

Chapter MVD 24

MOTOR VEHICLE TRADE PRACTICES

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MVD 24.01 Definitions. As used in this chapter: (1) "New" means any non-privately titled motor vehicle of the stated model year which has not been operated more miles than required for pre-delivery test, dealer exchange and delivery.

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

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

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

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

(4) "Damaged" means:

(a) For a new motor vehicle or an executive or demonstrator of the current model year, any which has suffered damage that has been uncorrected, or any damage over 6% of the retail price which has been corrected, when such damage is less than 50% of the vehicle's wholesale value.

(b) Any motor vehicle other than included in (a) above, which has suffered damage in excess of the following percentages of wholesale value at time damaged.

(1) One and two model years old, in excess of 30%;

(2) Three model years old and older, in excess of 40%

(5) "Wrecked" means any motor vehicle which has suffered damage equal to or in excess of 50% of its wholesale value at time damaged.

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

(7) "Privately titled" vehicle means a vehicle titled by a private individual or any party not a licensee of the motor vehicle division.

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

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

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MVD 24.02 Advertising and sales representations. (1) The use of false, deceptive or misleading advertising or representation by any

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licensee to induce the sale of a motor vehicle constitutes an unfair practice and is prohibited.

(2) Any licensee not subject to F.T.C. jurisdiction, making any statement of fact to the public in any advertisement or written statement or representation concerning the motor vehicles it offers for sale, the services it provides or other aspects of its business operation shall possess detailed evidence of the validity and accuracy thereof, which evidence shall be furnished to the division upon request.

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

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

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

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

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

(5) The use of new car list prices to advertise comparative savings for used vehicles is an unfair practice and prohibited unless the dealer can establish that a substantial number of the new vehicles in question have been recently sold at such list price.

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

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

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

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

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

2. Reduces its quality, or

3. Reduces the quantity or size thereof.

(c) The disclosure required by subsection (a) of this rule shall appear in close conjunction with the word "free", or other words of similar import, whenever such word first appears in each advertisement or offer. A disclosure in the form of a footnote, to which refer-

ence is made by use of an asterisk or other symbol placed next to the word "free" will not be regarded as compliance.

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

(9) Use of phrases such as "write your own deal", "name your own price", "appraise your own vehicle", and similar phrases are unfair practices and prohibited.

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

(11) It is an unfair practice for a licensee to advertise motor vehicles or types of motor vehicles for sale unless the licensee has available, for delivery within a reasonable time, a quantity of said vehicles sufficient to meet reasonably anticipated demands, unless the advertisement clearly and specifically discloses any limitations as to the quantity available for time of delivery. Any such advertisement shall also specifically disclose the expiration terms of the promotion or sale.

(12) Dealer and salesman licensees are prohibited from advertising motor vehicle sales at an address other than the licensed business premises.

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

(14) A model year and either new or used, must be stated by a dealer or salesman licensee when advertising any motor vehicle.

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

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MVD 24.03 Disclosure of the condition of the motor vehicle. (1) Changing the model year of a motor vehicle from that originally designated by the manufacturer at time of manufacture or assembly is an unfair practice and prohibited. If no model year is designated, the year of manufacture applies.

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

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

(4) Each used motor vehicle displayed or offered for sale by a dealer licensee shall have attached to the vehicle in a conspicuous

place, a writing clearly informing the buyer, prior to the sale, in simple and concise language:

(a) That the vehicle is used. In addition to being designated as "Used", vehicles which were known to be previously privately driven, executive, demonstrator, taxi-driven, police vehicle, driver-education, rental, public vehicle, municipal owned, damaged, or wrecked shall be clearly and specifically identified as such. The history of the vehicle as to prior use and condition is limited to the former owner's disclosure and that which the dealer could ascertain with reasonable diligence.

(b) The odometer reading, as corroborated by the last owner's mileage statement, available and subsequently shown to the purchaser, unless the odometer has been zeroed. The mileage statement shall include the last owner's name and address.

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

(d) That the vehicle is being sold on an "as-is" or "with all faults" basis if such is the fact. In such event, the writing shall further state in bold faced type that "the entire risk as to the quality and performance of the goods is with the buyer, and should the vehicle prove defective following the purchase, the buyer will assume the entire cost of all servicing and repair."

(5) If the condition of a vehicle for sale is such that it cannot be lawfully operated on Wisconsin highways, the dealer and salesman licensee must disclose that fact to all prospective retail buyers on the contract, prior to its execution, and must correct such condition prior to transferring possession of the vehicle to the buyer, unless sold as a junk vehicle and the title so notated and forwarded by the dealer to the division.

(6) As required by section 218.01 (7a) (a), Wis. Stats., for each used motor vehicle offered for sale by a dealer, the dealer shall either zero the odometer, or (a) have on file an odometer statement signed by the prior owner (wholesale auction dealer not included), and (b) show such statement to each prospective purchaser, prior to sale, and (c) retain such statement in his records for 5 years, and (d) furnish a current odometer statement for each motor vehicle sold to another dealer or wholesaler.

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MVD 24.04 Contract requirements. (1) All dealer licensees requiring a prospective buyer to make a written offer shall furnish a document that clearly notifies the prospective buyer that he is making an offer that is binding if accepted by the dealer licensee. The dealer licensee must accept or reject the offer within 2 working hours or the offer is automatically voided. The offeror may rescind the offer unless and until accepted by the dealer licensee. Such contract document shall state in bold face type that upon acceptance by the licensee within 2 working hours the offer to purchase will become a binding motor vehicle purchase contract.

