complete the repair work correctly the second time or refund the customer's money; (c) adopting provisions for stricter disciplinary action such as higher fines against those dealers who consistently perform poorly; (d) authorizing the department to order dealers performing poorly to provide appropriate training for their mechanics; and (e) requiring dealers to disclose labor rates and methods of charging for labor.*

2. *The Legislature amend Section 286-48, HRS, to require repair dealers working on salvaged, wrecked, or dismantled motor vehicles to certify before the vehicle can be sold that the rebuilt vehicle conforms with manufacturer's standards.*

3. *The Department of Commerce and Consumer Affairs conduct a consumer education program to make the public more aware of its rights under the auto repair laws and to publicize the State's complaint resolution services.*

4. *The Department of Commerce and Consumer Affairs seek the opinion of the Attorney General as to whether the board's present composition, which does not appear to conform to statute, affects the legality of the board's official actions, and if so, how the problem might be resolved.*

APPENDIX

RESPONSES OF AFFECTED AGENCIES

COMMENTS ON AGENCY RESPONSES

A preliminary draft of this Sunset Evaluation Report was transmitted on December 12, 1985 to the Motor Vehicle Repair Industry Board and the Department of Commerce and Consumer Affairs for their review and comment. A copy of the transmittal letter to the board is included as Attachment 1 of this Appendix. A similar letter was sent to the department. The responses from the board and the department are included as Attachments 2 and 3.

Basically, the board's position is to maintain the *status quo*, including the continued licensing of auto mechanics. Concerning auto body, paint, glass, and other auto specialty shops which our report says should not be licensed, the board states that we may not have understood that these shops require licensing only if they perform work which needs to be done by a licensed mechanic. We fully understand this, but the basic point is that requiring these shops to hire licensed mechanics provides little assurance that the work they perform will be satisfactory because the licensure of mechanics is, in itself, of questionable validity. Moreover, the rule which requires work to be done or supervised by a licensed mechanic in these shops has not been strictly enforced. However, there is growing concern among some of these shops that strict enforcement of the rule would seriously jeopardize their businesses. This issue appears to be among the more important ones for legislative resolution.

In its response, the Department of Commerce and Consumer Affairs has not expressed any position on the basic issues raised by our report, such as the continued licensing of auto mechanics and the licensing of auto body, paint, glass, and other auto specialty shops. However, it has comments on several other matters.

In our report, we stated that the board's present composition does not appear to conform to statute, and we recommended that the department seek the opinion of the Attorney General whether such a situation affects the legality of the board's official actions. The department states that it does not "necessarily agree that the present board is improperly constructed" and notes further that the department is not responsible for the selection of members of boards and commissions. We are aware, of course, that the department is not the appointing authority for board members, but we are surprised that the department is not concerned that one of its boards may be improperly constituted. Seeking legal advice seems to us to be the reasonable and prudent thing to do.

The department offers comments on the category and definition of "certified mechanic." In our report, we stated that the "certified mechanic" title is not authorized or defined in the statute. In the interest of not further confusing the issue, that is the only point we want to make.

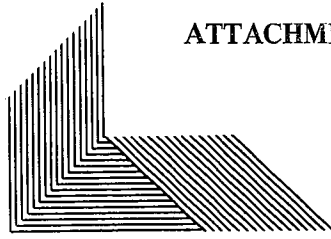
On another matter, the department states: "Recommending that we pay for the air fare of applicants (to take examinations in Honolulu) is asking that we give special services to a select group of individuals. . . ." Our report makes no such recommendation.

Finally, the department offers an explanation for the special training classes and exams which were given in 1985 to a special group of applicants and which were

viewed as unfair, preferential treatment by some in the industry. The department states that no preferential treatment was given, because all applications were filed on time, and all applicants were eligible to sit for the *October 15 and 16, 1985* exams. Our report clearly refers to the exam which was given on *July 29* as being the one which was irregularly scheduled. As to whether all applicants for testing were qualified, the department insists they were. On our part, we find it difficult to understand how the department can so conclude when some of the applicant forms had no work experience description at all.

ATTACHMENT 1

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
485 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813



CLINTON T. TANIMURA
AUDITOR

December 12, 1985

COPY

Mr. Raymond S. Y. Luke, Chairperson
Motor Vehicle Repair Industry Board
Department of Commerce and Consumer Affairs
State of Hawaii
Honolulu, Hawaii 96813

Dear Mr. Luke:

Enclosed are eight preliminary copies, numbered 4 through 11, of our *Sunset Evaluation Report, Regulation of Motor Vehicle Repairs, Chapter 437B, Hawaii Revised Statutes*. These copies are for review by you, other members of the board, and your executive secretary. This preliminary report has also been transmitted to Russel Nagata, Director, Department of Commerce and Consumer Affairs.

