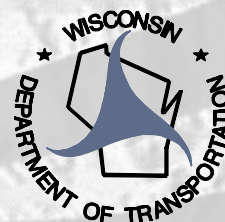




“Nothing astonishes men so much as common sense and plain dealing.”

R. W. Emerson



Summer brings rule changes

Amendments to chapters Trans 139 and 154 of the administrative code relating to motor vehicle trade practices were considered at a public hearing on April 4, 2002. Based on the comments received, several minor modifications were made to the Trans 139 proposal, while the Trans 154 proposal was not changed. Both amendments were submitted for legislative review in April, and will likely be effective August 1, 2002.

The proposed amendment to Trans 139 would allow motor vehicle dealers to charge a reasonable “Service Fee” for completing any sales or lease related vehicle inspection or forms which are required by law or rule. The fee would not be required by law, and would require full disclosure to the consumer. The text, originally proposed, would require dealers, upon request from a consumer, to provide a written disclosure of the services and costs included in the service fee. The proposal was amended to remove the reference to costs, due to the large number of potential variables. In exchange, the WisDOT reserves the right to audit fees to determine whether they are reasonable.

The original proposal did not address the disclosures required when advertising price, meaning that any service fee would need to be included in an advertisement. The revised proposal allows any service fee to be excluded from the advertised price, provided the advertisement clearly and conspicuously discloses that the advertised price does not include the optional service fee. An advertisement might say something like, “the advertised price includes all charges with the exception of sales tax, title and registration fees, and a service fee.”

Service fees are currently prohibited by Wisconsin law. **Be certain not to start charging a fee until the rule becomes effective.** Fees collected prior to the effective date of the rule must be refunded.

No changes were made to the Trans 154 amendment proposal. Trans 154 currently requires the dealer to complete an odometer disclosure on a “conforming” odometer disclosure statement. This rule making will amend Trans 154 by allowing the odometer disclosure to be recorded in the designated spaces provided on the manufacturer’s document of origin when disclosing mileage that is actual.

The next Plain Dealing will fully address how these rule changes will impact your business, and will be mailed out prior to the rule effective date. Direct any comments or questions to: Adam Boardman, Policy Analyst, WisDOT—Dealer Section, Room 806, Madison, WI 53707-7909, or by email: adam.boardman@dot.state.wi.us.

Use caution with electronic “repo” devices

Electronic devices that can be used to prevent a car from starting when its owner is in default on his or her car loan are available. However, the Department of Financial Institutions urges caution when using these devices. They cannot be used in Wisconsin unless they are engaged *after* a court enters judgment granting a creditor the right to repossess the collateral.

There are two ways a creditor may take possession of collateral in Wisconsin: voluntary surrender and pursuant to a replevin judgment. *Continued on page 3.*

Note: The **DMV fee schedule** can be found on the web at <http://www.dot.state.wi.us/dmv/fees.html>.

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Plain Dealing is published quarterly by the Wisconsin Department of Transportation, Division of Motor Vehicles, Bureau of Vehicle Services, Dealer Section.

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Lemon law buy-backs eligible for sales tax deduction.

The sales and use tax bill effective June 1, 2002, changes the procedure for determining a sales tax deduction for lemon buy-backs. If a person received a trade-in allowance on the purchase of a vehicle that is later determined to be a "lemon," sales tax on the replacement vehicle purchased can be calculated using the original trade-in amount if all of these conditions are met:

1. The customer provides to the seller of the replacement vehicle a statement from the manufacturer indicating the trade-in amount applied to purchase of the "lemon" vehicle and the date of the Lemon Law refund.
2. The replacement vehicle is purchased within 60 days of the lemon law refund.
3. The replacement vehicle is the first motor vehicle purchased by the customer after receiving the lemon law refund.

The trade-in amount allowed against the selling price of the replacement vehicle may not exceed the selling price of the replacement vehicle.

Example: Customer A purchases a new motor vehicle for \$35,000, trading in a vehicle valued at \$30,000 and paying \$5,000 in cash. Customer A pays \$250 of Wisconsin sales tax on the purchase of the new vehicle (\$35,000 selling price - \$30,000 trade-in = \$5,000 X 5% sales tax rate). The new vehicle is ultimately returned to the manufacturer because it is a "lemon." The manufacturer refunds \$35,000 plus the \$250 of sales tax to Customer A. The manufacturer provides a statement to Customer A indicating a \$30,000 trade-in was previously applied to the "lemon" vehicle and the date the refund is provided to Customer A. Within 60 days of receiving the Lemon Law refund, Customer A purchases a replacement vehicle for \$38,000.

