

---

# **Sunset Evaluation Update: Regulation of Motor Vehicle Repairs**

---

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

Submitted by

**THE AUDITOR**  
STATE OF HAWAII

Report No. 94-11  
September 1994

---

## Foreword

This report evaluates the regulation of motor vehicle repairs under Chapter 437B, Hawaii Revised Statutes. This evaluation and repeal of the chapter had been scheduled under the Sunset Law. Subsequently, Act 279 of 1994 removed the repeal date and with it the evaluation requirement. Nevertheless, since the work had already been done, we are issuing the report to help decision makers in assessing the regulatory program.

The report presents our findings as to whether the regulatory program complies with policies in the Sunset Law and whether there is a reasonable need to regulate motor vehicle repairs to protect the health, safety, and welfare of the public. It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Section 26H-5, HRS, the report incorporates in the Appendix the draft legislation to improve the program.

We acknowledge the cooperation of the Motor Vehicle Repair Industry Board, the Department of Commerce and Consumer Affairs, and others whom we contacted during the course of our evaluation. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Marion M. Higa  
State Auditor

---

# Table of Contents

## Chapter 1 Introduction

Background on Motor Vehicle Repairs .....	1
Regulatory Program .....	1
Previous Sunset Report .....	3
Objectives of the Evaluation .....	3
Scope and Methodology .....	4

## Chapter 2 Findings and Recommendations

Summary of Findings .....	5
State Should Continue To Regulate Motor Vehicle Repairs .....	5
Regulation of Individual Mechanics Is Unwarranted .....	6
Board Is Still Not Needed .....	9
DCCA Clarification Is Needed on Settlement Agreements and Executive Meetings .....	10
Recommendations .....	11

Notes .....	13
-------------	----

Responses of the Affected Agencies .....	15
--	----

Appendix: Proposed Legislation .....	21
--------------------------------------	----

---

# Chapter 1

## Introduction

---

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes, establishes policies for occupational licensing. The law directs the State Auditor to evaluate licensing statutes scheduled for repeal to determine whether the health, safety, and welfare of the public are best served by reenactment, modification, or repeal.

This report evaluates whether the regulation of motor vehicle repairs under Chapter 437B, HRS, complies with policies for occupational licensing in the Sunset Law. After our work was substantially completed, Act 279 of 1994 removed the December 31, 1995, repeal date for Chapter 437B and made the chapter permanent. However, we are still issuing the report to assist decision makers in assessing the regulatory program.

---

### Background on Motor Vehicle Repairs

Motor vehicle repair dealers and motor vehicle mechanics correct malfunctions of automobiles, trucks, motorcycles, and other vehicles. To restore the vehicle to working condition, they diagnose the malfunction, and repair, replace, or adjust parts.

Those who wish to be mechanics learn their trade by apprenticing with experienced mechanics or by attending formal training programs. Apprentice-trainees and helpers assist mechanics in routine service tasks and simple repairs. In Hawaii, any major work must be done under the supervision of a licensed mechanic (officially designated as a registered or certified mechanic). Training is offered by the University of Hawaii's community colleges. Hawaii high schools also offer auto shop classes.

As of February 1994, Hawaii had 852 licensed motor vehicle repair *dealers*, who operate shops. These included 19 dealers licensed to work with salvaged, wrecked, or rebuilt vehicles. Licensed *mechanics* numbered 2,960, with 2,943 living in the state.<sup>1</sup>

---

### Regulatory Program

Chapter 437B, HRS, enacted in 1975, governs the regulatory program for motor vehicle repairs. Those wishing to repair motor vehicles for compensation must be licensed as repair dealers or mechanics by the Motor Vehicle Repair Industry Board. The board is administratively attached to the Department of Commerce and Consumer Affairs.



The board consists of seven members, appointed by the governor, who serve without compensation. Three members must be connected with the motor vehicle repair industry and four are not connected. Two of the industry members must be licensed mechanics. An executive officer in the department's Professional and Vocational Licensing Division serves as staff to the board and administers its day-to-day operations.

The law defines repair of motor vehicles as maintenance, modifications, and repairs of motor vehicles. However, minor services such as changing tires, lubricating vehicles, installing batteries and other accessories, and replacing spark plugs and air filters are not considered repair work.

It is unlawful for any person to repair motor vehicles for compensation unless the person is licensed as a motor vehicle repair dealer or employs a licensed motor vehicle mechanic. Correspondingly, no mechanic may repair vehicles unless the mechanic is employed by a licensed repair dealer.

The department issues three categories of licenses to mechanics. "Registered mechanics" are those who were working as mechanics at the time licensing was established by statute. "Certified mechanics" are those licensed after passing certification examinations in specialty areas. Finally, "registered certified mechanics" are registered mechanics who subsequently chose to take and pass certification examinations. All licensed mechanics carry a pocket identification card that specifies the category of licensure and the specialties in which the mechanic is certified.

The board has established various specialty classifications of motor vehicle mechanics, for example, transmission, electrical, and brakes. While registered mechanics may work in any classification, others may work only in the specialties for which they are licensed. Licensing in a specialty requires certification in the specialty by the National Institute of Automotive Service Excellence and one to two years of schooling or one to three years of apprenticeship work with experience in the specialty.

Chapter 437B requires that motor vehicle repair dealers register with the State, provide customers with an advance estimate of repair costs, provide an invoice with the price of labor and parts, and return replaced parts upon the customer's request. Fraud, gross negligence, or willfully disregarding industry standards are prohibited. Dealers that restore or rebuild salvaged, wrecked, or dismantled vehicles must post a performance bond of at least \$25,000. For each violation of the law, the Motor Vehicle Repair Industry Board may revoke the license, order restitution, and impose a fine from \$100 to \$2,500.

The department's Regulated Industries Complaints Office (RICO) mediates and resolves consumer complaints, pursues disciplinary action against registrants, and seeks court injunctions and fines against unregistered persons. Final disciplinary decisions are made by the board following a recommended decision from the department's Office of Administrative Hearings. The board must also approve any settlement agreement worked out between RICO and the licensee.

---

## **Previous Sunset Report**

Our 1986 sunset evaluation of motor vehicle repairs under Chapter 437B recommended that the law be reenacted to continue the regulation of motor vehicle repair dealers.<sup>2</sup> We recommended amending the law to delete the Motor Vehicle Repair Industry Board and the licensing of individual mechanics. We also recommended eliminating ineffective or unnecessary provisions, simplifying and clarifying the law, and improving consumer protection.

In addition, we recommended that the Department of Commerce and Consumer Affairs conduct an education program to increase consumer awareness and publicize the State's complaint resolution services. We recommended that the department seek the state attorney general's opinion on whether the board's composition—which had fewer public members than required by law—affected the legality of the board's decisions.

---

## **Objectives of the Evaluation**

This evaluation sought to determine whether the regulation of motor vehicle repairs complies with the policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate motor vehicle repairs to protect the health, safety, and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Establish whether the regulatory program is being implemented effectively and efficiently; and
4. Make recommendations based on findings in these areas.

---

## Scope and Methodology

To accomplish these objectives, we reviewed the literature on motor vehicle repair dealers and mechanics and their regulation. We reviewed statutes and rules on these occupations in Hawaii and any changes in these since our 1986 sunset evaluation.

We also reviewed complaints and other evidence of harm to consumers. We interviewed members of the Motor Vehicle Repair Industry Board, personnel from the Department of Commerce and Consumer Affairs, industry representatives, and other knowledgeable persons. At the Department of Commerce and Consumer Affairs, we reviewed files on board operations, licensing, enforcement, and correspondence.

Our work was performed from January 1994 through June 1994 in accordance with generally accepted government auditing standards.



