



Wisconsin Department of Transportation
Office of the Secretary
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**Testimony of Wisconsin Department of Transportation
Legislative Advisor, Kathey Bilek and
Dealer and Agent Section Chief, Maura Schifalacqua
Before the Assembly Committee on Jobs, Economy, and Small Business
Development.**
December 5, 2023

Re: Clearinghouse Rule 23-014, relating to motor vehicle auction dealers and affecting small business.

Thank you, Chairman Gundrum, and members of the committee for your consideration of the department's input on Clearinghouse Rule 23-014, relating to motor vehicle auction dealers and affecting small business.

The objective of this proposed rule is to clarify the department's interpretation of s. 218.34, Stats., relating to provisional licensing policies and what constitutes a "valid" motor vehicle buyer's license. The rule clarifies that a license is valid only when the applicant for the license receives written authorization from the department. This is to close the loophole created by previous practice in the licensing process that allowed applicants to participate in auctions before the department has had the opportunity to review the application. Most importantly, this rulemaking brings the department into compliance with current statutes and reduces the risk of harm to consumers.

2003 Wisconsin Act 216, effective April 22, 2004, changed the law to require that persons could bid at motor vehicle auction only when they held a valid motor vehicle buyer's license [or other department-issued credentials]. Prior to this change, motor vehicles sold at a motor vehicle auction could only be sold to licensed motor vehicle dealers. Act 216 created an expansion to allow the sale of motor vehicles to licensed motor vehicle wholesalers and licensed motor vehicle buyers. To allow for an adjustment to this new requirement, the department implemented a policy in 2004 that permitted motor vehicle auctions to accept bids from customers under the following conditions:

- 1) the auction collected a buyer's license application from the customer;
- 2) the auction issued a receipt of application to the customer; and
- 3) the auction forwarded the application to the department.

The above approach would allow such persons to hold what is referred to as a provisional buyer's license, even though the statute requires holding of a "valid" buyer license. This policy allowed persons to purchase vehicles at auction prior to the department reviewing and approving their license application. In 2016, 3,608 buyer's licenses were issued. That number has increased every year since then, and in 2021, 5,747 buyer's licenses were issued. In 2017, WisDOT reported 124 denials of buyer's license applications. The following year, the department denied 145 buyer's licenses. Of

those, 77 applications originated with Wisconsin dealers, meaning the buyers still had access to the auction under the 2004 policy. To correct this, the department changed policy regarding buyer's licenses in 2018, prohibiting out-of-state customers from bidding at an auction until their application was reviewed and a valid license was issued by the department. In 2021, this policy was further refined to encompass all buyers, regardless of whether they were in Wisconsin or out-of-state. The department's revised policy clarified what it meant for a licensee to "display his or her... motor vehicle buyer license" under Wis. Stat. §218.34(1)(c).

In 2021, five plaintiffs representing Wisconsin motor vehicle auctions filed an injunction to prevent the department from implementing the 2021 policy. An order from the Jefferson County Circuit Court, issued January 11, 2022, prohibited the department from implementing the 2021 policy against the named plaintiffs, holding that rulemaking would be required to change its interpretation of what was considered a "valid" license. At the time of this court decision, the department continued to enforce the 2018 policy against auctions not involved in the injunction. This created an uneven playing field for auctions and buyers, leading to potential adverse economic impacts to businesses without fully addressing the problem of illegal vehicle sales.

Adding to the regulatory uncertainty, on October 31, 2022, two additional auto auctions filed a lawsuit against the department in Milwaukee Circuit Court, seeking a court order that the pre-2018 policy apply to those plaintiffs as well. On September 12, 2023, that court ordered the Department to cease enforcing the 2021 policy and ruled that the department needed to engage in formal rulemaking to change its interpretation of a "valid license" to exclude the provisional ones. Given these two court decisions, the department has reverted to the 2004 statutory interpretation for all licensed Wisconsin auto auctions.

The department began rulemaking efforts in early July of 2022 to create both a permanent rule and an emergency rule to align our interpretation with current statute and ensure an even playing field. The emergency rule, EmR2305, took effect on April 21, 2023. In August, the department submitted a request to JCRAR for its first 60-day extension of the emergency rule, seeking to prevent the expiration of the rule while we continued to work through the permanent rulemaking process. This request was not scheduled by JCRAR, and so the emergency rule expired on September 17, 2023.

Prior to the expiration of the emergency rule, the department held a combined public hearing for both rulemakings. Various stakeholders attended this hearing and shared their concerns. Wisconsin auctions' primary concern is if individuals are not allowed immediate access to their auction without first attaining an approved license from the department, they will not come back to their auction and they will lose any future business from that customer. While the department understands this argument, it is believed the impact will be minimal and short-lived. Department data for CY2022 show the average processing time for a completed individual buyer's license application was 3 to 5 business days. These applications are prioritized by the department to ensure a timely a response. Further, based on the feedback from the auctions, the department

has taken steps to build a database for which buyer license applications may be submitted electronically. The department would receive the application the same day of submittal.

The department is not certain of the impact to motor vehicle auctions absent data quantifying the number of provisional license holders who bid at auction. The department believes this change is a positive step in enhancing consumer protection by reducing the incidences of illegal motor vehicle sales. To be clear, WisDOT is not seeking to discourage buyer participation or impede the business activities of motor vehicle auctions. Rather, this rule will further legitimize buyers participating in auctions and strengthen consumer confidence in the car buying process.

If this rule is not approved, the department's rules and practice will remain out of compliance with state statute which will have direct impact on consumers. The purpose of this proposed rule is to align our rules with statute to clarify that a license is only valid when it is issued by the department. If an applicant is allowed to start bidding immediately at an auction, without approval by the state, it opens the door to allow individuals who may be denied that license to purchase multiple vehicles and sell them and increase risk to consumers.

Thank you for your time and consideration today. We are happy to try to answer any questions the committee may have.



To: Members, Joint Committee for Review of Administrative Rules
From: LKQ Corporation
Date: November 3, 2023
Re: Support for Clearing House Rule 23-014

LKQ Corporation (LKQ) is a leading provider of alternative and specialty parts to repair and accessorize automobiles and other vehicles. We currently have facilities in forty-seven states including Wisconsin. Our nine Wisconsin facilities have 227 employees at salvage yards and distribution facilities in Janesville, Hustisford, Milwaukee, Appleton, Butler, Eau Claire, LaCrosse and Plover.

As a company that buys and dismantles thousands of junk and salvage vehicles daily, we place the utmost importance on public safety and consumer protection. It is imperative that the unsafe vehicles bought at salvage auctions are disposed of properly and do not end up back in the hands of an unknowing consumer.

That is why LKQ supports Clearing House Rule 23-014. This rule will help address a rise in illegal motor vehicle sales and other consumer fraud from purchases at motor vehicle auctions in Wisconsin.

Wisconsin s. 218.34 is clear that a person ***must hold*** a valid license from the Wisconsin Department of Transportation (WisDOT) to purchase from a motor vehicle auction.

