

Chapter MVD 24

MOTOR VEHICLE TRADE PRACTICES

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MVD 24.01 Definitions. As used in this chapter:

(1) "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 pre-delivery test, dealer exchange and delivery.

(2) "Used" means any motor vehicle other than a new motor vehicle which has been previously privately titled and includes executive or demonstrator.

(a) "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.

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

(3) "Damage" means defects caused by reasons other than normal depreciation and wear through vehicle age and useage.

(4) "Licensee" means any motor vehicle manufacturer, distributor, dealer, or salesman, or any combination, thereof licensed by the motor vehicle division.

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

(6) "Privately owned and driven" means all privately owned motor vehicles.

(7) "Sale" includes lease with the option of purchase.

(8) "Manufacturer" as referred to in this chapter includes distributor.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73.

MVD 24.02 Advertising and sales representations. (1) 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) 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 division upon request.

(a) Terms such as "largest" must clearly state the basis for the claim, including time, unit, geographical area and other considerations, in the advertisement.

(b) Terms such as "best", "less" and "greater" and other superlatives and comparatives indicate puffery and are prohibited unless there is detailed proof available for such claim.

(3) When the price of a motor vehicle is advertised by a dealer licensee, it shall include all charges that must be paid by the buyer to acquire ownership of the vehicle with the exception of sales tax and title and registration fees. The amount of down payment required may be advertised only in conjunction with the price.

(a) No new vehicle price shall be advertised that is in violation of section 100.30, Wis. Stats., the "Unfair Sales Act."

(4) 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 buyer's vehicle to be traded. Use of the phrases "up to", "as much as" or similar phrases regarding a trade-in allowance are unfair practices and prohibited.

(5) The use of new motor vehicle list prices to advertise comparative savings for used vehicles is an unfair practice and prohibited.

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

(7) It is an unfair practice to use the word "free" or any other word or words of similar import, in advertisements or in other offers to the public, as descriptive of an article of merchandise, equipment, accessories or service which is not an unconditional gift, under the following circumstances:

(a) When all conditions, obligations or other prerequisites to the receipt and retention of the "free" article of merchandise or service offered are not clearly and conspicuously set forth at the outset so as to leave no reasonable probability that the terms of the offer will be misunderstood; and, regardless of such disclosure,

(b) When, with respect to any article of merchandise, equipment, accessories, or service, the offerer

1. Increases the ordinary and usual price of such article or merchandise, equipment, accessory, or

2. Reduces its quality, or

3. Reduces the quantity or size thereof.

(c) The disclosure required by paragraph (a) of this rule shall appear in close conjunction with the word "free", or other words of similar import, whenever such word first appears in each advertisement or offer. A disclosure in the form of a footnote, to which reference is made by use of an asterisk or other symbol placed next to the word "free" will not be regarded as compliance.

(8) Use by a dealer licensee of the words "wholesale", "at cost", "below invoice", "auction price", and similar words are unfair practices and prohibited.

(9) 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.

(10) Use of phrases such as "last of the remaining", "close-out", "final clearance", and similar phrases when used in reference to used motor vehicles is an unfair practice and is prohibited, unless the licensee is actually discontinuing business.

(11) 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 said 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. Any such advertisement shall also specifically disclose the expiration terms of the promotion or sale.

(12) Dealer and salesman licensees are prohibited from advertising motor vehicle sales at an address or listing a phone number other than that of the licensed business premises. Advertisements shall include the business name.

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

(14) When advertising any motor vehicle, a dealer or salesman licensee must state the vehicle's model year and, if the vehicle is of the current or previous model year, must designate the vehicle as used if such 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.

(15) Whenever a sale or promotion offering free gifts, merchandise, discounts or cash is advertised, any such advertisement shall also specifically disclose the expiration terms of such sale or promotion.

(16) 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 must disclose the cause of damage, regardless of the extent of such damage.

(17) Whenever a dealer licensee offers, promotes the sale of, or sells a flood damaged vehicle, all advertising relating to that vehicle must disclose that the vehicle has been flood damaged regardless of the extent of such 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.

MVD 24.03 Disclosure of the condition of the motor vehicle.

