

WISCONSIN LEGISLATIVE COUNCIL STAFF

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FORM 2

OCT 04 1999

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-135

AN ORDER to renumber Trans 138.04 (1) (b) 1. to 6., 139.05 (2) (k) and 139.07; to renumber and amend Trans 138.04 (1) (b) 7. and 139.05 (11); to amend Trans 138.02, 138.025 (1), 138.04 (1) (b) (intro.), (e) and (g), 138.05 (5), 138.08 (2), (11) and (19), 139.04 (4) and (6) (intro.) and (c) (intro.), 139.05 (1) (a), (2) (f), (g), (i) and (j), (6) and (10) and 139.06 (intro.) and (10); and to create Trans 138.025 (2) (i), 138.04 (1) (a) (title), (b) 2., (c) (title), (d) (title), (f) (title) and (h) (title), 139.03 (17), 139.04 (6) (a) 6. and (d) and (10), 139.05 (1) (a) 1. and 2., (2) (k), (8i) and (8r), 139.055, 139.06 (10) (b), 139.07 and 139.08, relating to dealer facilities, records and licenses; and motor vehicle trade practices.

Submitted by **DEPARTMENT OF TRANSPORTATION**

09-02-99 RECEIVED BY LEGISLATIVE COUNCIL.

10-01-99 REPORT SENT TO AGENCY.

RS:DLS:rv;wu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

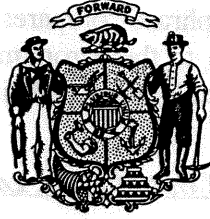
Comment Attached YES NO

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CLEARINGHOUSE RULE 99-135

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. In the list of statutes interpreted, s. 218.01 (7a), Stats., is listed twice and s. 342.16 (1m), Stats., does not exist.
- b. SECTIONS 6 and 7 should be combined and the treatment clause should read: "SECTION 6. Trans 138.04 (1) (b) 1. to 7. are renumbered Trans 138.04 (1) (b) 1. a. to g. and Trans 138.04 (1) (b) 1. g., as renumbered, is amended to read:".
- c. In s. Trans 139.03 (17), the word "do" should be replaced by the word "does."
- d. In s. Trans 139.04 (6) (c) (intro.), the word "may" should be replaced by the word "do."
- e. In s. Trans 139.05 (8r) (a), the notation "sub." should be inserted before the reference to "(2) (g)."
- f. In s. Trans 139.055 (1) (a) 2., the word "Said" in the second sentence should be replaced by the word "The." In the third sentence, the word "that" should be inserted after the word "provide."
- g. In s. Trans 139.07, the word "those" should be replaced by the phrase "the interest,".

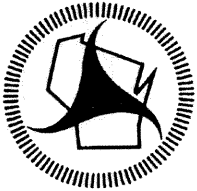
h. In s. Trans 139.08 (1), the word "must" should be replaced by the word "shall." Also, in the first sentence of sub. (1), the comma should be deleted. In sub. (2) (a), the phrase "has entered" should be replaced by the word "enters." In sub. (2) (b), the phrase "shall prepare and execute" should be replaced by the phrase "prepares and executes" and a statutory reference should be used instead of the reference to the acronym "U.C.C." Finally, in sub. (2) (d), the phrase "shall indicate" should be replaced by the word "indicates."

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. Trans 138.02 (10), it would be clearer to replace the phrase "in another jurisdiction" with the phrase "outside of Wisconsin."

b. Section Trans 139.04 (6) (d) makes use of the term "disclosure labels" and the words "label" and "disclosures." Either the singular or plural form should be used consistently. Also, in the third sentence, the phrase "making an offer to purchase the vehicle" should be replaced by a phrase such as "who desires to make an offer to purchase the vehicle," in order to make clear that the disclosure must be signed before a purchase offer is drafted or an offer is delivered.

c. Section Trans 139.05 (1m) includes the phrase "unless no inspection is required under s. Trans 139.04 (6) (c)." The referenced section of the administrative code relates to disclosures and not specifically to inspections.



Wisconsin Department of Transportation

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September 1, 1999

Ronald Sklansky, Director
Rules Clearinghouse
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One East Main Street, P. O. Box 2536
Suite 401
Madison, Wisconsin 53701-2536

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to **dealer facilities, records and licenses; and motor vehicle trade practices**, Trans 138/139

Dear Mr. Sklansky:

In accordance with § 227.15(1), Stats., I submit the enclosed text of proposed rule for Legislative Council staff review in the above-referenced matter. This document, along with written notice of WisDOT's submittal to joint Legislative Council staff, have also been filed with the Revisor of Statutes to be published in the Administrative Register in accordance with § 227.14(4m) and 227.17, Stats.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

Enclosure

cc: Sandy Beaupre
Mike Goetzman
Roger Cross
Cathy Skaar
Carson Frazier

The Wisconsin Department of Transportation proposes an order to renumber TRANS 138.04(1)(b)1. to 6., 139.05(2)(k) and 139.07; renumber and amend TRANS 138.04(1)(b)7. and 139.05(11); amend TRANS 138.02, 138.025(1), 138.04(1)(b)(intro.), (e) and (g), 138.05(5), 138.08(2), (11) and (19), 139.04(4), (6)(intro.) and (c)(intro.), 139.05(1)(a), (2)(f), (g), (i), (j), (6) and (10), 139.06(intro.) and (10); and create TRANS 138.025(2)(i), 138.04(1)(a)(title), (b)2., (c)(title), (d)(title), (f)(title), (h)(title), 139.03(17), 139.04(6)(a)6., (d), (10), 139.05(1)(a)1. and 2., (2)(k), (8i), (8r), 139.055, 139.06(10)(b), 139.07 and 139.08, relating to dealer facilities, records and licenses; and motor vehicle trade practices