The amount of sales tax on the purchase of the replacement vehicle is \$400 (\$38,000 selling price - \$30,000 trade-in previously allowed on the "lemon" = \$8,000 X 5% sales tax rate). Under prior law, the trade-in of a vehicle in a prior transaction could not be used in a subsequent transaction. (*Courtesy of Vicki Gibbons of the Wisconsin Department of Revenue*)

Salesperson exam joins the 21st Century. Gone are the days of squinting at the small print on Wisconsin's motor vehicle salesperson knowledge test. The DMV recently implemented Automated Knowledge Testing at all 5-day locations and travel team headquarters sites. Automated testing provides better service to DMV customers as they take the tests on touch-screen computers. Questions are randomly generated and each time a question is asked, the multiple-choice answers appear in random order. This makes each test unique and prevents memorizing answer patterns. Customers receive instant feedback as they take the test. If a question is answered incorrectly, the correct answer is displayed before moving to the next question. Customers who have difficulty reading the questions and answers on the screen may use headphones to take the test orally.

Motor vehicle dealer bonds and letters of credit.

Remember -- as a licensed motor vehicle dealer, it is *your* responsibility to maintain a current bond or letter of credit. The original document, not a photocopy, must be on file with the Dealer Section.

Clear window labels available. Dealer Section investigators are finding vehicles offered for sale without the Wisconsin Buyers Guide properly displayed. The law requires the label to be displayed within the vehicle, attached to a window except where not possible, and must be readable from the outside. Some dealers incorrectly choose to place the label on the dash, often arguing that the label is limiting vision and becomes a safety hazard during test drives. A clear window label was introduced to the market in 2000 that can help reduce the blind spots that some dealers are concerned about.

Following are some sources for purchasing the clear version of the Wisconsin Buyers Guide:

R.B. Cotton & Associates Consulting
Rubin Cotton: 414.788.9001, or 414.760.0744 (fax)
Metro Milwaukee Auto Auction
Lori Laughlin: 800.662.2947 ext. 2263

And the winner is...



The Right Way Dealer Award was presented to Jack Safro Toyota, Inc. for the first quarter of 2002. Jack Safro Toyota, Inc. received this award for putting forth extra effort to do business the right way by consistently completing licensing paperwork correctly and on time; maintaining a dealership facility that complies with all laws; participating in WisDOT's Wise Buys and CVR programs; and supporting and participating in community causes. Jack Safro Toyota, Inc. includes a number of Milwaukee area dealerships, all of which strive to do business, *the right way.*

Pictured to the left is Jim Tessmer, DMV Administrator Roger Cross, Sue Bell, and Chris Jones.





Dealer Ed_101

Dealer Alerts

Advertising Advice

Policy Briefing

Paperwork Pointers

Dealership employees may be acting as unlicensed dealers.

As a dealer, you may be paying an individual to purchase vehicles at the auction using the dealership's license. Be sure that your employees are using your license for the intended purpose. A current disturbing trend involves buyers, using their own money, to purchase vehicles from the auction in the dealer's name, and then selling them on the street as an unlicensed dealer. If you have any reason to suspect wrong doing involving an employee, or contracted buyer, contact the auction for a list of all vehicles purchased under your license during a specific time period. Be sure that these vehicles have been entered in your log book, and are accounted for. Remember, licensed Wisconsin motor vehicle dealers are responsible for the actions of their employees. If you are the victim of an unscrupulous employee, contact the Dealer Section at 608.266.1425 for help.

Titling Canadian vehicles. Another disturbing trend uncovered by the Dealer Section involves the illegal titling of vehicles from Canada. Wisconsin wholesalers are titling vehicles they do not own in their name. Wisconsin law prohibits titling a vehicle in your name, unless you own it. Dealers cannot act as a titling service. The illegal titling of vehicles can cost you your license to do business in Wisconsin (See back page - Can-Am Connections). You cannot obtain a title for a vehicle that you do not own, and doing so can lead to felony charges for submitting a false application for title.

Consignments between motor vehicle dealers are prohibited. Retail motor vehicle dealers may sell a vehicle for a private party on consignment. However, consignments between retail dealers are prohibited, as are consignments between wholesalers and retail dealers. Remember -- each consignment agreement shall contain: 1. Date of consignment; 2. Name of consignor and consignee; 3. Description of vehicle including year, make and identification number, a description of the prior use, and an odometer disclosure statement; 4. Terms of the agreement; 5. A statement by the owner indicating the lien status; 6. Signatures by the vehicle owner and selling dealer; and 7. An agreement outlining selling terms. (Wisconsin Administrative Code Trans 138.04)

Double bottom towing. With summer rapidly approaching, traffic increases on our state highways. If you sell recreational vehicles, tow vehicles, boat trailers or similar products, you likely are asked about double-bottom towing. Some of your customers may want to tow boats or other equipment behind their travel trailers and fifth wheels. DMV's Motor Carrier Services Section issues annual or consecutive month permits for the movement of three-vehicle combinations (travel trailer, boat trailer, personal watercraft trailer, etc.) arranged in order of weight, with the lighter of the towed vehicles in the third position. To qualify for a permit, the overall length of the combination cannot exceed 60 feet, and the towed vehicles must be for the use of the operator of the towing vehicle. The permits can only be issued by DMV, regardless of the highways used, and routes may be designated by them. The cost for an annual permit is \$40. For additional information, contact the Permit Unit of the Motor Carrier Service Section at 608.266.7320.

Heavy truck dealers required to submit title and registration applications. DMV's title processors report that at least one heavy truck dealer is telling customers that they will apply for the title, but not registration. Reminder--heavy truck dealers are required to submit title *and* registration paperwork on behalf of their customers just like any other dealer.