---

# Chapter 2

## Findings and Recommendations

---

We recommend that the State continue to regulate motor vehicle repairs. In this chapter, we affirm the key recommendations of our 1986 sunset evaluation—to end the regulation of individual mechanics, focus regulation on repair dealers (shops), and terminate the Motor Vehicle Repair Industry Board.

---

### Summary of Findings

1. The State should continue to regulate motor vehicle repairs to help protect consumers from financial harm.
2. The regulation of individual motor vehicle mechanics is unwarranted. The program is confusing, inconsistent, and detracts from consumer protection.
3. The Motor Vehicle Repair Industry Board is unnecessary. The regulatory program could be administered by the Department of Commerce and Consumer Affairs (DCCA).
4. DCCA needs to clarify requirements for settlement agreements and for executive meeting minutes.

---

### State Should Continue To Regulate Motor Vehicle Repairs

*Regulation helps protect the public from harm*

Regulation of motor vehicle repairs is warranted. A substantial number of complaints are made about industry practices and regulation provides protection for consumers.

Evidence exists that motor vehicle repairs have caused financial harm to the public. Complaints to DCCA's Regulated Industries Complaints Office (RICO) are increasing and in 1993 were the third highest among the industries the department regulates. Of the 217 complaints filed in 1993, the three most frequent were unlicensed activity (69), failure to provide an estimate (63), and failure to make proper repairs (63). About 75 percent of complaints were made by consumers.

Enforcement by RICO affords the public some protection. RICO closed 130 cases in 1993. It resolved some complaints by mutual agreement. For others, it sent advisory letters to respondents notifying them of their violations. In many cases, complainants received monetary restitution. Settlements ranged from a few dollars to \$6,000. RICO also imposed fines as high as \$1,600.



Since motor vehicles have become increasingly complex and sophisticated, most consumers cannot assess the type of repair services needed, estimate the costs, and evaluate the results. Regulation has given some protection to consumers in their transactions with repair shops and in obtaining redress.

---

## **Regulation of Individual Mechanics Is Unwarranted**

Unlike motor vehicle repair dealers, who operate shops, the regulation of mechanics is not necessary to protect the public. Other than Michigan, Hawaii is the only state to license mechanics. Few complaints are directed against mechanics. Licensing them does not ensure competency. Mechanic licensing is restrictive and replete with inconsistencies. Therefore, it should be ended.

### ***Few complaints are made against mechanics***

The vast majority of complaints to RICO are lodged against repair dealers, not mechanics. In 1993, RICO received 127 complaints against repair dealers, and 16 against both dealers and mechanics. Only 19 complaints, or about 9 percent, were against mechanics alone. (Another 55 complaints were simply for “unlicensed activity.”) The low volume of complaints against mechanics indicates that they are not causing significant harm to the public. Consequently, the benefits of regulating mechanics, with all of its problems and costs, are highly questionable.

### ***Licensing does not ensure competency***

The purpose of licensing practitioners is to ensure that they possess a certain minimal level of competency. No such assurance results from the licensing of motor vehicle mechanics. The competency of the majority of licensed mechanics is unknown.

In Hawaii, licensed mechanics fall into two main categories. The first category consists of those who were “grandfathered” because they worked as mechanics before 1976 when regulation began. The second category consists of those who were licensed as “certified” mechanics by passing either the certification test of the University of Hawaii or the ASE certification tests offered by the National Institute for Automotive Service Excellence. Of the current total of 2,960 licensed mechanics, 1,965 or 66 percent were licensed by being grandfathered.<sup>1</sup> The competency level of the grandfathered group is unknown.

To add to the problem, licensing does not ensure the continuing competency of licensees to deal with today’s more complex and sophisticated motor vehicles. The regulatory program requires only mechanics who were certified through the ASE examinations to be recertified by ASE every five years to demonstrate their continuing competence. Grandfathered mechanics are exempt from this

requirement. Mechanics certified through the University of Hawaii examinations are also exempt from recertification.

### **Rules are vague and broad**

Applicants for specialty licensing must meet certain qualification standards set forth in the administrative rules before they receive ASE certification. These rules are vague and broad.

The basic qualification standard in Section 16-87-26 of the Hawaii Administrative Rules requires at least two years of full-time, hands-on working experience as an automotive technician/mechanic or in body repair or painting. The requirement is so flexible as to be meaningless. For example, it is not clear how an individual with experience in body painting would qualify for certification as a transmission specialist.

Substitution requirements are similarly vague. The rules allow applicants to substitute up to one year of “relevant” formal training for the two-year work experience requirement. However, the content of the formal training is not always specified. Applicants may also substitute a three- or four-year “bona fide” apprenticeship program for the entire experience requirement. Again, the content is not described and the meaning of “bona fide” remains unclear.

The rules also give the Motor Vehicle Repair Industry Board the right to evaluate all requests for substitution and grant “such credit as appropriate.” The board can give credit even for “work experience other than as an automobile or truck technician/mechanic or body and paint repairer.” Such broad discretion creates the potential for special treatment and inconsistent decisions.

Finally, the qualification standards are not being enforced. License applicants are simply instructed to provide evidence of their work experience to ASE.

### ***Licensing categories create a paradox***

Paradoxically, mechanics with grandfathered licenses who did not have to demonstrate any qualifications for licensure are allowed a wide scope of practice, while those who had to demonstrate their qualifications through testing are limited in their practice.

Those licensed as grandfathered mechanics may perform a full range of repair services. The “grandfather” clause allowed mechanics who had worked for at least two years by January 1, 1976, and who registered with the State by June 30, 1976, to be officially licensed regardless of training, experience, or competence. Consequently, the level of training, skills, and knowledge of these mechanics is unknown.



At the same time, the law requires all other applicants seeking licensure to meet formal work experience or training requirements, and pass certification tests in one or more of the 16 specialty areas designated by the board. These “certified” mechanics are restricted to work in the specialties for which they have been certified. For example, a mechanic who passed the certification test in brake systems is certified to work only on brake systems.

Thus, grandfathered mechanics who did not have to meet any qualification standards are allowed to perform the full range of work in all specialty areas while certified mechanics may work only in those areas for which they are certified.

Furthermore, all repair shops are required to employ at least one full-time mechanic and may perform repairs only in the specialty areas for which their mechanic or mechanics are certified. A repair shop with one “grandfathered” mechanic may legally engage in the full range of repair activities. However, a repair shop with a mechanic certified only in brakes and transmissions may legally repair only brakes and transmissions and not air conditioning or electrical systems, do tune-ups, or provide other services.

### ***Certification restrictions cause problems***

The need for the licensing program to use the numerous specialty classifications established by ASE is questionable. Certification by specialties has made licensing difficult to implement, restrictive, and unenforceable.

The board has 16 specialty classifications. Eight are automotive repair specialties: engine repair, automatic transmission/transaxle, engine performance, manual drive train and axles, suspension and steering, electrical systems, brakes, and heating and air conditioning. Six are truck repair specialties: drive train, brakes, suspension-steering, gasoline engines, diesel engines, and electrical systems. The remaining categories are body work and motorcycles and motor scooters.

Certification by specialty restricts entry into the occupation, and it takes time and money. The ASE offers the examinations twice a year and limits applicants to four specialties per examination. This means that it would take an applicant one year to become certified in all eight automotive specialties and two years for all specialties. The applicant would have to pay a registration fee of \$20 to sit for each examination and another \$15 for each specialty test taken at a sitting.

In practice, the board and DCCA have not systematically required mechanics or repair shops to comply with specialty restrictions on their practice. In theory, repair shops are responsible for ensuring that all work is done or supervised by mechanics certified in the appropriate

specialty. For example, repair work on automatic transmissions can only be done or supervised by a mechanic certified in automatic transmission. It is unrealistic to expect the full range of mechanical work in Hawaii to be performed or supervised by certified mechanics. The law and regulations in this area are clearly unreasonable and have been unenforceable.

