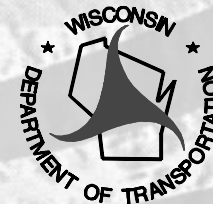


“Nothing astonishes men so much as common sense and plain dealing.”

R.W. Emerson



## Dealers can begin charging a service fee

Chapters Trans 139 and 154 of the administrative code relating to motor vehicle trade practices were amended effective August 1, 2002.

The amendment to Trans 139 allows 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 is not required by law, and requires full disclosure to the consumer. Please review the following policy statement that WisDOT will use to ensure efficient, effective and equitable regulation of the service fee. 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.

This rule making also amended 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. When disclosing mileage that is not actual, dealers are required to submit a separate conforming odometer statement.

### **Service Fee Policy Statement - Introduction**

Trans 139.05(8)(a) was amended removing the prohibition against dealers assessing an additional service fee for completing any sales-related vehicle inspection or form which are required by law or rule. This amendment allows a service fee to be assessed, provided it is fully disclosed, and includes the following disclosure: “A service fee is not required by law, but may be charged to motor vehicle purchasers or lessees for services related to compliance with state and federal laws, verifications and public safety, and must be reasonable.”

This document outlines the department’s policies and procedures regarding service fees. Because DMV regulates the business practices of motor vehicle dealers, and now allows dealers to assess a service fee, it is important that the division provide guidelines regarding policies for the correct assessment of this fee.

### **Reasonable**

Trans 139 allows dealers to assess a **reasonable** service fee. It is important that any fee assessed be reasonable in relation to services related to compliance with state and federal laws, verifications and public safety. When a complaint is received, or a problem is suspected, regarding the reasonableness of a service fee, an audit of the dealership may be conducted.

During an audit, dealers may be required to provide an itemized description of the fee, including justification for the amount being charged. This may include a list of the services provided, and the corresponding costs incurred by the dealer to provide these services. A sample of 10-15 recent contracts may also be required to make certain that the fees were disclosed properly. Justification of the fee is important, and dealers are advised to do this before ever assessing a fee, not simply upon request from the DMV. This justification must be limited to services actually provided that are required due to government regulation. DMV will take the type of vehicle into consideration when determining reasonableness. For example, a dealership may spend more time meeting statutory requirements for a school bus than for a brand new personal vehicle.

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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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*We welcome your questions and comments.*

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## Service Fee Policy Statement Continued

### Enforcement

If a dealer generates complaints or raises suspicion regarding service fees, standard enforcement procedures will be followed, ranging from informal advice, all the way up to suspension or revocation of a license. Close attention will be paid to advertising service fees. Reoccurring problems with the assessment of service fees could result in a dealer being required to refund fees that are not determined to be reasonable, or properly disclosed.

### Forms

The Wisconsin Buyers Guide has been modified to include a box to enter any service fee assessed. This box is located directly below the box used to list the price of the vehicle. Dealers are allowed to use the previous form (MV2872) until August 1, 2003. If listing a service fee on the old form, draw a line through the "Price" box, creating two boxes. In the lower box, the words "Additional Service Fee," must be added, as well as the dollar amount of the service fee being assessed. This is important, because the customer needs to understand that the service fee is not included in the dealer retail price listed on the Wisconsin Buyers Guide or supplemental price label.

The Dealer Supplemental Price Label also needs to include the optional service fee, if being assessed. We recommend adding a line titled, "Additional Service Fee" and space for the amount below the Dealer Retail Price line.

If charging a service fee, changes will also need to be made to the purchase contract. The service fee is taxable, and must be listed above the tax line in the price itemization section of the purchase contract. The "Other" box may be used until new forms are printed (New forms must be used by August 1, 2003). If using the "Other" box, the words "Service Fee" must be clearly added. The following disclosure statement must also be added to the purchase contract, preferably below the price itemization, "A service fee is not required by law, but may be charged to motor vehicle purchasers or lessees for services related to compliance with state and federal laws, verifications and public safety, and must be

reasonable." To assess a service fee all contracts used after August 1, 2003 must include the disclosure mentioned above. Until that time the disclosure may be made under "other conditions of sale."

If charging a service fee for a leased vehicle, the disclosure can be made on the motor vehicle lease order form, the motor vehicle prelease agreement, or the consumer motor vehicle lease agreement. If a service fee is assessed to a lease, the following statement must be included, "A service fee is not required by law, but may be charged to motor vehicle purchasers or lessees for services related to compliance with state and federal laws, verifications and public safety, and must be reasonable." The service fee is taxable, and must be clearly labeled for the customer.