The report contains our recommendations relating to the regulation of automobile repair. If you have any comments on our recommendations, we would appreciate receiving them by January 13, 1986. Any comments we receive will be included as part of the final report which will be submitted to the Legislature.

Since the report is not in final form and changes may possibly be made to it, we request that you limit access to the report to those officials whom you wish to call upon for assistance in your response. Please do not reproduce the report. Should you require additional copies, please contact our office. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the assistance and cooperation extended to us.

Sincerely,

Clinton T. Tanimura
Legislative Auditor

Enclosures

ATTACHMENT 2

GEORGE R. ARIYOSHI
GOVERNOR



RUSSEL S. NAGATA
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

MOTOR VEHICLE REPAIR INDUSTRY BOARD
STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. BOX 3469
HONOLULU, HAWAII 96801

January 9, 1986

RECEIVED

JAN 9 3 54 PM '86

OFF. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
Office of the Auditor
465 South King Street, Suite 500
Honolulu, Hawaii 96813

Dear Mr. Tanimura,

Thank you for the opportunity to comment on your Sunset Evaluation Report on the Regulation of Motor Vehicle Repairs, Chapter 437B, Hawaii Revised Statutes.

The Board concurs that there is a need to continue state regulation of the auto repair industry to protect the public consumer. The most reasonable method to do this is to continue the Motor Vehicle Repair Industry Board and its attendant responsibilities.

The Board does not concur with the recommendations to delete the requirement for auto mechanics to be licensed nor to delete the requirement that a auto mechanic work under the supervision of a licensed mechanic; nor to delete the requirement for testing by the State Director of Vocational Education; nor to delete the requirement for auto repair dealers to use licensed mechanics. Implementation of the foregoing recommendations may result in the motoring public receiving poor quality automotive repair services and flies in the face of the intent and desire of the legislature to provide quality automotive repair services to the motoring public. The rapidly changing technical characteristics of the automobile makes it essential that licensing and testing be expanded rather than removed.

Mr. Clinton Tanimura
January 9, 1986
Page 2

Based on comments contained in your report it would appear there is some misunderstanding regarding the licensing of auto body, paint, and glass shops. Section 16-87-11(c) of the Boards rules clearly state that licensing of an auto body shop, auto paint shop, auto glass shop, auto machine shop, radiator shop or other auto specialty is required only if any one of these shops engages in performing work required for certification as a mechanic.

Further, for your information repair dealers accountability is thoroughly covered in section 437-11 HRS Prohibited Practices; Section 437B-13 HRS Invoices, supplying used parts, customer's copy, and in the board rules at Section 16-87-21, Sign Required and Notice to Customer. It is the Boards opinion that if any future changes are required they can be handled through rule changes. This accountability also includes whatever warranty the repair dealer establishes for his work and includes estimated cost for the expected repairs.

Since Section 283-48(c)(2) HRS and Section 437B-11(11) HRS requires that rebuilt vehicles conform to the manufacturers established repair procedures or specifications and allowable tolerances for a particular model or year, the Boards considers that no further legislation is required in this area.

Considerable attention is drawn to the auto body repair industry's independent efforts at working within the Community College and State Department of Vocational Education to provide special classes for mechanic training and testing. In view of last years proposed Legislative resolutions, proposed bills and committee reports signed by the members of the House Higher Education and the Arts Committee and members of the Consumer Protector and Commerce Committee, the Board considers that the legislature intended that special efforts be made to increase the number of mechanics available for licensing. There was a special training program initiated by the community college, at the request of members of the auto body industry. Tuition for the special classes were paid for by each student. The applications were handled in a routine manner by the department

Mr. Clinton T. Tanimura
January 9, 1986
Page 3

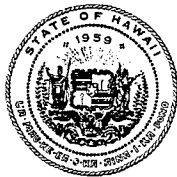
and the Board does not in any way believe that other than normal administrative procedures were followed by the department. The Board strongly feels that the efforts of the Community College, the State Vocational and Education Department and the department in carrying out the consensus of the legislature should be commended, not condemned.

Very truly yours,

A handwritten signature in cursive script that reads "Raymond S. Y. Luke". The signature is written in dark ink and is positioned above the typed name.

Mr. Raymond S. Y. Luke, Chairman
Motor Vehicle Repair Industry
Board

ATTACHMENT 3



GEORGE R. ARIYOSHI
GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

RUSSEL S. NAGATA
Director
COMMISSIONER OF SECURITIES

ROBERT A. ALM
DEPUTY DIRECTOR

January 13, 1986

RECEIVED

JAN 13 3 51 PM '86

OFF. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
Office of the Auditor
465 S. King Street, Suite 500
Honolulu, HI 96813

Dear Mr. Tanimura:

Thank you for the opportunity to comment on your "Sunset Evaluation Report on Motor Vehicle Repairs."

At this time we wish to comment on the recommendations directed at the department as follows:

"The DCCA conduct a consumer education program to make the public more aware of its rights under the auto repair laws and to publicize the State's complaint resolution services."