***Regulation of repair dealers should be improved***

Mechanics need not be licensed to protect consumers. A more effective approach is simply to regulate motor vehicle repair dealers.

Repair dealers are employers who are legally responsible for the job performance of the mechanics whom they employ. The doctrine of *respondeat superior* is a well-established principle of law. It means that an employer is 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 the employer is responsible for ensuring that employees are properly qualified and performing their work correctly and competently.

By deleting the requirement for mechanics to be regulated, responsibility will be placed more clearly on the motor vehicle repair dealer. Dealers would still be responsible for the requirements of Section 437B-11, HRS, Prohibited Practices. For example, disclosure requirements and prohibition of dishonest or fraudulent practices would continue to exist. The regulatory program would be strengthened because RICO would be able to direct its investigative efforts toward the dealers and take stronger disciplinary action.

---

**Board Is Still Not Needed**

In our 1986 sunset report, we recommended terminating the Motor Vehicle Repair Industry Board because its functions were no longer needed. Regulation could be streamlined by assigning administration of the program to the director of DCCA.

We recognize that the board has made great strides in improving the regulatory program and in adding protections for the consumer. However, we continue to believe that the board is not needed. Routine administrative functions relating to licensing could readily be assumed by DCCA staff, and the views of industry members could be obtained without a board. Even if individual mechanics continue to be licensed, their licensing should be straightforward and require no additional discretion or evaluative expertise.

Other program functions, the certification program and disciplinary actions, do not require a board to administer them. The statute requires the board to contract with the University of Hawaii for a certification



program for mechanics and to approve its certification test. The UH program is now well established and the board does not play a role in determining curriculum or certification requirements. The University of Hawaii administers the certification program and it can continue as an independent program. The board is required to approve license applications, but DCCA's Professional and Vocational Licensing Division pre-screens the applications to ensure that all requirements are met. The board merely "rubber stamps" its approval.

The board also adjudicates about 10 disciplinary actions each year subsequent to a decision recommended by DCCA's Office of Administrative Hearings. However, the DCCA director could conduct these adjudications as is the case with many other regulatory programs. Similarly, the director could take over the board's function of approving or rejecting settlement agreements proposed by RICO.

---

## **DCCA Clarification Is Needed on Settlement Agreements and Executive Meetings**

If the board is continued, DCCA should assist it by clarifying the requirements for settlement agreements and minutes of executive session meetings. This board, like others, is dissatisfied with the amount of information RICO provides for settlement agreements. The executive officer indicates that board members feel they need more information from RICO to ensure their decisions are fair. The board may need clarification about the settlement agreement process and the requirements of due process. DCCA should seek a written opinion from the Department of the Attorney General on the type and amount of information RICO can provide about settlement agreements along with procedures for obtaining the information that would not jeopardize due process.

Another area for clarification is the sufficiency of minutes. DCCA keeps minutes of the board's executive session meetings, but the minutes lack sufficient detail to be in compliance with the law. Chapter 92, HRS provides that minutes need not be full transcripts or recordings, but must be a true reflection of the matters discussed and represent the views of the participants. The substance of all matters proposed, discussed, or decided should be included in the minutes.

Noncompliance with Chapter 92 may result in legal action against the board. Section 92-12(c) provides that any person may commence a suit to require compliance with the law or to determine the applicability of the law to discussions or decisions of the board. Both the board and DCCA, through its executive officer, should ensure that minutes of executive meetings are sufficient to comply with the law. Reviewing and discussing the pertinent material in DCCA's operational manual for boards and commissions would help to achieve this.

---

## Recommendations

1. The Legislature should continue to regulate motor vehicle repairs. The Legislature should consider amending Chapter 437B to:
  - a. Repeal the provisions that regulate motor vehicle mechanics;
  - b. Repeal the provisions for a Motor Vehicle Repair Industry Board; and
  - c. Repeal the provisions that relate to the board's contracting with the University of Hawaii for a certification program.
2. The Department of Commerce and Consumer Affairs should seek a written opinion from the state attorney general on what information the department can provide for settlement agreements that would not jeopardize due process. The department should also enforce the requirements outlined in the statutes and departmental policies on minutes of executive session meetings.



---

## Notes

### Chapter 1

1. Hawaii, Department of Commerce and Consumer Affairs, *Summary/ Geographic Report* (printout), February 4, 1994, pp. 23-24.
2. Hawaii, Legislative Auditor, *Sunset Evaluation Report: Regulation of Motor Vehicle Repairs*, Report No. 86-4, Honolulu, January 1986.

### Chapter 2

1. Hawaii, Department of Commerce and Consumer Affairs, *Summary/ Geographic Report* (printout), February 4, 1994, pp. 23-24.





---

## Responses of the Affected Agencies

### Comments on Agency Responses

We transmitted a draft of this report to the Motor Vehicle Repair Industry Board and to the Department of Commerce and Consumer Affairs on August 8, 1994. A copy of the transmittal letter to the board is included as Attachment 1. A similar letter was sent to the department. The response from the board is included as Attachment 2 and that from the department is included as Attachment 3.

The board agrees with our recommendation to continue to regulate motor vehicle repairs. It disagrees with our recommendation to repeal the provisions of Chapter 437B on the licensing of mechanics, which it claims are essential to the well-being of consumers. However, we found that licensing mechanics is unnecessary, restrictive, and does not ensure competency.

The board also does not agree with our recommendation to repeal the Motor Vehicle Repair Industry Board. It says the board fulfills major functions of adjudicating complaints and proposing legislation. We found, however, that the department could handle the board's key functions. Finally, the board does not agree with our recommendation to repeal the provisions that relate to contracting with the University of Hawaii for mechanic certification because this goes hand in hand with the licensing of mechanics. We believe mechanic licensing is unwarranted and the University of Hawaii certification program could continue independently.

The department says it will take under advisement our recommendation to seek an attorney general opinion on what information the department can provide to the board for settlement agreements that would not jeopardize due process. Concerning our recommendation that the department should enforce the requirements outlined in the statutes and departmental policies on minutes of executive session meetings, the department says it is doing so. However, the minutes we reviewed did not meet the standards in Chapter 92 that they be a true reflection of the matters discussed, represent the views of the participants, and include the substance of all matters proposed, discussed, or decided.

STATE OF HAWAII  
OFFICE OF THE AUDITOR  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813-2917



MARION M. HIGA  
State Auditor  
(808) 587-0800  
FAX: (808) 587-0830

August 8, 1994

Mr. Roy T. Ozaki, Chair  
Motor Vehicle Repair Industry Board  
Department of Commerce and Consumer Affairs  
Kamamalu Building  
1010 Richards Street  
Honolulu, Hawaii 96813

Dear Mr. Ozaki:

Enclosed for your information are 8 copies, numbered 9 to 16 of our draft report, *Sunset Evaluation Update: Motor Vehicle Repairs*. We ask that you telephone us by Wednesday, August 10, 1994, on whether or not you intend to comment on our recommendations. Please distribute the copies to the members of the board. If you wish your comments to be included in the report, please submit them no later than Wednesday, September 7, 1994.

