



Plain Dealing

A Policy and administrative bulletin for licensed dealers from the Dealer Section of the Wisconsin Division of Motor Vehicles.

Vol. 1, No. 4

Fall 1990/Winter 1991

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

R. W. Emerson

As we begin 1991, we'd like to wish you a happy, healthy and prosperous new year.

We hope you've found that *Plain Dealing's* new format makes it easier to keep issues for future reference. If you're missing any of the first three issues, a limited supply is available through the address at the bottom of this column.

In this issue's "Points of View" section, we pose a question on dealer financial requirements and invite you to share your ideas with us. And be sure to read the article on dealer plate use on page four.

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Dealer license required for vehicle brokers

by Thomas L. Gais

Many of you have written or called us about the laws regarding motor vehicle brokers. Several have tried to operate in Wisconsin, and licensed dealers often don't know how to respond to them. Brokers are a complex subject for us as well as you, but I hope I can answer a few of your questions.

The most important thing to know is that a broker needs a dealer's license. The legal definition of a dealer includes not only people who buy and sell vehicles but also people who offer or attempt to "negotiate" vehicle sales, as well as those who are engaged "in the business of selling motor vehicles whether or not such motor vehicles are owned by such person, firm or corporation." These legal definitions clearly include brokers. Some brokers negotiate sales by arranging special price discounts between selected dealers and consumers. A common example in many states is an auto club or other membership organization which finds dealers willing to offer the club's members a discount on cars and trucks, such as a fixed percent over "dealer invoice." There's no doubt that the club is helping to negotiate the final sale price of the vehicles sold by the participating dealers, and that the club itself is therefore acting as a dealer.

Yet a business may need a dealer license even if it doesn't negotiate vehicle sales. Certain advertising or marketing services need to be licensed when they provide the service for a commission based on actual sales. For example, if a business finds potential buyers for dealers -- such as a directory or computer search service -- and receives a commission on each sale, that business is independently engaged in the business of selling motor vehicles even though they never own the vehicles. On the other hand, we don't require a license of advertising agencies, newspapers, or other businesses which help dealers or private citizens to market their vehicles and charge only a flat fee for their services. By "flat fee" we mean a fee that doesn't depend on whether the vehicles are actually sold.

Brokers should be licensed not only because it's the law, but also because it helps protect consumers. When brokers try to negotiate vehicle prices, they are telling consumers the conditions under which they may buy vehicles. This raises many of the consumer protection and disclosure issues our trade laws are designed to address. The same kinds of issues come up when a business is marketing and advertising vehicles and directly profits from their sales. If these types of businesses weren't

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News in Brief

Commercial Driver Licensing Takes Effect

As of January 1, 1991, anyone who operates a commercial motor vehicle on a street or highway must have a commercial drivers license (CDL) or a chauffeur license (or a school bus license if operating a school bus).

Definition of Commercial Motor Vehicle

A commercial motor vehicle has one or more of the following characteristics:

- ◆ It weighs over 26,000 pounds.
- ◆ It carries hazardous materials that require placarding under federal law.
- ◆ It is designed or used to carry the driver plus 15 or more passengers.

The CDL concept was brought about by the federal Commercial Vehicle Safety Act of 1986. All states are required to participate or lose a portion of their highway funds. Legislation was passed in 1989 to enact the federal requirements in Wisconsin.

There is more to this law than space allows us to cover in this newsletter. For details, there are several informative brochures and a manual available free of charge from the Division of Motor Vehicles. Call toll-free, 1-800-242-2514, for single copies of brochures or to ask questions about CDL. You can also pick up copies of the brochures and manual at your nearest DMV customer service center (driver license test station), or write to:

Bureau of Driver Services
P.O. Box 7917
Madison, WI 53707-7917

Truth in Mileage Update

There's been a change in the wording of the odometer notations on new titles which complies with the requirements of the federal Truth-in-Mileage Act. Titles that now show "Unverified" mileage will display the notation "Not Actual - Unverified" when reissued. Currently, only 1.73 percent (44,800 vehicles) of all Wisconsin titled vehicles have the "Unverified" mileage notation.

