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Chapter Trans 140

MOTOR VEHICLE DEALER FINANCIAL ELIGIBILITY AND BOND CLAIM REQUIREMENTS

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Subchapter I — Dealer Security and Financial Eligibility Requirements

Trans 140.01 Purpose and scope. **(1)** STATUTORY AUTHORITY. As authorized by ss. 218.0152, 218.25, and 227.11, Stats., the purpose of this chapter is to establish the department's administrative interpretation of ss. 218.0114 (4), (5), (20), (22), 218.0116 (1) (a) and (d), Stats., relating to the security requirements and financial qualifications of motor vehicle wholesaler, dealer, and salesperson license applicants, s. 218.11 (3) and (6) (a) and (g), Stats., relating to the financial qualifications of mobile home dealer license applicants to engage in the sale of recreational vehicles, and ss. 218.21 (1), (1m), (4) and (6), and 218.22 (1) and (3) (a) and (g), Stats., relating to the financial qualifications of motor vehicle salvage dealer license applicants, and s. 218.41 (2) (c) and (3) (a), Stats., relating to the financial qualifications of moped dealer license applicants.

(2) APPLICABILITY. (a) This chapter applies to any sole proprietorship, partnership or corporate entity applying for or holding a Wisconsin dealer's license under any of the statute sections cited in sub. (1).

(b) The provisions of subch. II apply to all applicants for a license issued by the department under ch. 218, Stats., and to all such licensees, who furnish a bond or letter of credit pursuant to s. 218.0114 (5) or (20), 218.11 (3) or (6) (g), 218.21 (4) or (6), or 218.33 (1), Stats. The provisions of subch. II also apply to all sureties and financial institutions that issue such bonds or letters of credit, and to all claimants against such bonds or letters of credit.

Note: Forms used in this chapter are: MVD-2195 Financial Statement, MVD-2077 Motor Vehicle Dealer, Mobile Home Dealer or Salesperson Bond, MVD-2077A Moped Dealer Bond, MVD 2511 Motor Vehicle Dealer Bond and MVD 2497 Motor Vehicle Salvage Dealer Bond.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85; cr. (2) (am) and am. (2) (b), Register, July, 1986, No. 367, eff. 8-1-86; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1987, No. 384; am. (1), renum. (2) (am) to be (2) (b) and am., r. (2) (b), Register, February, 1996, No. 482, eff. 3-1-96; corrections in (1), (2) (b) made under s. 13.92 (4) (b) 7., Stats., Register March 2012 No. 675.

Trans 140.02 Definitions. In this chapter:

(1) "Asset" means anything of value owned by the corporation, limited liability company, partner or sole proprietor.

(2) "Current assets" means cash and assets, including trade or investment items, which may be readily converted into cash in the ordinary course of business within one year from the date of the balance sheet and include, but are not limited to, cash and equivalent, customer and factory receivables, inventories, last in first out reserves and marketable securities.

(3) "Current liabilities" means liabilities which are due and payable within one year from the date of the balance sheet.

(4) "Discounted" means an asset which is not considered at full value when determining the financial statement net worth.

(5) "Financial institution" has the same meaning as found in s. 705.01 (3), Stats.

(6) "Financial statement" means a balance sheet showing assets, liabilities, and net worth on a fixed date.

(7) "Intangible asset" means an asset which does not have a readily determined value, such as goodwill, and is not generally offered for sale.

(8) "Letter of credit" means an irrevocable instrument issued by a financial institution guaranteeing payment on behalf of its customer to a beneficiary for a stated period of time and when certain conditions are met.

(9) "Liability" means an obligation to pay money or other assets or to render a service to another person.

(10) "Major liability" means a liability equal to or greater than 10% of the total liabilities listed on the financial statement.

(11) "Net worth" means the difference between the asset and liability values on a balance sheet. Negative net worth is the excess of liabilities over assets.

(12) "Pro-forma statement" means a financial statement that presents information that anticipates some event or events which will occur in the future.

(13) "Recreational vehicle dealer" has the same meaning as found in s. Trans 142.02 (7).

(14) "Substantial portion of the assets" means a value greater than 30% of all assets.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85; renum. (1) to (7) to be (4), (6), (7), (10), (11), (12) and (14) and am. (6) and (12), cr. (1) to (3), (5), (8), (9) and (13), Register, February, 1996, No. 482, eff. 3-1-96.

Trans 140.022 Security; forms and types. **(1)** FORMS OF SECURITY. The only acceptable forms of security to fulfill the security requirements of ss. 218.0101 to 218.0163, Stats., are as follows:

(a) *Surety bonds.* The bond shall be filed on a form prescribed by the department and issued by a bonding company licensed by this state and acceptable to the department. The bond shall be payable in the name of the department for the benefit of any person who sustains a loss because of an act of the licensee

constituting grounds for the suspension or revocation of a license under ss. 218.0101 to 218.0163, Stats.