We are always willing to and do consider consumer education programs, resources permitting.

"The DCCA seek the opinion of the Attorney General as to whether the board's present composition, which does not appear to conform to statute, affects the legality of the board's official actions, and if so, how the problem might be resolved."

We have reviewed your comments in this area and do not necessarily agree that the present board is improperly constructed. We feel it necessary to clarify that the department is not responsible for the selection of members of boards and commissions. In accordance with section 26-34, HRS, members of boards and commissions "shall be nominated and, by and with the advise and consent of the senate, be appointed by the governor." It is our understanding that prior to appointment a review is done of persons nominated for board appointments

Mr. Clinton T. Tanimura
January 13, 1986
Page 2

by the Governor and the Senate. Any apparent conflict of interest would presumably be discovered during the review process. The present members of the board underwent the review process described above and their nominations were confirmed.

We would also like to take the opportunity to comment on other observations and evaluations you have made of the department as follows:

"DCCA, on the other hand, has three categories of licensure.... It has a third license of "certified mechanic" that it issues to those who have passed certification tests. The "certified mechanic" license title is not authorized either by statute or by rule." (p. 3-10)

Section 437B-23, HRS, and section 16-87-25 of the board's rules address the certification process that a person must undergo in order to be "certified" or to be awarded a "certificate" as a mechanic. We believe that by the language contained in both of the aforementioned sections there is clear indication that for one to become a mechanic one must be "certified". Perhaps for clarity it would be beneficial for a definition to be added in the rules for "certified mechanic"; however, we do not find that absent a definition one cannot reasonably deduct that a "certified mechanic" license is one issued to a person who had undergone the certification process.

"DCCA, however, will not waive the requirement for the practical tests or pay air fare for candidates to come to Honolulu for the tests. This is a general departmental policy, not unique to the mechanic's certification program." (p. 3-16)

Practical examinations are statutorily required (see section 437B-23(c), HRS) and in our judgement cannot be waived by the department.

Our policy to not assume costs for the air fare of applicants for licensure is believed to be a reasonable and prudent decision. Monies appropriated to the department are to be expended for purposes of providing services to the general public. Recommending that we

Mr. Clinton T. Tanimura
January 13, 1986
Page 3

pay for the air fare of applicants is asking that we give special services to a select group of individuals who are pursuing interest on their personal behalf, not on the State's. In our fiduciary responsibility to spend tax payers monies wisely, we cannot in good conscious cover expenses for those who are attempting to obtain a license for their personal benefit.

Statements relating to the department's alleged involvement with the special certification program and the handling of applications of those enrolled in the special certification program.

We beg to differ on the accuracy of several statements made in your report with regard to the above subject matter. We initially wish to clarify that the board's executive secretary did not authorize the special certification tests. Further, the department did not give "preferential treatment" to any application filed with us. The 19 applications you refer to in the report were filed one month before the established deadline date of August 23, 1985. They were reviewed and approved in accordance with normal procedures. The 19 applications in addition to the other 111 applications filed by the deadline date, were eligible to sit for the written examination scheduled for October 15 and 16, 1985. Subject to notification by the State Office for Vocational Education that a special certification program had been implemented in July 1985 in which 19 of our applicants were enrolled, and subject to a request that the 19 be permitted to take a written and practical examination as part of the special certification program, we assented to the 19 being tested as requested. It is correct that only after the department became aware of the "stirrings" in the industry about the special certification program did we recommend to the board that they suggest guidelines for future implementation of special certification programs. Perhaps if communication had been better between the department and the State Office for Vocational Education, we all would have been prepared to address the concerns which were raised. We do not, however, foresee the same events happening again as the department and the State Office for Vocational Education have improved communications with each other.

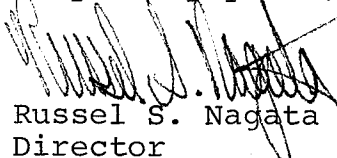
We note that considerable attention is given to the "substantive and technical irregularities" on the part of the DCCA staff in the review of applications. We

Mr. Clinton T. Tanimura
January 13, 1986
Page 4

have evaluated not only the 19 applications mentioned in your report, but also the other 111 applications filed at the same time and found they basically contained the information required. We feel it only fair to mention that the determination of whether an applicant has "substantiate[d] their meeting the minimum qualification", or has provided "adequate descriptions of relevant training or experience", or has "shown inappropriate work experience" can be a subjective judgement. However, we believe that having to do such determinations on a daily basis, and with assistance from the board if necessary, we have made valid assessments of applications. We acknowledge that three out of 130 applications were not signed by the applicants on both forms as required. When this matter was brought to our attention in November 1985, immediate action was taken to have the three applicants sign the one form which lacked their signature.

We appreciate having the opportunity to submit our comments to your report.

Very truly yours,



Russel S. Nagata
Director