218.34 Purchases from a motor vehicle auction.

(1) No person may purchase or submit a bid for the purchase of a motor vehicle from a motor vehicle auction unless the following conditions are satisfied:

(a) The person holds a valid motor vehicle dealer, motor vehicle wholesaler, or motor vehicle buyer license.

In 2004, WisDOT permitted motor vehicle auctions to accept bids from customers who did not hold a valid license under Wisconsin s. 218.34 Stats. if they had only applied for their license. As a result, WisDOT observed increases in unlicensed motor vehicle dealer sales and odometer fraud directly connected to the sale of motor vehicles allowed under their 2004 policy.

Not only did WisDOT's 2004 policy allow an increase in cases of unlicensed motor vehicle dealer sales and odometer fraud, it was also contrary to Wisconsin s. 218.34 Stats., which requires that a person ***must hold*** a valid license to purchase from a motor vehicle auction.

This new rulemaking would codify the department's 2021 interpretation of s. 218.34 Stats., requiring all motor vehicle buyers to have been issued a valid buyer's license from the WisDOT prior to bidding on or purchasing vehicles at motor vehicle auctions.

**WRITTEN STATEMENT IN OPPOSITION TO PROPOSED AMENDMENT TO EMERGENCY RULE 2305
BY WISCONSIN DEPARTMENT OF TRANSPORTATION**

**SUBMITTED ON BEHALF OF FOX VALLEY AUTO AUCTION, JEFFERSON MID-STATE AUTO AUCTION, CENTRAL
WISCONSIN AUTO AUCTION AND GREATER MILWAUKEE AUTO AUCTION (the "Auto Auctions")**

JUNE 2, 2023

INTRODUCTION

The Auto Auctions are privately-owned businesses providing an exchange for the selling and purchasing of motor vehicles at wholesale in Wisconsin. They are licensed by the Wisconsin Department of Transportation ("Department") under Subchapter VIII of Chapter 218 of the Wisconsin Statutes (Wis. Stat. §§ 218.30-218.34). The Auto Auctions compete with motor vehicle auctions in other states, as well as online auctions, many of which allow customers from any state to bid without restrictions.

The Auto Auctions appear in opposition to the Department's Proposed Amendment to Emergency Rule 2305 (the "Proposed Rule"), which would make permanent an emergency rule that materially and needlessly interferes with the conduct of Auto Auctions' businesses. The Proposed Rule will significantly decrease the Auto Auctions' revenues and the taxes they pay the state of Wisconsin, by driving wholesale motor vehicle buyers and sellers to auto auctions in neighboring states and unregulated online auctions.

BACKGROUND

The Proposed Rule overturns the Department's long-standing policy ("temporary license policy") of allowing individuals to buy motor vehicles at Wisconsin auto auctions once they have submitted their applications for a Wisconsin buyer license and paid the required fee, rather than requiring them to wait until their applications have been formally approved by the Department, a process that can take up to 60 days. The temporary license policy was adopted by the Department in 2004, after the legislature created Wis. Stat. § 218.34 to prohibit the Auto Auctions from accepting bids from customers who do not possess a motor vehicle dealer, motor vehicle wholesaler or motor vehicle buyer license. 2003 Wis. Act 216. At that time, the Department, recognizing the burden that this new statute imposed on the Auto Auctions, developed the temporary license policy to limit that burden. In its Proposed Order Amending Emergency Rule ("Exhibit A"), the Department acknowledges that the temporary license policy was "consistent with the statutory requirements of s. 218.34" and describes the policy as "permit[ting] motor vehicle auctions to accept bids from customers under the following conditions: 1) the auction collected a buyer's license application from the customer; 2) the auction issued a receipt of application to the customer; and 3) the auction forwarded the application to the department" and "[t]his allowed customers to obtain motor vehicles at auction while the department reviewed their application and issued a license." In addition to these conditions, the temporary license policy included the Department publishing a "Buyer's License Ineligibility List", which listed the names of individuals who were not permitted to buy motor vehicles at licensed Wisconsin auctions. If a license applicant's name appeared on this list, the applicant could not buy vehicles at an Auto Auction, until the Department granted the applicant a permanent license. Exhibit B (8/14/2004 Letter from Department to Auto Auctions detailing the temporary license policy).

The temporary license policy remained in effect from 2004 to 2018, when the Department attempted to change it without adopting the change as an administrative rule and without first discussing the proposed policy change with the Auto Auctions. Under the proposed policy change, the Auto Auctions could no longer accept bids from customers while their buyer license applications were pending, even if the customer did not appear on the Buyer License Ineligibility List. The policy change would apply to both new buyer license applicants and to applicants who had been previously issued a license and only needed to have the license renewed. Under this proposed change, individuals who had been licensed to buy at the Auto Auctions for several years would have to be turned away if their licenses had expired, until a renewal license had been issued, even though they had no history of misconduct.

Despite the Auto Auctions' protests, the Department began enforcing the policy change and even threatened to suspend some auctions' licenses to do business for allowing buyer license applicants to bid at their auctions before their licenses had been formally issued or renewed. Even existing licensees whose licenses had expired would show up at the Auto Auctions expecting to bid on vehicles and have to be sent away for up to 60 days while the Department went through the formality of issuing a renewal license. Many of these long-time customers began buying at out-of-state or online auctions and never returned to the Wisconsin auctions that had turned them away.

Because this policy change had a substantial negative impact on the Auto Auctions, some of them challenged the Department's authority to make the change without rulemaking. In June 2021, the Jefferson County Circuit Court issued a temporary injunction barring the Department from enforcing the policy change against the plaintiffs while the case was pending. In January 2022, the court issued a judgment declaring that the policy change could not be lawfully implemented without being adopted as a rule. The Department is now seeking to do that exactly that with the Proposed Rule.

ADVERSE IMPACT OF THE PROPOSED RULE ON THE AUTO AUCTIONS

The Auto Auctions face competition from both out-of-state auctions and online auctions, neither of which are regulated by the Department. The Auto Auctions' financial success depends on the number of motor vehicle sellers and buyers participating in their auctions. When buyers need to be turned away from their auctions and not allowed to bid, it injures the Auto Auctions' business because those buyers then go to the unregulated out-of-state and online auctions to buy vehicles, and sellers ultimately follow them, because the price that sellers receive for vehicles at an auction is directly affected by the number of participating buyers. The Proposed Rule will have a substantial negative impact on the Auto Auctions by significantly reducing that number.

The temporary license policy was implemented by the Department in 2004 in recognition that buyers, particularly those from out-of-state, will arrive at auctions to bid without knowing that their Wisconsin buyer licenses have expired or that they need a Wisconsin license in the first place. Because these buyers have to be vouched for by licensed dealerships who accept responsibility for their actions and because the Department maintained a Buyer License Ineligibility List of individuals who have engaged in past misconduct that would disqualify them from receiving a buyer license, the Department correctly concluded that it was prudent to allow individuals who were not on that list to buy vehicles while their applications for a new or renewal license were pending. By adopting this policy, the Department avoided the undue harm to its auto auction licensees that would be caused by having to refuse to allow buyer license applicants to bid until the Department had formally acted on the application. The Department now seeks to reverse the policy without demonstrating a legitimate reason for doing so.

