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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Note: Chapter MVD 24 as it existed on December, 31, 1982 was repealed and recreated as chapter Trans 139 effective January 1, 1983.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, 218.0152, and 227.11, Stats., the purpose of this chapter is to establish the department's administrative interpretation of ss. 218.0116 (1) (cm), (e), (gm), (im) 2., (j), and (km), 218.0141, and 218.0146, Stats., relating to motor vehicle trade practices.

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

(3) This chapter applies to any sale or lease of a vehicle by a dealer to a person within the state of Wisconsin if the vehicle is delivered within the boundaries of this state notwithstanding any contractual agreement between the dealer and person to the contrary.

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; am. (2), Register, May, 1997, No. 497, eff. 9-1-97; corrections in (1) made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559; CR 99-135; cr. (3) Register February 2004 No. 578, eff. 3-1-04.

Trans 139.02 Definitions. Words and phrases defined in ss. 340.01 and 342.01, Stats., apply to this chapter unless a different definition is specified. In this chapter:

(1) "Business use" means any motor vehicle owned or leased by either of the following:

- (a) A company, other than a lessor.
- (b) An individual and primarily operated for business use.

(2) "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.

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

(3m) "Day" means calendar day, unless otherwise stated in this chapter. The provisions of s. 990.001 (4), Stats., apply to calculations of time under this chapter, except that a legal holiday shall be counted as a day if the dealer is open for business.

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

(5) "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.

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

(6m) "Lease buy-out" means the lease option price or, if there is no option price, the amount the lessee shall pay the lessor to terminate the lease and transfer title to the vehicle.

(7) "Lease use" means any motor vehicle leased for a period of time exceeding 4 months.

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

(9) "Manufacturer" includes distributor.

(9m) "Manufacturer recall" means a recall inspection or repair which the manufacturer of a vehicle has been ordered to have performed by the national highway traffic safety administration or which the manufacturer has agreed voluntarily to have performed for safety reasons.

(9r) "Manufacturer warranty" means the original new vehicle warranty issued by the vehicle manufacturer. That term includes any motor home warranty issued by the vehicle engine or chassis manufacturer. Manufacturer warranty does not include a warranty issued by a manufacturer of vehicle parts or services not warranted by the vehicle manufacturer.

(10) "Material" means that a reasonable person would attach importance to its existence or a seller knows or had reason to know that a buyer would regard it as important. A seller has reason to know that information is material if a buyer specifically requests the information.

(10g) "Motor vehicle dealer" or "dealer" has the meaning as provided in s. Trans 138.02 (5g).

(10r) "Motor vehicle salesperson" or "salesperson" has the meaning as provided in s. Trans 138.02 (5r).

(11) "New" means any untitled or non-privately titled motor vehicle of the stated model year which has not been a demonstrator and has not been operated more than 200 miles for purposes other than manufacturer tests, pre-delivery tests by a dealer, dealer exchange or delivery.

(12) "Personal use" means any motor vehicle owned or leased by an individual and primarily operated for personal use.

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

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

(15) "Reasonable care" means the following:

(a) For vehicle inspections, a standard that requires an interior and exterior inspection, an under-hood and under-vehicle inspection, and a test drive. It does not require taking the vehicle apart or running tests unless it is necessary to diagnose apparent symptoms. Brakes may require some disassembly to satisfy the requirements in ch. Trans 305.

(b) For records inspections, a standard that requires providing information the dealership gets from manufacturer and auction notices, prior owner documents and disclosures, and their own vehicle inspection and repair records. It does not require contacting prior owners or obtaining records of previous titles unless necessary to clarify inconsistent or questionable information that is apparent.

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(16) “Rebuilt salvage” means any repaired vehicle that has ever had a salvage notation on its certificate of title from Wisconsin or another jurisdiction.

(17) “Rental use” means any motor vehicle rented for a period of time not exceeding 4 months.

(18) “Sale” includes lease with the option of purchase when the option is exercised.

(19) “Service contract” means any repair agreement sold by a dealer.

(19m) “Title” means certificate of title issued by the Wisconsin department of transportation under ch. 342, Stats., or by another state in conformity with its applicable law, as evidence of ownership of a specific vehicle.

(20) “Used” means any motor vehicle other than a new motor vehicle and includes executive or demonstrator.

(21) “Water damaged vehicle” means a vehicle that has been materially damaged by being covered, in whole or in part, by water, whether by flood or other occurrence and the damage is less than what is required to meet the definition for branding in s. 342.10 (3) (d), Stats.