Note: Under ss. 632.14 to 632.18, Stats., surety insurance is regulated by the Commissioner of Insurance.

(b) *Letters of credit.* The letter of credit shall be filed on a form prescribed by the department and issued by a financial institution acceptable to the department. The issuer shall waive the right to revoke the credit before its expiration date, which shall be no earlier than 3 years after the last day of the period covered by the letter. The letter of credit shall be payable in the name of the department and upon a written statement by the department that one or more persons have sustained a loss because of acts by the licensee constituting grounds for the suspension or revocation of a license under s. 218.0116, Stats.

Note: These forms may be obtained by contacting the Dealer Section's Business Licensing Unit at (608) 266-1425.

(2) MINIMUM SECURITY. A motor vehicle dealer or applicant for a motor vehicle dealer license shall provide and maintain in force a bond or letter of credit of not less than $50,000, or if the dealer or applicant sells or proposes to sell motorcycles and not other types of motor vehicles, a bond or irrevocable letter of credit of not less than $5,000.

(3) SUPPLEMENTAL SECURITY. In addition to the security required under sub. (2), the department may require a motor vehicle dealer, or applicant for a motor vehicle dealer license, to provide and maintain in force a supplemental bond in an amount not less than $5,000 nor more than $100,000. The department may also require such securities of wholesalers and motor vehicle salespersons and applicants for such licenses. The department shall require such bonds according to the criteria described in s. Trans 140.027.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; corrections in (1) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register March 2012 No. 675; 2013 Wis. Act 363: am. (2) Register May 2014 No. 701, eff. 6-1-14.

Trans 140.027 Criteria for supplemental security. **(1)** AMOUNT. The department may require supplemental bonds of motor vehicle dealers or wholesalers according to their annual vehicle sales and their total points in the current licensing period. The department shall provide a licensee or applicant written notice of the requirement for supplemental security. The department may require supplemental securities of applicants for such licenses according to the department's estimates of their annual retail vehicle sales and their total points for the licensing period for which the application is made. The department may determine or estimate points and annual vehicle sales according to subs. (2) and (3). Bonds shall be in the amounts described in the following table:

(2) DETERMINING POINTS. (a) *General.* The department may assess points against a licensed dealer or wholesaler, or an applicant for a license, who has violated any provisions in ss. 218.0101 to 218.0163, Stats., or rules interpreting ss. 218.0101 to 218.0163, Stats., that constitute grounds for the suspension or revocation of their license. The department may also assess points against a licensed dealer, wholesaler, or an applicant for a license when the department has reasonable cause to doubt the licensee or applicant's financial responsibility or solvency. The department shall provide a licensee or applicant written notice of a point assessment. Written notice of a point assessment shall specify the reasons for the point assessment, including the issuance of a complaint to revoke or suspend a license, a written stipulation to a conditional license, a civil forfeiture complaint or citation, notice of denial of a license, and a special order issued by the division of hearings and appeals. All points assessed by the department shall remain in effect for the duration of the current licensing period, and any new point assessments shall be added to the existing point total for that licensee throughout the current licensing period.

(b) *Effect of point assessments from previous licensing period.* The department may assess additional points or carry over points to a new licensing period under the following conditions:

1. The department may assess additional points for current violations when point assessments in previous licensing periods demonstrate a pattern of violations or repeat offenses.

2. The department may carry over point assessments from one licensing period to the next period for which a dealer or wholesaler makes application if a significant share of the licensee's or applicant's ownership or employees includes persons who were assessed points, or who were directly involved in violations causing points to be assessed, when they were last licensed by the department.

(c) *Appeals to eliminate point accumulations.* A licensee may, after 12 months of posting additional security, submit to the department evidence of eliminating the compliance or financial problems cited by the department when it assessed points, and ask that the department reduce or eliminate the licensee's current points. The licensee may submit only one request regarding the same point assessments during the licensing period.

SUPPLEMENTAL BOND CALCULATION						
Number of points	1	2	3	4	5	6 or more
Number of vehicles sold at retail per year						
0-249	5,000	10,000	15,000	20,000	25,000	30,000 to 50,000
250-999	15,000	23,000	30,000	38,000	45,000	55,000 to 75,000
1,000 and above	25,000	35,000	45,000	55,000	65,000	75,000 to 100,000

(d) *Point assessments.* The department may assess points according to the following table:

Grounds for assessing points	No. of points per violation
ss. 218.0114 (1), (4), (5), and (20), 218.0116 (1) (d) and (p), 342.06 (2), 342.16 (1m), 347.415, Stats.	4-6
s. 218.0116 (1) (bm), (c), (cm), (dm) to (f), (gm), (im) 2., (j), and (m), Stats., where the department has estimated that the loss to the consumer was greater than $500	4-6
s. 218.0116 (1) (bm), (c), (cm), (dm) to (f), (gm), (im) 2., (j), and (m), Stats., where the department has estimated that the loss to the consumer was less than or equal to $500	1-3
Other provisions of ss. 218.0101 to 218.0163, Stats., not specifically listed in this table	1-3
s. 218.0116 (1) (a), Stats., where the department has found financial insolvency or irresponsibility as demonstrated by:	
Ratio of current assets to current liabilities is less than 1.25 but greater than or equal to 1.00	1-3
Total assets exceed total liabilities, but by less than 35 percent	1-3
Ratio of current assets to current liabilities is less than 1.00; or negative net worth	6
Other indications of financial insolvency or irresponsibility not specifically listed in the table	1-3

(3) DETERMINING ANNUAL VEHICLE SALES. For the purpose of using the table in sub. (1), the number of vehicles sold per year may be defined as any of the following:

(a) Total number of motor vehicles sold at retail during the previous 12 months from the date requested by the department, the most recent calendar year, the most recent fiscal year when the dealer had been licensed, or the most recent year represented on the licensee's application, at the discretion of the department.

(b) Projected number of motor vehicles to be sold at retail during the next 12 months, based on the business' most recent quarterly sales.

(c) Projected number of motor vehicles to be sold at retail during the next 12 months, based on the best information available to the department.

(4) APPEALS. (a) A person adversely affected by any of the following actions may request an informal hearing from the department before the action becomes effective:

1. The issuance of written notice assessing points under this section.

2. The issuance of written notice requiring supplemental security under this section.

(b) A request for informal hearing on an action under par. (a) shall be made in writing and shall be filed with the department within 10 days after the licensee or applicant receives notice of the department's action.

(c) If the department receives a written request for an informal hearing, the department shall conduct a prompt informal hearing before a department employee or official who was not personally involved in the investigation or decision to take the action, and who has the authority to withdraw, modify or correct the action as necessary. The informal hearing shall be conducted within 10 business days after a request for informal hearing is received by the department, unless the person requesting the informal hearing agrees to a later date. An informal hearing may be conducted by telephone or at the department's offices.

(d) Within 5 business days after the conclusion of an informal hearing, the department shall issue a brief written memorandum which summarizes the informal hearing, and any decision or action resulting from the informal hearing. A copy of this memorandum shall be provided to the person requesting the informal hearing.

(e) The department's decision is final, and no further appeals may be submitted or considered.

Note: If the department initiates an action to deny, suspend, or revoke a license because of failure to obtain supplemental security, the affected licensee or applicant is entitled to a full evidentiary hearing before the division of hearings and appeals, pursuant to subch. I of ch. 227, Stats.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; corrections in (2) (a), (d) made under s. 13.92 (4) (b) 7., Stats., Register March 2012 No. 675.

Trans 140.028 When financial information is required. (1) The department may require a motor vehicle dealer or any other business licensed under ch. 218, Stats., or any applicant for such licenses, to submit information relating to its financial standing, solvency, or responsibility under any one of the following circumstances:

(a) The department has reasonable cause to doubt the financial responsibility of the applicant or licensee.

(b) The department has reasonable cause to doubt the applicant or licensee's compliance with ch. 218, Stats., or its related rules, where the violation constitutes grounds for suspension or revocation of a license. "Reasonable cause" includes a situation in which the licensee, applicant or employees of the licensee or applicant have been found by the department to have violated ch. 218, Stats., or rules interpreting ch. 218, Stats., anytime during the current or the immediately previous licensing period.

(c) The applicant or licensee is a motor vehicle salvage dealer that has not supplied a bond per s. 218.21 (4) (a), Stats., under the conditions specified in s. 218.0114 (20) (b), Stats.

(d) The applicant or licensee is a recreational vehicle dealer.

(e) The applicant or licensee is a wholesaler.

(f) The applicant or licensee is a moped dealer.

(2) Failure to provide the financial information required under sub. (1) shall be grounds for denial or revocation of the license.

Note: Provisions for protection of trade secrets are found in ss. 19.36 (5), 134.90 (1) (c) and 218.0114 (20) (c), Stats.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; correction in (1) (c) made under s. 13.92 (4) (b) 7., Stats., Register March 2012 No. 675.

Trans 140.03 Balance sheet information. (1) If required by the department, licensees or applicants shall submit a balance sheet dated not more than 90 days prior to the date of submission, that is prepared in accordance with generally accepted accounting principles. A small business as defined in s. 227.114, Stats., which does no interim financial reporting may submit a balance sheet from the close of the business' most recent fiscal year. The balance sheet shall contain the following:

(a) Assets.

(b) Liabilities.

(c) Net worth.

(d) The signature of one of the corporate officers, partners, or owners.

(e) The name of any financial institution used by the applicant.

(f) A schedule of securities owned, if any.

(g) A schedule of real property held, its fair market value, book value and the amount and terms of any indebtedness.

(2) Pro-forma statements shall not be accepted.