**NOTICE OF HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16(1), 110.06, 218.01(5), 227.11(2), Stats., and interpreting ss. 218.01(1)(e), 218.01(1)(n), 218.01(2)(d)1., 218.01(2a), 218.01(3)(a) 6., 9., 14., 18., 19., 22. and 30., 218.01(3)(bf), 218.01(7a), 218.01 (7a), 218.30, 218.32(2) and (4)(c) , 227.51(2), 341.51(3), 342.16(1m) and (2), Stats., the Department of Transportation will hold a public hearing in **Room 421** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **12th day of November, 1999**, at 1:00 PM, to consider the amendment of chs. Trans 138 and 139, Wisconsin Administrative Code, relating to dealer facilities, records and licenses; and motor vehicle trade practices.

An interpreter for the hearing impaired will be available on request for this hearing.

Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business November 26, 1999, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Cathy Skaar, Policy Analyst, Department of Transportation, Dealer Licensing Section, Room 806, P. O. Box 7909, Madison, WI 53707-7909.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16(1), 110.06, 218.01(5), 227.11(2), Stats.

STATUTES INTERPRETED: ss. 218.01(1)(e), 218.01(1)(n), 218.01(2)(d)1., 218.01(2a), 218.01(3)(a) 6., 9., 14., 18., 19., 22. and 30., 218.01(3)(bf), 218.01(7a), 218.01 (7a), 218.30, 218.32(2) and (4)(c), 227.51(2), 341.51(3), 342.16(1m) and (2), Stats.

General Summary of Proposed Rule. Chapters Trans 138 and 139 regulate the conduct of motor vehicle dealers, salespeople, and other licensees in Wisconsin and provide protection for consumers from unfair trade practices. The proposed rule amends these regulations to incorporate some new consumer protections and some changes requested by the motor vehicle dealer industry intended to facilitate commerce.

A detailed description of all proposed changes is given in the Statement of Scope for this rule making, published in the 11-1-98 Wisconsin Administrative Register. The following are the proposed changes:

1. Amend current s. Trans 138.02(10) definition of "sell" a motor vehicle, to include delivering a vehicle from a seller in another jurisdiction to a retail consumer in Wisconsin. The change would bring under dealer licensing authority those people who currently deliver vehicles to Wisconsin consumers for out-of-state sellers.

do they need licenses?

2. Exempt from dealer licensing requirements those retail auctions that sell, at one time, heavy (over 16,000 lbs.) construction motor vehicles owned by several

businesses, when those sales are incidental to the vehicle owners' primary business activities.

3. Change the definition of a "new" vehicle to allow any number of miles for manufacturer tests, pre-delivery test, dealer exchange or delivery, plus up to 200 miles for any other purpose (including the purchasing consumer's test drive). 7

4. To modify used motor vehicle disclosure requirements applicable to motorcycles. The Department proposes to exempt motorcycle dealers from the requirement of displaying the Wisconsin Buyer's Guide label on the motorcycle. Customers would have to be provided with an opportunity to review the Wisconsin Buyer's Guide prior to entering into a contract to purchase a motorcycle. why?

5. To create new protections for people who sell vehicles on consignment through a dealer and to protect the people who buy those consignment vehicles.

6. To clarify that a dealer may accept a subsequent offer on a vehicle when an accepted offer is already pending, and to specify required disclosures to the consumer whose offer is subject to an earlier pending offer.

7. To clarify that there are two allowed methods for dealerships to document changes to the motor vehicle purchase contract after the dealer has accepted the offer.

8. Amend s. Trans 138.05(5) to give the auctions 14 rather than 12 days to provide clear title before a dealer can rescind a purchase.

9. To restrict fraudulent consumer loan application practices made possible by artificial adjustments to the price of a vehicle.

10. Amend current s. Trans 139.05(2)(g) to permit dealers to provide a total cash price for a vehicle on the face of the motor vehicle purchase contract and to incorporate by reference a computer printout or other document that itemizes the components of that price. The consumer would sign the incorporated sheet.

11. Regulate adjustments to the amount due on delivery when a lien pay-off is an estimate.

12. Allow a consumer to rescind a contract without penalty when a rebate conditioned on consumer or vehicle eligibility is unavailable at the time of delivery.

13. Require dealers to pay off loans on a trade-in vehicle within 7 business days of acquiring the vehicle.

14. Make the penalty warning more apparent to the consumer by moving it next to the contract signature block.

15. Require a dealer either (a) to cancel a purchase contract within 5 business days of its execution if the credit terms disclosed in the contract cannot be obtained for the customer or (b) be bound to delivery of the vehicle on those terms.

16. Specify time periods that a dealer must wait for a consumer to accept or reject proposed credit terms, in different circumstances of contract signature and vehicle delivery.

17. To clarify that a dealer may cancel a purchase contract by a date specified in the contract if the contract is subject to the consumer obtaining acceptable financing of the consumer's choice, and the consumer does not notify the dealer in writing that financing has been secured.

18. Exclude audio equipment and molding damage when calculating whether a new vehicle has been damaged to the extent of more than 6% of its value when that equipment is replaced with identical manufacturer's original equipment.