History: Cr. Register, December, 1982, No. 324, eff. 1-1-83; am. (intro.), renum. (1) to (9) and (11) to (14) to be (2) to (6), (8), (9), (11), (13), (14) and (18) to (20) and am. (11), cr. (1), (7), (9m), (12), (15) to (17) and (21), r. and recr. (10), Register, May, 1997, No. 497, eff. 9-1-97; CR 99-135: cr. (3m), (6m), (9r), (10g) and (10r), am. (11) and (19) Register February 2004 No. 578, eff. 3-1-04; **CR 08-029: cr. (19m) Register August 2008 No. 632, eff. 9-1-08.**

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, title and registration fees. The advertised price does not need to include the amount of the service fee if the advertisement clearly and conspicuously discloses that the advertised price does not include the optional service fee. In the print media, the disclosure of the amount of the service fee or the disclosure that the advertised price does not include the optional service fee shall be printed in not less than 9-point boldface type or not smaller than the largest typeface within the advertisement. In other advertising media, the disclosure of the amount of service fee or the disclosure that the advertised price does not include the optional service fee should be clearly communicated to the intended audience.

(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 manufacturer suggested retail prices, wholesale or retail dealer pricing guides, or similar price guides to advertise comparative savings for used vehicles other than demonstrators or executives is an unfair practice and prohibited, except that a motor vehicle pricing guide may be used if the use of the guide as the source of the pricing is stated in any required disclosure and the dealer makes the full objective documentation used to set the price available in writing to the customer.

(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 or electronic mail address other than that of either the licensed business premises, or temporary locations as authorized by s. Trans 138.08, except that a licensee may list the phone number or electronic mail address of the licensee’s home in addition to the business phone number and address on a business card. 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,

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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 OR WATER DAMAGED VEHICLES. Whenever a dealer licensee offers, promotes the sale of, or sells a flood or water damaged vehicle, all advertising relating to that vehicle shall disclose that the vehicle has been flood or water damaged. Required disclosure of flood or water damage is limited to that which the dealer could find using reasonable care.

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), r. (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; am. (5), (11) and (16), r. (6), Register, May, 1997, No. 497, eff. 9-1-97; CR 02-028; am. (3) (a), Register July 2002 No. 559, eff. 8-1-01; **CR 08-029; am. (5) Register August 2008 No. 632, eff. 9-1-08.**

Trans 139.035 Unfair trade practices. (1) For purposes of this section, "bird-dogging" means an arrangement by a dealer or salesperson that provides consideration of any kind to a third party for sales leads, contingent upon a sale of a vehicle.

Note: Bird-dogging is also known as referral selling.

(2) Engaging in bird-dogging is an unfair trade practice and is prohibited.

History: CR 08-029; cr. Register August 2008 No. 632, eff. 9-1-08.

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 when determinable and the finished vehicle model year shall be stated on the Wisconsin buyers guide and the motor vehicle purchase contract if the model year of a motor vehicle chassis is different than the model year of the 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. 218.0116 (1) (km), 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, a service fee as allowed by s. Trans 139.05 (8) (a), and final dealer asking price.

(4) USED MOTOR VEHICLE GENERAL CONDITION DISCLOSURE. Dealer and salespersons 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). This disclosure shall include all significant existing mechanical, electrical and electronic defects and damage and evidence of repair to strut tower, trunk floor pan, frame or structural portion of unibody, including corrective welds. Disclosure of information shall be that which the licensee can find using reasonable care.

(5) USED MOTOR VEHICLE EQUIPMENT REQUIREMENTS AND DISCLOSURE. (a) Dealer and salespersons 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). This disclosure shall include 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 dealer can find using reasonable care.

(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 condition of the vehicle at the time of sale it meets the definition of a junk vehicle or a salvage vehicle, the dealer and salespersons shall make one of the following disclosures conspicuously on the motor vehicle purchase contract prior to its execution:

1. If the vehicle is a junk vehicle: "WARNING! Sold as junk vehicle. This vehicle may never be retitled." The dealer shall notate the title as "Junk Vehicle" and forward the title to the department within 10 days after determining that the vehicle is a junk vehicle.

2. If the vehicle is a salvage vehicle and sold with a salvage title: "WARNING! This is a salvage vehicle and cannot be registered for use on Wisconsin highways until it passes an authorized inspection which requires payment of a fee. Title will be issued with a rebuilt salvage brand."

Note: A vehicle previously titled in another jurisdiction as junked, or a substantially similar term as used in that jurisdiction, may not be titled or registered in Wisconsin. s. Trans 149.10 (3).