LACK OF NEED FOR THE PROPOSED RULE

The Department's proposed order amending the rule to make it permanent cites a "risk of harm from the sale of motor vehicles from unlicensed motor vehicle dealers" as the basis for the Rule. (Exhibit A at 1). However, the Department has offered very little, if any, evidence of illegal sales being made in Wisconsin by an unlicensed motor vehicle dealer due to the temporary license policy that the Proposed Rule will overturn. When the former head of the Department's Dealer Section, Michael Domke, was deposed in the litigation that prompted the current rule-making, he admitted that he did not know how many incidents of illegal sales were "a result of the temporary buyer's license policy . . ." Exhibit C (Partial Transcript of Deposition of Michael L. Domke taken on June 7, 2021), at 53:12-55:1. Mr. Domke also admitted that there is no reason why the Department cannot continue to keep and publish a list of individuals who have engaged in past illegal activity that bars them from bidding under a temporary buyer license. *Id.* at 19:15-20. In addition, the chances that an unqualified individual might buy a vehicle at an Auto Auction for an illegal purpose under a temporary buyer license is reduced by the requirement that a buyer license applicant must be sponsored by a licensed motor vehicle dealer which agrees to be responsible for the applicant's actions. *Id.* at 27:9-19.

The Auto Auctions understand that the real problem with illegal sale activities in Wisconsin is caused by certain wholesalers that are fully licensed by the Department. These licensed wholesalers share facilities with each other and are allowed to operate in Wisconsin with little or no permanent investment. For example, there are hundreds, if not thousands, of licensed wholesalers sharing facilities only a few miles north of the State Capitol in Arlington, Wisconsin. Because they hold valid Wisconsin wholesaler licenses issued by the Department, the Auto Auctions have no choice but to allow them to buy vehicles at their auctions, even though many of them are purportedly illegally reselling these vehicles at retail to Wisconsin consumers with spun odometers. It is these licensed, but illegitimate, wholesalers that the Department needs to address in order to protect Wisconsin consumers from fraudulent motor vehicle sales activities.

While the Auto Auctions strongly support the Department's efforts to protect Wisconsin consumers from illegal motor vehicle sale activities, they oppose the disruption of their businesses that will be caused by the Proposed Rule, where there is no evidence that the temporary license policy has materially contributed to those activities.

CONCLUSION

To avoid injury to these Wisconsin small businesses, the Department's long-standing temporary license policy should not be reversed without a strong showing that such reversal is needed to address a compelling state interest. Because the Department is unable to make such a showing, the Proposed Rule should be rejected.

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EmR2305 Rule Text

Please see the **EmR2305 info page** for dates, other information, and more related documents.

Department of Transportation (Trans)**Administrative Code Chapter Affected:**

Ch. Trans 138 (Revised)

Related to: Motor vehicle auction dealers, and affecting small businesses

Comment on this emergency rule

Comment on related clearinghouse rule

Related documents:

EmR2305 Fiscal Estimate

STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
PROPOSED ORDER AMENDING EMERGENCY RULE

The Wisconsin Department of Transportation proposes an order to:

Create ss. Trans 138.02 (13m) and 138.0225, relating to motor vehicle auction dealers and affecting small businesses.

The Statement of Scope for this Emergency Rule, SS 054-22, was approved by the Governor on June 3, 2022, published in Register No. 799A1 on July 5, 2022, and approved by Secretary of the State of Wisconsin Department of Transportation (“department”) Craig Thompson, as required by s. 227.135(2), Stats, on May 27, 2022. The emergency rule was approved by the Governor on April 13, 2023. The analysis below was prepared by the department.

ANALYSIS

Finding of emergency:

The welfare of retail consumers in the state of Wisconsin are at risk of harm from the sale of motor vehicles from unlicensed motor vehicle dealers. Previously, the department interpreted provisions of s. 218.34, Stats., as authorizing the department to issue motor vehicle buyer licenses only after the statutory procedure for assessing and issuing licenses has concluded, and only permits persons holding said license to bid on automobiles at an auction after the license process is completed. However, the department’s interpretation of

the language in s. 218.34, Stats., and the department's procedures have been invalidated by a recent court decision. The result is that unlicensed dealers can obtain vehicles at Wisconsin motor vehicle auctions through an existing licensing process, where applicants can bid on and purchase vehicles while their license is applied for with the department. The department is seeking a change to ch. Trans 138 through emergency rulemaking in order to close this loophole in the licensing process.

Statutes Interpreted: s. 218.34, Stats.

Statutory Authority: ss. 218.0111 (1), 218.0114 (1) and (4), 218.0152, 218.34, 227.10 (1), Stats.

Explanation of Agency Authority:

Section 218.0111 (1), Stats., requires that the department be the entity to issue all motor vehicle buyer licenses. Sections 218.0114 (1) and (4), Stats., set forth the licensing requirement the legislature has adopted for entities to engage in business as a motor vehicle dealer in Wisconsin. Section 218.0152 (3), Stats., authorizes the department to promulgate rules necessary for the effective administration and enforcement of permits it issues. Section 218.34, Stats., prohibits motor vehicle auctions from accepting bids from customers who do not possess a valid motor vehicle dealer, motor vehicle wholesaler, or motor vehicle buyer license. Section 227.10 (1), Stats., requires the department is required to promulgate a rule when interpreting an ambiguous statute.

Related Statute or Rule: ch. Trans 138

Plain Language Analysis:

In 2004, the department recognized the need to implement policy consistent with the statutory requirements of s. 218.34, Stats. To this end, the department permitted motor vehicle auctions to accept bids from customers under the following conditions: 1) the auction collected a buyer's license application from the customer; 2) the auction issued a receipt of application to the customer; and 3) the auction forwarded the application to the department. This allowed customers to obtain motor vehicles at auction while the department reviewed their application and issued a license.

Over time, the department observed increases in unlicensed motor vehicle dealer sales and odometer fraud directly connected to the sale of motor vehicles allowed under the 2004 policy. To correct this trend, the department changed policy regarding buyer's licenses in 2018, prohibiting out-of-state customers from bidding at an auction until their application was reviewed and a valid license was issued by the department. In 2021, this policy was further refined to encompass all buyers, regardless of whether they were in Wisconsin or out-of-state.

In 2021, five plaintiffs representing Wisconsin motor vehicle auctions filed an injunction to prevent the department from implementing the 2018 policy. An order from the Jefferson County Circuit Court, in the case, 21CV172, issued January 11, 2022, prohibited the department from implementing the 2018 policy against the named plaintiffs. The department has continued to enforce the 2018 policy against auctions not

involved in the injunction. This has created an uneven playing field for auctions and buyers, leading to potential adverse economic impacts to businesses without fully addressing the problem of illegal vehicle sales. Adding to the regulatory uncertainty, on October 31, 2022, 2 additional auto auctions filed a lawsuit against the department in Milwaukee Circuit Court, case 22CV7001, seeking a court order that the pre-2018 policy apply to those plaintiffs as well.