19. Clarify that a dealer may complete a purchase contract for a vehicle without inspecting and disclosing it if the vehicle is exempt by rule from inspection and disclosure.

20. To eliminate use of the term "service agreement" in the proposed rule and to use "service contract" throughout instead.

21. Restore several warranty disclosure requirements to the proposed rule which were removed from the rule in previous amendment. Misinformation regarding warranties has resurfaced as a problem since the provision was removed from the code.

Fiscal Effect. This proposed rule will have no fiscal impact on the Department or the Transportation Fund. No fiscal impact on local governments is anticipated.

Initial Regulatory Flexibility Analysis. This proposed rule will have little net effect on small businesses. On the one hand, business activities of dealers are improved by some streamlined requirements; on the other hand, disclosures of sales practices are required to provide adequate consumer protection. Specifically:

1. Amend current s. Trans 138.02(10) definition of "sell" a motor vehicle, to include delivering a vehicle from a seller in another jurisdiction to a retail consumer in Wisconsin. The change would bring under dealer licensing authority those people who currently deliver vehicles to Wisconsin consumers for out-of-state sellers. *This provision will require some out-of-state dealers to become licensed in Wisconsin and follow Wisconsin reporting and trade practice law for sales in Wisconsin.*

2. Exempt from dealer licensing requirements those retail auctions that sell, at one time, heavy (over 16,000 lbs.) construction motor vehicles owned by several businesses, when those sales are incidental to the vehicle owners' primary business activities. *This provision will reduce paperwork burden for these small businesses.*

3. Change the definition of a "new" vehicle to allow any number of miles for manufacturer tests, pre-delivery test, dealer exchange or delivery, plus up to 200 miles for any other purpose (including the purchasing consumer's test drive). *This change will require dealers to keep track of reasons for miles; on the other hand, this provision will enable dealers to sell as "new" some vehicles which the previous definition had not allowed, an aid to the business.*

4. To modify used motor vehicle disclosure requirements applicable to motorcycles. The department proposes to exempt motorcycle dealers from the requirement of displaying the Wisconsin Buyer's Guide label on the motorcycle. Customers would have to be provided with an opportunity to review the Wisconsin Buyer's Guide prior to entering into a contract to purchase a motorcycle. *This provision will reduce small business costs associated with protecting and/or replacing labels as is required under current law; however, requiring that the label be provided to the consumer before a contract becomes binding creates a new function for businesses to perform. Without that step, however, the significant consumer protections provided by the labels would be lost.*

5. To create new protections for people who sell vehicles on consignment through a dealer and to protect the people who buy those consignment vehicles. *This provision will require dealers selling vehicles on consignment to file UCC financing statements as well as follow Wisconsin dealer regulations.*

6. To clarify that a dealer may accept a subsequent offer on a vehicle when an accepted offer is already pending, and to specify required disclosures to the consumer whose offer is subject to an earlier pending offer. *This provision will allow dealers' more flexibility in structuring transactions to protect consumers in this circumstance, this provision requires dealers to provide clear disclosure to consumers as to the status of their offers.* ?

7. To clarify that there are two allowed methods for dealerships to document changes to the motor vehicle purchase contract after the dealer has accepted the offer. *This provision will reduce paperwork by allowing a new contract in addition to making changes on the current contract; however, to provide necessary consumer protections, dealers will be required to obtain consumer signature of new contract and must attach all superseded contracts.*

8. Amend Trans s. 138.05(5) to give the auctions 14 rather than 12 days to provide clear title before a dealer can rescind a purchase. *This provision will ease administrative burden on small businesses.*

9. To restrict fraudulent consumer loan application practices made possible by artificial adjustments to the price of a vehicle. *This provision will require dealers to specify true prices and discounts on the purchase contract, to protect consumers from fraudulent consumer loan applications; on the other hand, this requirement will help dealers by assuring that the vehicle loan will more likely be made and the purchase will close.*

10. Amend current s. Trans 139.05(2)(g) to permit dealers to provide a total cash price for a vehicle on the face of the motor vehicle purchase contract and to incorporate by reference a computer printout or other document that itemizes the components of that price. The consumer would sign the incorporated sheet. *This provision reduces dealer paperwork by allowing attached references to price components; to provide necessary consumer protection, however, the provision requires that the consumer sign the incorporated sheet.*

11. Regulate adjustments to the amount due on delivery when a lien pay-off is an estimate. *This provision will protect consumers from contract obligation that they cannot meet; and it also protects dealers by making it clear that a vehicle sale will or will not close.*

12. Allow a consumer to rescind a contract without penalty when a rebate conditioned on consumer or vehicle eligibility is unavailable at the time of delivery. *This provision provides necessary consumer protections for sales involving rebates and provides no hardship to dealers.*

13. Require dealers to pay off loans on a trade-in vehicle within 7 business days of acquiring the vehicle. *This provides necessary consumer protections and involves no hardship to dealers.*

14. Make the penalty warning more apparent to the consumer by moving it next to the contract signature block. *This provides necessary consumer protections and involves no hardship to dealers.*

15. Require a dealer either (a) to cancel a purchase contract within 5 business days of its execution if the credit terms disclosed in the contract cannot be obtained for the customer or (b) be bound to delivery of the vehicle on those terms. *This provides necessary consumer protections and involves no hardship to dealers.*

