

Chapter Trans 139

MOTOR VEHICLE TRADE PRACTICES

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Note: Chapter MVD 24 as it existed on December, 31, 1982 was repealed and recreated as chapter Trans 139 effective January 1, 1983.

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

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

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

Trans 139.02 Definitions. In this chapter:

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

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

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

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

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

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

(7) "Manufacturer" includes distributor.

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

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

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

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

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

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

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

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

Trans 139.03 Advertising and sales representations.

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

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

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

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

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

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

(4) TRADE-IN ALLOWANCE. No specific price shall be stated in an advertisement as an offer for a trade-in, if the price so stated is contingent upon the condition, model, or age of the prospective purchaser's vehicle to be traded. Use of the phrases "up to," "as much as" or similar phrases regarding a trade-in allowance is an unfair practice and prohibited.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Trans 139.04 Disclosure of the condition of the motor vehicle. (1) **MODEL YEAR DESIGNATION.** (a) Changing the model year of a motor vehicle is an unfair practice and prohibited. If no model year is designated, the year of manufacture applies.

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

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

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

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

(b) Any additions to or deletions from items contained on the label in par. (a) shall be identified by both description and retail price on a dealer supplemental price label affixed to the motor vehicle in a clear and conspicuous location. Items to be disclosed on dealer supplemental labels include, but are not limited to, dealer installed optional equipment or accessories, products or services performed by the dealer beyond the manufacturer's pre-sale delivery obligations, and final dealer asking price.

(4) **USED MOTOR VEHICLE GENERAL CONDITION DISCLOSURE.** Dealer and salesperson licensees shall inform prospective retail purchasers of used motor vehicles in writing before purchase contract execution, in the manner and on the form prescribed in sub. (6) of all significant existing mechanical and structural defects and damage. Disclosure of information shall be that which the licensee can ascertain as a result of reasonable diligence, which shall consist of but is not limited to a walk-around and interior inspection, under-hood inspection, under-vehicle inspection and a test drive.

(5) **USED MOTOR VEHICLE SAFETY EQUIPMENT DISCLOSURE.** (a) Dealer and salesperson licensees shall inform prospective retail purchasers of used motor vehicles in writing before purchase contract execution, in the manner and on the form prescribed in sub. (6), whether or not the condition of a vehicle for sale is such that it can be legally operated at all times in accordance with ch. 347, Stats., and ch. Trans 305. Disclosure of information shall be that which the licensee can ascertain as a result of reasonable diligence, which shall consist of but is not limited to a walk-around and interior inspection, under-hood inspection, under-vehicle inspection, and a test drive.

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

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

"WARNING!

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

2. Specify for the retail purchaser the defects which are in violation of ch. 347, Stats., and ch. Trans 305 as prescribed in sub. (4) and in this subsection.

(c) If because of the general condition of a vehicle, it is considered by the dealer licensee to be a junk vehicle at time of sale, the purchase contract shall state "Sold as junk vehicle"; the dealer licensee shall notate the title and forward it to the department. The purchaser shall be advised that the vehicle may subsequently be

re-titled and operated only after it has been inspected and approved by a law enforcement officer, the statutory \$25 inspection fee paid and the certification and inspection fee is submitted to the department together with title and registration application and appropriate fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; r. and recr. (4) and (7); am. (6) (a) 2., Register, June 1974, No. 222, eff. 7-1-74; r. and recr. (5), Register, June, 1974, No. 222, eff. 10-1-74; am. (4) (intro.), (4) (f), (5) (a) and (6) (a) 1., renum. (5) (b) to be (5) (c), cr. (5) (b), am. (6) (a) 1., renum. (6) (c) to be (6) (d) and am., cr. (6) (c), renum. (7) to be (8) and cr. (7), Register, April, 1977, No. 256, eff. 5-1-77; renum. from MVD 24.03 and am., Register, December, 1982, No. 324, eff. 1-1-83; am. (6) (a) (intro.), Register, October, 1983, No. 334, eff. 11-1-83; am. (5) (b), (6) (b) and (c) 3., r. (5) (c), renum. (5) (d) to be (5) (c), Register, May, 1985, No. 353, eff. 6-1-85; am. (6) (a) 4. and (b), Register, May, 1986, No. 365, eff. 6-1-86; am. (6) (a) (intro.) and 2., r. and recr. (7), Register, January, 1996, No. 481, eff. 2-1-96; corrections in (5) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1996, No. 488.

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

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

(b) A motor vehicle offer to purchase or purchase contract shall be executed whenever the dealer licensee accepts a down

payment, deposit or title for trade-in unit from a prospective retail purchaser.