Situations that would have resulted in an odometer reading being shown as "Unverified" in the past, such as a buyer's inability to obtain an odometer statement from the seller, will be shown as "Not Actual" from now on. A "Not Actual" notation can be changed to "Actual" in the same way "Unverified" mileage could be corrected. This involves

tracing the ownership of the vehicle back to the point where the chain of odometer disclosure was broken, and obtaining a signed odometer disclosure from the people involved.

To make it easier for you to get information about a vehicle's odometer disclosure history, dealers may contact the Correspondence and Title File Unit. The unit's phone number is (608) 266-0970. There is no charge for requests by dealers for odometer information. You need to have the title number and vehicle description ready when calling. You can order copies of vehicle records by phone for a small charge. The copies can be sent immediately, along with billing information. Written requests should be sent to:

Department of Transportation
Vehicle Record Files
P.O. Box 7911, Room 100
Madison, WI 53707-7911

Recycling Law Begins January 1

by Wendy Weisensel

The recycling statute (Wisconsin Act 335) signed into law in April, hit home on January 1, 1991, when lead-acid vehicle batteries and large household appliances are no longer allowed in trash bound for Wisconsin landfills or incinerators.

Another item, used motor oil from automobiles and trucks, buses, heavy farm and construction equipment, boat motors, lawn mowers and even airplanes cannot be put in state landfills or burned in incinerators that don't recover energy. This ban also takes effect January 1, says the Department of Natural Resources.

"Vehicle batteries, waste oil and appliances are potentially hazardous if disposed of improperly, but they can be successfully recycled if handled correctly." Paul Kozlar, environmental specialist, DNR

By January 1, the agency will launch a public information effort to generate understanding of the recycling law and to encourage all citizens to recycle various waste items. The effort will focus first on lead-acid batteries, used motor oil and appliances.

Free DNR how-to-recycle publications on batteries, waste oil and appliances will be available after January 1, 1991, and a four-page fact sheet is available now. Contact Rose Walsh at the department's Bureau of Information and Education, P.O. Box 7921, Madison, WI 53707; or phone (608) 267-7375 for copies. Copies are also available at DNR offices statewide.



License Renewal Update

As license renewals pour in and we embark on multi-year licensing with staggered renewal dates, we're finding that most of you handled the changes well. Congratulations!

It will be even easier to renew once

we've passed the transition phase and the system is in place. Here are a few more tips for those of you who haven't filed your renewal yet and for filing your next renewal.

▶ **Combination motor vehicle/motorcycle dealers** should have the same renewal date for both licenses. If yours are different, use the renewal date assigned to your main business and apply the prorate factor for that date to the \$5 per plate fee for the secondary business.

▶ **Motor vehicle and mobile home dealers** -- be sure to follow the instructions on which forms go in which return envelope. The Office of the Commissioner of Banking should get one copy of the application, one copy of the financial statement and a fee check. Dealer Section should get one copy of the application, one copy of the financial statement, the salesperson license/BID card holder report, the service agreement (if required) and a check payable to Registration Fee Trust.

▶ **Send all the forms in at the same time.** We can't process the salesperson renewal report without the dealer license application and fees.

▶ Please be sure your dealer license number appears on all the forms, including your check.

You'll receive another renewal packet at least 30 days before the renewal date that has been assigned to you. The next renewal will be easier -- all annual fees will simply be doubled to cover the two-year license. We welcome any suggestions you may have to make renewals even easier.

The New Wisconsin Title

Wisconsin's new Certificate of Title document was introduced on January 7, 1991. The new title is larger than its predecessors, measuring 8 1/2" by 10". The assignment of ownership for the titled owner is on the face of the title instead of the back. There is space for five dealer reassignments on the back. There is also room for auctions and salvage pools to show their name, license number and date of transaction in each reassignment area.

The odometer disclosures conform to Truth-in-Mileage Act (TIMA) requirements. The printed name and address of both the buyer and the seller are required, as well as their signatures. The new title will be able to display a six-character odometer reading to accommodate the large number of vehicles on the road whose odometers can display 100,000 or more miles.