The Department may not issue a certificate of title for a vehicle if the certificate of title for the vehicle was inscribed by a person other than a state with the word "JUNKED" or any other notation clearly indicating that the vehicle was junked unless the owner provides an affidavit stating that the inscription on the title was entered in error and the vehicle passes an inspection under s. Trans 149.05. The Department may refuse to issue a title for such a vehicle if it concludes that the vehicle was intended to be junked at the time the title was noted as junk. s. Trans 149.09 (3).

Note: Only licensed salvage dealers can sell junk vehicles or parts.

(6) WISCONSIN BUYERS GUIDE. (a) Except as provided in pars. (c) and (d), each used motor vehicle displayed or offered for sale by a dealer shall display a guide as prescribed by the department. The guide shall be prepared by an authorized employee of either the dealer, another dealer having the same majority ownership as the dealer, or a predecessor dealer at the same location as the dealer. The guide shall be completed in duplicate and contain the printed names of the vehicle inspector and the records inspector. The dealer or a salesperson, prior to separating the copy for display, shall sign the original guide. Except as provided in par. (d),

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the copy shall be displayed within the vehicle, attached to a window if possible, shall be readable from the outside of the vehicle, and shall become the possession of the purchaser upon acceptance of delivery. The original shall be signed by the purchaser prior to delivery of the motor vehicle and shall be retained by the dealer for 5 years. The guide shall clearly state in simple and concise language:

1. That the vehicle is used. All material history, prior use and title brands shall be clearly and specifically disclosed, for example, rebuilt salvage, flood or water damaged, transferred to insurer upon payment of claim, manufacturer buyback, personal use, business use, lease use, rental use, demonstrator, executive, taxicab or public transportation, police vehicle, driver-education or government vehicle, or history and use unknown. All title brands that appear on the existing certificate of title for the vehicle or that will appear on the new certificate of title for the vehicle as required by s. 342.10, Stats., shall be disclosed. The title brand disclosures shall also include any other jurisdiction in which the vehicle has been previously titled. If the vehicle has not been previously titled in another jurisdiction, this disclosure shall specify Wisconsin. Disclosure of history and prior use is not limited to those conditions which require title branding. Required disclosure of the history, prior use and title brands is limited to that which the dealer could find using reasonable care.

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 price, model year, make, model, identification number, color, engine size, when determinable, for example, 350 cubic inches or 3.8 liter and number of cylinders, and type of transmission, for example, automatic or manual and number of forward gears, and drive type, for example, front wheel drive, rear wheel drive or 4-wheel drive.

Note: When engine size is not determinable, insert "NA" on the Guide.

4. The availability or existence of dealer warranties, manufacturer warranties and service contracts in the following language:

WARRANTY

IMPORTANT:

Ask for all promises in writing. Spoken promises are difficult to enforce. Warranty terms may be negotiable. Terms agreed to on the purchase contract are final.

Dealer Warranty

AS IS - No Warranty
Dealer disclaims all warranties including implied warranties of merchantability and fitness for a particular purpose.

Limited Warranty
Refer to separate warranty document for coverages and exclusions.

Term:
(months)
(miles)
whichever comes first

Manufacturer Warranty

Expired
Not known
Cancelled due to salvage or other vehicle history.
Remaining vehicle mfr warranty - Call the mfr or refer to warranty booklet for details.

Expiration:
(date)
(miles)
whichever comes first

Percent of retail repair costs to be paid by buyer %
Deductible to be paid by buyer \$

Deductible to be paid by buyer \$
Transfer fee to be paid by buyer \$

Pay to: Mfr
Dealer

Vehicle Service Contract

may be available for purchase. Ask for price, deductibles, coverages, exclusions and cancellability.

4m. If a motor vehicle dealer proposes to use any language in the buyers guide that differs from that shown in subd. 4., the dealer shall submit the proposed language to the department. The department shall respond to the dealer within 30 days of receiving the proposed language as to whether the dealer may use the proposed language. The dealer may not modify the proposed language prior to receiving approval from the department to use the proposed language.

5. 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. However, it is an unfair practice for a dealer to not remedy an item improperly reported on the guide that the dealer could have found using reasonable care if the buyer has notified the dealer within a reasonable time after the buyer discovered or should have discovered the improperly reported item and the vehicle is made available to the dealership. The dealer shall reasonably remedy or make a good faith effort to reasonably remedy an item improperly reported within 30 days of the buyer's notification.

Note: The form prescribed by the Department is the Wisconsin Buyers Guide. A copy of this form is available, at no charge, from the Division of Motor Vehicles, Dealer Section, located in Madison, Wisconsin.