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

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

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

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

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

(e) Specify an anticipated delivery date on the face of the contract and state further in bold face type next to the anticipated delivery date that: "REGARDLESS OF REASON, IF THE VEHICLE ORDERED BY THE PURCHASER IS NOT AVAILABLE FOR DELIVERY WITHIN 15 CALENDAR DAYS AFTER ANTICIPATED DELIVERY DATE, THE PURCHASER MAY CANCEL THIS ORDER AND SHALL WITHIN ONE BUSINESS DAY, RECEIVE A FULL REFUND OF ANY DOWN PAYMENT AND RETURN OF TRADE-IN VEHICLE, OR TITLE FOR TRADE-IN VEHICLE, OR BOTH. IF THE TRADE-IN IS NOT AVAILABLE, THE PURCHASER SHALL RECEIVE THE TRADE-IN ALLOWANCE. UNLESS DELIVERY DATE IS OTHERWISE QUALIFIED ON THE PURCHASE CONTRACT BY THE PURCHASER, IF THE ORDERED VEHICLE BECOMES AVAILABLE FOR DELIVERY PRIOR TO THE STATED ANTICIPATED DELIVERY DATE, THE DEALER LICENSEE MAY REQUIRE ACCEPTANCE NOT LESS THAN 21 CALENDAR DAYS AFTER HAVING NOTIFIED THE PURCHASER OF AVAILABILITY OF DELIVERY AND MAY SUBSEQUENTLY VOID THE CONTRACT IF THE PURCHASER REFUSES TO TAKE DELIVERY, IN WHICH CASE NO PENALTY SHALL BE ASSESSED BY THE DEALER LICENSEE FOR NON-ACCEPTANCE OF DELIVERY PRIOR TO THE STATED ANTICIPATED DELIVERY DATE." Notification of availability of delivery and penalty for non-acceptance by the dealer licensee to the purchaser shall be by registered or certified mail, return receipt required.

(f) Reference all warranties, warranty disclaimers, service agreements, and insurance service plans which are part of the transaction at the time of contract execution. For example, "service agreement, 15% discount for 60 days for repair at our shop." Additional information shall be provided as described in sub. (10) (b), (c) and (d).

(g) Reference price due on delivery and the known components of that price, including but not limited to, cash price, sales tax, license and title fees, down-payment, and trade-in allowance. Rebates shall be referenced separately by dollar amount and assignment.

(h) Specify all disclosures required in s. Trans 139.04 (1) (b), (2) (a), and (5) (b).

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

(j) Clearly state whether or not the contract is subject to the purchaser obtaining acceptable financing through the dealer or at the creditor of the purchaser's choice and how long the purchaser has to obtain financing. If the purchaser is unable to obtain acceptable financing, the purchaser may cancel the contract and shall, within one business day, receive a full refund of any down-payment, and return of trade-in vehicle, or title for trade-in vehicle, or both, and no penalty shall be assessed. If the trade-in vehicle

is not available, the purchaser shall receive the trade-in allowance.

(k) Specify all other separately negotiated conditions of sale not stated elsewhere on the contract.

(3) **RETURN OF DEPOSIT MONIES OR TRADE-IN TITLE.** Any down payment, deposit, or title shall be returned to the prospective retail purchaser within 2 working hours from the time the offer to purchase was made if the offer to purchase is not accepted by the dealer licensee. If the prospective purchaser is not present or available during the 2 hour period, those items shall be returned in person or mailed during the following business day.

(4) **MOTOR VEHICLE PRICE PROTECTION.** A motor vehicle manufacturer, importer or distributor which accepts dealer orders placed on behalf of private retail purchasers shall furnish dealer licensees with price lists upon which retail motor vehicle purchase contracts may be executed. 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 the price lists shall remain in effect until receipt by the dealer licensees of written official price change notification which shall contain the specific dollar amounts of increases or revised prices applicable to the various models, optional equipment, accessories and destination or transportation charges.

(a) Price increases imposed by these motor vehicle manufacturers, importers or distributors, are prohibited on those vehicles for which dealers had orders written with private retail purchasers prior to the dealer's receipt of the written official price change notification.

(b) A motor vehicle purchase contract signed by a private retail purchaser and accepted by a dealer licensee shall constitute evidence of an existing order written with a private retail purchaser.

(c) Price increases in instances cited in sub. (5) (b) and (c) 1. shall not be subject to the provisions of this subsection.

(5) **MOTOR VEHICLE PRICE CHANGES.** A motor vehicle manufacturer, importer or distributor which has adopted a formal policy of not accepting dealer orders placed on behalf of private retail purchasers shall notify franchised dealer licensees and the department of that fact in writing. If the policy is not clearly set forth to franchised dealer licensees, price increases imposed by the motor vehicle manufacturer, importer or distributor are prohibited on those vehicles for which dealers had orders written with private retail purchasers prior to the dealer's receipt of the official price change notification referred to in sub. (4).