(1) Model year designation. (a) Changing the model year of a motor vehicle with a manufacturer's specified gross vehicle weight of more than 1,000 pounds or less than 10,000 pounds from that originally designated by the manufacturer is an unfair practice and prohibited. If no model year is designated, the year of manufacture applies.

(b) Changing the model year of a motor vehicle with a manufacturer's specified gross vehicle weight of 1,000 pounds or less or of 10,000 pounds or more from that originally designated by the manufacturer is an unfair practice and prohibited, except that the model year of such a vehicle may be redesignated no more than once providing 1. the manufacturer redesignates all like motor vehicles of the same series, and 2. the manufacturer continues to manufacture new vehicles of the same series after such redesignation, and 3. such vehicles of the same series are identical in all respects, and 4. the customer is informed of the redesignation in writing on the purchase contract. If no model year is originally designated, the year of manufacture shall be deemed the "originally designated" model year.

(2) The dealer and salesman licensees must disclose to the prospective buyer of any new motor vehicles when any equipment or accessories originally installed have been removed or replaced by a dealer prior to sale, if replacement items are not of equal quality.

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

(4) Except as provided in (g) following, each used motor vehicle displayed or offered for sale by a dealer licensee shall have attached to the vehicle in a conspicuous place, a writing clearly informing the buyer, prior to sale, in simple and concise language:

(a) That the vehicle is used. In addition to being designated as "Used", vehicles which were known to be previously privately driven, executive, demonstrator, taxi-driven, police vehicle, driver-education, lease, rental, public vehicle, company vehicle, municipal owned, or flood damaged regardless of the extent of such damage shall be clearly and specifically identified as such. Disclosure of the prior use and flood damage is limited to that which the dealer could ascertain with reasonable diligence.

(b) The odometer reading at time the vehicle was obtained by the dealer and disclosure that such reading is known to be actual mileage, or that such reading is known to be inaccurate in which case actual mileage shall be disclosed if known, or that such reading is not known to be actual mileage, as corroborated by the prior owner's mileage statement, available and subsequently shown to the purchaser, in accordance with section MVD 24.03 (7), Wis. Adm. Code. Such writing shall further disclose that the name and address of the vehicle's prior owner is available upon request.

(c) The vehicle asking price, make, year model, identification number, engine type (V-8, six) and type of transmission (standard, four-speed, automatic).

(d) The basic terms and conditions of warranty, if offered.

(e) That the vehicle is being sold on an "as-is" or "with all faults" basis if such is the fact. In such event, the writing shall further state in bold faced type that "Except for any manufacturer's or other

express warranty which exists on this vehicle, the entire risk as to the quality and performance of the vehicle is with the buyer, and should the vehicle prove defective following the purchase, the buyer will assume the entire cost of all servicing and repair."

(f) That the condition of the vehicle for sale is such that it cannot be legally operated at all times on Wisconsin highways, if such is a fact. The language shall state:

"WARNING!

This vehicle may not be operated or licensed and must be towed or hauled from this location if purchased in its present condition. If all defects which prohibit its legal operation are not corrected prior to your accepting delivery of the vehicle, it must be inspected and approved by a qualified law enforcement officer before it can be licensed and operated on Wisconsin highways. Such inspection certification and the title must be submitted by the owner to the division together with proper registration fee."

(g) Such written disclosure as required by (4) preceding does not apply to:

1. Each used motor vehicle prior to being offered for sale, providing a written statement "Not for sale" is displayed on each such motor vehicle.

2. Each executive or demonstrator displaying a new vehicle price label until such time as offered for sale.

(5) Dealer and salesman licensees must inform prospective retail purchasers of used motor vehicles in writing before purchase contract execution, in the manner and on the form prescribed by the division of all significant existing mechanical and structural defects and damage.

(a) Disclosure of information required on the prescribed form is limited to that which the licensee could ascertain as a result of reasonable diligence, which shall consist of but is not limited to an inspection of all used motor vehicles, in the manner and on the form prescribed by the division. Such inspection shall consist of but is not limited to a walk-around and interior inspection, under-hood inspection, under-vehicle inspection and a test-drive. Such form, disclosing existing defects and damage shall be completed in duplicate, the original of which shall be retained by the dealer for 3 years and a copy of which shall be reviewed with and furnished to the purchaser prior to execution of the vehicle purchase contract, whether or not there are existing significant defects or damage. Samples of the inspection form required by this subsection shall be made available to dealer licensees within 2 months following adoption of this subsection. This subsection shall become effective 4 months after its publication in the Wisconsin Administrative Register.