The Department of Commerce and Consumer Affairs, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa  
State Auditor

Enclosures



JOHN WAIHEE  
GOVERNOR



CLIFFORD K. HIGA  
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

September 6, 1994

RECEIVED  
SEP 6 8 42 AM '94  
OFF. OF THE AUDITOR  
STATE OF HAWAII

Marion H. Higa, State Auditor  
Office of the Auditor  
State of Hawaii  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813-2917

Dear Mrs. Higa:

The Motor Vehicle Repair Industry Board ("Board") thanks you for the opportunity to provide comment on the Sunset Evaluation Update for Motor Vehicle Repairs. We will comment on the recommendations as they appear chronologically on page 11 of the report:

1. The Legislature should continue to regulate motor vehicle repairs.

The Board agrees that motor vehicle repairs should continue to be regulated for the protection of the consuming public.

2. The Legislature should consider amending Chapter 437B as follows, to:

- a. Repeal the provisions that regulate motor vehicle mechanics;

The Board disagrees with the repeal of the provision that regulates motor vehicle mechanics, as it feels strongly that the regulation of mechanics is essential to the well-being of the consumer.

The mechanic is the "life-blood" of the repair industry and is considered a professional in his own right. To provide no definition, qualifications, competency testing, regulation or credentializing of mechanics would ultimately result in harm to the consuming public.



The elimination of regulation could easily lead to repair dealers hiring uncertified mechanics or mechanics with no official credentials, without the public being aware that potentially unqualified and incompetent persons would be repairing their cars. The result of error could endanger lives!

Licensing repair dealers but not mechanics as proposed would be analogous to licensing hospitals, but not doctors; animal clinics, but not veterinarians; or beauty shops, but not cosmetologists.

The Board does not see any advantage for the consumer if only the "facility" were licensed and not the practitioner, who actually does the work requiring knowledge and expertise.

- b. Repeal the provisions for a Motor Vehicle Repair Industry Board; and

The Board also disagrees with the repeal of the Board itself, as it does fulfill major functions, primarily in adjudicating consumer complaints and proposing legislation.

The existence of a board permits both an industry and a public perspective in reviewing complaints and legislation. This usually results in well thought-out decisions with varied points of views. It is felt that the system, with a diverse Board, works.

- c. Repeal the provisions that relate to the board's contracting with the University of Hawaii for a certification program.

The Board does not agree with repealing of provisions calling for the Board to contract with the University of Hawaii certification program primarily because this program goes hand in hand with the licensing of mechanics which the Board feels must be maintained.

Again, we thank you for the opportunity to provide comment.

Very truly yours,



Roy T. Ozaki  
Chairman  
Motor Vehicle Repair Industry Board

JOHN WAIHEE  
GOVERNOR



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

CLIFFORD K. HIGA  
DIRECTOR

LINDA CHU TAKAYAMA  
DEPUTY DIRECTOR

September 6, 1994

Marion H. Higa, State Auditor  
Office of the Auditor  
State of Hawaii  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813-2917

RECEIVED  
SEP 6 1 35 PM '94  
OFF. OF THE AUDITOR  
STATE OF HAWAII

Dear Ms. Higa:

Thank you for providing the Department of Commerce and Consumer Affairs ("department") the opportunity to comment on the recommendations directed at the department as contained in the Sunset Evaluation Update: **Motor Vehicle Repairs**.

At the end of the report it is recommended the department "seek a written opinion from the state attorney general on what information the department can provide for settlement agreements that would not jeopardize due process".

We appreciate your concern and will take this under advisement.

Further, you recommend the department should "enforce the requirements outlined in the statutes and departmental policies on minutes of executive session meetings".

We believe that we are enforcing the requirements of Chapter 92, HRS, regarding executive session minutes. The department has and will continue to, diligently follow all provisions of Chapter 92, HRS, to ensure compliance.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Clifford K. Higa".

Clifford K. Higa  
Director

cc: Noe Noe Tom, Licensing Administrator





## Proposed Legislation

EIGHTEENTH LEGISLATURE, 1995  
STATE OF HAWAII

---

## A BILL FOR AN ACT

RELATING TO MOTOR VEHICLE REPAIRS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. Section 437B-1, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       "**§437B-1 Definitions.** As used in this chapter:

4       ["Board" means the motor vehicle repair industry board.

5       "Certified mechanic" is a motor vehicle mechanic who has  
6 successfully passed the certification tests in any or all of the  
7 certification specialties set forth in this chapter.]

8       "Chlorofluorocarbon" or "CFC" means any member of the family  
9 of substances containing carbon, fluorine, and chlorine,  
10 including, without limitation, those compounds known as CFC-11,  
11 CFC-12, CFC-13, CFC-14, CFC-113, CFC-114, CFC-115, CFC-116,  
12 CFC-500, CFC-502, and CFC-503, and any combination or mixture  
13 containing any of these chlorofluorocarbon compounds.

14       "Crash parts" means motor vehicle replacement parts, either  
15 sheet metal or plastic, which constitute the visible exterior of  
16 the vehicle, including inner and outer panels, and which are  
17 repaired or replaced as the result of a collision.

18       "Department" means the department of commerce and consumer  
19 affairs.

1 "Director" means the director of commerce and consumer  
2 affairs.

3 "Hydrochlorofluorocarbon" or "HCFC" means any member of the  
4 family of substances containing hydrogen, carbon, fluorine, and  
5 chlorine, including, without limitation, those compounds known as  
6 HCFC-22 and HCFC-123, and any combination or mixture containing  
7 any of these hydrochlorofluorocarbon compounds.

8 "Mobile air conditioner" means an air conditioner designed  
9 for installation in a motor vehicle.

10 "Motor vehicle" means any passenger car, truck, truck  
11 tractor, motorcycle, or motor scooter, as defined in section  
12 286-2, and the integral parts thereof.

13 ["Motor vehicle mechanic" means any person whether  
14 self-employed or employed by another, who, for compensation,  
15 engages in the diagnosis or repair of malfunctions of motor  
16 vehicles, and may be classified as "intermediate" or "journeyman"  
17 as the terms are commonly used in the motor vehicle repair  
18 industry.

19 "Motor vehicle mechanic helper" means any person who, for  
20 compensation, engages in the diagnosis or repair of malfunctions  
21 of motor vehicles under the supervision of a registered motor  
22 vehicle mechanic.]

1 "Motor vehicle repair dealer" means any person [who is, or  
2 has in the person's employ, a motor vehicle mechanic registered  
3 under this chapter and] who, for compensation, engages in the  
4 business of diagnosing or repairing malfunctions of motor  
5 vehicles.

6 "Refrigerant recovery and recycling equipment" means a  
7 device used to recover and to purify CFCs for later reuse.

8 ["Registered mechanic" is a motor vehicle mechanic who has  
9 registered in accordance with this chapter.]

10 "Repair of motor vehicles" means all maintenance of and  
11 modifications and repairs to motor vehicles, including the  
12 rebuilding or restoring of rebuilt vehicles as defined in section  
13 286-2, but excluding repairing tires, changing tires, lubricating  
14 vehicles, installing light bulbs, batteries, windshield wiper  
15 blades, and other minor accessories, cleaning, adjusting, and  
16 replacing spark plugs, replacing oil and air filters, and other  
17 minor services[, which] as the [board] department determines by  
18 rule [determines may be performed by persons without the skills  
19 and knowledge required of motor vehicle mechanics and helpers].  
20 No service shall be designated as minor, for purposes of this  
21 section, if the [board] department finds that performance of the  
22 service [requires mechanical expertise,] has given rise to a high



1 incidence of fraud or deceptive practices, or involves a part of  
2 the vehicle essential to its safe operation."

3       SECTION 2. Section 437B-2, Hawaii Revised Statutes, is  
4 amended to read as follows:

5       "**§437B-2 Applicability of chapter.** This chapter does not  
6 apply to:

7       (1) Employees of the county, state, or federal governments  
8           when carrying out the functions of governmental  
9           employment; or

10       (2) Employees of a commercial or business enterprise who  
11           engage in the repair of motor vehicles which are owned,  
12           maintained, and operated exclusively by [such] that  
13           commercial or business enterprise and which are not  
14           leased or rented to others; provided that employees who  
15           are qualified to register as motor vehicle repair  
16           dealers may voluntarily register pursuant to this  
17           chapter."