It's important to remember that *all reassignments should be made on the new title itself* -- not on separate reassignment forms. When all of the reassignment spaces have been filled up, the last dealer must obtain title in the dealership name. Be sure to keep photocopies of both sides of the title for your records and to serve as incoming and outgoing odometer statements.

Buckle Up, Or Else . . .

The National Highway Traffic Safety Administration (NHTSA) is cracking down on dealers who aren't properly displaying passive seatbelt systems in the showroom. Disconnecting passive seatbelt systems on display cars violates the federal "Vehicle Safety Standard 208" and is punishable by a fine of up to \$1,000 per vehicle. The law requires that cars be delivered with the belts intact and in proper working order.

NHTSA has been checking dealers nationwide to determine compliance with this law. In addition to the fines, NHTSA has the authority to seek injunctions forbidding the sale of non-conforming vehicles. Dealers found to be in violation of the law will be re-audited. Further violations would lead to civil penalty action.

Dealer Alert

Attention New Motor Vehicle Dealers -- Using terms such as "invoice," "cost," or similar terms in advertising the price of a motor vehicle, is prohibited unless the following disclosure is made in the advertisement: "the dealer's actual cost is less because there are, or may be, factory holdbacks, rebates, incentives, or other discounts to the dealer." (Emphasis added.) Changes are not permitted in the wording of the disclosure.

To clarify an item in the last issue of Plain Dealing, salvage dealers may subcontract with licensed carriers displaying an LC number on their trucks.

1991 Trailer Plates have a new number sequence -- they now start with "9" instead of "3". (We need to be able to issue 3000 series numbers to retail dealers.)

Be sure to send us any salesperson licenses that have been turned in to you at the end of a person's employment. We want our records to accurately reflect who is working for you.

At the end of a lease with option to purchase, dealers are required to complete a used vehicle disclosure label when the lessee exercises the option to purchase. You may contract the inspection out in cases where the lessee has moved out of the area. You may not, however, charge the lessee for this inspection.

Policy Briefings

Dealer Plate Do's and Don'ts

A dealer's spouse, not employed at the dealership, is using one of the dealership's cars to run personal errands. Is it proper to use a dealer plate on the car?

What is permissible use of a dealer license plate? The answer not only affects your likelihood of being ticketed for improper use, but the general public's perception of your plate use as well.

According to Wisconsin Statute Section 341.47(1), vehicles of dealers, distributors, manufacturers and transporters are exempt from general registration requirements when:

Except as provided in sub. (2), any motor vehicle, mobile home, trailer or semitrailer owned or repossessed by a dealer, distributor or manufacturer may be operated on the highways of this state for either private or business purposes without being registered if such vehicle has displayed upon it valid registration plates issued pursuant to s. 341.51 to the dealer, distributor or manufacturer who is the owner of the vehicle or holder of the repossessed vehicle and such vehicle:

- (a) Is actually offered for sale by a dealer, distributor or manufacturer; or
- (b) Is in transit from the factory to a distributor or dealer or from the dealer to the purchaser; or
- (c) Is being used by a manufacturer primarily for trial tests; or
- (d) Is being repossessed, being reconditioned for resale or being foreclosed or resold.

In a nutshell, this means that dealer license plates may be used for personal or business purposes provided the vehicle is actually owned and offered for sale by the dealer.

The answer to the question posed at the beginning of this article is: **Yes**, if the car is owned and offered for sale by the dealership, and the spouse resides in the dealer's household, it is proper to use a dealer plate.