This rulemaking codifies the department's 2021 interpretation of s. 218.34, Stats. The rule clarifies that a license is valid only when the applicant for the license receives written authorization from the department. This is to close the loophole in the licensing process that previously allowed applicants to participate in auctions while the department reviewed their application.

This rulemaking also clarifies the requirements an applicant must meet in order to hold a valid license. The applicant must be employed by a licensed motor vehicle dealer and, if employed by more than one dealer, be licensed by each employer. The applicant must also be at least 18-years-old and pay the required fees to receive the license. Currently, the fee for an out-of-state buyer's license is \$6 and expires on the same date as the person's home state dealer license or 12 months from the date the department receives the application, whichever is sooner. An in-state buyer's license expiring in one year or less is \$6 and an in-state buyer's license expiring in more than a year is \$12. In-state buyer's licenses expires on the same date as the employer's dealer license.

All requirements for buyer's license issuance, the application form, and instructions for renewal can be found on the department's website: <https://wisconsindot.gov/Pages/dmv/dlr-agents/busns-licnse/buyerslicense.aspx>.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

There are no known existing or proposed federal regulations addressing motor vehicle purchases at auctions.

Comparison with Rules in Adjacent States:

Illinois.

625 ILCS 5/5-701

(a) No person, other than a licensed new vehicle dealer, a licensed used vehicle dealer, or municipality, shall engage in this State in the business of auctioning vehicles, for more than one owner, at auction or shall offer to sell, solicit or advertise the sale of a vehicle at auction without first acquiring a commercial vehicle auctioneer license from the Secretary of State under the provisions of this Section. A vehicle auction licensee shall be entitled thereunder to sell, solicit, and advertise the sale of used vehicles belonging to others at auction.

(b) An application for a vehicle auctioneer license shall be filed with the Secretary of State, duly verified by oath, in such form as the Secretary of State..."

*Iowa.***Iowa Admin. Code 761-425.20 (322)**

425.20(2) *Retail auction sales.* Any person who sells at public auction more than six vehicles in a 12-month period shall obtain the appropriate dealer's license. All certificates of title for the vehicles offered for sale at public auction shall be duly assigned to the dealer.

425.20(3) *Place of business.* A dealer's license issued under this rule does not require a place of business.

425.20(4) *Exceptions.*

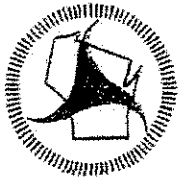
a. The state of Iowa, counties, cities and other governmental subdivisions are not required to obtain a dealer's license to sell their vehicles at retail.

b. This rule does not apply to a vehicle owner, or to an auctioneer representing the owner, selling vehicles at a retail auction if the vehicles were acquired by the owner for consumer use, the vehicles are incidental to the auction, and only one owner's vehicles are sold.

Michigan.

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Links to Admin. Code and Statutes in this Register are to current versions, which may not be the version that was referred to in the original published document.



Wisconsin Department of Transportation

DIVISION OF MOTOR VEHICLES
Dealer Section
4802 Sheboygan Ave.
P. O. Box 7909
Madison, WI 53707-7909

August 24, 2004

Telephone: 608-266-1425
Facsimile (FAX): 608-267-0323
E-mail: dealers.dmv@dot.state.wi.us

Dear Auction Owners:

Starting November 1, 2004, a new law requires wholesale motor vehicle buyers to have a Wisconsin Buyer's License from WisDOT. Under the new law, only licensed motor vehicle dealers, wholesalers or licensed vehicle buyers will be allowed to buy vehicles at wholesale auctions or from other dealers. The Buyer's License, created by WI Act 216, protects consumers and dealers by bringing all wholesale vehicle buyers under DOT regulation.

Application collection at auction

In order to get your auction customer authorized quickly and out into the lanes to bid, DOT has established a process for auctions to collect Buyer's License applications and fees on behalf of DOT and issue a license application receipt from the auction allowing the applicant to bid the very same day. The auction's license application receipt will authorize the applicant to participate in any Wisconsin wholesale auction until DOT reviews and approves the application and sends the Buyer's License card to the applicant's employer by mail.

See the enclosed flowchart "Application Collection Process at Auction" for a visual of the steps auctions should follow when collecting and submitting Buyer's License applications to DOT and issuing a license application receipt to bidders.

The application collection process is as follows:

1. Auction develops its own *license application receipt* form to give to Buyer's License applicants who submit a DOT license application at the auction.
2. Auction may allow customers who hold a DOT Buyer's License to bid at auction.
3. Auctions may allow customers to bid if they hold only a Buyer's License application receipt from your auction or another auction, but have not yet received their Buyer's License card from DOT.
4. At their discretion, auctions may honor a Buyer's License application receipt from another auction or they may issue their own receipt to the customer. However, they should not collect a new Buyer's License application from an applicant who holds a license application receipt from another auction.

**EXHIBIT
B**

5. Customers who hold no Buyer's License or license application receipt from an auction should complete and submit a Buyer's License application to the auction for submission to DOT. Use DOT form MV2941 *Buyer's License Application*.
6. Customers employed by and buying for more than one dealer must complete an application for each dealership.
7. Applicants must provide proof of their employing dealership. Applicants employed by out-of-state and non-U.S.A. dealerships should provide a photocopy of the employing dealer's license, including an English translation if the license is not in English.
8. If the employing dealer has not signed the Buyer's License application, the auction should fax the application to the dealer for a signature. No bidding should be allowed until the dealer signs the application.
9. If the Social Security number is missing from the application—no bidding should be allowed. If the applicant is ineligible for a Social Security number, but wishes to apply for a Buyer's License, they should complete a DOT *Certification of Non-Eligibility for Social Security Number* form. The form must be notarized and the auction should submit it to DOT along with the Buyer's License application form and fee. (The auction may then issue a license application receipt and allow the applicant to bid.)
10. Auction collects the completed application and appropriate DOT license fee. Fees should be paid by check, payable to Registration Fee Trust. Cash and credit cards are not accepted.

Buyer's License periods and fees:

License	Period	Expires	Fee
Buyer's License— <i>Employee of Wisconsin dealership</i>	License period runs concurrently with employing dealer's two-year license period.	Same day as employing dealer's license.	\$6 if the employing dealer's license expires in less than 12 months. \$12 if the employing dealer's license expires in 12 months or more.
Buyer's License— <i>Employee of non-Wisconsin dealership</i>	Up to two years	The 2nd July 31 st after license is issued.	\$12 for two years.

1. Auction issues Buyer's License application receipt that expires in 15 days to the customer and allows bidding.
2. Auction mails all Buyer's License applications and fees to DOT that same day in one batch envelope.
3. DOT receives applications from auction and verifies applicant eligibility.
4. Each Monday, DOT sends auctions a list of ineligible applicants.
5. Auctions will prohibit applicants from bidding, even though they hold a Buyer's License application receipt, if the applicant subsequently appears on the DOT Buyer's License Ineligibility List to receive a Buyer's License.
6. DOT will notify auctions regarding any ineligible applicant who later becomes eligible to receive a Buyer's License.
7. DOT issues Buyer's License to eligible applicants, and sends Buyer's License card to the employing dealer's address.

