

## Chapter Trans 139

## MOTOR VEHICLE TRADE PRACTICES

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Note: Chapter MVD 24 as it existed on December, 31, 1982 was repealed and recreated as chapter Trans 139 effective January 1, 1983.

**Trans 139.01 Purpose and scope.** (1) **STATUTORY AUTHORITY.** As authorized by ss. 110.06, 218.01 (5) and 227.11, Stats., the purpose of this chapter is to establish the department's administrative interpretation of ss. 218.01 (3) (a) 6., 9., 14., 18., 19., and 22., 218.01 (5m), 218.01 (7a) and 342.16 (1m), Stats., relating to motor vehicle trade practices.

(2) **APPLICABILITY.** This chapter applies to any person applying for or holding a Wisconsin motor vehicle manufacturer, distributor, dealer or salesperson license.

History: Cr. Register, December, 1982, No. 324, eff. 1-1-83; am. (1), Register, May, 1985, No. 353, eff. 6-1-85; correction in (1) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1987, No. 384.

**Trans 139.02 Definitions.** In this chapter:

(1) "Cash price" means manufacturer's suggested retail price, or dealer asking price, including manufacturer installed options and accessories and manufacturer transportation charges, plus dealer installed options and accessories and additional dealer markup, profit and transportation charges, minus the dollar value of cash discounts.

(2) "Damage" means defects caused by reasons other than normal wear through vehicle age and usage.

(3) "Demonstrator" means any untitled or non-privately titled motor vehicle which was used primarily for the purpose of demonstration to the public.

(4) "Executive" means any untitled or non-privately titled motor vehicle which was used primarily by executives of licensed manufacturers, distributors or dealers and not used for demonstration to the public.

(5) "Insurance service plan" means a repair agreement issued by an insurance company and sold by a dealer.

(6) "Licensee" means any motor vehicle manufacturer, distributor, dealer, or salesperson, or any combination thereof, licensed by the department.

(7) "Manufacturer" includes distributor.

(8) "New" means any untitled or non-privately titled motor vehicle of the stated model year which has not been operated more miles than required for manufacturer's tests, pre-delivery test, dealer exchange or delivery.

(9) "Private retail purchaser" or "retail purchaser" means any purchaser not licensed as a motor vehicle manufacturer, distributor, dealer, or wholesaler.

(10) "Privately driven" means any privately owned, non-lease motor vehicle.

(11) "Privately titled vehicle" means a vehicle titled by a private individual or any party other than a licensed motor vehicle manufacturer, distributor, or dealer.

(12) "Sale" includes lease with the option of purchase when the option is exercised.

(13) "Service agreement" means any repair agreement sold by a dealer.

(14) "Used" means any motor vehicle other than a new motor vehicle and includes executive or demonstrator.

History: Cr. Register, December, 1982, No. 324, eff. 1-1-83.

**Trans 139.03 Advertising and sales representations. (1) TRUTHFUL.** The use of false, deceptive or misleading advertising or representations by any licensee to induce the purchase of a motor vehicle constitutes an unfair practice and is prohibited.

(2) **FACTUAL.** (a) Any licensee, making any statement of fact to the public in any advertisement or written statement or representation concerning the motor vehicles it offers for sale, the services it provides or other aspects of its business operation, shall possess detailed evidence of the validity and accuracy thereof, which evidence shall be furnished to the department upon request.

(b) Terms such as "largest" when referring to dealership size shall be based solely on vehicle sales volume and shall clearly state the basis for the claim, including vehicle make, time period if other than entire prior 12 months and geographic area if other than statewide, in the advertisement. Each vehicle make shall be considered separately in determining new vehicle sales volume.

(3) **DISCLOSURES REQUIRED WHEN ADVERTISING PRICE.** (a) When the price of a motor vehicle is advertised by a dealer licensee, or a group of dealer licensees are named in a joint advertisement, the advertised price shall include all charges that shall be paid by the purchaser to acquire ownership of the vehicle with the exception of sales tax and title and registration fees.