(3) If the department determines that there has been a misstatement on a financial statement, the misstatement shall be grounds for denial or revocation of the license.

Note: Form MVD-2195 Financial Statement.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85; am. (1) (intro.), (e) and (g), Register, February, 1996, No. 482, eff. 3-1-96.

Trans 140.04 Asset reporting. (1) VALUATION. The financial statement shall present assets in terms of historical cost or book value of assets. In lieu of a statement presented with historical cost of fixed assets or book value of assets, the department shall consider a statement presenting fair market value information of fixed assets if clearly labeled and accompanied by an appraisal report of a certified appraiser or tax appraisal.

(2) CASH. Whenever a substantial portion of the assets of an entity is in the form of cash, confirmation of the amount is required from the financial institution holding the cash.

(3) RECEIVABLES. When a substantial portion of the assets of an entity are in the form of receivables from another individual, partnership or corporation, all or part of the receivables shall be discounted in considering the net worth of the applicant. In order to evaluate the quality of a receivable, a financial statement from the individual, partnership or corporation may be required. In no case will the department discount factory receivables.

(4) INVENTORY. The financial statement shall include the number of units in inventory and the number of units floor planned or used for loan collateral. A GAAP presentation of inventory values would not allow for the use of a reserve account for balance sheet information compiled for external purposes. As an exception to a GAAP presentation, the department will allow the use of a reserve account to accurately assess the value of inventory.

(5) CERTAIN ASSETS NOT TO BE CONSIDERED. The department shall not consider the following assets in evaluating the financial statement of an applicant:

(a) As specified in s. 815.20, Stats., equity in homestead property up to $25,000;

(b) As specified in s. 815.18, Stats., items of personal property which are exempt from execution;

(c) Any intangible asset values;

(d) Leasehold improvements; and

(e) All other assets subject to prior liens, security agreements, or other pledges.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85.

Trans 140.05 Liability reporting. (1) REPORTING. All liabilities and contingent liabilities shall be reported. The terms, amount and conditions of any major liabilities shall be separately scheduled. This schedule should show the names of individuals or institutions who hold the debt, the amount of debt, and the terms of repayment. A list of customers and the amounts on deposit with the dealer should be attached to the financial statement.

(2) RATIO ANALYSIS. A ratio analysis comparing current liabilities with current assets shall be used to evaluate a dealer's financial potential. Current liabilities which exceed current assets may be grounds for the denial, suspension or revocation of a dealer's license.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85; am. (2), Register, February, 1996, No. 482, eff. 3-1-96.

Trans 140.06 Net worth reporting. (1) TREASURY STOCK. Treasury stock held by a corporation shall be reported separately on the balance sheet and clearly labeled as treasury stock.

(2) PREVIOUS PROFIT. Profit from the previous period of operations shall be reported separately in the net worth section of the balance sheet.

(3) NEGATIVE NET WORTH. A financial statement with a negative net worth is evidence of lack of financial ability to conduct business and the license shall be denied or revoked.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85.

Trans 140.07 Types of entities. (1) SOLE PROPRIETORSHIPS. A sole proprietorship may report the entire value of assets jointly owned by the sole proprietor and by one or more persons on its financial statement. The financial statement shall be signed by the sole proprietor.

Note: An example of a joint asset would be a home owned by the sole proprietor and the sole proprietor's spouse.

(2) PARTNERSHIPS. Partnerships shall submit a statement for the partnership as a whole and individual statements for each of the general partners. If the partnership agreement provides for anything other than an equal sharing by the partners, it shall be prominently noted on the statements. The provisions of sub. (1) relating to the listing of jointly owned assets also apply to this subsection.

(3) CORPORATIONS. A financial statement is required for the corporation which will hold the license. A financial statement of a controlling corporation, parent corporation or an interlocking corporation may be submitted, but shall not be substituted for the financial statement of the applicant.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85; 2013 Wis. Act 363: renum. (3) (a) to (3), r. (3) (b) Register May 2014 No. 701, eff. 6-1-14.

Trans 140.08 Copies required. Salvage dealers, motor vehicle wholesalers, and moped dealers shall file one copy of their financial statement with the department. All other dealers shall file their financial statements in duplicate. The department shall forward the duplicate copy to the co-licensor, the office of the commissioner of banking.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85.

Trans 140.09 General requirements. (1) OPERATING STATEMENT. If required by the department, the applicant shall submit an income statement or other financial statement. The department may require a dealer to submit updated financial information during the license year if questions arise regarding the dealer's financial condition.

(2) ACCEPTABLE NET WORTH. (a) The following guidelines are used in determining the acceptable level of net worth of an applicant:

Dealer Type	
New Auto or Truck	$50,000 bond or letter of credit required
Used Auto or Truck	$50,000 bond or letter of credit required
Motorcycle and not other motor vehicles	$5,000 bond or letter of credit required
Motorcycle and other motor vehicles	$50,000 bond or letter of credit required
Recreational Vehicle	Minimum required ratio of total assets to total liabilities of 1.4
Moped	Minimum required ratio of total assets to total liabilities of 1.4
Motor Vehicle Wholesaler	Minimum required ratio of total assets to total liabilities of 1.4
Motor Vehicle Salvage	Minimum net worth of $5,000

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(b) The department may deny the license of an applicant who fails to meet the net worth criteria set out in par. (a).