It is important that any fee assessed be reasonable in relation to services related to compliance with state and federal laws, verifications and public safety.

### Advertising

The advertised price does not need to include the amount of the service fee if the advertisement clearly and conspicuously discloses that the advertised price does not

include the optional service fee. Written advertisements shall disclose the amount of the service fee, or that the advertised price does not include the amount of the service fee. This disclosure shall be printed in not less than 9-point boldface type or not smaller than the largest typeface within the advertisement. So, if the largest typeface in the advertisement is greater than 9-point type, the service fee disclosure must be made with a minimum of a 9-point boldface type. If the largest typeface in the advertisement is less than 9-point type, the service fee disclosure must be made using the largest typeface within the advertisement.

### Additional Disclosure

Upon request from a purchaser, the selling dealer must provide a written disclosure of the services included in any service fee assessed. To meet this requirement, a dealer could use a standard prepared document.

*Continued on Page 3*

## And the winner is...



The Don Miller group in Madison, has been awarded the Right Way Award for the second quarter. The group includes Don Miller Chrysler Plymouth, Don Miller Dodge, Don Miller Pontiac GMC Truck Subaru, and Don Miller Dodge West. The dealer group was chosen for receiving very few consumer complaints and resolving any complaints swiftly and satisfactorily. The dealer participates in the WisDOT Wise Buys consumer education program and consistently completes licensing paperwork correctly and on time. We also recognize the Don Miller Group as a contributor and volunteer to many events and organizations around the Madison area. The Don Miller Group consistently strives to do business, *The Right Way*.



*Pictured above, from left to right, is Don T. Miller, DMV Administrator Roger Cross, and Dave Miller.*



# Dealer Ed\_101

Dealer Alerts

Advertising Advice

Policy Briefing

Paperwork Pointers

Selling new vehicles without the proper **franchise agreement** is against the law in Wisconsin. A current trend involves Wisconsin dealers purchasing new Canadian vehicles wholesale. Simply titling a vehicle in the dealer name does not make it used. To sell a vehicle without the proper franchise agreement, that vehicle must meet the definition of a used motor vehicle. For the purpose of enforcing the franchise law, a “used motor vehicle” is defined in Trans 137 as:

1. Any motor vehicle which has been *privately* titled\*, or
2. Any motor vehicle which has not been privately titled\*, but:
  - Has been operated more than 6,000 miles, or
  - Has been operated more than 4,000 cumulative miles, and owned more than 120 days by the licensee currently offering the vehicle for sale, or
  - Has sustained damage while in-transit and has been acquired by the motor carrier from the motor vehicle manufacturer because of the liability agreement between the manufacturer and carrier, or
  - Is of a previous model year. A vehicle shall be considered to be a previous model year after December 31, of the calendar year identical to the manufacturer’s designated model year.

*\*Privately titled* means a vehicle titled by a person who acquired a vehicle through a bona fide sales transaction in which the person gave substantial value to acquire ownership of the vehicle for purposes other than lease, rental or resale and **who is not a motor vehicle manufacturer, final stage manufacturer, converter, distributor, wholesaler, dealer, fleet owner, or lease or rental company.**

Reminder – An **MV11** must be completed for all sales, including those to municipalities and state agencies. The MV11 must also be signed and include an odometer statement. When giving an application to a municipality the above guidelines still apply. If a temp plate is issued, even to a municipality, the appropriate fees must be collected.

## You be the DOT!

Compare how you would handle this complaint situation with the actual resolution made by the Dealer Section.

A customer purchased a 1998 Mercedes Benz with 4,000 miles for \$49,000. The Wisconsin Buyers Guide disclosed previous repaired body damage. Based on the disclosure, the customer believed the vehicle may have had minor body repairs. Two months later, the purchaser learned from the prior owner that the vehicle had suffered more than \$18,000 worth of damage, including unibody damage. The customer filed a complaint alleging improper disclosure. (How would you handle this complaint? Dealer Section answer on back page)

Don’t forget to include the **\$3 Environmental Impact Fee** on mail-in title applications. Submitting incorrect fees can cause delays in the processing of your paperwork. The large number of incorrect applications received by DMV suggests that a lot of dealers are still using old forms. In order to minimize mistakes, be sure to use the newest versions of forms. To check on current fees you can access the DMV fee schedule at <http://www.dot.state.wi.us/dmv/fees.html>, or go to the WisDOT Web site ([www.dot.state.wi.us](http://www.dot.state.wi.us)), under Division of Motor Vehicles click on Information and Services, and then click on Fee Schedule.