(2) A retail contract to purchase must be clearly entitled "MOTOR VEHICLE PURCHASE CONTRACT" to clearly disclose the nature of the contract the buyer is signing.

(3) A contract or offer to purchase shall:

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

(b) Describe the motor vehicle purchased and the trade-in vehicle by year, make, model, and identification number.

(c) Require the date and time of execution be stated.

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

(e) Require a delivery date be specified. Regardless of reason, if the vehicle ordered by the buyer cannot be delivered within 15 days of the specified delivery date, the buyer may cancel the order and receive a full refund of any down payment, trade in vehicle, or trade-in allowance.

(f) Provide that all warranties which are part of the transaction must be referenced in the purchase contract. If no warranty is provided, "AS-IS" or "WITH ALL FAULTS" must be indicated as provided in (h) following.

(g) Provide that if the vehicle is sold with the balance of new vehicle warranty, and the dealer licensee makes no disclaimer of warranty, and subsequently warranty transfer is rejected by the manufacturer, the dealer shall be obligated to honor the warranty.

(h) In the event the sale is made on an "as-is" or "with all faults" basis, state such fact in bold faced type and further state in bold faced type that "the entire risk as to the quality and performance of the goods is with the buyer, and should the vehicle prove defective following the purchase, the buyer will assume the entire cost of all servicing and repair."

(4) A dealer licensee may request a down payment, deposit, or title for trade-in unit from a prospective buyer at the time the offer to purchase or purchase contract is being negotiated, provided that the down payment, deposit or title is returned to the prospective buyer within 2 working hours if the contract is not accepted by the dealer licensee.

(5) A trade-in vehicle may be reappraised only if subsequently suffered damage, or parts or accessories have been removed.

(6) Any increase in price, other than subsection (5) above, shall be considered bushing as defined by section 218.01 (3) (a) 18, Wis. Stats., and is prohibited. Any official manufacturer or distributor motor vehicle price schedule change shall become effective upon receipt of such written notice by dealers, and such price change shall apply only to those vehicles ordered after receipt of such notice.

(7) Damages to a customer-ordered vehicle, not exceeding 6% of the retail price, which have been adequately repaired, shall not constitute grounds for revocation of the customer order.

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MVD 24.05 Warranties. (1) The following items must be included in all written warranties provided by licensees:

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

(b) Clear identification of the party or parties to whom the warranty is extended.

(c) Parts covered.

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

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

(f) A statement of what the person guaranteed must do and expenses he must bear.

(g) The procedure which the person guaranteed should take in order to obtain performance of any obligation under the warranty, including the identification of any class of persons authorized to perform the obligations set forth in the warranty.

(2) The elements of the warranty shall be stated in words or phrases which clearly disclose the nature or scope of the warranty.

(3) No motor vehicle implied warranty of merchantability or fitness shall be waived unless explicitly negotiated between the buyer and the dealer licensee and on an "as-is" or "with all faults" basis.

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

(5) The use of the words "without charge" and other similar words or phrases in connection with the warrantor's services or responsibilities under a warranty constitutes an unfair practice and is prohibited unless the warrantor does not assess any costs or charges in connection with the required repair or replacement of a warranted item or services.

(6) If a valid warranty claim made during the warranty period, as evidenced by a dealer repair order indicating date and mileage, cannot be remedied until after expiration of the warranty period, the warrantor shall continue to be obligated for such claim until properly remedied.

(7) Parts repaired or replaced by a dealer on a new vehicle which was received from the manufacturer or distributor in a damaged condition shall carry the same warranty as the original parts.

History: Cr. Register, June, 1972, No. 198, eff. 7-1-72.

MVD 24.06 Motor vehicle repairs and services. (1) 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.

(2) It is an unfair practice and prohibited to:

(a) Fail to provide in advance to a customer, a written estimate, when in excess of \$10, of the extent and nature of the services to be provided and the estimated cost thereof including any charges for reassembly or any parts disassembled for inspection or any service charge to be imposed, unless this requirement is waived by the customer.

(b) Fail to call or contact the customer in the event that further inspection discloses that additional repairs or services will be required or fail to obtain prior permission from the customer to make additional repairs or replacements. Said prior permission must be in writing and shall be entitled "Authorization for Additional Repair Work."

(c) Fail to disclose, in the case of a service call where the customer has initially contacted the repairman, that a service charge will be imposed even though no repairs or replacements are effected, before the repairman goes to the location of the motor vehicle.

(d) Represent that repairs or replacements are indicated or necessary when such is not a fact.

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(e) Represent that repairs or replacements have been made when such is not a fact.

(f) Represent that the goods being inspected or diagnosed are in a dangerous condition or that the customer's continued use of them may be harmful to him when such is not a fact.

(g) Fail to provide the customer with an itemized list of repairs performed and replacements made, and 1. a list of parts by name and a statement of whether they are new, used, or rebuilt, as designated by suppliers, and charge therefor, and, 2. the number of hours of labor charged, and, 3. the identity of the person/s performing the repairs. A repair order providing required information shall be adequate.

(h) Fail to maintain records which show the actual number of hours worked by that mechanic and the names of customers for whom he performed service. Time cards or repair orders shall constitute adequate records.

History: Cr. Register, June, 1972, No. 198, eff. 7-1-72.