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85; r. and recr. (2) (a), Register, February, 1996, No. 482, eff. 3-1-96; 2013 Wis. Act 363: am. (2) (a) Register May 2014 No. 701, eff. 6-1-14.

Subchapter II — Claims Against Bonds of Department Licensees

Trans 140.20 Definitions. The terms used in this subchapter shall have the same meanings as in ch. 218, Stats., except as specifically provided below:

(1) "Claim arose against the bond or letter of credit of a licensee" means a situation in which a cause of action has accrued against the licensee. Unless otherwise provided by statute, a cause of action accrues where there exists a claim capable of present enforcement, a suable party against whom it may be enforced, and a party who has a present right to enforce it. A tort claim accrues when the injury is discovered or reasonably should have been discovered.

Note: See ch. 893, Stats., and cases thereunder, governing the applicable statutes of limitation, and determination of the date when a cause of action accrues.

(2) "Commercial customer" means a private person who buys or agrees to buy one or more motor vehicles from the licensee for the person's business or commercial use. A private person who sells, trades, or consigns to the licensee a motor vehicle used by the person primarily for business or commercial purposes is also a commercial customer.

(3) "Financial institution" means any person or organization authorized to do business under any state or federal law relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan associations, credit unions and sales finance companies. A credit corporation or similar financing organization of a motor vehicle manufacturer, factory branch, distributor or dealer is a financial institution. Any person who floor plans motor vehicles is a financial institution.

(4) "Floor plan" means to make a financing arrangement for the lending of money to a motor vehicle dealer so that he or she may purchase a motor vehicle to include in his or her inventory; the loan being secured by the motor vehicle while in the dealer's possession and to be repaid when the motor vehicle is sold.

(5) "Motor vehicle" shall have the same meaning as s. 218.0101 (22), Stats., and includes mobile homes as defined by s. 218.0114, Stats. For the purposes of this subchapter, a moped as defined by s. 218.40 (2), Stats., is also a motor vehicle.

(6) "New motor vehicle" shall have the same meaning as s. Trans 137.03 (7).

(7) "Private person" means a person not licensed under ch. 218, Stats., and not required to be so licensed, for the purpose of the transaction from which the person's claim arises. A financial institution, or a motor vehicle manufacturer, factory branch, factory representative, distributor, distributor representative, or a motor vehicle, mobile home, moped, salvage, trailer or auction dealer or a salesperson employed by such dealer is not a private person.

(7m) The "period covered by the security" is co-extensive with the biennial license, issued under ch. 218, Stats., which is conditioned on providing the security in question. If the biennial license is extended by operation of s. 227.51 (2), Stats., the period covered by the security also is extended and remains co-extensive unless sooner cancelled by the surety.

Note: Forms for bonds and letters of credit are available from the Dealer Section, Department of Transportation, P.O. Box 7909, Madison, Wisconsin 53707.

(8) "Retail customer" means a private person buying or agreeing to buy one or more motor vehicles from the bonded licensee for the private person's personal, family or household use. A person buying or agreeing to buy a motor vehicle or mobile home to be used primarily for business or commercial purposes is not a retail customer. A private person who sells, trades, or consigns to the bonded licensee a motor vehicle used personally or by the person's family or household, and not used primarily for business or commercial purposes, is a retail customer.

(9) "Secured party" means a lender, seller or other person, whose claim is based on a transaction in which there is, or was, a security agreement creating a security interest in the lender's, seller's or person's favor, even if that interest is not sufficient to satisfy the claim. A person able to claim a lien under ss. 779.41, 779.415, or 779.43 (3), Stats., is a secured party.

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86; r. (1), renum. (1m) to be (1) and am., am. (2) and (7m), Register, February, 1996, No. 482, eff. 3-1-96; corrections in (5) made under s. 13.92 (4) (b) 7., Stats., Register March 2012 No. 675; CR 22-048: am. (7) Register July 2023 No. 811, eff. 8-1-23.

Trans 140.21 Allowed claims. (1) A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the claimant's agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.0116 (1) (a) to (gm), (im) 2., (j), (jm), (k), (m) or (n) to (p), Stats.

2. A recreational vehicle dealer license, in the case of a bonded recreational vehicle dealer, pursuant to s. 218.11 (6), Stats.

3. A salvage dealer license, in the case of a bonded salvage dealer, pursuant to s. 218.22 (3), Stats.

4. An auction dealer license, in the case of a bonded auction dealer, pursuant to s. 218.32 (3), Stats.

5. Any other license issued by the department under ch. 218, Stats., in any other case, including that of a bonded manufacturer, distributor, distributor-wholesaler, or trailer dealer, pursuant to s. 218.0116 (1), Stats.