Electronic devices *continued from page 1.* To repossess collateral other than by voluntary surrender, the creditor must:

- determine that the consumer is in default
- send notice of default to the consumer
- give 15 days within which to cure the default
- receive a replevin judgment from a court of competent jurisdiction granting the right to repossess the collateral.

Non-judicial enforcement of rights in collateral is not permitted in Wisconsin. Penalties for illegal repossession are severe, including allowing the consumer to keep the merchandise and recover all money paid. If you choose to use an electronic interlock device, *be sure you have the replevin judgment before engaging the device.*

Citations and criminal charges

continued from back page.

Kosmatka, John, Milwaukee -- Convicted on three counts of failure to transfer title with intent to defraud related to an unlicensed dealer investigation. Sentenced to 30 days in jail stayed for nine months pending compliance, \$500 to charity, and 30 hours of community service.

Seco, Gerald, Janesville -- Two citations issued for failure to transfer title and one citation issued for unlicensed motor vehicle activity.

Soldberg, Allan, DBA AI's Automotive, Madison -- Two citations issued for failure to transfer title related to an unlicensed dealer investigation.

Thompson, Cory, Milwaukee -- Two citations issued for failure to transfer title related to an unlicensed dealer investigation.

Treichel, Milton, Greenleaf -- Citation issued for failure to transfer title related to an unlicensed dealer investigation.



Enforcement Actions

A I II, Inc., Germantown -- An Order Suspending License from 11/1/01 to 1/1/02 was issued for unlicensed sales, failure to have business sign, failure to have vehicle display area, failure to have Wisconsin Buyers Guides displayed on vehicle offered for sale, failure to maintain records, and failure to allow WisDOT to inspect records.

Americar, Green Bay -- A Special Order was issued for allowing an unlicensed salesperson to sell vehicles at the dealership.

Auto and Truck Salvage, Sullivan -- An Order Suspending License from 4/1/02 to 6/30/02 was issued for receiving a stolen vehicle and selling stolen parts. Charges referred to the Jefferson County District Attorney.

Can Am Connections, Port Washington -- Voluntarily surrendered dealer license in December of 2001 for failure to keep an accurate log book, lying on a sworn statement to WisDOT, and for obtaining Wisconsin titles for Canadian vehicles that the dealer never owned.

Darlington Motors, Darlington -- A Civil Forfeiture and a Letter of Assurance was issued for selling new vehicles without a franchise agreement.

F&M Falls Car Company, Slinger -- An Order Suspending License from 2/20/02 to 2/24/02 was issued for failure to submit titles within seven business days, failure to have

titles for vehicles offered for sale, failure to maintain logbook and failure to honor purchase contract.

Larson Quinn, Ellsworth -- Owner, William Quinn, pled guilty in state court to one felony count of false writings. Quinn was sentenced to 60 days in jail starting June 1, 2002, 3 years probation, and ordered to pay federal fines for one count of wire fraud charged to the corporation.

Jensen Auto, Wisconsin Dells -- An Order Suspending License from 4/8/02 to 4/12/02 was issued for switching the VIN on a 1996 Dodge Intrepid during a rebuild of the vehicle.

Main Street Motors, East Troy -- An Order Suspending License from 4/8/02 to 4/21/02 was issued for violations of off-premise sales, unlicensed sales, and filing a false sales tax statement.

Moore Auto Sales, Superior -- A Special Order was issued for allowing an unlicensed dealer to use the license, and for not maintaining proper records.

River City Motors, Wisconsin Rapids -- A Special Order was issued for failure to submit title applications within seven business days.

T-Roy Motors, Waterloo -- An Order Suspending License from 5/8/02 to 5/10/02 was issued for filing a false sales tax statement on a title application.

Citations and Criminal Charges

AB Auto, Milwaukee -- Dealer voluntarily surrendered license on 05/06/02 for fraudulently applying for registration. Owner Fred Yazdani pled guilty to one count of false registration in Milwaukee County.

Amato, Mike, DBA Easy Buy Auto Sales, South Beloit, IL -- Citation issued for acting as an unlicensed Wisconsin motor vehicle dealer.

Boyer, Michael D., Milwaukee -- Citation issued for failure to transfer title related to an unlicensed dealer investigation.

Bernard, Charles, Janesville -- Ten citations issued for failure to transfer title and one citation issued for unlicensed motor vehicle activity.

Brugger, Christopher, Madison -- Bench warrant issued for failure to transfer title with intent to defraud and acting as a motor vehicle dealer without a license.

Davis, Russell, Janesville -- Two citations issued for failure to transfer title related to an unlicensed dealer investigation.

Diorio, Robert, Milwaukee -- Citation issued for failure to transfer title related to an unlicensed dealer investigation.

Godwin, Thomas, Holmen -- Citation issued for unlicensed motor vehicle activity.

Hamilton, Dirk, Milwaukee -- Convicted of four counts of failure to transfer title related to an unlicensed dealer investigation.

Continued on Page 3

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