16. Specify time periods that a dealer must wait for a consumer to accept or reject proposed credit terms, in different circumstances of contract signature and vehicle delivery. *This provision improves dealer cost situation by removing uncertainty as to purchase consummation. However, to provide necessary consumer protections the provision specifies disclosure requirements in different circumstances.*

17. To clarify that a dealer may cancel a purchase contract by a date specified in the contract if the contract is subject to the consumer obtaining acceptable financing of the consumer's choice, and the consumer does not notify the dealer in writing that financing has been secured. *This provision reduces dealer uncertainty as to whether a sale will close. However, to provide necessary consumer protections the provision requires dealers and consumers to agree in contract to a date.*

18. Exclude audio equipment and molding damage when calculating whether a new vehicle has been damaged to the extent of more than 6% of its value when that equipment is replaced with identical manufacturer's original equipment. *This provision reduces small business costs without hardship to consumers.*

19. Clarify that a dealer may complete a purchase contract for a vehicle without inspecting and disclosing it if the vehicle is exempt by rule from inspection and disclosure. *This provision reduces small business costs without hardship to consumers.*

20. To eliminate use of the term "service agreement" in the rule and to use "service contract" throughout instead. *This provision is technical and has no substantive effect.*

21. Restore several warranty disclosure requirements to the rule which were removed from the rule in previous amendment. Misinformation regarding warranties has resurfaced as a problem since the provision was removed from the code. *This provides necessary consumer protections and involves no hardship to dealers.*

Copies of Proposed Rule. Copies of the proposed rule may be obtained upon request, without cost, by writing to Cathy Skaar, Policy Analyst, Department of Transportation, Dealer Licensing Section, Room 806, P. O. Box 7909, Madison, WI 53707-7909 or by calling (608) 267-3635. Copies may also be viewed and printed at the following website: www.watda.org/links/trans139. Hearing-impaired individuals may contact the Department using TDD (608) 266-3096. Alternate formats of the proposed rule will be provided to individuals at their request.

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 85.16(1), 110.06, 218.01(5), 227.11(2), Stats., the department of transportation hereby proposes to amend rules interpreting ss. 218.01(1)(e), 218.01(1)(n), 218.01(2)(d)1., 218.01(2a), 218.01(3)(a) 6., 9., 14., 18., 19., 22. and 30., 218.01(3)(bf), 218.01(7a), 218.01 (7a), 218.30, 218.32(2) and (4)(c), 227.51(2), 341.51(3),

342.16(1m) and (2), Stats., relating to dealer facilities, records and licenses; and motor vehicle trade practices.

SECTION 1. Trans 138.02(10) and (note) are amended to read:

TRANS 138.02(10) "Sell" means to transfer or offer to transfer ownership of a motor vehicle for compensation, whether or not the person executing or offering to execute the transfer owns the vehicle. Selling includes displaying, depicting, or describing the vehicle to potential buyers and indicating by any means that the person is willing to sell the vehicle or accept an order for the vehicle's future sale or the sale of a similar vehicle. The term also includes executing or offering to execute a lease with a requirement that the lessee purchase the vehicle. "Sell" also includes the act of delivering a vehicle from a seller in another jurisdiction to a person at a location within this state if the person has ordered the vehicle from within this state by fax, telephone, the internet, mail, or some other means.

NOTE: This definition of "selling" includes the activities of consignment dealers, who may display vehicles and negotiate sales on behalf of the vehicles' owners but ~~do not own the vehicles themselves.~~

SECTION 2. Trans 138.025(1) is amended to read:

TRANS 138.025(1) DEALERS. Except as provided in sub. (2), any person engaging wholly or partly in the business of selling motor vehicles or exchanging, buying, leasing, delivering to a retail customer, providing services aiding the sale of motor vehicles, offering or attempting to negotiate a sale or exchange of an interest in motor vehicles, whether or not such vehicles are owned by such person, without first obtaining and maintaining a valid license under s. 218.01, Stats., violates s. 218.01(2), Stats.

SECTION 3. Trans 138.025(2)(i) is created to read:

TRANS 138.025(2)(i) *Heavy vehicle auctions.* Retail auctioneers that sell only vehicles with a gross vehicle weight rating or actual weight in excess of 16,000 pounds on behalf of businesses that are not engaged in the regular sale of motor vehicles. ? eth

SECTION 4. Trans 138.04(1)(a)(title) is created to read:

TRANS 138.04(1)(a) ^(title) ~~Ownership records.~~

SECTION 5. Trans 138.04(1)(b)(intro.) is amended to read: (1)(b)(title) is created to read:

TRANS 138.04(1)(b)(title) Consignment sale documents. ^{remembered 1. and} 1. Written

consignment agreement between owner and dealer for each vehicle not owned by the dealer and offered for sale by the dealer. Consignments between motor vehicle dealers are prohibited. [Nor may wholesalers consign vehicles to motor vehicle dealers.] Each consignment agreement shall contain: ?

SECTION 6. Trans 138.04(1)(b)1. to 6. are renumbered Trans 138.04(1)(b)1.a. to 7. and

SECTION 7. Trans 138.04(1)(b)7. is renumbered Trans 138.04(1)(b)1.g. and amended to read: is

Trans 138.04(1)(b)1.g. An agreement between the vehicle's owner and the dealer providing that the dealer will hold the title certificate or a copy of both sides of the original title certificate for inspection by potential buyers during the period of consignment, that the title reassignment by the owner will not be signed until the vehicle is actually sold, and that if the vehicle is not sold during the duration of the consignment, the dealer will promptly return the title certificate to the owner along with the vehicle.