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Note: This paragraph does not supersede any applicable provision of ch. 893, Stats., and does not limit the liability of the licensee in any way.

(2) The following claims shall be disallowed:

(a) Any claim by a claimant licensed under ch. 218, Stats., or required to be so licensed.

(b) Any claim by the licensee, the licensee's employing dealer, if any, or the licensee's agents, partners, stockholders or employes.

(c) Any claim arising from activities of the licensee which are not regulated by the department under ch. 218, Stats., specifically including, without limitation, claims for rent, mortgage payments, wages, commissions, personal services rendered and commercial transactions not directly related to the sale or purchase of a motor vehicle.

(d) Any claim by a manufacturer, factory branch, factory representative, distributor or distributor representative involving the sale or delivery of a new motor vehicle to the licensee.

(e) Any claim for interest or penalties, legal costs, attorney fees, or punitive damages except as otherwise expressly provided in sub. (5).

(f) Any claim by a financial institution or secured party.

(3) Any of the following acts by a claimant, as determined by the department, may be grounds for disallowing a claim:

(a) Making or offering a false statement, false or altered document, or other misrepresentation in support of a claim against the security;

(b) Making a claim based in whole or in part upon a transaction or an act by the claimant which is unlawful or contrary to statute, regulation or administrative rule, as determined by the department.

(c) Failing to make a claim in the manner provided by this subchapter.

(d) Failure of the claimant to cooperate in the investigation of the claimant's claim, including failure to provide additional supporting documentation or evidence for a claim or to provide other explanatory materials when that information is requested by the department and is readily available to, or known to, the claimant or is in the claimant's possession or control.

(4) A claim may be allowed in part and disallowed in part.

(5) (a) When a claimant is unable to obtain title to a motor vehicle because the licensee who held the vehicle for sale created a security interest in the motor vehicle and a manufacturer or financial institution is holding the title or Manufacturers Certificate of Origin (MCO) to ensure payment by the licensee at the time of sale, the claimant's reasonable expenses, including legal costs and attorney fees, in obtaining requisite title documentation, are allowable claims against the security of the licensee.

(b) As alternatives to making the claim described in par. (a), a claimant in such a case may instead do any of the following:

1. Rescind the purchase contract and make a claim against the security of the licensee for the full purchase price of the vehicle.

2. Make a claim against the security of the licensee for the cost of a title bond prescribed by s. 342.12 (3) (b), Stats.

3. Make any other allowable claim for damages.

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86; am. (1) (a) to (c) 4., (d), (2) (a) to (e), (3) and (5) (a) to (b) 2., r. (1) (c) 5., renum. (1) (c) 6. to be 5., Register, February, 1996, No. 482, eff. 3-1-96; corrections in (1) (c) 1., 5. made under s. 13.92 (4) (b) 7., Stats., Register March 2012 No. 675.

Trans 140.22 Priority of claims. Allowable claims against the security shall be assigned to one of the following priority classes:

(1) SALESPERSON, MOTOR VEHICLE AND RECREATIONAL VEHICLE DEALER SECURITIES. The priority classes of allowable claims against the security of any licensee except a wholesaler, salvage or auction dealer, in order of their priority, are as follows:

(a) Claims of retail customers including, without limitation, claims arising from a particular motor vehicle purchase from the licensee or from a particular motor vehicle sale by the licensee, claims for repairs warranted by the licensee, claims for failure to furnish title to a motor vehicle, claims for deposits against an uncompleted motor vehicle purchase transaction, and claims for the failure of the licensee to pay the claimant for a trade-in, a motor vehicle purchased by the licensee, or a consigned vehicle not returned to the consignor upon request.

(b) Claims of commercial customers including, without limitation, claims arising from a particular motor vehicle purchase from the licensee or from a particular motor vehicle sale by the licensee, claims for repairs warranted by the licensee, claims for failure to furnish title to a motor vehicle, claims for deposits against an uncompleted motor vehicle purchase transaction, and claims for the failure of the licensee to pay the claimant for a trade-in, a motor vehicle purchased by the licensee, or a consigned vehicle not returned to the consignor upon request.

(c) Claims of the department for title and registration fees.

(2) WHOLESALER, SALVAGE AND AUCTION DEALER BONDS. The priority classes of allowable claims against a wholesaler bond, a salvage dealer bond or an auction dealer bond, in order of their priority, are as follows:

(a) Claims arising from transactions involving the sale or purchase of a particular motor vehicle, excluding the claims of a secured party, a financial institution, the department of revenue or the department of transportation.

(b) All other allowable claims, including claims of the department for title and registration fees.

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86; am. (intro.), (1) (intro.) to (b), (2) (intro.) and (b), r. (1) (d) to (f), Register, February, 1996, No. 482, eff. 3-1-96.