(b) Unless otherwise agreed to in the written purchase contract, the use of the inspection form provided for herein shall neither create any warranties, express or implied, nor affect warranty coverage provided for in the purchase contract.

(6) Illegal, inoperable or junk condition. (a) Prior to execution of a vehicle purchase contract, if the condition of a vehicle for sale is such

that it cannot be legally operated at all times in accordance with chapter 347, Wis. Stats., and Wis. Adm. Code chapter MVD 5, or if a vehicle is inoperable in such a manner as to make compliance impossible to determine, the dealer and salesman licensee must:

1. Disclose that fact to all retail purchasers in conspicuous contrasting bold faced type on the face of the vehicle purchase contract prior to its execution in the following language:

"WARNING!

This vehicle may not be operated or licensed and must be towed or hauled from this location if purchased in its present condition. If all defects which prohibit its legal operation are not corrected prior to your accepting delivery of the vehicle, it must be inspected and approved by a qualified law enforcement officer before it can be licensed and operated on Wisconsin highways. Such inspection certification and the title must be submitted by the owner to the division together with proper registration fee." and

2. Specify for the retail purchaser the defects which are in violation of chapter 347, Wis. Stats., and Wis. Adm. Code chapter MVD 5, on the vehicle purchase contract or on the form prescribed by the division.

(b) If the dealer licensee does not correct all defects which prohibit its legal operation, as required to be specified in (a) 2, preceding, prior to delivery of the vehicle to a retail purchaser:

1. The vehicle must be towed or hauled from the dealer's premises, and

2. The application for title shall be marked "THIS VEHICLE MAY NOT BE LEGALLY OPERATED ON WISCONSIN HIGHWAYS AND NO REGISTRATION WILL BE ISSUED" and forwarded by the dealer licensee to the division on behalf of the purchaser.

(c) If the general condition of a vehicle is such that 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" and the dealer licensee shall so notate the title and forward same to the division. Such purchaser shall be advised that such vehicle may subsequently be re-titled and operated only after it has been inspected and approved by a qualified law enforcement officer, the statutory \$25 inspection fee paid and such certification and inspection fee is submitted to the division together with title and registration application and appropriate fee.

(7) Mileage disclosure. (a) Subsections (b) and (c) following do not apply to a motor vehicle with a gross weight rating of more than 16,000 pounds, or a motor vehicle 25 years old or older.

(b) For each motor vehicle offered for sale by a dealer, the dealer shall:

1. Have on file an odometer statement signed by the prior owner, except for new vehicles obtained by such dealer direct from the manufacturer or distributor, and

2. Show such statement to each prospective retail purchaser, prior to sale, and

3. Retain such statement in his records for 3 years, and
4. Furnish a new, current odometer statement to the purchaser, and
5. Retain a copy of such statement in his records for 3 years.

(c) Such prior owner's and dealer's statement shall contain:

1. A pre-printed statement "Federal regulations require you to state the odometer mileage before transfer of ownership. An inaccurate statement may make you liable for damages to your transferee (purchaser), pursuant to Section 409 (a) of the Motor Vehicle Information and Cost Savings Act of 1972, Public Law 92-513.", and

2. A description of the vehicle, and
3. His name and address, and
4. His signature, and
5. The date of ownership transfer, and

6. The odometer reading, qualified by a statement that either such reading is known to be actual mileage, or that such reading is known to be inaccurate in which case actual mileage shall be disclosed if known, or that such reading is not known to be actual mileage.

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.

Note: MVD 24.03 (5) was suspended by the Joint Committee for Review of Administrative Rules on July 11, 1973. Senate Bill 811 sustaining the committee's suspension failed to pass in 1973 Legislature.