Auctions should also enforce the following requirements for bidders:

1. Only licensed motor vehicle dealers, motor vehicle wholesalers and motor vehicle buyers may bid at wholesale auctions. By law, bidders must display their license to the auction upon request.
2. Bidders must include their license number on any bid submitted to the auction, and on ~~any other document evidencing the purchase of a vehicle from the auction (eg. a block ticket)~~
3. Motor vehicle buyers employed by and buying for more than one dealership must have a license for each employing dealer and may bid on a vehicle for only *one dealer at a time*.
4. Licensed dealers and licensed wholesalers do not need a Wisconsin Buyer's License.

We are planning a visit to your auction to give you additional training and information. If you feel you will not need this additional training please contact your area investigator.

Sincerely,



Nancy J Passchl

Buyers License Team Chairperson

DOT – Dealer Section

In The Matter Of:

*Jefferson Mid-State Auto Auction LLC, et al. v.
Wisconsin Department of Transportation*

Deposition of Michael L. Domke

June 7, 2021

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Original File Domke Michael 6-7-21 CONFIDENTIAL.txt

Min. Conf. Dep. 6/7/21 - 1/1

EXHIBIT

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1 second.
2 Q Do you see item 5 on Exhibit 2 that's shown on the
3 screen? It says "Auctions will prohibit
4 applicants from bidding, even though they hold a
5 Buyer's License application receipt, if the
6 applicant subsequently appears on the DOT Buyer's
7 License Ineligibility List to receive a Buyer's
8 License."
9 A I see it.
10 Q What was the DOT buyer's license ineligibility
11 list? Could you describe that for us. And I'm
12 talking about during the time you were the
13 supervisor of the dealer section
14 Field Investigation Unit.
15 A I'm not aware of us having a DOT buyer's license
16 ineligibility list.
17 Q So as of June of 2011, did the Department drop
18 that requirement?
19 A I can say when I came on board in 2011. I don't
20 have any knowledge of this ineligibility list.
21 Q Do you have an understanding what it was prior to
22 it being discontinued?
23 A I really wasn't aware of it prior to receiving
24 this document about a month ago, so I can't speak
25 to when that list stopped being offered or

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1 produced.
2 Q So you never saw this document until a month ago?
3 I believe you've said that twice now, correct?
4 A Correct.
5 Q So when you made the decision in 2017 or late 2017
6 to no longer allow out-of-state buyer applicants
7 to bid using the receipt for their license or
8 based on their application, you did not have
9 access to this formal statement of policy; is that
10 correct?
11 A Correct.
12 Q You didn't even know it existed?
13 A I had never seen it before.
14 Q Right. Would it have changed your opinion as to
15 whether you should change the policy if you knew
16 that at one time there was a list of ineligible
17 buyers that auctions could check, and if so, then
18 they would be prohibited from allowing an
19 applicant to bid?
20 A It would not.
21 Q Would it be possible today for the Department to
22 provide auctions with a list of ineligible buyers
23 based on past fraud or other illegal activities?
24 A Well, I feel that by publishing our eligibility
25 list we are in effect illustrating who is eligible

Page 19

1 and who is not.
2 Q And describe your eligibility list as it exists
3 today.
4 A Anyone who currently holds an issue -- or I'm
5 sorry, a license issued by Wisconsin DOT is
6 published on the list that is updated each morning
7 on our website.
8 Q Okay. We'll get to the application process and
9 review in a little bit. I don't want to jump
10 ahead.
11 So just so I'm clear, you have no knowledge
12 today as to why the ineligible applicant list was
13 discontinued at some point prior to June of 2011?
14 A I don't.
15 Q Would it be possible to have a list of ineligible
16 applicants based on the DOT's records of
17 individuals who have engaged in illegal activity?
18 A It would be possible to produce a list of
19 applications we have denied, suspended, or
20 revoked.
21 MR. NORMAN: All right. Scroll
22 down just a little bit. I want to stop
23 there, please.
24 Q All right. So you see in Exhibit 2 on the page
25 that's now showing another paragraph 1 under the

Page 20

1 heading "Auctions should also enforce the
2 following requirements for bidders," No. 1 says
3 "Only licensed motor vehicle dealers, motor
4 vehicle wholesalers and motor vehicle buyers may
5 bid at wholesale auctions. By law, bidders must
6 display their license to the auction upon
7 request."
8 Now, that's a correct statement of the
9 statute, of 218.34, correct?
10 MS. JURSS: Objection, calls for a
11 legal conclusion.
12 Q Is that your understanding of what the law
13 requires?
14 A Yes.
15 Q And this statement was in Exhibit 2 the same
16 document that set forth the policy allowing
17 applicants for a buyer's license to bid using
18 their receipt, correct?
19 A I'm sorry. Could you say that again.
20 Q This was in the same exhibit that set forth the
21 policy allowing applicants for a buyer's license
22 to bid once they made their application and paid
23 their fee, correct?
24 A Sorry, Paul. Are you saying that this component
25 falls within the same policy that we're currently

Page 25

1 Q Can you identify what changes have been made since
2 2015?
3 A That I cannot.
4 Q So just to look at some of the information on it,
5 the first section requires information regarding
6 dealer license, dealer name, dealer owner name,
7 et cetera. This is the sponsoring dealer for the
8 applicant for a buyer's license, correct?
9 A Correct.
10 Q And this form is used whether the applicant is
11 applying to buy for an out-of-state or in-state
12 dealer; is that correct?
13 A That is correct.
14 Q And then if we go down, it asks for the applicant
15 information, and one of the things it asks for is
16 the applicant dealer license number or photo ID
17 number; is that correct?
18 A Correct.
19 Q And why is that information requested?
20 A I can't say for certain.
21 Q You don't know?
22 A I don't -- I can't say for certain why that
23 specific information is requested.
24 Q It also asks for applicant state license or ID.
25 What is being requested there?

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1 A Are you talking in the first block of the
2 applicant section?
3 Q I'm talking on the first line of the applicant
4 section to the right of the applicant dealer
5 license number or photo ID.
6 A Sure. It's asking which state --
7 MS. JURSS: I'm sorry. Just to
8 clarify, Paul, I object just for
9 misstatement. You've said applicant dealer
10 license number, but it says driver license
11 number.
12 MR. NORMAN: Oh, thank you for
13 correcting me, yeah.
14 MS. JURSS: Go ahead, Michael.
15 Q Go ahead. Just so we've got a clear record, my
16 question is what does the applicant state license
17 or ID, what information is that seeking?
18 A Which state issued the driver's license or photo
19 ID number being provided in the previous block.
20 Q And then the applicant's Social Security number,
21 that's required by state law, correct?
22 A Correct.
23 Q Outside of the Social Security number and
24 obviously the name, what other information on here
25 is required by state law as opposed to department

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1 policy?
2 A I'd have to refer back to Section 218 to verify
3 specifically which piece of information is
4 required versus policy.
5 Q Can you think of anything other than
6 Social Security number, as we sit here today?
7 A I don't want to make a misstatement. I can't say
8 for certain which section is and isn't.
9 Q And then if we scroll down a little further to
10 where it says "DEALER'S STATEMENT." This is where
11 the dealer, either owner or authorized
12 representative of the licensed dealer, whether
13 in-state or out-of-state, signs, correct?
14 A Correct.
15 Q And in signing they agree that they will be
16 responsible or at least the dealership will be
17 responsible for the actions of the applicant if
18 issued a license, correct?
19 A Correct.
20 Q Has the department ever sanctioned a dealer for
21 something that one of its buyers or the employees
22 has ever done?
23 A Yes.
24 Q How often does that happen?
25 A It happens several times per year.