Here are some guidelines to help you determine proper use of dealer plates:

- ◆ **Do** display a used vehicle disclosure label or Monroney label on any vehicle using a dealer plate as proof that the vehicle is owned and offered for sale by the dealership. (A label need not be displayed while coming from or going to a wholesale transaction.)
- ◆ **Do** make sure that vehicles used by employees for personal use are available for display at the dealership during business hours.
- ◆ **Don't** use dealer plates on consignment vehicles (they aren't owned by the dealership).
- ◆ **Don't** use dealer plates on rental or loaner vehicles (they aren't offered for sale during the period they are rented or loaned).
- ◆ **Don't** use dealer plates on service vehicles and tow trucks.
- ◆ **Celebrity and dignitary use** of dealer plates at events such as the annual air show in Oshkosh is **permitted**. Be sure a Monroney label or a used vehicle disclosure label is displayed on each vehicle.
- ◆ If you allow your spouse or children residing in your household to use dealer plates, **do** be certain that the vehicle is actually offered for sale and displays a used vehicle disclosure label or Monroney label. While this type of use is technically permitted, there has been adverse public reaction to it.

Those are the fundamentals of permissible dealer license plate use. Remember the key words **owned and actually offered for sale by the dealership**. In last year's *Plain Dealing* survey on dealer plates, sixty percent of you favored expanded use of dealer plates. Through legislative action, we may someday see changes regarding use of dealer plates on loaners, rentals and consignment vehicles. If you have questions about dealer plate use, call the Business Licensing Unit at (608) 266-1425.

Paperwork Pointers

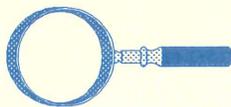
☞ When paying fees for your customers' applications for title/registration, the best way to avoid being asked how you intended the checks to be divided is to either write a separate check for each application, or write one check to cover all the applications sent in one envelope.

☞ The increased number of **attachments to title/registration applications** can slow down processing time. For speedier handling, make sure the VIN verification for out-of-state vehicles is done on the same application form and use paper clips or staples to keep documents together -- don't tape documents together.

Points of View

Under Examination . . . Financial Requirements

Part of our responsibility in licensing dealers is to determine the business' ability to meet its financial obligations. Dealers now have two ways to show their financial stability: filing a financial statement or, in some cases, filing an optional \$25,000 surety bond. We are beginning to look at other ways dealers could meet financial requirements.



What method do you choose to meet the financial requirement and why? What difficulties have you experienced in using the available methods? What are some other ways financial stability could be determined?

Mail your comments to:

Plain Dealing
Wis. DOT Dealer Section
P.O. Box 7909
Madison, WI 53707-7909

Or FAX comments to us at: (608) 267-0323

We'll print as many of your responses as space allows in the next issue of *Plain Dealing*.

We want to know your associations . . .

If any of you belong to local or regional dealer associations, let us know names, addresses and contact people. We'll add them to our mailing list so they'll receive *Plain Dealing* as well as notices for any regional training or "open house" sessions for dealers.

Motor Vehicle Brokers

(Continued from page 1.)

licensed, a dealer might even evade our advertising and trade practice laws by setting up purportedly independent brokering operations to reach consumers through deceptive means. To avoid these problems, we think it's best to bring all these businesses under the licensing system and its requirements.

Although brokers must be licensed, none in fact have dealer licenses in Wisconsin. Brokers are generally unable or unwilling to meet the requirements for retail dealers, such as facilities and display areas for used vehicle dealers and franchise agreements for brokers involved with new vehicles. The difficulties in getting a license have encouraged at least some of the national businesses who broker vehicles in other states to work with our department and modify their programs in order to avoid the need for a license.

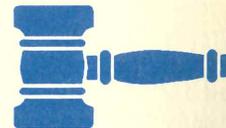
However, some brokers are trying to operate outside the law despite enforcement actions by the Department. You should ask to see the license of any person or business who appears to be involved in a brokering operation before you participate in the program. If the business doesn't have a license, ask them whether they've reviewed their program with the Wisconsin Department of Transportation and whether they can show you evidence that they don't need a license. If there's a specific program or business you want to find out more about, please call us at (608) 266-1425.

Crackdown on Unlicensed Dealers

It's just not fair -- dealers who follow all of Wisconsin's dealer licensing laws and rules bristle at the sight of unlicensed sales or salvage activity going on around them. We hear your concern and have stepped up enforcement activity against unlicensed dealers.