(a) In the event of motor vehicle manufacturer, importer or distributor price reduction the amount of any reduction received by a dealer licensee shall be passed on to the private retail purchaser by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer.

(b) Price increases in the following instances shall not be subject to the price protection and price change provisions of sub. (4) and this subsection:

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) Any increase in price to a retail purchaser after the dealer has accepted an offer to purchase from the purchaser is an unfair practice and prohibited except as follows:

1. Motor vehicle dealer licensees who accept offers to purchase from private retail purchasers for new vehicles not yet in the dealer's inventory shall, in the following statement to be completed on the purchase contract, check box A where the manufacturer, importer or distributor has a formal policy of not accepting retail orders as described in this subsection, or where the manufacturer's suggested retail price of an ordered vehicle of the upcoming model year is unknown; or check box B where the manufactur-

er's suggested retail price is unknown as in the case of a newly introduced model: "□ Order-out vehicle not price protected. (Check A or B)

A. □ Current model year price known. If the manufacturer's suggested retail price increases before vehicle delivery, the final cash price shall be the current contract cash price, plus the increase in the manufacturer's suggested retail price adjusted by _____% discount or _____% markup of said increase.

B. □ Price of newly introduced model currently unknown. The final cash price shall be the total of the manufacturer's suggested retail price upon delivery plus the price of any dealer installed options set forth in this contract with _____% discount subtracted from or _____% markup added to the total.

However, if the final cash price of either A or B exceeds, the purchaser may cancel the contract without penalty. Also the dealer is not obligated to deliver unless the purchaser agrees to pay the final cash price."

2. A trade-in vehicle may be reappraised if it suffers damage as defined by s. Trans 139.02 (2), or parts or accessories have been removed after purchase contract execution. Reappraisal by the dealer licensee shall be limited to an amount equal to the retail repair costs of damages incurred, or to the value of parts or accessories removed. Reappraisal for mileage/kilometers is not allowed unless the dealer has stated on the contract that "The appraisal is based on an odometer reading of up to _____ miles/kilometers, and the trade-in vehicle may be reappraised if it exceeds this limit."

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

(7) **ORDER LIMITATIONS.** It is an unfair practice and prohibited for a dealer licensee to execute a purchase contract for a vehicle or type of motor vehicle unless the dealer licensee reasonably expects to have the ordered vehicle available for delivery by the anticipated delivery date.

(8) **SERVICE FEES.** (a) Except as provided in par. (b), a dealer licensee may not assess a purchaser an additional service fee or charge for completing any sales-related vehicle inspection or forms which are required by law or rule.

(b) A dealer licensee who has contracted with the department in accordance with the provisions of s. 341.21, Stats., may charge a purchaser a fee in the amount contained in the contract for the dealer's services relating to the processing or distribution of an original or renewal registration or a certificate of title.

(9) **WAIVER.** The use of a motor vehicle purchase contract which requires the purchaser to waive any claims the purchaser may have for breach of contract by the licensee is an unfair practice and prohibited.

(10) **ADDITIONAL DISCLOSURES.** The motor vehicle purchase contract shall:

(a) Clearly state "Motor vehicle dealer sales are governed by ch. 218, Stats., and ch. Trans 139 administered by the Motor Vehicle Dealer License Section, Wisconsin Department of Transportation, P.O. Box 7909, Madison, Wisconsin 53707."

(b) Clearly describe type of warranties, insurance service plans, service agreements or warranty disclaimers which apply to the vehicle. Actual warranty, insurance service plan, and service agreement documents shall be provided separately.

(c) 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, and only if, manufacturer warranty status is unknown 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 PURCHASER, 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.

(d) In the event the sale is made on an "AS IS—NO WARRANTY" basis, clearly state that fact in bold faced type and further state in bold faced type that: "Except for any express or implied warranty by the manufacturer or other third party which exists on this vehicle, the entire risk as to the quality and performance of the vehicle is with the purchaser, and should the vehicle prove defective following the purchase, the purchaser shall assume the entire cost of all servicing and repair."

(11) **CONTRACT PROHIBITED.** A purchase contract for a used motor vehicle shall not be executed with the retail purchaser until the vehicle has been inspected and findings disclosed as required by s. Trans 139.04 (4) and (5).

(12) **ORDER CHANGES.** A dealer licensee shall notify a retail purchaser of any information changing the order or delivery of a vehicle, such as a change in options, equipment, price, or anticipated assembly and delivery date. Notification shall be within 3 business days from the date the dealer receives the information.