Page 28

1 Q And what kind of sanctions -- first of all, for
2 what actions of a buyer do you sanction the
3 employing or sponsoring dealer?
4 A Well, it would be anything that falls within
5 Section 218.0116. There's a long list of
6 violations.
7 Q So that would include illegal sales on a vehicle
8 that was purchased through an auction?
9 A Yes, it would.
10 Q In other words, the buyer reselling it rather than
11 it being resold by the sponsoring dealer; would
12 that be a correct way to put it?
13 A That would be one way, yes.
14 Q That term is often called curbing?
15 A Yes, it is.
16 Q If a buyer buys on behalf of a dealer at an
17 auction in Wisconsin, isn't the title assigned by
18 the selling dealer to the buying dealer in that
19 dealer's name; in other words, it doesn't get
20 assigned to the individual who's the buyer,
21 correct?
22 A That is correct.
23 Q And how does a buyer who buys on behalf of a
24 dealer, which they're obligated to do under the
25 law, how do they curb a vehicle if the title is

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1 referring to?
2 Q Let's go to Exhibit 20, please. And this is
3 Chapter Trans 138, which has the regulations
4 pertaining to the licensing and -- requirements
5 for licensing by various categories of licensees
6 in Wisconsin, correct?
7 A Correct.
8 Q And this is a department regulation that's been
9 developed or was developed back in the '80s it
10 looks like, correct?
11 A Based on the note, yes.
12 Q When is the last time this has been amended; do
13 you know?
14 A I don't know.
15 Q Have you amended it or should I say has the
16 Department amended it since you've been section
17 chief?
18 A Since I've been section chief, I don't believe so.
19 Q Now, let's scroll down to 138.03(6). Just keep
20 going. I'll you when to stop. Stop there.
21 Do you see paren 6? And I'll paraphrase it.
22 It provides that a dealer -- a motor vehicle
23 dealer who is not located in Wisconsin but who
24 accepts purchase orders or lease agreements by fax
25 or phone and delivers vehicles to persons within

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1 the state, they're required to have a license if
2 they deliver in the state, correct, even though
3 they sell by the Internet?
4 A Correct.
5 Q But under this rule they're exempted from having
6 any facilities in Wisconsin as long as they can
7 maintain a business office outside the state and
8 keep the records that are required for their
9 Wisconsin transactions, correct?
10 A Correct.
11 Q But the Department interprets this to not allow
12 the same exemption from business facilities in
13 Wisconsin for a licensed wholesaler even though
14 they don't have any vehicles located in Wisconsin,
15 correct?
16 A Well, this -- that is correct, but there's a
17 difference. This requires them to be selling and
18 delivering vehicles in the state, which is not
19 allowed by wholesalers.
20 Q Well, why would an out-of-state wholesaler need a
21 business facility in Wisconsin which would include
22 a space to display vehicles if they weren't
23 wholesaling any vehicles or retailing any vehicles
24 in the state?
25 A The only answer I could give you is the law

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1 requires it.
2 Q Your rule requires it, correct?
3 A The rule -- the rule requires -- specifies those
4 facility requirements.
5 Q So under the change of policy no longer allowing
6 an out-of-state wholesaler to bid on vehicles
7 based on their license issued in another state,
8 they now have -- in order to buy vehicles at
9 Wisconsin auctions, they are not only required to
10 get a Wisconsin license but also buy or rent a
11 facility to display vehicles in Wisconsin,
12 correct, even if they don't need it?
13 A Are you asking if an out-of-state wholesaler
14 wishes to continue purchasing vehicles at
15 Wisconsin auctions for wholesale purposes only, if
16 their only option is to obtain a Wisconsin
17 wholesale license; is that the question?
18 Q Right. They have to get a Wisconsin wholesaler
19 license; in order to do that they have to own or
20 rent a business facility in Wisconsin even if they
21 don't have any use for it?
22 A Correct.
23 Q Let's go to your affidavit, Exhibit 21, please.
24 And let's scroll to paragraph 21 within
25 Exhibit 21. Okay. This is where you talk about

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1 the rationale for changing the policies that we're
2 discussing here, "In response to a dramatic
3 increase in unlawful sales and odometer/title
4 fraud." And unlawful sales were what we referred
5 to as curbing, correct, an unlicensed -- or a
6 buyer who did not have a Wisconsin dealer's
7 license would buy a vehicle at an auction, take it
8 someplace within the state, and retail it to some
9 customer without having any license to do so,
10 right?
11 A Correct.
12 Q And an odometer/title fraud would be -- well, why
13 don't you explain how that relates to buyers.
14 A Under the same essentially premise that you
15 earlier described, they would purchase a vehicle
16 at auction, alter the odometer and often the title
17 as well to reflect a lower mileage and then sell
18 that vehicle, both without the credential and with
19 the lower mileage.
20 Q So odometer/title fraud is the same? I mean,
21 they're not two different -- there's not odometer
22 fraud and then a separate incidence of title
23 fraud? In order to spin an odometer, you have to
24 not only change the odometer, but then you have to
25 change the odometer disclosure on the title; is

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1 that correct?
2 A Not exactly. If you want to make it clean and
3 convincing, you would do both, but we've seen it
4 where the odometer is rolled back on the vehicle,
5 but they have not altered the title.
6 Consequently, title fraud isn't just limited to
7 odometer alterations. There's other things that
8 you can do to the title, such as trying to remove
9 brands or trying to make reassignments to create
10 the perception that it's a legitimate sale from a
11 legitimate entity.
12 Q So what I want to try to get a handle on here,
13 Michael -- and just listen to me carefully because
14 I'm going to try to make a distinction here.
15 Since you've been section chief, how many of the
16 following described incidents does the Department
17 have evidence: One, an out-of-state resident
18 applies for a Wisconsin buyer's license; two, the
19 application subsequently is denied by DOT; and
20 three, prior to denial the applicant buys a
21 vehicle at a Wisconsin auction and then illegally
22 sells it and/or engages in some other illegal
23 activity with respect to that vehicle? In other
24 words, how often did this temporary buyer's
25 license policy result in an illegal sale or other

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1 illegal activity?
2 A So I can't give you an exact number.
3 Q Can you give me an approximation. In a percentage
4 out of the total incidents of odometer title fraud
5 or illegal sales that were the concern, how many
6 of those were as a result of the temporary buyer
7 license policy?
8 A Boy, because there's so many of our denials that
9 fit in -- like, I don't have them broken down into
10 this particular isolated scenario. Based on how
11 many submit an application and then subsequently
12 went on to commit these activities prior to us
13 denying them, I could not give you an estimate on
14 it. I know we have several examples of it,
15 though, and I can't give you a percentage in
16 comparison to the overall number of applications
17 being -- we're talking big numbers here.
18 Pinpointing a specific number would be too tough
19 for me right now.
20 Q Okay. I want an approximation -- or I want a
21 percentage. Out of all of the incidents of
22 odometer/title fraud or illegal sales that have
23 occurred since you've been dealer section, what
24 percentage of them was a result of the temporary
25 buyer's license policy that was changed in 2018?