Trans 140.23 Payments on allowed claims. (1) The amount paid on each allowed claim shall be determined by the priority class of the claim. All claims in the same priority class shall be treated alike, beginning with the claims of the first priority class, as follows:

(a) The total amount necessary to pay all claims of the class in full shall be determined.

(b) If enough funds are available under the bond or letter of credit to do so, all claims of the class shall be paid in full.

(c) If, after all allowed claims of a class have been paid in full, funds remain available to pay additional claims, the allowed claims of the next priority class shall be paid, in accordance with pars. (a) to (d).

(d) If insufficient funds are available to pay all claims in a class, then each claim of the class shall be prorated according to the following formula:

$$\frac{\text{dollar amount of claim}}{\text{total dollar amount of claims in class}} \times \text{available funds} = \text{prorated dollar amount of claim}$$

(2) When a class of claims has been prorated because there are insufficient funds available to pay the claims of the class in full, no payments shall be made upon allowed claims of the successive priority classes.

(3) The aggregate total of all payments on all claims may not exceed the total amount of the bond or letter of credit available for payment of claims.

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86; am. (1) (a) to (c) and (3), Register, February, 1996, No. 482, eff. 3-1-96.

Trans 140.24 Making claims. (1) Each claim shall be in writing and shall include all of the following:

(a) The name and address of the claimant and a telephone number where the claimant can be reached during normal business hours.

(b) A description of the nature of the claim and the transaction from which the claim arose, including any specific acts of the dealer which are grounds for suspension or revocation of the dealer's license under ch. 218, Stats.

(c) The date on which the claim arose.

(d) The dollar amount of each separate loss or item of damage included in the total amount of the claim.

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(e) Copies of all documents related to the transaction from which the claim arose.

(f) A statement of the status of any lawsuit regarding the claim and filed by the claimant against the licensee, including the name of the case, case number, court and a copy of any judgment entered.

(g) A description of the security interest, if any, held by the claimant including a copy of any security agreement related to the transaction from which the claim arose and a description of the secured property.

(h) A description of any licenses held by the claimant, if the claimant is licensed under ch. 218, Stats.

(i) A statement of whether the claimant is a retail customer, commercial customer, motor vehicle manufacturer, factory branch, factory representative, distributor, distributor representative, dealer, salesperson or a financial institution.

(j) A statement of whether the claimant is the licensee, the claimant's employer agent or employee.

(2) The department may adopt and provide forms for use by claimants.

Note: Copies of the form for making claims, MV-2542, Claim Against Bond of Licensee, are available from the Dealer License Section, Department of Transportation, P.O. Box 7909, Madison, Wisconsin 53707.

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86; am. (1), Register, February, 1996, No. 482, eff. 3-1-96.

Trans 140.25 Payment by surety or financial institution. (1) The surety or financial institution may, at any time, pay the amount of the bond or letter of credit to the department.

(2) The department shall hold all payments on a particular bond or letter of credit in a separate account. This separate account may be interest bearing. The department may retain interest earned, if any, but shall not otherwise make any charges against the bond or letter of credit for administering the bond or letter of credit and determining claims against it.

(3) If payment from the surety or financial institution is not received prior to, or during, the determination of claims by the department as provided in s. Trans 140.26, the department shall, after the final determination of timely claims, demand payment on the bond or letter of credit from the surety in an amount equal to the lesser of the face value of the bond or the aggregate total of the claims determined to be allowed. The surety or financial institution shall pay the amount demanded to the department within 30 days. The department may execute an appropriate written release for the surety or financial institution, if the surety or financial institution so requests, after payment is received.

(4) If a surety or financial institution fails to tender the amount of the bond or letter of credit to the state, or to make timely payment of the amount demanded as provided in sub. (3), or otherwise fails to observe the provisions of this chapter, then the department may, in addition to any other available remedy, revoke its acceptance of the surety or financial institution as adequate to provide any bond or letter of credit of any persons secured under any statute or rule administered by the department. The department shall notify the surety company or financial institution of its intent to revoke its acceptance of the surety or financial institution. The surety company or financial institution may, within 30 days of such notice, request a hearing before the secretary or the secretary's designee, prior to revocation of the department's acceptance of the surety or financial institution.

Note: Final determinations of the department are subject to judicial review pursuant to ss. 227.15 to 227.21, Stats.

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86; am. Register, February, 1996, No. 482, eff. 3-1-96.

Trans 140.26 Procedure for determination of claims against the dealer bond or letter of credit. (1) PETITION FOR RULING. (a) Any claim made against the bond or letter of credit of a licensee, any request by a surety for a department determination of a claim, any notification of the department by a licensee of the licensee's termination of business, any filing of a bankruptcy petition by a licensee, or any payment of any part of a bond or letter of credit by the surety or financial institution to the department may be regarded by the department as a petition for declaratory ruling under s. 227.41, Stats.