(b) The Wisconsin buyers guide required by par. (a) shall also include the following information:

1. All equipment requirements as required by ch. Trans 305 shall be maintained in proper working condition for the vehicle to be operated legally on Wisconsin highways.

2. Any important consumer information the department identifies as useful to the prospective purchaser, including the department's administrative code authority, address and phone number.

3. Written explanations of any detected problems reported in the general condition or equipment requirements areas.

(c) The written disclosures required by pars. (a) and (b) do 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.

4. A used motor vehicle with a gross vehicle weight rating of more than 16,000 pounds or a motor vehicle which is or has in the past been registered in Wisconsin or another jurisdiction at a gross weight exceeding 16,000 pounds. This exclusion does not apply to motor homes.

5. A junk vehicle with a written statement, "This is a junk vehicle", conspicuously displayed.

6. An unrepaired salvage vehicle with a written statement, "This is a salvage vehicle", conspicuously displayed.

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7. A vehicle being sold to a lessee of the vehicle or the lessee's agent or employee who operated the vehicle while under lease.

(d) The written disclosures required by pars. (a) and (b) are not required to be posted on a motorcycle. The motorcycle dealer may, at its option, display Wisconsin Buyer's Guides on motorcycles and may employ mechanisms to protect them from weather. A Wisconsin Buyer's Guide for a motorcycle that is not displayed on the vehicle shall be maintained by the dealer and provided upon request to any person who requests to see the label or who makes an offer to purchase the vehicle. The dealer or salesperson shall show or provide a copy of the Wisconsin Buyer's Guide to a person who desires to make an offer to purchase the vehicle before the dealer drafts the purchase offer and before the person delivers an offer to the dealer. The label shall become the possession of the purchaser upon acceptance of delivery.

(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 or true and legible copies of such records relating to a vehicle since last titled, including the current title and all prior owner odometer disclosure statements.

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.

(8) WHOLESALE DISCLOSURE REQUIREMENTS. Sellers in wholesale transactions shall make the disclosures required in s. Trans 139.04 (6) (a) 1. to wholesale purchasers of motor vehicles in writing before purchase.

Note: Sellers include licensed wholesale auctions which are required to collect and pass along the information from the seller to the buyer. Wholesale auctions are responsible for disclosing vehicles owned by dealers, manufacturers or distributors in other jurisdictions.

(9) MANUFACTURER RECALLS. Before delivering to a retail purchaser any used vehicle of a line make for which the dealer holds a franchise, the dealer shall do all of the following that are applicable:

(a) Determine from the vehicle's manufacturer whether or not the vehicle is the subject of any unperformed manufacturer recalls.

(b) If the vehicle is the subject of any unperformed manufacturer recalls for which the manufacturer will reimburse the dealer for performing, perform all such recalls or agree in writing to perform such recalls at a time convenient to the customer not later than 20 days after delivery, unless the unavailability of parts or other circumstances beyond the control of the dealer prevents performance within that time.

(c) Disclose in writing to the purchaser any unperformed manufacturer recalls with regard to the vehicle that have been disclosed to the dealer upon inquiry of the manufacturer.

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; am. (1) (b), (4), (5) (a), (b) 2., (6) (a) (intro.), 1., 3. and (7) (b), r. and recr. (5) (c), (6) (a) 4. and (b), r. (6) (a) 5., renum. (6) (a) 6. to be (6) (a) 5. and am., cr. (6) (c) 4. to 7., (8) and (9), Register, May, 1997, No. 497, eff. 9-1-97; CR 02-028: am. (3) (b), Register July 2002 No. 559, eff. 8-1-02; correction in (2) (b) made under s. 13.93 (2m)

(b) 7., Stats., Register July 2002 No. 559; CR 99-135: am. (4), (6) (a) (intro.) and (c) (intro.), cr. (6) (d) Register February 2004 No. 578, eff. 3-1-04; **CR 08-029: cr. (6) (a) 4m. Register August 2008 No. 632, eff. 9-1-08.**

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 in the presence of the purchaser. In addition, whenever a motor vehicle offer to purchase is signed and accepted by a dealer, 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 made in one of the following manners:

1. All parties shall notate and initial all copies of the original documents.

2. A motor vehicle dealer shall prepare a replacement contract indicating that it replaces the original contract documents. The motor vehicle dealer shall retain the original contract documents in the manner required by s. Trans 138.04 (1) (e). Making material changes to the replacement contract without direct oral disclosure of those changes to the purchaser is an unfair sales practice.

(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

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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 and service contracts in the following language:

“WARRANTY INFORMATION

Check applicable boxes. Refer to separate document for coverages and exclusions.