In 1990, we issued warning letters to complete twenty-six investigations into unlicensed motor vehicle sales and six investigations into unlicensed salvage operations. People who received warning letters were given the option of becoming licensed by completing an enclosed application packet.

More serious actions were taken against thirteen individuals acting as unlicensed motor vehicle dealers and three individuals acting as unlicensed salvage dealers. Thanks to the cooperation of district attorneys from Dane, Jackson, Juneau, Marathon, Milwaukee, Oconto, Outagamie, Richland, Rock and Waukesha Counties, these people were successfully prosecuted and fined.



If you would like to report unlicensed activity you've observed, please call our Consumer Assistance hot line at (608) 266-0765. You'll receive information and a form for filing a written complaint. You may file anonymously if you wish, but if you'd like to know the outcome of the investigation, be sure we know who you are and how to reach you. We ask that you bear in mind that it may take several months to gather sufficient evidence for criminal prosecution.

Summary of 1990 Licensing Actions

Ace Towing, Milwaukee -- License was suspended for 45 days and a Special Order was issued by the Office of the Commissioner of Transportation for failure to record about 347 vehicles in the logbook and failure to mail certificates of title for junked vehicles to the department.

Gerald Ambrosius, Green Bay -- Salesperson license was suspended for five days and a Special Order was issued for ignoring evidence that a trade-in vehicle had higher mileage than shown on the odometer statement and representing the lower mileage as accurate when reselling the vehicle.

B and B Enterprises, Janesville -- A conditional motor vehicle dealer license and Special Order were issued prohibiting the dismantling of used vehicles and selling parts from the dealership location.

Bud's Scrap Metal & Auto Removal, Janesville -- License was denied for continued violations since the denial of his 1989 license.

Bud Weiser Motors, Janesville -- Special Order was issued for failure to disclose damage in excess of 6% of the suggested retail price of 17 new vehicles. Also agreed to a forfeiture of \$3,400.

Co-Share Wisconsin, Inc., Milwaukee -- License was denied for lack of franchise agreements to broker new vehicles.

Cross Salvage, Whitefish Bay -- License was denied for continuing to operate while under suspension and violation of a Special Order issued in 1989.

Jeremiah Cross Salvage, Milwaukee -- License was suspended for ten days and a Special Order was issued for failure to keep record of about 56 vehicles acquired for salvage purposes.

Dane Auto Sales, Dane -- Special Order was issued for failure to keep proper records, failure to register vehicles used as loaners, and failure to inspect and disclose defects on vehicles offered for sale.

Fryer Auto Salvage, Cudahy -- License suspended for 45 days and Special Order issued for failure to enter vehicles in logbook and failure to send titles for junked vehicles in to the department.

Michael Haag, Wauwatosa -- Salesperson license application denied because of past misconduct and passing bad checks.

Steven R. Huntley, Green Bay -- Salesperson license denied for selling vehicles with unpaid liens, forgery of a customer's signature and submitting a false title application.

International Auto Brokers, Hurley -- License was denied for lack of franchise agreements to broker new vehicles.

Jerry Pritchard, Brookfield -- Salesperson license denied because of bad checks written to the department. Denial was upheld by the Office of the Commissioner of Transportation.

Slocum Pontiac, Greenfield -- Special Order was issued for selling a vehicle to a second buyer while a binding contract was in effect with a previous purchaser.

Southside Auto Salvage, Inc., Milwaukee -- License was suspended for 15 days and a Special Order was issued for selling a vehicle with lower mileage than it had when acquired, failure to keep required records and failure to transfer title.

Townsend Brothers Auto & Truck Repair, Milwaukee -- License was suspended for 30 days and a Special Order was issued for failure to keep record of about 257 vehicles acquired for salvage purposes and failure to mail titles for junked vehicles in to the department.

Michael D. Zydowicz, Brookfield -- Salesperson license denied for failure to report a felony conviction on the application.

Dealer Section
Wisconsin Dept. of Transportation
P.O. Box 7909, Room 806
Madison, WI 53707-7909