SECTION 8. Trans 138.04(1)(b)2., (c)(title) and (d)(title) are created to read:

Trans 138.04(1)(b)2. Copies of any documents required to be created under s.

Trans 139.08.

(c)(title) *Vehicle condition disclosures.*

(d)(title) *Odometer disclosure.*

SECTION 9. Trans 138.04(1)(e) is amended to read:

Trans 138.04(1)(e)(title) Contracts. Original or copy of motor vehicle purchase contracts, as required by s. Trans 139.05, purchase orders and invoices. Copy of ~~MV1~~ Wisconsin title and ~~registration~~ license plate application forms completed for each vehicle purchaser as additional evidence of sale and information regarding collection of sales tax and Wisconsin title and registration fees, when applicable. If the contract supersedes any prior offer or contract between the parties, copies of the superseded contract as required by s. Trans 139.05(1)(a)2.

NOTE: The current Wisconsin Title and License Plate Application forms used by dealers is form MV-11, which may be purchased from motor vehicle dealer form supply companies. MV-1 is used by the general public for this purpose and is available from motor vehicle service centers.

SECTION 10. Trans 138.04(1)(f)(title) is created to read:

Trans 138.04(1)(f) *Dealer record book.*

Trans (holder) is created to read
SECTION 11. Trans 138.04(1)(g) is amended to read:

Trans 138.04(1)(g)(title) Retention requirements. The used vehicle information as specified in par. (f) shall be maintained for a period of 5 years, as required by s. 342.16, Stats., and all other required records shall be maintained for a period of 5 years from the date of sale, including facsimile copies of factory invoices, dealer reassignment forms, consignment agreements, purchase contracts, ~~MV1 or MV11~~ copies of Wisconsin title and ~~registration~~ license plate applications, ~~used motor vehicle disclosure~~

~~labels~~ Wisconsin buyers guides, regular and conforming power of attorney forms, prior owner odometer disclosure statements, dealer's subsequent odometer disclosure statements, lessor's notices to lessees relating to odometer disclosure required at end of lease, and lessee's odometer disclosure statement completed at end of lease. The records shall be kept in the place of business during business hours and shall be open to inspection and copying by a representative of the department during reasonable business hours.

NOTE: The current Wisconsin Title and License Plate Application forms used by dealers is form MV-11, which may be purchased from motor vehicle dealer form supply companies. MV-1 is used by the general public for this purpose and is available from motor vehicle service centers.

SECTION 12. Trans 138.04(1)(h)(title) is created to read:

Trans 138.04(1)(h) ^(title) *Electronic record keeping.*

SECTION 13. Trans 138.05(5) is amended to read:

Trans 138.05(5) Rescind the vehicle sale transaction if unable to furnish clear title to the purchasing dealer within ~~42~~ 14 calendar days following date of sale, if so requested by the purchasing dealer.

SECTION 14. Trans 138.08(2) is amended to read:

Trans 138.08(2) The duration of each sale ~~shall~~ may not exceed 10 days.

SECTION 15. Trans 139.02(11) and (19) are amended to read:

Trans 139.02(11) "New" means any untitled or non-privately titled motor vehicle of the stated model year which has not been a demonstrator and has not been operated more than ~~100 miles or more than 500 miles if the vehicle's mileage is disclosed on the purchase contract before the buyer signs the contract~~ 200 miles for

purposes other than manufacturer tests, pre-delivery tests by a dealership, dealer exchange or delivery.

(19) "~~Service agreement contract~~" means any repair agreement sold by a dealer.

SECTION 16. Trans 139.03(17) is created to read:

Trans 139.03(17) VEHICLES IN SHORT SUPPLY. A dealer who has a signed purchase contract to sell a particular vehicle with a buyer that is subject to satisfaction of a contingency by the buyer before it becomes final may accept offers to purchase that vehicle subordinate to that of the buyer. Any such subordinate offer shall plainly state that it is valid only if the existing purchase contract for that vehicle ^{does} do not close. X

SECTION 17. Trans 139.04(4) and (6)(intro.) are amended to read:

Trans 139.04(4) USED MOTOR VEHICLE GENERAL CONDITION DISCLOSURE. Dealer and salespersons shall inform prospective retail purchasers of used motor vehicles in writing before purchase contract execution, in the manner and on the form prescribed in sub. (6). This disclosure shall include all significant existing mechanical, electrical and electronic defects and damage and evidence of repair to strut tower, trunk floor ~~plan~~ pan, frame or structural portion of unibody, including corrective welds. Disclosure of information shall be that which the licensee can find using reasonable care.

(6) WISCONSIN BUYERS GUIDE. (a) Except as provided in ~~par.~~ par. (c) and (d), each used motor vehicle displayed or offered for sale by a dealer shall display a guide as prescribed by the department. The guide shall be prepared by an authorized employe of either the dealer, another dealer having the same majority ownership as the dealer, or a predecessor dealer at the same location as the dealer. The guide shall be

completed in duplicate and contain the printed names of the vehicle inspector and the records inspector. The original guide shall be signed by the dealer or a salesperson prior to separating the copy for display. ~~The~~ Except as provided in par. (d), the copy shall be displayed within the vehicle, attached to a window except where not possible, and shall be readable from the outside, or attached to motor driven cycles, and it shall become the possession of the purchaser upon delivery. The original shall be signed by the purchaser prior to delivery of the motor vehicle and shall be retained by the dealer for 5 years. The guide shall clearly state in simple and concise language:

SECTION 18. Trans 139.04(6)(a)6. is created to read:

Trans 139.04(6)(a)6. Whether the vehicle is being sold by the dealership on a consignment basis.