Dealer Warranty

- AS IS – No Warranty**
Dealer disclaims all warranties including implied warranties of merchantability and fitness for a particular purpose.
- Limited Warranty**
Refer to separate warranty document for coverages and exclusions.

Term:
_____ (months)
_____ (miles)
whichever comes first

Percent of retail repair costs to be paid by You _____%

Deductible to be paid by You \$ _____

Manufacturer Warranty

- New Vehicle Warranty
- Expired
- Not known
- Cancelled due to salvage or other vehicle history.
- Remaining vehicle mfr warranty – Call the mfr or refer to warranty booklet for details.

Expiration:
_____ (date)
_____ (miles)
whichever comes first

Deductible to be paid by You \$ _____

Transfer fee to be paid by You \$ _____

Pay to: Mfr
 Dealer

Service Contract Information

- Service Contract
Term: ____ (months) ____ (miles), whichever comes first.
Percent of retail repair costs to be paid by You: _____%
Deductible to be paid by You \$ _____”

(fm) If a motor vehicle dealer proposes to use any language in the purchase contract that differs from that shown in par. (f), the dealer shall submit the proposed language to the department. The department shall respond to the dealer within 30 days of receiving the proposed language as to whether the dealer may use the proposed language. The dealer may not modify the proposed language prior to receiving approval from the department to use the proposed language.

(g) State the price due on acceptance of delivery of the vehicle and contain an itemized calculation of the price. The itemized calculation of the price shall state the manufacturer’s suggested retail price, if the vehicle is a new vehicle, or the price stated on the Wisconsin Buyer’s Guide, if the vehicle is a used vehicle, and all additional charges, mark-ups, mark downs, discounts or other adjustments made to arrive at the price due upon acceptance of delivery, including where applicable, but not limited to, delivery charges, sales tax, license and title fees, down-payment, owned trade-in

allowance, positive or negative leased trade-in allowance and estimated or actual pay-off amount, or estimated or actual lease buy-out amount as permitted under sub. (8g) for any loan secured by a trade-in vehicle. Rebates shall be referenced separately by dollar amount and assignment. The itemized calculation of the vehicle’s price shall be made on the face of the purchase contract, except that the components of the total manufacturer’s suggested retail price may be provided by reference to the vehicle’s window label or in an attachment to the purchase contract. The use of an attachment does not alter dealer’s responsibility to comply with s. Trans 139.04 (2) (a). The purchaser is not required to sign the dealer’s attachment to the purchase contract.

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

(i) Immediately above the contract signature block, make specific reference to any penalty which may be assessed to the purchaser for non-acceptance of the vehicle. The penalty may not exceed 5% of the cash price as provided by s. 218.0141, Stats.

(j) Clearly state financing contingencies in the manner provided in s. Trans 139.055. If the purchaser is unable to obtain acceptable financing, the purchaser may cancel or rescind 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.

(jm) Include any disclosure required under sub. (6m).

(jr) If the purchase offer is for a vehicle for which the motor vehicle dealer has already executed a purchase contract, the purchase offer shall clearly state that that purchase offer is contingent on the prior executed purchase contract not being completed. Such a contingent purchase offer shall also provide that the purchaser may rescind the offer at any time prior to being notified by the dealer that the prior executed purchase contract was not completed and that the contingency has been removed from the purchaser’s contingent purchase offer. If the purchase contract is rescinded or the prior executed purchase contract completed, any downpayment or trade-in shall be returned within one business day.

(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.

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(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. Local, state or federal tax 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 manufacturer'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, bumpers, moldings or audio equipment is excluded from the 6% rule when replaced by identical manufacturer's original equipment.

(6m) ESTIMATED MILEAGE AT DELIVERY. If a motor vehicle dealer enters into a purchase contract to sell a new vehicle as defined in s. Trans 139.02 (11) that is not available at the dealer's location, the dealer shall provide the purchaser with an estimate of vehicle mileage at delivery. The purchase contract shall be cancelable at purchaser's option if the mileage of the vehicle upon delivery exceeds the dealer's estimate. This option ends upon acceptance of delivery. Once acceptance of the vehicle occurs, any purchaser's rights to cancel the purchase contract on the basis of excess mileage over dealer's good faith estimate are waived. The purchase contract shall state in bold face type the following: **IF THE MOTOR VEHICLE DEALER AND PURCHASER ENTER INTO A PURCHASE CONTRACT FOR A NEW MOTOR VEHICLE NOT AVAILABLE AT THE DEALER'S LOT, THE DEALER AND PURCHASER AGREE THAT THE VEHICLE MILEAGE UPON DELIVERY WILL NOT EXCEED _____ <motor vehicle dealer fills in estimated mileage> MILES. BEFORE VEHICLE DELIVERY, PURCHASER HAS THE RIGHT TO CANCEL THE PURCHASE CONTRACT IF THE MILEAGE OF THE VEHICLE EXCEEDS THAT AMOUNT.**