18       SECTION 3. Section 437B-3, Hawaii Revised Statutes, is  
19 repealed.

20       ["**§437B-3 Motor vehicle repair industry board.** There shall  
21 be a motor vehicle repair industry board consisting of seven  
22 members. Three members of the board shall be persons connected

1 with the motor vehicle repair industry and at least two of those  
2 members shall be motor vehicle mechanics registered under this  
3 chapter. The remaining four members shall not be connected with  
4 the motor vehicle repair industry."]

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

7 "§437B-4 Powers and duties of [board.] department. In  
8 addition to any other powers and duties authorized by law, the  
9 [board,] department, in accordance with this chapter and chapter  
10 91, shall:

- 11 (1) [Establish] Adopt rules establishing such  
12 qualifications for the registration of motor vehicle  
13 repair dealers [and motor vehicle mechanics] as may be  
14 necessary for the welfare of the public and the motor  
15 vehicle repair industry[, provided that no person shall  
16 be registered as a motor vehicle mechanic without first  
17 receiving certification as provided by this chapter];
- 18 (2) Inquire into the practices and policies of the motor  
19 vehicle repair industry and [make] adopt rules with  
20 respect to such practices and policies as may be deemed  
21 important and necessary by the [board] department for  
22 the welfare of the public and the motor vehicle repair

1 industry;

2 [(3) Contract and cooperate with the University of Hawaii in  
3 developing and administering the certification program  
4 provided for in this chapter;

5 (4)] (3) Adopt, amend, and repeal such rules not  
6 inconsistent with this chapter, as the [board]  
7 department deems appropriate for effectuating the  
8 purpose of this chapter and to ensure the welfare of  
9 the public;

10 [(5)] (4) Adopt rules pursuant to chapter 91 necessary to  
11 implement [the provisions of] this chapter relating to  
12 CFCs; and

13 [(6)] (5) Enforce this chapter and rules adopted pursuant  
14 thereto."

15 SECTION 5. Section 437B-7, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "§437B-7 Registration required. [On or after January 1,  
18 1976, it shall be unlawful for any person to] No person may  
19 engage in [the repair of motor vehicles for compensation]  
20 business as a motor vehicle repair dealer without registering [as  
21 a motor vehicle repair dealer or motor vehicle mechanic] in  
22 accordance with this chapter. [Every motor vehicle repair dealer



1 shall be a motor vehicle mechanic or shall have at least one  
2 motor vehicle mechanic in the dealer's employ. No motor vehicle  
3 mechanic shall engage in the repair of motor vehicles unless that  
4 person is also registered as a motor vehicle repair dealer or  
5 unless that person is in the employ of a motor vehicle repair  
6 dealer.] Registration shall include submission of a completed  
7 application for registration which shall be accompanied by the  
8 payment of appropriate fees. The director shall prescribe the  
9 form of the application."

10 SECTION 6. Sections 437B-7.5 and 437B-8, Hawaii Revised  
11 Statutes, are repealed.

12 ["[§437B-7.5] Requirements for registration of repair  
13 dealer; inspection. (a) Before a motor vehicle repair dealer  
14 registration is granted by the board, the applicant shall  
15 establish that the applicant is or employs a full-time motor  
16 vehicle mechanic registered with the board, and has a repair  
17 facility and the equipment necessary to properly perform work in  
18 the specialty or area of certification in which registration is  
19 requested.

20 (b) The board may inspect an applicant's repair facility  
21 and equipment prior to registration, and may conduct subsequent  
22 inspections of repair facilities to verify continued compliance

1 with subsection (a).

2       **[\$437B-8] Powers to classify and limit registration. (a)**  
3 The board shall adopt rules necessary to effect the  
4 classification of motor vehicle mechanics in a manner consistent  
5 with the certification program established by this chapter, and  
6 shall limit the motor vehicle repair activities of a registrant  
7 to those areas for which the registrant is certified or  
8 registered.

9       (b) An applicant may make application for registration in  
10 more than one classification if the applicant is certified for  
11 each classification and otherwise meets the qualification for  
12 registration as prescribed by the board. If the applicant is  
13 registered for more than one classification, the applicant shall  
14 pay the registration fee but shall not be required to pay any  
15 additional registration fee."]

16       SECTION 7. Section 437B-9, Hawaii Revised Statutes, is  
17 amended to read as follows:

18       **"§437B-9 Fees: application; biennial renewals;**  
19 **registration; restoration. (a)** The fees for each application,  
20 original biennial registration, and renewal for the motor vehicle  
21 repair dealer [and the motor vehicle mechanic] shall be as  
22 provided in rules adopted by the department pursuant to chapter

1 91. At the time of registration renewal, each registrant shall  
2 submit a completed renewal application and all applicable fees,  
3 and shall demonstrate continued compliance with all registration  
4 [and certification] requirements.

5 (b) Any motor vehicle repair dealer maintaining more than  
6 one motor vehicle repair facility shall separately register each  
7 repair facility[, providing the name of the full-time motor  
8 vehicle mechanic for the facility,] and pay a fee for each  
9 facility.

10 (c) The renewal fee shall be paid to the [board] department  
11 on or before June 30 of each odd-numbered year. Failure,  
12 neglect, or refusal of any registrant to pay the biennial renewal  
13 fee before the date shall constitute a forfeiture of the  
14 registration. Any registration may be restored within one year  
15 after the date of forfeiture upon compliance with the renewal  
16 requirements and upon written application and the payment of the  
17 required fee plus an amount equal to fifty per cent thereof. Any  
18 registrant who fails to restore registration within one year from  
19 the date of forfeiture shall reapply for registration as a new  
20 applicant."

21 SECTION 8. Section 437B-10, Hawaii Revised Statutes, is  
22 repealed.



1       ["§437B-10] **Certified repair dealer.** A dealer is a  
2 registered and certified motor vehicle repair dealer if not less  
3 than fifty per cent of the mechanics employed by the dealer on a  
4 full-time basis are registered-certified mechanics."]

5       SECTION 9. Section 437B-11, Hawaii Revised Statutes, is  
6 amended to read as follows:

7       "**§437B-11 Prohibited practices.** In addition to any other  
8 grounds for disciplinary action authorized by law, the following  
9 acts or omissions related to the repair of motor vehicles shall  
10 be grounds for invoking the enforcement procedures of section  
11 437B-12:

12       (1) Making or authorizing in any manner or by any means  
13           whatever any statement written or oral which is untrue  
14           or misleading, and which is known, or which by the  
15           exercise of reasonable care should be known, to be  
16           untrue or misleading;

17       (2) Causing or allowing a customer to sign any work order  
18           that does not state the repairs requested by the  
19           customer or the automobile's odometer reading at the  
20           time of repair;

21       (3) Failing or refusing to give to a customer a copy of any  
22           document requiring the customer's signature, as soon as

- 1           the customer signs the document;
- 2       (4) Any other conduct that constitutes fraud;
- 3       (5) Conduct constituting gross negligence;
- 4       (6) Failure to comply with this chapter or rules adopted
- 5           pursuant to it;
- 6       (7) Any wilful departure from or disregard of accepted
- 7           practices or professional standards;
- 8       (8) Making false promises of a character likely to
- 9           influence, persuade, or induce a customer to authorize
- 10          the repair, service, or maintenance of a motor vehicle;
- 11       (9) Having repair work subcontracted without the knowledge
- 12          or consent of the customer unless the motor vehicle
- 13          repair dealer[, mechanic, or apprentice] demonstrates
- 14          that the customer could not reasonably have been
- 15          notified;
- 16       (10) Conducting the business of motor vehicle repair in a
- 17          place other than stated on the registration except that
- 18          mobile repair facilities may be permitted if the
- 19          registration so indicates;
- 20       (11) Rebuilding or restoring of rebuilt vehicles as defined
- 21          in section 286-2 in such a manner that it does not
- 22          conform to the original vehicle manufacturer's