(b) Use of terms such as "invoice," "cost," or similar terms, when advertising the price of a motor vehicle, and accessories, is an unfair practice and prohibited unless the advertisement discloses the dealer's actual cost is less because there are, or may be, factory holdbacks, rebates, incentives, or other discounts to the dealer, if that is the case.

(c) Whenever a dealer licensee has a promotion on a used motor vehicle and a sales price is stated in an advertisement, the sales price shall be disclosed on the vehicle during the sales promotion period.

(4) **TRADE-IN ALLOWANCE.** No specific price shall be stated in an advertisement as an offer for a trade-in, if the price so stated is contingent upon

the condition, model, or age of the prospective purchaser's vehicle to be traded. Use of the phrases "up to," "as much as" or similar phrases regarding a trade-in allowance is an unfair practice and prohibited.

(5) **USED VEHICLE COMPARATIVE SAVINGS.** The use of new motor vehicle list prices, wholesale or retail dealer pricing guides, or similar price guides to advertise comparative savings for used vehicles is an unfair practice and prohibited.

(6) **REPOSSESSED.** The term "repossessed" shall not be used in any public representation.

(7) **FREE MERCHANDISE.** It is unfair practice to use the word "free" or any other word or words of similar import, in any advertising, if receipt of the free merchandise, equipment, accessories or service is conditioned by purchase of a vehicle or related accessories.

(8) **ESTABLISHING PRICE.** Use of phrases such as "write your own deal," "name your own price," "appraise your own vehicle," and similar phrases is an unfair practice and prohibited.

(9) **SALES.** (a) Use of phrases such as "last of the remaining," "close-out," "final clearance," "clearance," and similar phrases when used in reference to used motor vehicles, other than demonstrator and executive vehicles, is an unfair practice and prohibited, unless the dealer licensee is actually discontinuing business.

(b) Use of phrases such as "last of the remaining," "close-out," "final clearance," "clearance" and similar phrases when used in reference to demonstrator, executive and new motor vehicles is an unfair practice and prohibited, unless the dealer licensee is not replacing the vehicles with similar vehicles of the same model year, or is actually discontinuing business.

(10) **VEHICLE AVAILABILITY.** It is an unfair practice for a licensee to advertise motor vehicles or types of motor vehicles for sale unless the licensee has available, for delivery within a reasonable time a quantity of the advertised vehicles sufficient to meet reasonably anticipated demands, unless the advertisement clearly and specifically discloses any limitations as to the quantity available or time of delivery.

(11) **NAME AND ADDRESS.** Dealer and salesperson licensees are prohibited from advertising motor vehicle sales at an address or from listing a phone number other than that of either the licensed business premises, or temporary locations as authorized by s. Trans 138.08. Advertisements shall include the business name.

(12) **NEW VEHICLES.** Franchised new vehicle dealers, distributors and manufacturers are the only licensees permitted to advertise or sell new vehicles.

(13) **MODEL YEAR AND IF USED.** When advertising any motor vehicle, a dealer or salesperson licensee shall state the vehicle's model year and, if the vehicle is of the current or previous model year, shall designate the vehicle as used if that is the fact. Reference to "low mileage," "X-miles," "one-owner," "demonstrator," "executive," or other words of similar meaning shall serve to designate the vehicle as used. If all vehicles in an advertisement are used, one reference to designate that they are used is sufficient.

(14) **EXPIRATION TERMS OF SALES OR PROMOTIONS.** Whenever a sale or promotion offering gifts, merchandise, equipment, accessories, service, discounts, price reductions, or cash is advertised, the advertisement shall also specifically disclose the expiration terms or date of the sale or promotion.

(15) **TWO OR MORE DAMAGED VEHICLES.** Whenever a promotion or sale involving 2 or more vehicles damaged by the same cause as a result of the same incident is offered by a dealer licensee, all accompanying advertising shall disclose the cause of damage, regardless of the extent of damage.