(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) A dealer may assess a purchaser or lessee an additional service fee for completing any sales-related or lease-related vehicle inspection or forms which are required by law or rule if the dealer has made full disclosure of the service fee to the prospective retail customer. The service fee may not be increased after this disclosure but may be reduced. Dealers that choose to charge a purchaser or lessee a service fee shall include the following disclosure on the purchase or lease contract: "A service fee is not required by law, but may be charged to motor vehicle purchasers or lessees for services related to compliance with state and federal laws, verifications and public safety, and must be reasonable." Upon request from a purchaser, the selling dealer shall provide a written disclosure of the services included in this service fee. The Department reserves the right to audit fees to determine whether they are reasonable.

(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.

(8g) ESTIMATED TRADE-IN LIEN PAYOFF AMOUNTS. When the payoff for a trade-in vehicle is unknown, the dealer may estimate the payoff in the itemization of vehicle price required under sub. (2) (g). Where such an estimate is used, the purchase contract shall provide that the purchaser may rescind the purchase contract if the actual amount needed to pay off all extensions of credit secured by the motor vehicle exceeds the estimated payoff amount used in the itemized calculation of vehicle price by more than 1 payment on the note secured by the trade-in vehicle. The actual difference between the estimated payoff and actual payoff shall be disclosed by the dealer to the purchaser in writing. A purchaser's refusal to accept delivery of a vehicle or agree in writing to waive the payoff difference within 7 days of notification by the dealer that contract contingencies have been met and disclosure of the payoff difference shall rescind the purchase contract. Adjusting the contract price to reflect an actual loan payoff amount is not

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bushing if the dealer complies with the requirements of this subsection.

(8r) VEHICLE REBATES. (a) The existence of a manufacturer's or other rebate on a vehicle is a material item in determining the price of the vehicle. A purchase contract shall provide that if, for any reason, a purchaser does not qualify for a rebate that is referenced in the purchase contract as required by sub. (2) (g), the purchaser may rescind the purchase contract unless the dealer discounts the purchase price of the vehicle by the amount of the rebate. If a purchaser does not qualify for a rebate and the dealer will not provide a discount in the amount of the rebate, the dealer shall notify the purchaser in writing of the fact that the purchaser does not qualify for the rebate and notify the purchaser that the contract shall be rescinded unless purchaser, within 7 days, signs a new purchase contract for the vehicle for the new higher contract price. A purchaser's refusal, within 7 days of receiving written notification, to execute a new purchase contract rescinds the original contract. Purchaser's execution of a new contract after disclosure of the fact that purchaser did not qualify for a rebate waives purchaser's objections related to the rebate.

(b) Delivering a motor vehicle to the purchaser without disclosing in writing that the purchaser does not qualify for the rebate in the manner required under par. (a) is "bushing" under sub. (5) (c) unless the dealer provides a discount to the purchaser for the amount of the rebate and delivers the vehicle at the original contract price.

(c) If a manufacturer rebate not referenced in a purchase contract becomes available based on the delivery date of a vehicle, and a retail purchaser qualifies for the rebate at the time of delivery, the rebate shall be awarded to the purchaser and the contract shall be amended accordingly as provided in sub. (1) (a). For purposes of this section, "manufacturer rebate" means a rebate provided by the vehicle manufacturer directly to the purchaser, including when assigned to the motor vehicle dealer, and does not include manufacturer rebates or wholesale incentives to the dealer or manufacturer discounts from the wholesale price to the dealer.

(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 clearly state "Contact the selling motor vehicle dealer to discuss any questions or problems about your vehicle or this contract. If you are unable to resolve any disputes with the dealer, you may contact: Division of Motor Vehicles, Dealer Section, Wisconsin Department of Transportation, P.O. Box 7909, Madison, Wisconsin 53707. The Dealer Section licenses motor vehicle dealers and administers the administrative regulations governing consumer protection in vehicle sale transactions, Ch. Trans 139, Wis. Admin. Code."

(11) CONTRACT PROHIBITED. A purchase contract for a used motor vehicle may 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) unless no inspection is required under s. Trans 139.04 (6) (c).