MVD 24.04 Contract requirements. (1) All dealer licensees shall furnish a document that clearly notifies the prospective retail buyer on its face that he is making an offer to purchase that will become a binding motor vehicle purchase contract if accepted by the dealer licensee, that the dealer licensee must 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. All conditions precedent to the acceptance of the purchaser's offer by the licensee shall be clearly set forth in the contract. Until acceptance or rejection of the offer, the licensee shall be prohibited from selling the vehicle to any other party.

(2) A retail contract to purchase must be executed and must be clearly entitled "MOTOR VEHICLE PURCHASE CONTRACT" to clearly disclose the nature of the contract the buyer is signing. An exact copy of such contract shall be provided to the buyer prior to or at the time of sale.

(3) 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 the motor vehicle purchase and the trade-in vehicle by year, make, model, and identification number.

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

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

(e) Specify a delivery date on the face of the contract and state further in bold faced type next to the delivery date that: "Regardless of reason, if the vehicle ordered by the buyer cannot be delivered within 15 days of the specified delivery date, the buyer may cancel the order and receive a full refund of any down payment, trade-in vehicle, or trade-in allowance only if the trade-in is not available."

(f) Make specific reference to all express warranties which are part of the transaction.

(g) Clearly inform the prospective purchaser in bold faced type whether or not there is a remaining new vehicle warranty which will be honored by the manufacturer if such is known by the dealer. If, and only if, such fact is not known by the dealer, the contract shall state in bold faced type that: "The selling dealer has not determined whether the manufacturer shall honor any remaining new vehicle warranty on this vehicle and the buyer, *not the seller*, assumes the risk that no new vehicle warranty may be applicable."

If a dealer licensee states that there is a remaining new vehicle warranty on a vehicle which will be honored by the manufacturer and warranty transfer is subsequently rejected, the selling dealer shall be obligated to honor the warranty.

(h) In the event the sale is made on an "as-is" or "with all faults" basis, state such fact in bold faced type and further state in bold faced type that "Except for any manufacturer's or other express warranty which exists on this vehicle, the entire risk as to the quality and performance of the vehicle is with the buyer, and should the vehicle prove defective following the purchase, the buyer will assume the entire cost of all servicing and repair."

(4) A dealer licensee may request a down payment, deposit, or title for trade-in unit from a prospective retail buyer at the time the offer to purchase or purchase contract is being negotiated, provided that the down payment, deposit, or title is returned to the prospective retail buyer within two working hours if the contract is not accepted by the dealer licensee. If the prospective buyer is not present or available during such two-hour period, such items must be returned in person or be mailed during the following business day.

(5) Any increase in price, to a retail customer, after having accepted an order of purchase or a contract from a buyer, is prohibited except that (a) a trade-in vehicle may be reappraised if it subsequently suffered damage, or parts or accessories have been removed, or (b) as provided in (6) following.

(6) Motor vehicle price changes. (a) A motor vehicle manufacturer, importer, or distributor which accepts orders placed on behalf of private retail customers shall furnish motor vehicle dealers with price lists upon which retail motor vehicle purchase contracts may be executed. Such price lists shall set forth the base prices of the various models along with the prices of all optional equipment, accessories and destination or transportation charges. The prices set forth in such price lists shall remain in effect until receipt by the dealers of written

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official price change notification which shall contain the specific dollar amounts of increases applicable to the various models, optional equipment, accessories and destination or transportation charges.

(b) Unless a motor vehicle manufacturer, importer, or distributor has adopted a formal policy of not accepting orders placed on behalf of private retail customers and such policy is clearly set forth to franchised dealers, price increases imposed by such motor vehicle manufacturer, importer, or distributor are prohibited on those vehicles for which dealers had orders written with private retail customers prior to the dealer's receipt of the official price change notification referred to in (a) preceding. A sales contract signed by a private retail customer shall constitute evidence of each such order. In the event of motor vehicle manufacturer, importer, or distributor price reduction the amount of any such reduction received by a dealer shall be passed on to the private retail customer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or decrease. Price increases caused by any of the following reasons shall not be subject to the provisions of this section:

1. The addition of new equipment as required by state or federal law.
2. In the case of foreign make vehicles, revaluation of the U.S. dollar by the U.S. government.
3. State or federal tax rate changes.