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; am. (7), r. (8), renum. (9) to be (8) and am., cr. (9), Register, April, 1977, No. 256, eff. 5-1-77; renum. from MVD 24.04 and am., Register, December, 1982, No. 324, eff. 1-1-83; emerg. am. (5) (c) 1., eff. 7-22-83; am. (5) (c) 1., Register, May, 1985, No. 353, eff. 6-1-85; renum. (8) to be (8) (a) and am., cr. (8) (b), Register, January, 1997, No. 493, eff. 2-1-97.

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

(1) **CONTENTS.** If a sale of a motor vehicle by a licensee is made subject to a warranty, the warranty shall be in writing and shall be provided to the purchaser at the time of delivery of the vehicle and shall include the following items:

(a) Clear identification of the names and addresses of the warrantors.

(b) Clear identification of the purchaser to whom the warranty is extended.

(c) Parts covered. Use of the terms "power train" or "drive train" to describe parts or systems covered is prohibited.

(d) Exceptions and exclusions from the terms of the warranty.

(e) A statement of what the warrantor shall do in the event of a defect or malfunction, at whose expense and for what period of time.

(f) A statement of what the purchaser shall do and expenses the purchaser shall bear.

(g) The procedure the purchaser 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) **DISCLOSURE.** The elements of the warranty shall be stated in words or phrases which clearly disclose the nature or scope of the warranty.

(3) **IMPLIED WARRANTY.** No implied warranty of merchantability or fitness shall be excluded in the sale of a motor vehicle unless the sale is explicitly negotiated between the purchaser and dealer licensee on an "AS IS—NO WARRANTY" basis and is in conformity with ss. Trans 139.04 (6) (a) 5. and 139.05 (10) (d). No implied warranty of merchantability or fitness shall be modified or limited, except that implied warranties may be limited to the duration of a written limited warranty of reasonable duration.

(4) **ADVERTISING.** Warranties shall not be advertised unless the basic terms and conditions of the warranty are disclosed in the advertisement.

(5) **WITHOUT CHARGE.** 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) **EXTENDED WARRANTY.** 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 the claim until properly remedied.

(7) **REPLACEMENT PARTS.** Parts repaired or replaced by a dealer licensee 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, provided the parts are approved for use by the vehicle manufacturer or distributor for repair or replacement.

(8) **WARRANTY REIMBURSEMENT.** (a) Manufacturers shall reimburse dealers for warranty repairs at the dealer's effective labor rate charged all customers as required by s. 218.01 (3) (a) 22., Stats., 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.

(b) The "effective labor rate charged all customers" by the dealer is determined by dividing the total non-warranty charges by the total non-warranty repair hours billed by the dealership for each class of repairs for same make vehicles during the same period.

(c) Manufacturers may audit a dealer's non-warranty repair records for various classes of repairs for same make vehicles to determine the "effective labor rate charged all customers." In the event an audit by the manufacturer reveals an actual labor rate at variance with the labor rate established by the dealer, any liability

of the dealer to the manufacturer is limited to the period of time covered by the audit.

(d) Manufacturers may not:

1. Audit dealer repair records written more than 2 years prior to the audit, unless there is evidence of criminal fraud.

2. Require the dealer to perform geographic or other surveys of hourly labor rates charged or received by other dealers.

(e) The same labor time computations shall be used, for example, Chilton's, the manufacturer's guidelines, straight time averages, for both warranty and non-warranty repairs for same make vehicles. Same make vehicles which are being compared for labor time computations may be up to 5 years old or have been driven up to 50,000 miles.

(f) Manufacturers shall increase a dealer's warranty labor reimbursement rate not later than 30 days following a dealer's notifying the manufacturer of a repair labor rate increase, unless an audit discloses the dealer's claimed labor rate is not the "effective labor rate charged all customers."

(9) **WARRANTY LABOR REIMBURSEMENT COMPLAINTS.** Any department determination or licensing action based on a warranty labor complaint shall be based upon the information submitted to the department by the parties involved. The department shall not be required to conduct any on-site investigations or informational hearings.

(10) **WARRANTOR BASIC OBLIGATION.** 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 24.05 (10), Register, December, 1975, No. 240, eff. 1-1-76; am. (3), Register, April, 1977, No. 256, eff. 5-1-77; renum. from MVD 24.05 and am., Register, December, 1982, No. 324, eff. 1-1-83; am. (1) (c), Register, May, 1986, No. 365, eff. 6-1-86.

Trans 139.07 Waiver. Waiver of any requirements of this chapter, except as specifically provided for in this chapter, 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; renum. from MVD 24.06 and am., Register, December, 1982, No. 324, eff. 1-1-83.