(11m) CONTINGENT PURCHASE CONTRACTS. A motor vehicle dealer who has a signed purchase contract to sell a particular vehicle with a purchaser that is subject to satisfaction of a purchaser's contingency before the purchase contract becomes final may accept purchase offers for that vehicle subordinate to that of the purchaser. Any such subordinate purchase offer shall include the disclosures required by sub. (2) (jr).

(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 anti-

pated 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), renun. (9) to be (8) and am., cr. (9), Register, April, 1977, No. 256, eff. 5-1-77; renun. 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; renun. (8) to be (8) (a) and am., cr. (8) (b), Register, January, 1997, No. 493, eff. 2-1-97; r. and recr. (2) (f), am. (10) (intro.) and (a), r. (10) (b) to (d), Register, May, 1997, No. 497, eff. 9-1-97; CR 02-028: am. (2) (g) and (8) (a), Register July 2002 No. 559, eff. 8-1-02; correction in (2) (i) made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559; CR 99-135: am. (1) (a), (2) (f), (i), (j), (5) (b) 3., (6), (10) and (11), cr. (1) (a) 1., 2., (2) (jm), (jr), (6m), (8g), (8r) and (11m), r. and recr. (2) (g) Register February 2004 No. 578, eff. 3-1-04; **CR 08-029: cr. (2) (fm) Register August 2008 No. 632, eff. 9-1-08.**

Trans 139.055 Financing. (1) DEALER ARRANGED FINANCING. (a) *Notice to consumer regarding ineligibility for financing.* If a motor vehicle purchase contract becomes binding upon the purchaser contingent upon the motor vehicle dealer providing financing on terms disclosed to the purchaser in advance of the execution of the purchase contract, the contract shall provide that if the dealer is unable to provide such financing, the contract shall be rescinded if the dealer provides notice to the purchaser within 14 days of the contract date that dealer financing is unavailable. If the dealer fails to timely provide such notice, the purchaser may elect to carry out the contract and the dealer shall, within 28 days of the contract date, finance the purchase of the vehicle on the terms specified in the contract and deliver the vehicle in the manner specified in the purchase contract.

(b) *Establishing credit terms between the contract date and delivery date for a vehicle.* With respect to a contract to purchase a motor vehicle that is contingent on the motor vehicle dealer arranging financing for the motor vehicle that is acceptable to the purchaser, a dealer may, subsequent to the contract date and prior to the purchaser accepting delivery of the motor vehicle, provide the customer with notice that the dealer has arranged financing for the vehicle for which the customer is qualified. If the transaction is a consumer transaction, the notice shall include all disclosures of the terms of the arranged financing that are required by the federal truth-in-lending act including the amount to be financed, the annual interest rate, total principal and interest payments, and the monthly interest and principal payment due over the course of the loan. The notice shall state that the purchaser has 7 days to accept or reject the proposed financing. If the purchaser accepts the proposed financing, the financing contingency of the contract shall be deemed satisfied and the dealer shall be bound to provide financing on the terms set forth in the notice. If the purchaser rejects the proposed financing but waives the financing contingency, the financing contingency shall be deemed waived and the purchaser shall be bound to the contract without regard to whether the purchaser is able to secure financing. If the purchaser fails to respond to the notice within 7 days or rejects the proposed financing and does not waive the financing contingency, the purchase contract shall be rescinded.

(2) PURCHASER ARRANGED FINANCING. A motor vehicle purchase contract that is contingent on a purchaser arranging financing is rescinded if the purchaser does not provide evidence to the dealer that the purchaser has arranged acceptable financing for the purchase of the vehicle, such as a loan commitment letter, within a time established in the purchase contract.

(3) NO FEES ON VOID CONTRACTS. A dealer may not charge a fee or penalty to the purchaser in connection with a contract that is rescinded under this section.

History: CR 99-135: cr. Register February 2004 No. 578, eff. 3-1-04.

Trans 139.06 Warranties. For the purpose of this chapter, service contracts are not considered warranties, but for the purposes of disclosure and performance as provided in subs. (1)

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through (7) and in sub. (10), the term “warranty” shall include service contracts.

(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 s. Trans 139.04 (6) (a) 5. 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. 218.0116 (1) (km), 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. (a) 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 contract.

(b) A dealer shall service or repair a motor vehicle under the same terms and conditions as a manufacturer warranty if dealer provides information to the purchaser that there is a remaining manufacturer warranty on the vehicle that will be honored by the manufacturer, and the vehicle is not warranted or the manufacturer subsequently rejects a request to transfer the warranty to the purchaser.

(c) A dealer shall service or repair a motor vehicle part under the same terms and conditions as a part manufacturer warranty if the dealer provides information to the motor vehicle purchaser that there is a remaining part manufacturer warranty on a vehicle part for which there is no warranty or that the warrantor refuses to transfer to purchaser.