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1 A I don't know.
2 Q So you cannot say, as you sit here, that this was
3 a significant factor in causing the increase in
4 unlawful sales and odometer/title fraud, correct?
5 A No, that's not what I'm saying. What I'm saying
6 is I don't have the exact numbers or even the
7 close approximations you're asking for.
8 Q When did this dramatic increase in unlawful sales
9 and odometer/title fraud occur?
10 A Well, we have been seeing a steady increase since
11 probably -- I would say the spike really started
12 hitting around 2015.
13 Q Okay. And the temporary buyer's license policy
14 has been in effect for 11 years up to that point,
15 correct?
16 A Correct.
17 Q But until 2015 there wasn't this dramatic increase
18 in unlawful sales and odometer/title fraud,
19 correct?
20 A Well, again, I don't want to -- I don't want to
21 misconstrue dramatic. We had been seeing an
22 increase of unlicensed sales coming out of Indiana
23 starting in 2012, 2013, and then that began to
24 ramp up in -- we started seeing larger volumes
25 land in Wisconsin around '15.

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1 Q You said coming out of Indiana. These were
2 Indiana buyers who got Wisconsin licenses or --
3 A These were Indiana wholesale dealers who were
4 participating in Wisconsin.
5 Q Okay. And they were buying cars at Wisconsin
6 auctions, but they were already licensed. This
7 was permitted at that time because out-of-state
8 wholesalers were allowed to bid for vehicles,
9 right?
10 A Correct.
11 Q Based on their Indiana license. And then once you
12 did require that they have a Wisconsin license,
13 they went ahead and got Wisconsin licenses,
14 correct?
15 A No.
16 Q They didn't?
17 A No. At that time the Indiana license had been
18 abolished.
19 Q You have a problem with licensed wholesalers today
20 because you allow them to share facilities, and so
21 you have a lot of out-of-state dealers who come in
22 and get a license, and then they share an office,
23 such as in Arlington, correct?
24 A I won't say it's a problem. I will say that that
25 business model exists here in Wisconsin.

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1 Q And you have recently suspended or revoked the
2 licenses of three licensed wholesalers who use the
3 same address in Arlington, correct?
4 A We have -- we've done more than three.
5 Q All right. I want to focus on when DOT does
6 receive an application for a buyer's license.
7 What process is followed before the license is
8 either issued to the applicant or the license is
9 denied?
10 A Your question is what is the whole process?
11 Q Yes. Can you just walk us through it. You get
12 the application. Auctions can still take the
13 applications and the fees and submit them to DOT,
14 correct?
15 A Correct.
16 Q Is that done by mail, or can it be done online?
17 A It is done by mail.
18 Q And so once the application then hits your office,
19 what's the process followed in making the decision
20 whether to grant or deny it?
21 A So an agent in our Business and Consumer Services
22 Unit will review the application for completion,
23 make sure that it has all the requisite signatures
24 and information. It will -- they will ensure that
25 we have the appropriate fees. They will check our

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1 business licensing system, also known as BLISS.
2 In that system if we investigate or anybody
3 in the section had, like, placed an alert on an
4 individual or a dealer entity, that flag will show
5 up when the agent goes in to begin processing. If
6 that flag exists, they will consult with the
7 person who put it in to determine whether or not
8 the application needs to be reviewed by them, or
9 if further investigation is warranted, they will
10 verify the self-certification on the buyer's
11 application form in which they disclose whether or
12 not they have previous criminal convictions and
13 whether or not those merit further review to
14 determine their ability to be licensed.
15 MR. NORMAN: Just a moment. Would
16 you put Exhibit 22 up on the screen, Carmen.
17 (Discussion off the record)
18 Q Michael, we were just referring to checking about
19 a convicted crime. You're checking if the
20 applicant had checked Yes on the box on the right
21 side under "APPLICANT'S STATEMENT"?
22 A Yes, Box No. 2.
23 Q "Have you ever been" -- so if that box was
24 checked, then what would you do again?
25 A It would review the specific vi -- for what crime

Page 59

1 they were convicted of and then review whether or
2 not that would potentially disqualify them from
3 being licensed.
4 Q All right. If the box was checked No, would you
5 do anything to verify whether that answer was --
6 or do you do anything to verify whether that
7 answer is accurate?
8 A Yes. They'll do a -- they'll conduct a quick
9 check of CCAP to determine if there's any
10 violations that existed that they were not -- that
11 were not disclosed. If there is anything that
12 would disqualify them or anything that should have
13 been listed, they will push it through. If there
14 is, they'll bring it to management's attention to
15 determine what the next step is.
16 Q What else is done?
17 A After that process, depending on whether that
18 alert was there or not, if there's no other
19 convictions and everything looks good, they'll
20 issue the license.
21 Q So from the time the application hits until the
22 license or decision whether to grant or deny a
23 license is made, the two sources of information to
24 check with respect to whether or not this buyer
25 has a history of illegal activity or fraud are

Page 60

1 CCAP and BLISS, right?
2 A For those individuals that are in the system, yes.
3 Q Those individuals who are in the system. What do
4 you mean?
5 A Yeah, so if there is a -- if the customer exists
6 in the business licensing system and has the
7 ability to put an alert on, they would -- that
8 notification would be made to whoever the --
9 whoever placed that hold on. If there are
10 scenarios where there is a known address -- and
11 this happened a few years ago in Missouri. We
12 would get a rash of applications from the exact
13 same address. Those would be reviewed by one of
14 the investigators and determined whether or not
15 fraud had taken place prior to being issued.
16 Q So that would be based on the address for the
17 dealership that's on the application?
18 A Correct.
19 Q And that's not in BLISS; that's -- or is it?
20 A That is not in BLISS.
21 Q That's a list that you maintain of addresses from
22 out of state where there's been past problems?
23 A We don't maintain -- we don't maintain a list.
24 One of our investigators will take a look at the
25 applications that come in to determine if any of

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24 One of our investigators will take a look at the
25 applications that come in to determine if any of

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1 were purchased by an applicant buying them based
2 on the temporary license using its receipt?
3 A I don't have that information.
4 Q Now, there's a lot of places where somebody who
5 wants to obtain a vehicle at wholesale prices and
6 sell it illegally or spin its odometer and
7 increase its value can obtain other than Wisconsin
8 auto auctions, correct?
9 A I wouldn't say that there's a lot of -- I would
10 not agree with that statement.
11 Q There's a lot of wholesaling of vehicles being
12 done online these days, correct?
13 A There are a lot of vehicle sales being conducted
14 online, but I'm not sure how you're defining
15 wholesaling, between who and who's facilitating
16 and who's buying and --
17 Q One dealer selling to another dealer or a
18 wholesaler using an online auction portal that
19 several companies have created, correct?
20 A I'm familiar with a handful of online platforms in
21 which they're facilitating that, yes.
22 Q Do you know what percentage of the vehicles that
23 are sold through auctions today are sold through
24 online auctions as opposed to physical auctions?
25 A I don't.

