
DEALER TALK

Volume 1, Issue 3

June 1998

OFF-SITE SALES

Please be reminded that all vehicles displayed for sale at off-site ("tent") sales must be safety inspected and display the federal buyers guide. For more information about obtaining a temporary supplemental license for an off-site used car sale, see the last issue of "Dealer Talk" or call the

1998 LEGISLATION

By now you should have received a memorandum from DMV and the Dealer Board, outlining legislation adopted by the 1998 General Assembly which may be of interest to you. Below is a summary of that legislation. For more details, please consult the memorandum.

HB 469 Dealer's License Plates. Allows a dealer to authorize, through a form issued by DMV, an individual to use dealer license plates on a vehicle that is being driven to or from (1) a point of sale, (2) an auction, (3) a repair facility, or (4) a dealer exchange. The authorized individual may only operate with a dealer's license plate for up to twenty-four hours.

HB 1013 Optional Multi-Year License. Beginning January 1, 1999, you will be given the option of renewing your licenses for a two-year period. Look for additional information in future issues of "Dealer Talk".

HB 1013 Motor Vehicle Transaction Recovery Fund. Effective October 1, 1998, the ceiling will be raised from \$50,000 to \$75,000, in the aggregate payments, which can be made to retail purchasers against a single dealership. Also, eligibility for making a claim to the Fund will be expanded to include lessees.

HB 1013 Regulated Advertising Practices. In order to accommodate dealers who use the "in-line" classifieds, where the whole advertisement is less than 8-point typeface, two additional alternatives for stating the processing fee will be available beginning October 1, 1998. First, the processing fee can be less than 8-point typeface so long as it is not smaller than the largest typeface within the advertisement. Second, in these advertisements where the type is less than 8-point typeface, the processing fee may be omitted so long as the dealer participates in a newspaper-provided listing of processing fees and the dealer's advertisement includes an asterisk or other notation to refer the reader to the

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Board Office.

1998 LEGISLATION

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SB 635 Leased Vehicle Lemon Law. Extends to consumers who lease automobiles, those protections contained in the Motor Vehicle Warranty Enforcement Act. ("Lemon Law").

HB 461 Warranty Obligations of Motor Vehicle Manufacturers and Distributors. In summary, this bill has three features: (1) Warranty parts compensation shall be stated as a percentage of markup. (2) A dealer's failure to comply with the specific requirements of the manufacturer or distributor for processing a warranty claim shall not constitute grounds for denial or reduction or the amount of compensation to the dealer. (3) A dealer shall not be charged back or otherwise liable for sales incentives or charges related to a motor vehicle sold by the dealer and subsequently exported, provided the dealer can demonstrate that he exercised due diligence and that the sale was made in good faith and without knowledge of the purchaser's intention to export the motor vehicle.

HB 462 Coercion of Motor Vehicle Dealers. Makes it unlawful for any manufacturer or distributor to fail or refuse to offer to its line-make franchised dealers all models manufactured for the line-make, or require a dealer to pay any extra fee, or remodel, renovate, or recondition the dealer's existing facilities, or purchase unreasonable advertising displays or other materials as a prerequisite to receive a model or series of vehicles.

HB 327 Uninsured Motor Vehicle Fee. Effective July 1, 1998, the uninsured motor vehicle fee will be increased from \$400.00 to \$500.00.

TEMPORARY TAGS

The Department of Motor Vehicles is pleased to report a smooth transition to the new temporary tag design. To clarify exactly how dealers should be completing

Dealer Talk

A Bi-monthly newsletter of The Virginia Motor Vehicle Dealer Board

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NOTE: We make every effort to ensure information in *Dealer Talk* is accurate, but it is not a substitute for legal advice.

Calendar of Events

Monday, July 20, 1998:
Place: DMV Headquarters
Time: 9:00 a.m.
Transaction Recovery Fund Committee Meeting

Monday, July 20, 1998:
Place: DMV Headquarters
Time: 10:00 a.m.
Licensing Committee Meeting

Monday, July 20, 1998:
Place: DMV Headquarters
Time: 1:30 p.m.
Dealer Practices Committee Meeting

Monday, July 20, 1998:
Place: DMV Headquarters
Time: 3:00 p.m.
Advertising Committee Meeting

Tuesday, July 21, 1998
Place: DMV Headquarters
Time: 8:45 a.m.
Finance Committee Meeting

Tuesday, July 21, 1998
Place: DMV Headquarters
Time: 9:00 a.m.
Franchise Law Committee Meeting