SECTION 19. Trans 139.04(6)(c)(intro.) is amended to read:

Trans 139.04(6)(c) The written disclosures required by pars. (a) and (b) ~~shall~~ ^{do} may not apply to:

SECTION 20. Trans 139.04(6)(d) and (10) are created to read:

Trans 139.04(6)(d) The written disclosure required by pars. (a) and (b) is not required to be posted on a motorcycle. Disclosure labels for motorcycles that are not displayed on the vehicle shall be maintained by the dealer and provided upon request to any person who requests to see the label or who makes an offer to purchase the vehicle. In the case of a person ^{desires to make} making an offer to purchase the vehicle, the disclosures shall be signed by the person before a purchase offer is drafted by the dealer or an offer is delivered by the person to the dealer. The label shall become the possession of the purchaser upon delivery. ^{how is this known then}

(10) CONSIGNMENT VEHICLES. In addition to any other disclosures required under this section, any vehicle sold by the dealership on a consignment basis for a person shall prominently display the following disclosure: "THIS VEHICLE IS BEING SOLD ON A CONSIGNMENT BASIS BY THIS DEALERSHIP FOR <NAME OF OWNER> AND IS NOT PART OF THIS DEALERSHIP'S INVENTORY."

SECTION 21. Trans 139.05(1)(a) is amended to read:

Trans 139.05(1)(a) An exact copy of the motor vehicle offer to purchase shall be provided to the purchaser at the time the offer is signed by the purchaser except in the case where the offer has not left the presence of the purchaser and is accepted by the dealer licensee in the presence of the purchaser. In addition, whenever a motor vehicle offer to purchase is signed and accepted by a dealer licensee, becoming a binding motor vehicle purchase contract, an exact copy of the purchase contract shall be provided to the purchaser. Any changes to the offer to purchase after signing by the purchaser, or to the purchase contract subsequent to dealer acceptance, shall be ~~notated and initiated by all parties on all copies.~~ made in one of the following manners:

SECTION 22. Trans 139.05(1)(a)1. and 2. are created to read:

Trans 139.05(1)(a)1. All parties shall notate and initial all copies of the original documents.

2. A replacement contract shall be prepared that indicates it replaces the original contract documents. The original contract documents shall be retained by the dealer in the manner required by s. Trans 138.04(1)(e). Making material changes to the replacement contract without direct oral disclosure of those changes to the customer is an unfair sales practice.

SECTION 23. Trans 139.05(2)(f), (g), (i) and (j) are amended to read:

Trans 139.05(2)(f) Reference all warranties and service contracts in the following language:

"WARRANTY INFORMATION "

Check applicable boxes. Refer to separate document for coverages and exclusions.

Dealer Warranty
 AS IS - No Warranty
Dealer disclaims all warranties including implied warranties of merchantability and fitness for a particular purpose.
 Limited Warranty
Refer to separate warranty document for coverages and exclusions.

Manufacturer Warranty
 New Vehicle Warranty
 Expired
 Not known
 Cancelled due to salvage or other vehicle history.
 Remaining vehicle mfr warranty - Call the mfr or refer to warranty booklet for details.

Term: _____ (months)
_____ (miles)
whichever comes first
Percent of retail repair costs to be paid by You _____ %
Deductible to be paid by You \$ _____

Expiration: _____ (date)
_____ (miles)
whichever comes first
Deductible to be paid by You \$ _____
Transfer fee to be paid by You \$ _____
Pay to: Mfr
 Dealer

Service Agreement Contract Information

Service Agreement Contract
Term: _____ (months) _____ (miles), whichever comes first.
Percent of retail repair costs to be paid by You: _____ %
Deductible to be paid by You \$ _____ "

(g) ~~Reference~~ State the price due on delivery of the vehicle and contain an itemized calculation of the price or reference to an attachment signed by the buyer that contains the itemized calculation of the price. The itemized calculation of the price shall

state the manufacturer's suggested retail price if the vehicle is a new vehicle or the price stated on the Wisconsin buyer's guide if the vehicle is a used vehicle, and all additional charges, mark-ups, mark downs, discounts or other adjustments made to arrive at the price due on delivery and the. All known components of that the price, including but not limited to, cash price due on delivery, delivery charges, discounts, mark-ups, mark downs, sales tax, license and title fees, down-payment, and trade-in allowance and loan payoff figures or estimated figures as permitted under sub. (8i) for any loan secured by the trade-in vehicle shall be shown. Rebates shall be referenced separately by dollar amount and assignment. If the itemized calculation of the price is made on a separate attachment, that attachment shall be signed by the buyer at the same time as any purchase contract or offer to purchase the vehicle or the purchase contract or offer to purchase shall be considered in violation of this paragraph.

(i) ~~Make~~ Immediately above the contract signature block, make specific reference to any penalty which may be assessed to the purchaser for non-acceptance of the vehicle. The penalty ~~shall~~ may not exceed 5% of the cash price as provided by s. 218.01(5m), Stats.

