

CR 84-226

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8:30 am
Revisor of Statutes
Bureau

CERTIFICATE

State of Wisconsin)
) ss.
Department of Transportation)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Lowell B. Jackson, P.E., Secretary of the Wisconsin Department of Transportation and custodian of the official records of the Department, do hereby certify that the annexed rule amendment relating to motor vehicle dealer trade practices was duly approved and adopted by this Department on April 10, 1985.

I further certify that the annexed copy has been compared by me with the original on file in this Department and that the same is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Transportation, in the City of Madison, Wisconsin, this 10th day of April, 1985.



Lowell B. Jackson

Lowell B. Jackson, P.E.
Secretary
Wisconsin Department of Transportation

ORDER OF THE
DEPARTMENT OF TRANSPORTATION
REPEALING, RENUMBERING, AND AMENDING RULES

To repeal, amend, and renumber Chapter TRANS 139, Wis. Admin. Code, relating to motor vehicle dealer trade practices.

Analysis by the Department of Transportation

This rule amends s. TRANS 139.01(1) by eliminating the reference to sec. 218.01(3)(a)27, since the Department's administrative interpretation of that section is presently covered in TRANS 137; amends s. TRANS 139.04(5)(b) and 139.04(6)(b) and repeals s. TRANS 139.04(5)(c) relating to registration procedures for dealer sales of vehicles with "safety" equipment defects; amends s. TRANS 139.04(6)(c)3, to allow operation of a vehicle without a disclosure label to the point of wholesale as well as from the point of purchase; and amends s. TRANS 139.05(5)(c)1., to provide a more meaningful and understandable mandatory disclosure statement on the purchase contract when the transaction involves the sale of a new motor vehicle which is potentially subject to a manufacturer's price increase.

A review of TRANS 139 was initiated in response to a concern expressed by Wisconsin Auto and Truck Dealers Association (WATDA) that: 1) the title only and tow away requirements included in TRANS 139 restrict their ability to compete in the used vehicle market place; and 2) the mandatory disclosure language in TRANS 139.05(5)(c)1. was not being readily understood by dealers, salespersons, and purchasers. After reviewing TRANS 139 and discussing alternatives with WATDA, and in the case of TRANS 139.05(5)(c)1., the Justice Department, the Department developed this rule. Section 7 of the rule relating to purchase contract language was enacted as an emergency rule in July 1983.

Under the current provisions of TRANS 139, dealers are required to inspect used vehicles and disclose any defects prior to offering those vehicles for sale. This amendment does NOT change that requirement.

The major portion of this amendment relates to the removal of the "tow-away," "defective title" and "reinspection" provisions of the current rule. The current rule requires dealers to advise individuals who decide to purchase vehicles with disclosed equipment defects that the vehicle must be towed or hauled from the dealer's premises. In private sales there are no inspection and "tow away" requirements.

Since vehicle defects are listed as contributing circumstances in less than 4% of all accidents in Wisconsin, the tow-away requirement cannot be strongly justified. However, the tow-away requirement can be viewed as creating an undue burden and competitive disadvantage for dealers. The purpose of TRANS 139 is to insure that consumers receive complete information on which to base their decision to purchase a vehicle. Disclosure begins with advertising and includes warranty information, purchase contract requirements and the mechanical condition of the vehicle. Mechanical defects are required to be disclosed because they affect the value and utility of a vehicle. Since dealers will still be required to disclose mechanical defects and include adequate warnings on purchase documents, consumers will still be able to make

informed choices. The tow-away requirement currently placed on the dealer is not viewed as integral to the purpose of TRANS 139 and hence is being eliminated.

In addition, currently when a dealer sells a vehicle with unrepaired mechanical defects the dealer is required to write a statement on the title that the vehicle is defective and may not be operated on the highway. This provision is being eliminated since a title is an "ownership" document and the inclusion of statements as to the vehicle's mechanical state is not relevant to proof of ownership.

Finally, the amendment eliminates the requirement that vehicles with defects which have been sold by dealers be reinspected by law enforcement officers prior to registration. There is no such requirement in private sales and the requirement cannot be justified as a cost-effective provision given the small number of accidents in which mechanical defects are listed as a contributing factor.

Based on its review of dealer practices, the Department believes that most dealers would correct the type of safety hazards which pose a real safety hazard prior to sale. The rule revision allows purchasers to benefit from a lower purchase price if they prefer to arrange for or make their own repairs to safety-related items.

Fiscal impact. There is no anticipated fiscal effect on the state or local government.

Forms. Although some of the provisions will require dealers to provide new or modified used vehicle disclosure statements, there are no new or revised state forms as a result of this rule.

Pursuant to authority vested in the department of transportation by ss. 110.06, 218.01(5) and 227.014, Stats., the department proposes to amend and adopt administrative rules interpreting ss. 218.01(3)(a)9, 14, and 18, Stats., relating to motor vehicle trade practices.

Rule Text

Section 1. TRANS 139.01(1) is amended to read:

(1) STATUTORY AUTHORITY. As authorized by ss. 110.06, 218.01(5) and 227.014, 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, and 27, 218.01(5m), 218.01(7a) and 342.16(1m), Stats., relating to motor vehicle trade practices.