(c) The provisions of sections 24.04 (5) and 24.04 (6), Wis. Adm. Code shall:

1. Be suspended during periods in which the federal government has imposed controls on the prices of motor vehicles, and
2. Not apply to motor vehicles with a gross weight rating of more than 16,000 pounds.

(7) On any new vehicle, any uncorrected damage or any corrected damage exceeding 6% of the manufacturer's suggested retail price, as measured by retail repair costs, must be disclosed in writing prior to delivery. Damage to glass, tires, and bumpers are excluded from the 6% rule when replaced by identical manufacturer's original equipment.

(8) Adequately repaired damage to a customer-ordered new vehicle, not exceeding the 6% rule, shall not constitute grounds for revocation of the customer order. The customer's right of revocation ceases upon his acceptance of delivery of the vehicle, provided disclosure as required by (7) preceding is made prior to delivery.

(9) A dealer licensee shall not assess a service fee for completing and processing normal registration and title applications.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; am. (1), (3) (e) and (4); r. and recr. (6); cr. (9), Register, June, 1974, No. 222, eff. 7-1-74.

MVD 24.05 Warranties. (1) If a sale of a motor vehicle by a licensee is made subject to a warranty, such warranty must be in

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writing and must be provided to the buyer prior to or at the time of sale and must include the following items:

- (a) Clear identification of the names and addresses of warrantors.
 - (b) Clear identification of the party or parties to whom the warranty is extended.
 - (c) Parts covered.
 - (d) Exceptions and exclusions from the terms of the warranty.
 - (e) A statement of what the warrantor will do in the event of a defect or malfunction, at whose expense, and for what period of time.
 - (f) A statement of what the person guaranteed must do and expenses he must bear.
 - (g) The procedure which the person guaranteed should take in order to obtain performance of any obligation under the warranty, including the identification of any class of persons authorized to perform the obligations set forth in the warranty.
- (2) The elements of the warranty shall be stated in words or phrases which clearly disclose the nature or scope of the warranty.
 - (3) No implied warranty of merchantability or fitness shall be excluded or modified in the sale of a motor vehicle unless the sale is explicitly negotiated between the buyer and dealer licensee on an "as-is" or "with all faults" basis and is in conformity with sections MVD 24.03 (4) (d) and 24.04 (3) (h) of this code.
 - (4) Warranties shall not be advertised unless the basic terms and conditions of the warranty are disclosed in the advertisement.
 - (5) The use of the words "without charge" and other similar words or phrases in connection with the warrantor's services or responsibilities under a warranty constitutes an unfair practice and is prohibited unless the warrantor does not assess any costs or charges in connection with the required repair or replacement of a warranted item or services.
 - (6) If a valid warranty claim made during the warranty period, as evidenced by a dealer repair order indicating date and mileage, cannot be remedied until after expiration of the warranty period, the warrantor shall continue to be obligated for such claim until properly remedied.
 - (7) Parts repaired or replaced by a dealer on a new vehicle which was received from the manufacturer or distributor in a damaged condition shall carry the same warranty as the original parts.
 - (8) Manufacturers shall reimburse dealers for warranty repairs at a reasonable labor rate and at a reasonable allowance for parts replaced. Manufacturers shall notify dealers of the acceptance or denial of a warranty claim within 30 days of receipt of the claim, and shall make payment to the dealer within 30 days of acceptance of the claim, except for instances beyond the manufacturer's control.
 - (9) Repair service agreement is not considered a warranty, but for the purposes of disclosure and performance as provided in sections

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24.05 (1) through (6), Wis. Adm. Code, the term warranty shall include repair service agreement.

(10) 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.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; cr. (9), Register, June, 1974, No. 222, eff. 7-1-74; renum. 24.06 (2) to be 24.06 (10), Register, December, 1975, No. 240, eff. 1-1-76.

Note: MVD 24.06 Motor vehicle repairs and services was repealed effective 1-1-76.

MVD 24.06 Waiver. Waiver of any requirement of chapter MVD 24, except as specifically provided for in chapter MVD 24 is prohibited and void.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; renum. from 24.07 to 24.06, Register, December, 1975, No. 240, eff. 1-1-76.