(d) A dealer shall service or repair a motor vehicle under the same terms and conditions as a third party warranty if, before the purchaser accepts delivery of the motor vehicle, dealer provides information to the purchaser that there is a remaining third-party warranty on the vehicle that will be honored by the third party warrantor and the vehicle is not warranted or the third party subsequently rejects a request to transfer the warranty to the purchaser.

(e) Under this subsection, a dealer’s obligation to honor a warranty that the dealer improperly discloses or disclaims to the purchaser is limited to providing motor vehicle service and repairs under the same terms and conditions the original warrantor would have been obligated to honor. A dealer’s obligation to honor a warranty is also limited by the expiration date or mileage set forth under the motor vehicle manufacturer, third party or part manufacturer warranty, or until the motor vehicle attains the age or mileage the dealer discloses to the purchaser in the Motor Vehicle Purchase Contract, in accordance with s. Trans 139.05 (2) (f), whichever is later.

Note: A dealer is not required to ascertain whether remaining warranty is available if the dealer does not provide information to the purchaser that there is a remaining warranty available for transfer to the vehicle purchaser, except that new car deal-

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ers should ascertain availability of remaining manufacturer warranties for used cars of the same line make for which the dealer holds a franchise.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; cr. (9), Register, June, 1974, No. 222, eff. 7-1-74; renum. MVD 24.06 (2) to be MVD 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; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1997, No. 497; correction in (8) made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559; CR 99-135: am. (intro.) and (10), cr. (10) (b) to (e) Register February 2004 No. 578, eff. 3-1-04.

Trans 139.07 Satisfaction of liens. When a dealer accepts a vehicle in trade that is subject to an outstanding lien and agrees in the purchase contract to pay off the balance due the lien holder, the dealer shall pay the amount stated in the purchase contract due the lien holder, after any adjustments for any estimated trade-in lien payoff amounts pursuant to s. Trans 139.05 (8g) within 14 days of taking delivery of the trade-in vehicle. The dealer shall be responsible for any interest that accrues, penalties assessed, late fees, or other charges made on the debt secured by the lien to the extent those penalties, fees or other charges result from the dealer delaying payment of the amount stated in the purchase contract to be due the lien holder beyond 14 days of taking delivery of the trade-in vehicle.

History: CR 99-135: cr. Register February 2004 No. 578, eff. 3-1-04.

Trans 139.08 Consignment vehicles. (1) A dealer shall comply with all the requirements of this section with respect to any vehicle it sells on a consignment basis. Consignment sales include any arrangement by which a dealer displays or sells a vehicle on behalf of a person other than the dealer.

(2) No dealer may accept delivery of or display a consignment vehicle for sale until all of the following requirements have been met:

(a) Dealer enters into a written consignment agreement with the consignor specifying the terms of the consignment agreement. A consignment agreement for the sale of a vehicle that is not

owned by the consignor for personal, family or household purposes between a dealer and a person shall include a provision that the consignor retains a security interest in the vehicle in the amount of the proposed sale price of the vehicle. A consignment agreement for sale of goods owned by the consignor for personal, family or household purposes shall include a provision that the consignor retains ownership of the vehicle.

(b) In a transaction involving goods owned by the consignor for purposes other than personal, family or household purposes, the dealer prepares and executes a U.C.C. financing statement naming consignor as a secured party and files the U.C.C. financing statement with the department of financial institutions. This paragraph does not apply to a consignment vehicle sale through a salvage pool or wholesale auction. The financing statement shall be prepared and filed so as to properly perfect the consignor's security interest. The cost of filing the financing statement may be charged to the consignor.

(3) A dealer shall remit any monies due a consignor under a consignment agreement within 7 days of the date a consignment vehicle is sold.

Note: The purpose of this section is to insure that a consignor's interest in any vehicle consigned is protected from adverse claims of motor vehicle dealer creditors, administrators, or trustees. Section 402.326 (5), Stats., provides that personal, family or household goods do not become the property of a consignee dealer upon consignment. Therefore, no U.C.C. financing statement is required to protect consignors of personal vehicles. A U.C.C. financing statement is required to perfect the interest of a business consignor in a vehicle consigned to a dealer. ss. 409.310 and 409.319, Stats.

History: CR 99-135: cr. Register February 2004 No. 578, eff. 3-1-04.

Trans 139.09 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 MVD 24.07 to MVD 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; CR 99-135: renum. from s. Trans 139.07 Register February 2004 No. 578, eff. 3-1-04.