1           established repair procedures or specifications and  
2           allowable tolerances for the particular model and year;  
3       (12) Subcontracting, recommending, or referring motor  
4           vehicle repair work to, or in any way assisting, a  
5           motor vehicle repair dealer [or mechanic] whose  
6           registration [or certification] is not in full  
7           compliance with this chapter;  
8       [(13) Failure to directly supervise a motor vehicle mechanic  
9           apprentice/trainee or motor vehicle mechanic helper;]  
10      [(14)] (13) Servicing mobile air conditioners without using  
11           refrigerant recovery and recycling equipment that is  
12           certified by Underwriter Laboratories, Incorporated or  
13           was in use by the motor vehicle repair industry prior  
14           to December 31, 1989;  
15      [(15)] (14) Performing service on any motor vehicle or mobile  
16           air conditioner after January 1, 1994, without  
17           successful completion of an appropriate training course  
18           in the recovery and recycling of CFC and HCFC  
19           refrigerants, which included instruction in the proper  
20           use of refrigerant recovery and recycling equipment  
21           that is certified by Underwriter Laboratories,  
22           Incorporated; and



1     ~~[(16)]~~ (15) Violating chapter 342C."

2           SECTION 10. Section 437B-12, Hawaii Revised Statutes, is  
3 amended as follows:

4           1. By amending subsection (a) to read:

5           "(a) In addition to any other actions authorized by law, in  
6 accordance with chapter 91, the [board] director may fine,  
7 suspend, revoke, or refuse to renew the registration of a motor  
8 vehicle repair dealer [or mechanic] for any violation of this  
9 chapter or rules adopted pursuant thereto. The [board] director  
10 may also order restitution as provided in subsection (c)."

11          2. By amending subsections (c) and (d) to read:

12          "(c) In lieu of or in addition to the fine imposed under  
13 this section, the [board] director may require the motor vehicle  
14 repair dealer [or mechanic] to make restitution to the customer.  
15 Restitution may be imposed in lieu of a fine even though the  
16 amount may exceed the maximum fine set forth in subsection (b).

17          (d) If a motor vehicle repair dealer operates more than one  
18 motor vehicle repair facility in this State, the [board] director  
19 pursuant to subsection (a) may only revoke, suspend, or refuse to  
20 renew the registration of the specific motor vehicle repair  
21 facility that has violated this chapter. The violation, or the  
22 action by the [board,] director, shall not affect in any manner

1 the right of the motor vehicle repair dealer to operate the  
2 dealer's other motor vehicle repair facilities; provided that the  
3 [board] director may suspend, revoke, or refuse to renew the  
4 registration for all motor vehicle repair facilities operated in  
5 this State by a motor vehicle repair dealer upon a finding that  
6 the motor vehicle repair dealer has, or is, engaged in a course  
7 of repeated and wilful violations of this chapter, or rules  
8 adopted pursuant thereto."

9       SECTION 11. Section 437B-13, Hawaii Revised Statutes, is  
10 amended to read as follows:

11       "**§437B-13 Invoices; supplying crash parts or used parts;**  
12 **customer's copy.** All work done by a motor vehicle repair dealer,  
13 [mechanic, or apprentice,] including all warranty work, shall be  
14 recorded on an invoice and shall describe all service work done  
15 and parts supplied. Service work and parts shall be listed  
16 separately on the invoice, which shall also state separately the  
17 subtotal prices for service work and for parts, not including the  
18 general excise tax, and shall state separately the tax, if any,  
19 applicable to parts and service work. If any crash, used,  
20 rebuilt, or reconditioned parts are supplied, the invoice shall  
21 clearly state that fact. If a part of a component system is  
22 composed of new and used, crash, rebuilt, or reconditioned parts,

1 the invoice shall clearly state that fact. One copy shall be  
2 given to the customer and one copy shall be retained by the motor  
3 vehicle repair dealer."

4 SECTION 12. Section 437B-14, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "[[]§437B-14[[]] Return of replaced parts; exceptions. Upon  
7 request of the customer at the time the work order is taken, the  
8 motor vehicle repair dealer[, mechanic, or apprentice] shall  
9 return replaced parts to the customer at the time of the  
10 completion of the work excepting such parts as may be exempt  
11 because of size, weight, or other similar factors from this  
12 requirement by rule of the [board] department and excepting such  
13 parts as the motor vehicle repair dealer[, mechanic, or  
14 apprentice] is required to return to the manufacturer or  
15 distributor under a warranty arrangement. If the parts must be  
16 returned to the manufacturer or distributor, the dealer[,  
17 mechanic, or apprentice] at the time the work order is taken  
18 shall offer to show, and upon acceptance of the offer, shall show  
19 the parts to the customer upon completion of the work, except  
20 that the dealer shall not be required to show a replaced part  
21 when no charge is being made for the replacement part."

22 SECTION 13. Section 437B-15, Hawaii Revised Statutes, is



1 amended to read as follows:

2       "§437B-15 Estimate for labor and parts. (a) The motor  
3 vehicle repair dealer[, mechanic, or apprentice] shall give the  
4 customer a written estimated price for labor and parts necessary  
5 for a specific job prior to commencement of the job. [Such] The  
6 written estimated price need not be given if waived in writing by  
7 the customer. No charge in excess of fifteen per cent of the  
8 estimated price, if the estimated price is less than \$100, or ten  
9 per cent of the estimated price, if the estimated price is in  
10 excess of \$100, shall be charged for parts and labor supplied in  
11 excess of the estimated price, without the prior written or oral  
12 consent of the customer. [Such] This consent shall be obtained  
13 at some time after it is determined that the estimated price is  
14 insufficient and before the labor not estimated is performed or  
15 the parts not estimated are supplied. This provision may be  
16 waived in writing by the customer, provided that such waiver by  
17 its terms shall be effective only after the dealer [or mechanic]  
18 has made reasonable efforts to contact the customer. The form  
19 and content of any waiver shall be as prescribed by rule of the  
20 [board.] department. Nothing in this section shall be construed  
21 as requiring a motor vehicle repair dealer[, mechanic, or  
22 apprentice] to give a written estimated price if the dealer[,

1 mechanic, or apprentice] does not agree to perform the requested  
2 service. A reasonable fee may be charged for making the  
3 estimate.

4 (b) If any crash parts manufactured by anyone other than  
5 the original vehicle equipment manufacturer are to be supplied or  
6 installed, the estimate shall clearly state that fact and  
7 identify each of those crash parts. In identifying the crash  
8 parts which are not manufactured by the original vehicle  
9 equipment manufacturer, the motor vehicle repair dealer[,  
10 mechanic, or apprentice] may include information on any  
11 applicable manufacturer's warranty and information about the  
12 part's compliance with any certified testing program.

13 (c) No motor vehicle repair dealer[, mechanic, or  
14 apprentice] shall use crash parts which are not manufactured or  
15 supplied by the original vehicle equipment manufacturer unless  
16 the owner of the motor vehicle accepts the use of such parts and  
17 signs the estimate acknowledging the use and source of the crash  
18 parts."