(16) **FLOOD DAMAGED VEHICLES.** Whenever a dealer licensee offers, promotes the sale of, or sells a flood damaged vehicle, all advertising relating to that vehicle shall disclose that the vehicle has been flood damaged regardless of the extent of damage.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; am. (5) and (14), Register, June, 1974, No. 222, eff. 7-1-74; am. (2) (a), r. (2) (b), (3) (a) and (8), renum. (9) and (10) to be (8) and (9), (11) and (15) are renum. (10) and (14) and am. renum. (12), (13), (14), (16) and (17) to be (11), (12), (13), (15) and (16), Register, April, 1977, No. 256, eff. 5-1-77; renum. from MVD 24.02 and am., Register, 1982, No. 324, eff. 1-1-83; am. (3) (a), Register, October, 1983, No. 334, eff. 11-1-83.

**Trans 139.01 Disclosure of the condition of the motor vehicle. (1) MODEL YEAR DESIGNATION.** (a) Changing the model year of a motor vehicle is an unfair practice and prohibited. If no model year is designated, the year of manufacture applies.

(b) Both the chassis model year and the finished vehicle model year shall be stated on the motor vehicle purchase contract if the model year of a new motor vehicle chassis is different than the model year of the new finished vehicle, as designated by the converter-manufacturer or final stage manufacturer under the provisions of s. Trans 137.06 (5) (a).

(2) **NEW MOTOR VEHICLE DISCLOSURE.** (a) The dealer and salesperson licensees shall disclose to the prospective purchaser of any new motor vehicle when any parts, equipment or accessories originally installed have been removed or replaced by a dealer licensee prior to sale, if the replacement items are not of equal quality, and shall disclose all dealer installed options or accessories and whether or not warranted. The disclosures shall be in writing on the face of the motor vehicle purchase contract as required by s. Trans. 139.05 (2) (f) and (h).

(b) Prior to delivery of a new motor vehicle, the dealer licensee shall furnish to the purchaser a copy of the predelivery test and inspection report made pursuant to the manufacturer's specifications filed under s. 218.01 (3) (a) 22, Stats. The manufacturer shall file with the department a copy of any amended delivery and preparation obligations of its dealers at least 30 days prior to adoption of changes.

(3) **NEW MOTOR VEHICLE WINDOW STICKER AND DEALER SUPPLEMENTAL PRICE LABEL.** (a) Manufacturer's suggested retail price labels shall remain affixed to motor vehicles as required by federal law, until sold and delivered to the ultimate purchaser.

(b) Any additions to or deletions from items contained on the label in par. (a) shall be identified by both description and retail price on a dealer supplemental price label affixed to the motor vehicle in a clear and conspicuous location. Items to be disclosed on dealer supplemental labels include, but are not limited to, dealer installed optional equipment or

accessories, products or services performed by the dealer beyond the manufacturer's pre-sale delivery obligations, and final dealer asking price.

(4) **USED MOTOR VEHICLE GENERAL CONDITION DISCLOSURE.** Dealer and salesperson licensees 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) of all significant existing mechanical and structural defects and damage. Disclosure of information shall be that which the licensee can ascertain as a result of reasonable diligence, which shall consist of but is not limited to a walk-around and interior inspection, under-hood inspection, under-vehicle inspection and a test drive.

(5) **USED MOTOR VEHICLE SAFETY EQUIPMENT DISCLOSURE.** (a) Dealer and salesperson licensees 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), whether or not the condition of a vehicle for sale is such that it can be legally operated at all times in accordance with ch. 347, Stats., and ch. MVD 5. Disclosure of information shall be that which the licensee can ascertain as a result of reasonable diligence, which shall consist of but is not limited to a walk-around and interior inspection, under-hood inspection, under-vehicle inspection, and a test drive.