Section 2. TRANS 139.04(5)(b) is amended to read:

(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. ~~Disclose that fact to all retail purchasers in conspicuous bold faced type on the face of the vehicle purchase contract prior to its execution in the following language~~ Make the following disclosure conspicu-

ously on the face of the motor vehicle purchase contract prior to its execution:

"WARNING!

This vehicle may not be operated or licensed and shall 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 shall be inspected and approved by a law enforcement officer before it can be licensed and operated on Wisconsin highways,--inspection certification and title shall be submitted by the owner to the department together with proper registration fee. This vehicle cannot be legally operated on Wisconsin highways and may not be safe."

2. Specify for the retail purchaser the defects which are in violation of ch. 347, Stats., and ch. MVD 5 as prescribed in sub. ~~(6)(b)~~ (4) and in this subsection.

3.--Advise the purchaser that the vehicle shall be towed or hauled from the dealer's premises.

4.--After making a notation on the face of the title transfer application form, MV-1, stating "THIS VEHICLE MAY NOT BE LEGALLY OPERATED ON WISCONSIN HIGHWAYS AND NO REGISTRATION WILL BE ISSUED,"--forward the title transfer application form, MV-1, to the department on behalf of the purchaser, to the following address:

Division of Motor Vehicles

Wisconsin-Department-of-Transportation
 Post-Office-Box-7949
 Madison, WI--53707

Section 3. TRANS 139.04(5)(c) is repealed.

Section 4. TRANS 139.04(5)(d) is renumbered 139.04(5)(c).

Section 5. TRANS 139.04(6)(b) is amended to read:

(b) ~~In addition to the~~ The used vehicle label required by par. (a), ~~if the condition of the vehicle for sale is such that it cannot be legally operated at all times on Wisconsin highways, an additional notice in writing shall be displayed on the vehicle stating:~~ "WARNING: shall also include the following statement:

~~This vehicle may not be operated or licensed and shall 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 shall be inspected and approved by a law enforcement officer before it can be licensed and operated on Wisconsin highways. The inspection certification and the title shall be submitted by the owner to the department together with proper registration fee.~~ "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."

Section 6. TRANS 139.04(6)(c)3, is amended to read:

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

SECTION 7. TRANS 139.05(5)(c)1. is amended to read:

1. Motor vehicle dealer licensees who accept offers to purchase from private retail purchasers for new vehicles not yet in the dealer's inventory ~~for which a specific price is not stated on the contract~~ because the manufacturers suggested retail price is unknown or because 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 manufacturer's suggested retail price is unknown as in the case of a newly introduced model: ~~shall indicate on the purchase contract, to be completed as a condition of sale, the following statements: "The maximum cash price shall not exceed \$-----, and shall be ----- the same as, or ----- \$----- or ----- % more than, or ----- \$----- or ----- % less than the manufacturer's suggested retail price as indicated on the label affixed to the vehicle. -- If the final cash price exceeds the originally agreed upon maximum cash price, the dealer is not obligated to deliver at the stated maximum cash price, and the pur-~~

~~chaser may cancel the contract and not be subject to any penalty.~~"

" 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.

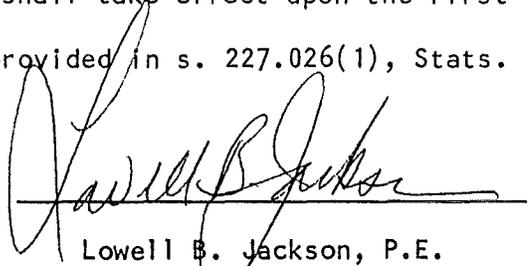
However, if the final cash price of either A or B exceeds \$ _____, the purchaser may cancel the contract without penalty. Also the dealer is not obligated to deliver unless the purchaser agrees to pay the final cash price."

Section 8. TRANS 139.08 is repealed.

Section 9. INITIAL APPLICABILITY. The new or revised used vehicle disclosure label and motor vehicle purchase contract forms specified in ss. Trans. 139.04(4), (5) and (6) and 139.05 shall be utilized beginning no later than 90 days following the effective date of the amended rule, except that a dealer's supply of previously existing forms may continue to be used in transactions not affected by the changes.

The rule revisions contained in this order shall take effect upon the first day of the month following publication as provided in s. 227.026(1), Stats.

7/10/85
Date



Lowell B. Jackson, P.E.

Secretary

Department of Transportation



State of Wisconsin \

DEPARTMENT OF TRANSPORTATION



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Bureau

DIVISION OF MOTOR VEHICLES

4802 Sheboygan Avenue
P. O. Box 7949
Madison, WI 53707-7949

April 9, 1985

Mr. Gary Poulson
Assistant Revisor of Statutes
411 West, State Capitol
Madison, Wisconsin 53702

Re: Clearinghouse Rule 84-226
Relating to Motor Vehicle Dealer Trade Practices;
Trans 139

Dear Mr. Poulson:

Enclosed for filing, pursuant to sec. 227.023, Wis. Stats., is a certified copy of CR 84-226, an administrative rule relating to motor vehicle dealer trade practices. An additional, uncertified copy of CR 84-226 is enclosed to be used as a printer's copy. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,

Mary Runkel/hml

Mary M. Runkel
Executive Assistant

MMR:hml

Enclosures

cc: Sue Gallagher
DOT Office of Transportation Information
Carl Johnson
Don Krohn