19 SECTION 14. Section 437B-16, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "[[]§437B-16[[]] **Records required; inspection.** Each motor  
22 vehicle repair dealer shall maintain such records as are required

1 by rules adopted by the [board.] department. The records shall  
2 be open for reasonable inspection by the [board] department or  
3 other law enforcement officials. All such records shall be  
4 maintained for at least two years."

5 SECTION 15. Section 437B-17, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "[[]§437B-17[[]] Sign required concerning [board;] notice to  
8 customer. The [board] department shall design and approve of a  
9 sign which shall be placed in all motor vehicle repair dealer  
10 locations in a place and manner conspicuous to the public.  
11 [Such] The sign shall give notice that inquiries concerning  
12 service may be made to the [board] department and shall contain  
13 the telephone number of the [board.] department. The sign shall  
14 also give notice that the customer is entitled to a return of  
15 replaced parts upon the customer's request therefor at the time  
16 the work order is taken."

17 SECTION 16. Section 437B-19, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "[[]§437B-19[[]] Jurisdiction of circuit court; procedure.  
20 The circuit court of the judicial circuit in which any person  
21 carries on, or attempts to carry on, business as a motor vehicle  
22 repair dealer [or acts or holds oneself out as a motor vehicle



1 mechanic or motor vehicle mechanic apprentice] in violation of  
2 this chapter, or any rule [made] adopted pursuant to this  
3 chapter, [shall] on application of the [board,] department, shall  
4 issue an injunction or other appropriate order restraining [such]  
5 that conduct.

6       The proceedings under this section shall be governed by the  
7 Hawaii [Rules of Civil Procedure,] rules of civil procedure,  
8 except that no undertaking shall be required, and the [board]  
9 department shall not be required to allege facts necessary to  
10 show or tending to show lack of an adequate remedy at law or  
11 irreparable injury."

12       SECTION 17. Section 437B-21, Hawaii Revised Statutes, is  
13 amended to read as follows:

14       "[[§437B-21[]] **Civil action.** Nothing in this chapter  
15 shall prohibit the bringing of a civil action against a motor  
16 vehicle repair dealer[, mechanic, or apprentice] by an  
17 individual."

18       SECTION 18. Sections 437B-23, 437B-23.5, and 437B-24,  
19 Hawaii Revised Statutes, are repealed.

20       ["§437B-23 **Certification program.** (a) The board shall  
21 contract with the University of Hawaii to develop and administer  
22 a certification program for motor vehicle mechanics.

1       (b) The certification program shall provide for issuing a  
2 certificate to mechanics generally skilled in the repair of motor  
3 vehicles and to mechanics who specialize in certain areas of  
4 motor vehicle repair. A person may be certified as being  
5 generally skilled in the repair of motor vehicles, specially  
6 skilled in one or more areas of motor vehicle repair, or both  
7 generally and specially skilled. Each area shall be separately  
8 tested and certified. The program shall provide for  
9 apprenticeship leading to certification as a mechanic. The  
10 program may be an apprenticeship program registered with the  
11 department of labor and industrial relations in accordance with  
12 chapter 372. Nothing in this section or chapter shall prevent a  
13 student in a course leading to certification from repairing motor  
14 vehicles so long as the student is supervised by a mechanic.

15       (c) The certification test shall be approved by the board  
16 and if written, shall be given orally at the request of the  
17 person being tested. Each application for certification shall be  
18 accompanied by a nonrefundable examination fee as provided in  
19 rules adopted by the department pursuant to chapter 91.

20       (d) There shall be no limit on the number of times a person  
21 may apply for certification; provided that any person failing the  
22 examination must wait thirty days before retaking the test.

1       (e) All persons who take and pass the certification test  
2 shall be awarded a certificate which shall be posted in a  
3 prominent place at their place of business or employment and a  
4 patch which may be worn on clothing apparel. The University of  
5 Hawaii shall design and procure the certificate and patch.

6       **§437B-23.5 Apprentices and helpers.** It shall be unlawful  
7 for any motor vehicle mechanic apprentice/trainee or motor  
8 vehicle mechanic helper to assist a motor vehicle repair dealer  
9 or motor vehicle mechanic unless the apprentice or helper works  
10 under the direct supervision of a registered or certified motor  
11 vehicle repair dealer or motor vehicle mechanic. All motor  
12 vehicle mechanic apprentices/trainees and motor vehicle helpers  
13 shall be assigned to and shall be the responsibility of a  
14 registered or certified motor vehicle mechanic, provided that  
15 each registered or certified mechanic shall have assigned to the  
16 mechanic not more than a total of five apprentices/trainees or  
17 helpers. In the event that a motor vehicle mechanic, who is  
18 assigned one or more motor vehicle mechanic apprentices/trainees  
19 or motor vehicle helpers, is terminated from employment, the  
20 motor vehicle repair dealer shall have thirty days to replace the  
21 motor vehicle mechanic in order to reassign the  
22 apprentices/trainees or helpers.



1        **[§437B-24] Certification required for mechanics prior to**  
2 **registration.** (a) Except as provided in subsection (b) below,  
3 every mechanic applying for registration shall have passed the  
4 appropriate certification test provided for in this chapter.

5        (b) Notwithstanding any provision of this chapter, any  
6 person who has been engaged as a motor vehicle mechanic for a  
7 period of at least two years prior to January 1, 1976, and who  
8 has applied for registration as a motor vehicle mechanic under  
9 this chapter on or before June 30, 1976, shall not be required to  
10 take the certification test prescribed in this chapter prior to  
11 registration."]

12        SECTION 19. Section 437B-25, Hawaii Revised Statutes, is  
13 amended to read as follows:

14        "[[]§437B-25[[]] **Suits by the office of consumer protection.**  
15 Nothing in this chapter shall prevent the director of the office  
16 of consumer protection from filing an action against any motor  
17 vehicle repair dealer[, mechanic, or apprentice] for violation of  
18 section 480-2."

19        SECTION 20. Section 437B-26, Hawaii Revised Statutes, is  
20 amended to read as follows:

21        "**§437B-26 Bond required to work on salvaged, wrecked, or**  
22 **dismantled motor vehicles; forfeiture.** (a) Any motor vehicle

1 repair dealer desiring to engage in the business of restoring or  
2 rebuilding salvaged, wrecked, or dismantled vehicles shall submit  
3 to the [board] department a performance bond, with corporate  
4 surety satisfactory to the [board.] department. The amount of  
5 the bond shall be not less than \$25,000 and the condition of the  
6 bond shall be the satisfactory rebuilding or restoration of  
7 salvaged, wrecked, or dismantled vehicles.

8 (b) When the [board] department finds that a registrant has  
9 wilfully departed from or disregarded accepted practices of  
10 workmanship with respect to work performed under section  
11 437B-11(11), the [board may,] department, in accordance with  
12 chapter 91, may order the forfeiture to the State of the  
13 performance bond submitted under subsection (a).

14 (c) Failure, refusal, or neglect to maintain in full force  
15 and effect a bond shall cause the automatic suspension of the  
16 registration effective as of the date of expiration or  
17 cancellation of the bond. The registration shall not be  
18 reinstated until a bond as required under this section is  
19 received by the [board.] department.

20 Failure to effect a reinstatement of a suspended  
21 registration within sixty days of the suspension shall cause the  
22 registration to be terminated, thereby forfeiting all

1 registration and biennial renewal fees.

2       A registrant [may], within fifteen calendar days after  
3 receipt of notification of the registration termination, may  
4 request an administrative hearing pursuant to chapter 91 to  
5 review the termination."