(b) If the petition does not initially comply with the required format of s. 227.41 (2), Stats., the department may request that the additional materials needed to satisfy s. 227.41 (2), Stats., be furnished.

(2) NOTICE OF PETITION. (a) The department shall provide notice to all interested parties by publishing notice, pursuant to s. 985.07 (1), Stats., in a newspaper of general circulation in the area of the licensed address of the licensee and by mailing notice to all interested parties known to the department.

(b) The notice required in par. (a) shall include:

1. The name of the licensee.
2. The amount of the bond or letter of credit.
3. The period of time covered by the bond or letter of credit.
4. The deadline for the submission of claims against the bond or letter of credit.
5. The address from which to request claims forms and to which to submit claims.
6. The date and the place for a hearing on all timely but disputed claims.

(3) DEADLINE FOR CLAIMS. The deadline for the submission of claims shall be 60 days after the final insertion of the published notice required by sub. (2).

(4) EVALUATION AND INVESTIGATION. (a) The department shall evaluate each claim received, request additional documentation or clarification from the claimant as necessary and make a preliminary determination of the allowance, amount and priority class of the claim.

(b) In determining the allowance, amount and priority class of a claim, the department shall give full faith and credit to applicable findings of fact and judgments entered by a court in an action involving the claim in which the claimant and the licensee were opposing parties.

(5) DISPUTED CLAIMS. (a) *Preliminary determination of claims.* When a preliminary determination of all claims received prior to the deadline for filing claims is completed, the compilation of all those preliminary determinations shall be sent to each claimant, the surety, if any, and the licensee, who shall all be parties to any hearing under sub. (6). The compilation of preliminary determinations may include an estimate of the amount which would be paid on each claim, in accordance with s. Trans 140.23, if the preliminary determinations are not contested.

(b) *Deadline for objection.* Each claimant, the surety, if any, or the licensee shall have 30 days from the date the preliminary determination is mailed to the claimant to object to the preliminary determination of the allowance, amount or priority class of any claim.

(c) *Notice of objection.* The party objecting to a preliminary determination shall furnish timely notice, pursuant to par. (b), of the grounds for the party's objection to the department, the surety, if any, and the licensee. If the preliminary determination objected to is of a claim by another claimant, timely notice of the grounds for the objection shall also be made by the objector to that claimant.

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(d) *Adoption of preliminary determinations.* If the preliminary determinations are not disputed the scheduled public hearing may be cancelled and the preliminary determinations shall be adopted by the department.

(6) HEARING ON CLAIMS. (a) If there is a dispute of a preliminary determination, a hearing shall be held before a hearing examiner appointed by the department. The claimant, surety, licensee, and any party objecting to the preliminary determination of the claim may present evidence, including witnesses and argument.

(b) The hearing shall be scheduled for a date within 120 days of the publication of the notice provided in sub. (2). The hearing may subsequently be rescheduled to another date, time or place at the discretion of the department and upon notice to all claimants, the licensee and the surety, if any.

(7) HEARING EXAMINER DETERMINATION FINAL. The determination of the hearing examiner regarding the allowance, amount and priority class of each claim shall be the final decision of the department.

(8) FINAL DECISION AND PAYMENT. (a) The final decision of the department shall be in writing and sent to each claimant, the surety or financial institution and the licensee. Payments from the bond, in accordance with the final decision shall not be made until at least 10 days after the final decision is sent to each party.

(b) The amount paid on an allowed claim shall be determined as provided by s. Trans 140.23.

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86; am. (1), (2) (a), (b) 1. to 5., (4) (b), (5) (a) to (c), (6) and (8) (a), Register, February, 1996, No. 482, eff. 3-1-96; CR 22-048: am. (5) (b) Register July 2023 No. 811, eff. 8-1-23.

Trans 140.27 Late claims. If any funds remain in a separate bond or credit account established under s. Trans 140.25 (2), or available under the remaining liability of the surety or financial institution after payment of all timely and allowed claims, the department may accept late claims for determination. After determining all claims received prior to the third anniversary of the end of the period covered by the bond or letter of credit, and after appropriate payment to each claimant has been made, any remaining funds held by the department from the particular bond or letter of credit, excluding interest earned, shall be refunded to the surety or financial institution.

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86; am. Register, February, 1996, No. 482, eff. 3-1-96.

Trans 140.28 Alternative procedure for determination of claims. At the discretion of the department, as an alternative to the procedures described in s. Trans 140.26 or 140.27, the department may proceed as necessary to allow any Wisconsin circuit court, or any federal court, having appropriate jurisdiction over any claim by any claimant against the licensee, to hear the claims of all claimants known to the department, to determine the allowance, amount and priority class of each claim and to make awards against the bond or letter of credit in accordance with ss. Trans 140.21 to 140.23.

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86; renum. (1) and am., r. (2), Register, February, 1996, No. 482, eff. 3-1-96.

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