### Service Fee Policy statement continued from page 2

Dealers should feel free to have the Dealer Section review a standard document to determine whether it meets the requirements of written disclosure. It is important that this disclosure be brief and to the point. Services performed should be easy to read, and catch the eye, as opposed to being buried within the text of a paragraph.

It is highly recommended that bullet points be utilized when highlighting individual services. Examples of some of the items that may be included in the written disclosure statement follow:

#### Sample Disclosure List

- Check vehicle safety, history, and titles.
- Provide full condition information on the window label.
- Discover and disclose accurate vehicle mileage.
- Check for recalls on used vehicles where required.
- Complete required forms and contracts that protect your interests.
- Process titles and plates.
- File and clear liens.
- Keep your information private and secure.
- Fulfill vehicle emission laws.
- Pass along manufacturer information, including lemon law notices.
- Process taxes on your purchase and rebates.
- Keep you informed of your rights and obligations.
- Keep important records of your purchase.
- Purchase required forms and supplies.
- Maintain technology to process your paperwork faster.
- Train staff to carry out laws that protect you.
- Maintain professional licenses that ensure quality service.



## Enforcement Actions

**K & H Auto**, Neillsville -- A Special Order and three citations were issued for failure to properly obtain salvage titles.

**KWK Electric**, Milwaukee -- A Special Order was issued for submitting a false statement in application for title and for failing to properly log vehicles in logbook. KWK also terminated the employment of Ivan Zaiats as a condition of the Special Order. Zaiats was responsible for the

violations.

**Paperland Motors**, Green Bay -- An Order Suspending License from 06-10-02 to 07-09-02 was issued for providing false information on a certificate of title.

**Trucks 4 U**, Blanchardville -- A Special Order and \$500 civil forfeiture was issued for selling new motor vehicles for which the dealer was not franchised.

## Citations and Criminal Charges

**Del's Auto Repair**, Onalaska -- Citation issued for failure to title vehicle as the result of an unlicensed dealer investigation.

**F & M Falls Car Company**, Slinger -- Citation issued for failure to submit title within seven business days.

**Ganta, Gene**, Columbus -- Citation issued for failure to transfer title as the result of an unlicensed dealer investigation.

**Gomez, Joseph**, Neillsville -- Citation issued for acting

as a motor vehicle dealer without a license as the result of an unlicensed dealer investigation.

**Larson, Wayne**, Elk Mound -- Citation issued for acting as an unlicensed salvage dealer.

**Lee J. Parra Enterprises**, Sheboygan -- Citation issued for failure to submit title within seven business days.

**75th Street Auto Sales**, Kenosha -- Citation issued and default judgment ordered for failure to submit title within seven business days.

### Answer — You be the DOT!

(from page 3)

WisDOT Informed the dealer of the complaint. The dealer said he had made the proper disclosure. WisDOT inspected the car, and found evidence of repaired damage. WisDOT also discovered that the dealer had picked the car up from the body shop after the \$18,000 repair.

WisDOT determined the dealer did not use reasonable care in determining the extent of damage and disclosing it. The consumer filed a bond claim. The dealer repurchased the vehicle before a determination was made on the bond claim.

### Dealer Section announces personnel changes

Long time Dealer Section Wausau Investigator Tom Krummel said farewell, and is gearing up for an exciting retirement. DMV employee Cathy Fallos was hired to fill Tom's position, and is headquartered in Wausau. Milwaukee Investigator Jim Anderson recently accepted the Odometer Enforcement position vacated last year when Kevin Konopacki became the Investigator Supervisor. Michael Urban, of the Wisconsin State Patrol, was hired to fill the Green Bay Investigator position vacated by Tom Harrison nearly a year and a half ago. Consumer Specialist Linda Mabie accepted an investigator position with the Wisconsin Department of Health and Family Services. The process to fill the Milwaukee Investigator position vacated by Jim, and the Consumer Specialist position vacated by Linda, is underway.

**Wis. Dept. of Transportation  
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STANDARD  
US POSTAGE PAID  
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