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1 Q And the Department does not require online
2 auctions if they do not have facilities in
3 Wisconsin to be licensed as auto auctions,
4 correct?
5 A It depends on what business transaction they're
6 performing.
7 Q Under what circumstances would an online auction
8 that has no facility located in Wisconsin be
9 required to be licensed as an auto auction?
10 A If any of their activity meets the definition of
11 sell in the administrative rule.
12 Q Let's go to Exhibit 20. Stop there where the
13 underlining is. Trans 138.02 contains the
14 Department's definition of auto auction -- strike
15 that -- auction dealer, correct?
16 A Correct.
17 Q And that includes -- in order to be an auction
18 dealer, required to be licensed in Wisconsin, you
19 have to be a person who for compensation takes
20 possession of a vehicle and offers it for sale.
21 Online auctions generally don't take possession of
22 the vehicles, correct, before they put them out
23 on --
24 A I have seen a wide range of business models in
25 which they do these things, so it depends on how

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1 possession is also being interpreted, whether
2 that's physical or ownership.
3 Q Isn't it true that the online auctions you've
4 required to be licensed in Wisconsin have been
5 required only to have a licensed wholesaler or
6 have a wholesaler's license?
7 A Well, the business model that we require them to
8 have a wholesale -- I mean, it depends on how
9 you're defining auction. I mean, if they don't
10 meet the definition of auction dealer and their
11 business model fits into a wholesale definition,
12 then we require them to have that license.
13 Q Can you identify any online auction that's not
14 physically located in Wisconsin that's been
15 required to have an auto auction license as
16 opposed to a wholesaler's license?
17 A I was with you until the end there. Can you ask
18 that again, Paul.
19 Q Can you identify any online auction that does not
20 have facilities in Wisconsin that has been
21 required to have an auto auction license as
22 opposed to a wholesaler's license?
23 A No.
24 Q And with a wholesaler's license, they can sell to
25 anybody they want; there's no requirement that the

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1 person that bids on vehicles on behalf of the
2 dealer or otherwise be licensed in Wisconsin or
3 anywhere else, correct?
4 A No, that is not correct. They're only allowed to
5 sell to licensed wholesalers or dealers.
6 Q And those licensed wholesalers or dealers can be
7 located in another state, correct?
8 A With our license and how they negotiate that,
9 they're allowed to negotiate between those dealers
10 and wholesalers.
11 Q Where does it restrict a licensed wholesaler from
12 selling vehicles to someone who is not a licensed
13 dealer or wholesaler?
14 A I would have to -- I don't have any statutes or
15 rules in front of me, so I can't cite
16 specifically.
17 Q Let's scroll down in this exhibit, please. Stop
18 there. The definition of wholesaler is a person,
19 other than a licensed dealer -- I'm looking at 14
20 here -- who does any of the following: sells more
21 than 5 used vehicles to motor vehicle dealers,
22 other wholesalers, or salvage dealers; purchases
23 used vehicles at a motor vehicle auction dealer;
24 or purchases used motor vehicles on behalf of
25 motor vehicle dealers.

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1 of follow-up questions to Hannah's.

2

3

RE-EXAMINATION

4 By Mr. Norman:

5 Q On the dealer license number, Michael, it's your
6 testimony, as I understand it, that you do not
7 know whether the driver's license or photo ID
8 number that's put on the application becomes the
9 buyer's license number in every case. We saw it
10 with one of the examples I gave you. Is that
11 correct?

12 A Correct.

13 Q You don't know if it's that in every case?

14 A Correct.

15 Q Okay. But there's no reason the Department of
16 Transportation, the dealer section, couldn't adopt
17 a policy so that it would be the same in every
18 case, so when the application is filled out,
19 everyone knows what the license, if it's issued,
20 number will be, correct? There's nothing to stop
21 you from doing that as was done in the one case?

22 A In that case that does seem plausible, but I would
23 need to make sure I was aware of all scenarios.
24 So you have individuals that may not have an ID or
25 a license, that we could account for all of those.

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1 Q And you're also -- as I understand your testimony,
2 even though we saw with one out-of-state buyer's
3 license that their renewal license had the same
4 number as the previous license, you're not sure
5 that's the same in every case, correct?

6 A Correct. I don't know how that's being generated.

7 Q But, again, there would certainly be nothing to
8 stop DOT from having a policy where the renewal
9 license had the same number as the original
10 license, correct?

11 A I would have to verify how we're creating that
12 number before I could verify that.

13 Q And when dealers renew their licenses, they always
14 keep the same number, correct?

15 A Unless they request a new one, yes.

16 MR. NORMAN: That's all I have.

17 Thank you.

18 (Adjourning at 12:47 p.m.)

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1 STATE OF WISCONSIN }
2 COUNTY OF DANE } ss.

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4 I, Carmen Harder, RPR, a Notary Public in and
5 for the State of Wisconsin, do hereby certify that
6 the foregoing deposition of MICHAEL L. DOMKE was
7 taken before me on June 7, 2021, and reduced to
8 writing by me, a professional court reporter and
9 disinterested person, approved by all parties in
10 interest and thereafter converted to typewriting
11 using computer-aided transcription.

12 I further certify that I am not related to nor
13 an employee of counsel or any of the parties to the
14 action, nor am I in any way financially interested in
15 the outcome of this case.

16 IN WITNESS WHEREOF, I have hereunto set my hand
17 and affixed my notarial seal of office at Madison,
18 Wisconsin, this 8th day of June 2021.

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25

Notary Public, State of Wisconsin
My Commission Expires 9/25/2021



Ashley Lak <ashley@greatermilwaukeeautoauction.com>

Wisconsin Buyer's License Application

1 message

Ashley Beisenstein <ashley@gmaa.com>
To: Jose Berges <jose@bbautorollers.com>

Thu, Jun 22, 2023 at 8:40 AM

Hi,

Please complete and submit the application for the Wisconsin buyer's license found at the link below. Once approved, I can get your dealership registered.

<https://wisconsin.gov/Documents/formdocs/mv2941.pdf>

Thank you,

Ashley Beisenstein
Office Manager
www.gmaa.com



P: 414.365.3500
F: 414.362.0200