(j) ~~Clearly state whether or not the contract is subject to the purchaser obtaining acceptable financing through the dealer or at the creditor of the purchaser's choice and how long the purchaser has to obtain financing contingencies in the manner provided in s. Trans 139.055.~~ Clearly state whether or not the contract is subject to the purchaser obtaining acceptable financing through the dealer or at the creditor of the purchaser's choice and how long the purchaser has to obtain financing contingencies in the manner provided in s. Trans 139.055. If the purchaser is unable to obtain acceptable financing, the purchaser may cancel the contract and shall, within one business day, receive a full refund of any down-payment, and return of trade-in vehicle, or title for trade-in vehicle,

or both, and no penalty shall be assessed. If the trade-in vehicle is not available, the purchaser shall receive the trade-in allowance.

SECTION 24. Trans 139.05(2)(k) is renumbered Trans 139.05(2)(m).

SECTION 25. Trans 139.05(2)(k) is created to read:

Trans 139.05(2)(k) If the contract is for a vehicle for which the dealership has already negotiated a purchase contract, the contract shall clearly state that the contract is contingent on the prior contract not being completed. The contract shall also provide that the buyer may rescind the contract at any time prior to being notified by the dealer that the prior contract has not closed and that the dealer is prepared to deliver the vehicle to buyer.

SECTION 26. Trans 139.05(6) is amended to read:

Trans 139.05(6) **DAMAGE DISCLOSURE.** On any new vehicle or demonstrator or executive vehicle, any corrected damage exceeding 6% of the manufacturer's suggested retail price, as measured by retail repair costs, and all uncorrected damage shall be disclosed in writing to the purchaser prior to delivery. Damage to glass, tires, ~~or~~ bumpers, moldings or audio equipment is excluded from the 6% rule when replaced by identical manufacturer's original equipment.

SECTION 27. Trans 139.05(8i) and (8r) are created to read:

Trans 139.05(8i) **ESTIMATED TRADE-IN LIEN PAYOFF AMOUNTS.** When the outstanding balance of any lien secured by a vehicle to be used as a trade-in vehicle for a transaction is unknown, the dealer may estimate the payoff amount of the loan secured by the lien in the itemization of vehicle price required under sub. (2)(g). Where such an estimate is used the sales contract shall provide that the buyer may rescind the

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purchase contract if the actual amount needed to pay off all extensions of credit secured by the motor vehicle exceeds the estimated payoff amount used in the itemized calculation of vehicle price by more than a certain amount. The amount by which the estimate may vary from the actual payoff may be negotiated as part of the purchase contract.

(8r) VEHICLE REBATES. (a) The existence of a manufacturer's or other rebate on a vehicle is a material item in determining the price of the vehicle. If for any reason a buyer does not qualify for a rebate that is referenced in the purchase contract as required by ^{Sub.} (2)(g), and the dealer does not discount the purchase price of the vehicle by the amount of the rebate, the buyer may rescind the purchase contract. All purchase contracts shall specifically reference this right of the buyer.

(b) If a manufacturer consumer rebate not referenced in a purchase contract becomes available based on the delivery date of a vehicle, and a retail purchaser qualifies for the rebate at the time of delivery, the rebate shall be awarded to the purchaser and the contract shall be amended accordingly as provided in s. Trans 139.05(1)(a).

SECTION 28. Trans 139.05(10) is amended to read:

Trans 139.05(10) ADDITIONAL DISCLOSURES. The motor vehicle purchase contract shall clearly state ~~"Motor vehicle dealer sales are governed by ch. 218, Stats., and ch. Trans 139 administered by the~~ "Contact the selling dealership to discuss any questions or problems about your vehicle or this contract. If you are unable to resolve any disputes with the dealership you may contact: Division of Motor Vehicle Dealer License Section, Wisconsin Department of Transportation, P.O. Box 7909, Madison,

Wisconsin 53707. The Dealer Section licenses motor vehicle dealers and administers the administrative regulations governing consumer protection in vehicle sale transactions, Ch. Trans 139, Wis. Admin. Code."

SECTION 29. Trans 139.05(11) is renumbered Trans 139.05(1m) and amended to read:

TRANS 139.05(1m) CONTRACT PROHIBITED. A purchase contract for a used motor vehicle ~~shall~~ may not be executed with the retail purchaser until the vehicle has been inspected and findings disclosed as required by s. Trans 139.04(4) and (5) unless no inspection is required under s. Trans 139.04(6)(c).

this provision relates to disclosures

SECTION 30. Trans 139.055 is created to read:

TRANS 139.055 Financing. (1) **VEHICLE SALES.** (a) *Dealer arranged financing.* 1. 'Notice to consumer regarding ineligibility for financing.' A motor vehicle sales contract shall provide that if the dealer is arranging financing on behalf of the customer and is unable to do so, the contract shall be null and void if the dealer provides a notice to that effect to the purchaser or the purchaser elects to cancel the contract. In the event the dealer fails to provide the required notice to the customer within 7 calendar days of the contract date, the customer may elect to carry out the contract and, in such case, the dealer shall finance the customer's purchase of the vehicle and deliver the vehicle in the manner specified in the contract.

2. 'Establishing credit terms between the contract date and delivery date for a vehicle.' With respect to a contract to purchase a motor vehicle that is contingent on the dealer arranging financing for the motor vehicle that is acceptable to the purchaser, a dealer may, subsequent to the contract date and prior to the customer taking delivery

of the motor vehicle, provide the customer with notice that the dealer has arranged financing for the vehicle for which the customer is qualified and state the terms of such financing, including the amount to be financed, the annual interest rate, total principal and interest payments. ^{The} Said notice shall include a copy of all proposed financing documents. The notice shall provide ^{that} the customer has 7 calendar days to accept or reject the proposed financing. If the customer accepts the proposed financing, the financing contingency of the contract shall be deemed satisfied and the dealer shall be bound to provide financing on the terms set forth in the notice. If the customer rejects the proposed financing but waives the financing contingency, the financing contingency shall be deemed waived and the customer shall be bound to the contract without regard to whether the customer is able to secure financing. If the customer fails to respond to the notice or rejects the proposed financing and does not waive the financing contingency, the contract shall be null and void.