(b) If a vehicle is inoperable in such a manner as to make compliance impossible to determine, or if the dealer licensee does not correct all defects which prohibit its legal operation prior to delivery of the vehicle to a retail purchaser, the dealer and salesperson licensee shall:

1. Make the following disclosure conspicuously on the face of the motor vehicle purchase contract prior to its execution:

**"WARNING!**

This vehicle cannot be legally operated on Wisconsin highways and may not be safe."

2. Specify for the retail purchaser the defects which are in violation of ch. 347, Stats., and ch. MVD 5 as prescribed in sub. (4) and in this subsection.

(c) If because of the general condition of a vehicle, it is considered by the dealer licensee to be a junk vehicle at time of sale, the purchase contract shall state "Sold as junk vehicle"; the dealer licensee shall notate the title and forward it to the department. The purchaser shall be advised that the vehicle may subsequently be re-titled and operated only after it has been inspected and approved by a law enforcement officer, the statutory \$25 inspection fee paid and the certification and inspection fee is submitted to the department together with title and registration application and appropriate fee.

(6) **USED MOTOR VEHICLE DISCLOSURE LABEL.** (a) Except as provided in par. (c), each used motor vehicle displayed or offered for sale by a dealer licensee shall display a label as prescribed by the department. The label shall be completed in duplicate. The original shall be displayed within the vehicle 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 copy shall be signed by the purchaser prior to delivery of the motor vehicle and shall be retained by the dealer licensee for 5 years. The label shall clearly state in simple and concise language:

1. That the vehicle is used. Vehicle must be designated as "Used," and the prior use must be clearly and specifically disclosed, for example, privately driven, executive, demonstrator, taxi-driven, police vehicle, driver-education, lease, rental, public vehicle, company vehicle, municipally owned, or unknown. If a vehicle had been previously junked or flood damaged, regardless of the extent of damage, that shall be clearly disclosed. Required disclosure of the prior use and flood damage is limited to that which the dealer licensee could ascertain with reasonable diligence.

2. The odometer reading at the time the vehicle was obtained by the dealer licensee and a disclosure that either the reading is known to be actual miles, or the reading is not the actual miles, or the reading reflects the amount of mileage in excess of the designed mechanical odometer limit, as corroborated by the prior owner's odometer disclosure statement available and subsequently shown to the purchaser, in accordance with sub. (7). The window sticker or disclosure label shall further disclose that the name and address of the vehicle's prior owner are available upon request.

3. The vehicle asking price, make, model year, identification number, engine type, for example, V-8, 6, rotary, and type of transmission; for example, standard, four-speed, automatic.

4. The basic terms and conditions of warranty, if offered, identifying the systems covered using such terms as engine, transmission, differential, cooling system or electrical system and specifying the duration of the warranty and the percentage of any repair costs to be paid by the consumer. Use of the terms "power train" or "drive train" to describe systems covered is prohibited.

5. That the vehicle is being sold on an "AS IS-NO WARRANTY" basis if that is the fact. If so, it shall be further stated in bold faced type that "Except for any express or implied warranty by the manufacturer or other third party which exists on this vehicle, the entire risk as to the quality and performance of the vehicle is with the purchaser and should the vehicle prove defective following the purchase, the purchaser will assume the entire cost of all servicing and repair."

6. The inspection disclosures required in subs. (4) and (5). Unless otherwise agreed to in the purchase contract, the inspection disclosures shall neither create any warranties, express or implied, nor affect warranty coverage provided for in the purchase contract.

(b) The used vehicle label required by par. (a) shall also include the following statements:

1. "All required safety equipment items below, except those marked "Not OK", are in legal operating condition. WARNING: Until all "Not OK" items are corrected, this vehicle cannot be legally operated on Wisconsin highways and may not be safe."

2. "Independent Inspection: Ask the dealer if you may have a more detailed inspection of this vehicle done by your mechanic on or off the display lot."

3. "IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing."

(c) The written disclosures required by pars. (a) and (b) shall not apply to:

1. A used motor vehicle prior to being displayed or offered for sale, providing a written statement "Not inspected for sale" is conspicuously displayed on each vehicle.