6       SECTION 21. Act 202, Session Laws of Hawaii 1993, is  
7 amended as follows:

8       1. By amending section 1 to read:

9       "SECTION 1. Chapter 437B, Hawaii Revised Statutes, is  
10 amended by adding two new sections to be appropriately designated  
11 and to read as follows:

12       "§437B-       Citation for unregistered activity. (a) In  
13 addition to any other remedy available, an investigator may issue  
14 citations to persons acting as or engaging in the business of a  
15 motor vehicle [mechanic or] repair dealer within the State  
16 without having [a registration certificate] registered previously  
17 [obtained] under and in compliance with this chapter and the  
18 rules adopted by the [director.] department.

19       (b) Each citation shall be in writing and shall describe  
20 the basis of the citation, including the specific statutory  
21 provisions alleged to have been violated, and may contain an  
22 order of abatement, and an assessment of civil penalties as



1 provided in section 437B-11.4. All penalties collected under  
2 this section shall be deposited in the special fund established  
3 under section 26-9(o).

4 (c) Service of a citation issued under this section shall  
5 be made by personal service, or by certified mail, restricted  
6 delivery, sent to the last known business or residence address of  
7 the person cited.

8 (d) Any person served with a citation under this section  
9 may submit a written request to the director for a hearing,  
10 within twenty days of the receipt of the citation, with respect  
11 to: the violations alleged, the scope of the order of abatement,  
12 or the amount of the civil penalties assessed.

13 (e) If the person cited under this section timely notifies  
14 the director of the request for a hearing, the director shall  
15 afford the person an opportunity for a hearing in accordance with  
16 chapter 91. The hearing shall be conducted by the director, or  
17 the director may designate a hearings officer to hold the  
18 hearing. The director or any hearings officer designated by the  
19 director shall have the power to issue subpoenas, administer  
20 oaths, hear testimony, find facts, make conclusions of law, and  
21 issue a final order.

22 (f) If the person cited under this section does not submit

1 a written request to the director for a hearing within twenty  
2 days from the receipt of the citation, the citation shall be  
3 deemed a final order of the director.

4 (g) The director may apply to the appropriate court for a  
5 judgment to enforce the provisions of any final order issued by  
6 the director or designated hearings officer pursuant to this  
7 section, including the provisions for abatement and civil  
8 penalties imposed.

9 (h) If any party is aggrieved by the decision of the  
10 director or the designated hearings officer, the party may appeal  
11 in the manner provided in chapter 91 to the circuit court of the  
12 circuit in which the party resides or has the party's principal  
13 place of business or in which the action in question occurred.  
14 The operation of an abatement order shall not be stayed on appeal  
15 unless specifically ordered by a court of competent jurisdiction  
16 after applying the stay criteria enumerated in section 91-14(c).

17 (i) The sanctions and disposition authorized under this  
18 section shall be separate from and in addition to all other  
19 remedies, either civil or criminal, provided in any other  
20 applicable statutory provision.

21 (j) The director may adopt rules pursuant to chapter 91  
22 necessary for the purposes of the section.

1       **§437B- Violation; penalties.** (a) Registrants who  
2 [perform work outside their appropriate specialty or area of  
3 certification or who] aid or abet an unregistered person to evade  
4 this chapter shall be assessed a civil penalty of not more than  
5 \$500 for the first violation; not more than \$1,000 for the second  
6 violation; and not less than \$1,500 or more than \$2,000 for any  
7 subsequent violation.

8       (b) Any person who violates section 437B-7 shall be  
9 assessed a civil penalty of not more than \$500 for the first  
10 violation; not more than \$1,000 for the second violation; not  
11 more than \$2,000 for the third violation; and not more than  
12 \$2,500 for any subsequent violation."

13       2. By amending section 4 to read:

14       "SECTION 4. This Act shall take effect upon its approval  
15 [and]; provided that section 1 shall be repealed on June 30,  
16 1996."

17       SECTION 22. Section 26-9, Hawaii Revised Statutes, is  
18 amended by amending subsection (c) to read as follows:

19       "(c) The board of acupuncture, board of public accountancy,  
20 board of barbers, board of cosmetology, boxing commission, board  
21 of chiropractic examiners, contractors license board, board of  
22 dental examiners, board of electricians and plumbers, elevator



1 mechanics licensing board, board of professional engineers,  
2 architects, surveyors, and landscape architects, board of hearing  
3 aid dealers and fitters, board of massage therapy, board of  
4 medical examiners, motor vehicle industry licensing board, [motor  
5 vehicle repair industry board,] board of examiners in  
6 naturopathy, board of nursing, board of examiners of nursing home  
7 administrators, board of dispensing opticians, board of examiners  
8 in optometry, board of osteopathic examiners, pest control board,  
9 board of pharmacy, board of physical therapy, board of  
10 psychology, board of private detectives and guards, real estate  
11 commission, board of veterinary examiners, board of speech  
12 pathology and audiology, and any board, commission, program, or  
13 entity created pursuant to or specified by statute in furtherance  
14 of the purpose of this section including but not limited to  
15 section 26H-4, or chapters 484, 514A, and 514E shall be placed  
16 within the department of commerce and consumer affairs for  
17 administrative purposes."

18       SECTION 23. All rights, powers, functions, and duties of  
19 the motor vehicle repair industry board are transferred to the  
20 department of commerce and consumer affairs.

21       All officers and employees whose functions are transferred  
22 by this Act shall be transferred with their functions and shall

1 continue to perform their regular duties upon their transfer,  
2 subject to the state personnel laws and this Act.

3       No officer or employee of the State having tenure shall  
4 suffer any loss of salary, seniority, prior service credit,  
5 vacation, sick leave, or other employee benefit or privilege as a  
6 consequence of this Act, and such officer or employee may be  
7 transferred or appointed to a civil service position without the  
8 necessity of examination; provided that the officer or employee  
9 possesses the minimum qualifications for the position to which  
10 transferred or appointed; and provided that subsequent changes in  
11 status may be made pursuant to applicable civil service and  
12 compensation laws.

13       An officer or employee of the State who does not have tenure  
14 and who may be transferred or appointed to a civil service  
15 position as a consequence of this Act shall become a civil  
16 service employee without the loss of salary, seniority, prior  
17 service credit, vacation, sick leave, or other employee benefits  
18 or privileges and without the necessity of examination; provided  
19 that such officer or employee possesses the minimum  
20 qualifications for the position to which transferred or  
21 appointed.

22       In the event that an office or position held by an officer

1 or employee having tenure is abolished, the officer or employee  
2 shall not thereby be separated from public employment, but shall  
3 remain in the employment of the State with the same pay and  
4 classification and shall be transferred to some other office or  
5 position for which the officer or employee is eligible under the  
6 personnel laws of the State as determined by the head of the  
7 department or the governor.

8       SECTION 24. All appropriations, records, equipment,  
9 machines, files, supplies, contracts, books, papers, documents,  
10 maps, and other personal property heretofore made, used,  
11 acquired, or held by the motor vehicle repair industry board  
12 relating to the functions transferred to the department of  
13 commerce and consumer affairs shall be transferred with the  
14 functions to which they relate.

15       SECTION 25. All rules, policies, procedures, guidelines,  
16 and other material adopted or developed by the motor vehicle  
17 repair industry board shall remain in full force and effect until  
18 amended or repealed by the department of commerce and consumer  
19 affairs pursuant to chapter 91, Hawaii Revised Statutes. In the  
20 interim, every reference to the motor vehicle repair industry  
21 board in those rules, policies, procedures, guidelines, and other  
22 material is amended to refer to the department of commerce and



1 consumer affairs or director of commerce and consumer affairs as  
2 appropriate.

3       SECTION 26. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun, before its effective date.

6       SECTION 27. Statutory material to be repealed is bracketed.  
7 New statutory material is underscored.

8       SECTION 28. This Act shall take effect upon its approval.

9

10

INTRODUCED BY: \_\_\_\_\_