(b) *Purchaser arranged financing.* A motor vehicle purchase contract that is contingent on a buyer arranging financing is null and void if the buyer has not provided evidence that buyer has arranged acceptable financing for the purchase of the vehicle within a time established in the contract.

(c) *No fees on void contracts.* No fee or penalty may be charged to the consumer by the dealer in connection with a contract that is rendered null and void under this subsection.

(2) **VEHICLE LEASES.** A contract to lease a motor vehicle shall be null and void if it does not conform to all disclosure requirements for motor vehicle leases required by federal law.

SECTION 31. Trans 139.06(intro.) and (10) are amended to read:

TRANS 139.06 Warranties. For the purpose of this chapter, service ~~agreements~~ contracts are not considered warranties, but for the purposes of disclosure and performance as provided in subs. (1) through (7) and in sub. (10), the term "warranty" shall include service ~~agreements~~ contracts.

(10) WARRANTOR BASIC OBLIGATION. (a) It is an unfair practice and prohibited for a warrantor to fail to service or repair a motor vehicle in accordance with the terms and conditions of the warranty or service ~~agreement~~ contract.

SECTION 32. Trans 139.06(10)(b) is created to read:

Trans 139.06(10)(b) If a dealer states there is a remaining new vehicle warranty on a vehicle which will be honored by the manufacturer and warranty transfer is subsequently rejected, or the dealer disclaims knowledge of whether a vehicle has remaining factory warranty when the dealer knew or reasonably should have discovered that the warranty would not be honored by the manufacturer, the selling dealer shall be obligated to provide service for the vehicle under the same terms and conditions as the manufacturer would have been obligated to provide under the original manufacturer's warranty.

SECTION 33. Trans 139.07 is renumbered Trans 139.09.

SECTION 34. Trans 139.07 and 139.08 are created to read:

TRANS 139.07 Satisfaction of liens. When a motor vehicle dealer accepts a vehicle in trade that is subject to an outstanding lien, the dealer shall pay outstanding debt secured by the lien within 7 calendar days of taking delivery of the trade-in vehicle.

The dealer shall be responsible for any interest that accrues, penalties assessed, late

fees, or other charges made on the debt secured by the lien to the extent ^{the interest,} those penalties, fees or other charges result from the dealer delaying payment of the outstanding debt upon accepting delivery of the vehicle.

NOTE: s. 218.01(9), Stats.

TRANS 139.08 Consignment vehicles. (1) A dealership must comply with all the requirements of this section ^g and s. Trans 139.04(10) with respect to any vehicle it sells on a consignment basis. Consignment sales include any arrangement by which a dealership displays or sells a vehicle on behalf of a person other than the dealership.

(2) No dealer may accept delivery of or display a consignment vehicle for sale until all of the following requirements have been met:

(a) The dealership ^s has entered ~~ed~~ into a written consignment agreement with the consignor specifying the terms of the consignment agreement. Any consignment agreement between a dealer and a person shall include a provision that the consignor retains a security interest in the vehicle in the amount of the proposed sale price of the vehicle or retains ownership of the vehicle.

(b) The dealership ^s shall prepare ^s and execute ^s a U.C.C. financing statement and file the U.C.C. financing statement with the ^{Wis. ?} department of financial institutions. The financing statement shall be prepared and filed so as to properly perfect the consignor's security or ownership interest. The cost of filing the financing statement may be charged to the seller. ^{under}

(c) The dealership notifies any person with a security interest in its inventory that the dealership accepts consigned vehicles for sale on a consignment basis.

(d) The Wisconsin buyer's guide for the vehicle shall indicate⁻⁵ that the vehicle is a consigned vehicle.

(3) A dealer shall remit any monies due a consignor under a consignment agreement within 4 calendar days of the date a consignment vehicle is delivered to a buyer.

NOTE: The purpose of this section is to insure that a consignor's interest in any vehicle consigned is protected from adverse claims of dealership creditors, administrators, or trustees.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 31 day of August, 1999.



CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation



Wisconsin Department of Transportation

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The Honorable Judy Robson
Senate Chairman
Joint Committee for Review
of Administrative Rules
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Madison, Wisconsin 53702

September 1, 1999

SEP 03 REC'D

SEP 03 1999

The Honorable Glenn Grothman
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 15 North, State Capitol
Madison, Wisconsin 53702

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to **dealer facilities, records and licenses; and motor vehicle trade practices**, Trans 138/139

Dear Senator Robson and Representative Grothman:

Enclosed for your information is a Notice of Public Hearing and Text of Proposed Rulemaking relating to the above-entitled matter. These documents have also been filed with the Revisor of Statutes, the Legislative Council, and the Department of Administration in accordance with the requirements of §§ 227.15 and 227.17, Stats.

Sincerely,


Julie A. Johnson
Paralegal

Enclosure

cc: Sandy Beaupre
Mike Goetzman
Roger Cross
Cathy Skaar
Carson Frazier