2. A demonstrator or executive vehicle until removed from executive or demonstrator service and displayed or offered for sale on the sales lot.

3. A used motor vehicle which is operated between point of wholesale or point of purchase and the licensee's business premises by the licensee or agent if a valid dealer registration plate is affixed to the vehicle.

(7) MILEAGE DISCLOSURE. Unless exempted from the odometer disclosure statement requirements under s. Trans 154.05, for every motor vehicle offered for sale by a dealer licensee, the dealer licensee shall:

(a) Establish and maintain for 5 years those mileage and odometer disclosure records specified in s. Trans 154.12. The records shall be maintained and made available in a manner prescribed under s. Trans 154.12.

(b) Show to each prospective purchaser, prior to sale, all odometer disclosure records relating to a vehicle, including the prior owner's odometer disclosure statement contained on the conforming title or, if the title is nonconforming, on a separate conforming mileage statement.

Note: A dealer may show a prospective buyer a copy of both sides of a title document instead of the original if the prospective buyer is shown the original document when requested prior to execution of a purchase contract.

(c) Upon transfer of motor vehicle, disclose the odometer reading to the purchaser in a manner and form as prescribed under s. Trans 154.04.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; r. and recr. (4) and (7); am. (6) (a) 2., Register, June 1974, No. 222, eff. 7-1-74; r. and recr. (5), Register, June, 1974, No. 222, eff. 10-1-74; am. (4) (intro.), (4) (f), (5) (a) and (6) (a) 1, renum. (5) (b) to be (5) (c), cr. (5) (b), am. (6) (a) 1, renum. (6) (c) to be (6) (d) and am., cr. (6) (c), renum. (7) to be (8) and cr. (7), Register, April, 1977, No. 256, eff. 5-1-77; renum. from MVD 24.03 and am., Register, December, 1982, No. 324, eff. 1-1-83; am. (6) (a) (intro.), Register, October, 1983, No. 334, eff. 11-1-83; am. (5) (b), (6) (b) and (c) 3., r. (5) (c), renum. (5) (d) to be (5) (c), Register, May, 1985, No. 353, eff. 6-1-85; am. (6) (a) 4. and (b), Register, May, 1986, No. 365, eff. 6-1-86; am. (6) (a) (intro.) and 2., r. and recr. (7), Register, January, 1996, No. 481, eff. 2-1-96.

Trans 139.05 Motor vehicle purchase contract. (1) USAGE. All dealer and salesperson licensees shall furnish retail purchasers with a copy of a document clearly entitled "Motor Vehicle Purchase Contract" that clearly notifies the prospective retail purchaser on its face that the purchaser is making an offer to purchase that shall become a binding motor vehicle purchase contract if accepted by the dealer licensee, that the dealer licensee shall accept or reject the offer within 2 working hours or the offer is automatically voided and that the offeror may rescind the offer unless and until accepted by the dealer licensee. Until acceptance or rejection of the offer, the licensee shall be prohibited from selling the vehicle to any other party.

(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 pur-

Register, January, 1996, No. 481

chaser. 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 initialed by all parties on all copies.

(b) A motor vehicle offer to purchase or purchase contract shall be executed whenever the dealer licensee accepts a down payment, deposit or title for trade-in unit from a prospective retail purchaser.

(2) **CONTRACT FACE REQUIREMENTS.** A contract or offer to purchase shall, on its face:

(a) Clearly identify the names and addresses of the dealer licensee and purchaser.

(b) Describe both the motor vehicle purchased and the trade-in vehicle by year, make, model, identification number and specify whether the purchased vehicle is new, used, or executive or demonstrator.

(c) State the date and time each necessary signature is affixed.

(d) Include the salesperson's name and license number in an area other than where signed by the purchaser and dealer or authorized representative.

(e) Specify an anticipated delivery date on the face of the contract and state further in bold face type next to the anticipated delivery date that:

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