Tuesday, July 21, 1998
Place: DMV Headquarters
Time: 9:30 a.m.
Full Board Meeting

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- **Transfer of a Salesperson’s License.** Salespeople are licensed to a particular dealership. If you hire a salesperson that is or was previously licensed at another dealership, that individual must first make application for a license from the Board in the name of your dealership before he/she can go to work selling automobiles. This process is quick and easy. All you must do is have the employee complete the standard application form and submit the proper fee. Depending on the situation, this fee ranges from \$0 to \$45.00. If you contact the Board Office we can give you the exact fee for your situation. Also, if the previous dealer has not sent the Board the “old” license, you should send that to us along with the license application.
- **Out-of-State or “Foreign Dealers”.** Dealers who are licensed in other states must register with DMV in order to sell their cars at wholesale auctions. It has come to our attention that there are a number of out-of-state dealers who are selling vehicles to Virginia dealers in situations other than at wholesale auctions. We are asking for your help in ensuring that out-of-state dealers only sell their products at wholesale auctions. And when they do sell their products at wholesale auctions, that they are properly registered.
- **Consignment Contracts.** At minimum, a consignment contract must include the following:
 1. The complete name, address, and the telephone number of the owners.
 2. The name, address, and dealer certificate number of the selling dealer.
 3. A complete description of the vehicle on consignment, including the make, model year, vehicle identification number, and body style.
 4. The beginning and termination dates of the contract.
 5. The percentage of commission, the amount of the commission, or the net amount the owner is to receive, if the vehicle is sold.
 6. Any fees for which the owner is responsible.
 7. A disclosure of all unsatisfied liens on the vehicle and the location of the certificate of title to the vehicle.
 8. A requirement that the motor vehicle pass a safety inspection prior to sale.

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In addition, you must inform any prospective customer that the vehicle is on consignment. Dealer license plates cannot be used to demonstrate a vehicle on consignment except on (i) motor vehicles with gross vehicle weight of 15,000 pounds or more and (ii) vehicles on consignment from another licensed motor vehicle dealer. The owner’s license plates may be used to demonstrate the vehicle provided adequate liability insurance coverage is in place.

Lastly, the sale of consigned vehicles are between the consignor and the consumer or dealer who owns the vehicle. In the case of a consignment, the consignee is a “go-between” for the consignor and the purchaser.

- **Correspondence.** Help us help you by including your “dealer number” on all correspondence you send to us. Knowing your dealer number helps us provide faster service to you.

DEALER- OPERATOR

Every dealership must have a dealer-operator. The dealer-operator is the person in charge of the day-to-day operation of the dealership. In fact, the dealer-operator is defined in the Code of Virginia as “...the individual who works at the established place of business of a dealer and who is responsible for and in charge of day-to-day operations of the place of business.” It is not required that the owner be the dealer-operator.

If your dealer-operator leaves your dealership, you have 120 days to get a new one in place. A 60-day extension can be granted by the Board, if good cause can be shown.

ACTIONS:

- Advertising Violations: During the months of March and April, Board staff issued 71 first violation "educational/warning letters". Topics addressed in these letters included: Incomplete Truth in Lending, Failing to include a "Sale End Date" when advertising a "sale", Failure to disclose vehicle as being used, Failing to disclose the Processing Fee or Freight amount, Processing Fee and/or Freight charges not in 8-point boldface type, Disclosure not clear and conspicuous (not in at least 6-point upper case print), Advertising a "Free Item" when a purchase is necessary to receive the "free" item, and Omitting Year, Make, Model of the vehicle when a sale price is advertised. Six "second violation" letters were sent. Topics addressed in these letters include: Incomplete Truth in Lending (3), Advertising a "Free Item" when a purchase is necessary to receive the "free" item (1), and Failing to include a "Sale End Date", when advertising a "sale" (2). Second violations are subject to a \$500 civil penalty.
- Three claims against the Motor Vehicle Transaction Recovery Fund, totaling \$7,275 were approved at the May Board meeting. All three claims were related to one dealer. A fourth claim was tabled to the next Board Meeting set for July.
- The Board suspended the license of two dealers for 30 days for having made a material misstatement on an application.
- Civil penalties were assessed against two dealers who employed, in a sales capacity, individuals that were not licensed as salespersons.
- The Board assessed a civil penalty on a dealer who was not maintaining the minimum number of business hours as specified in the law.
- Two dealers were assessed civil penalties for selling vehicles from a location other than from their licensed location.

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ACTIONS:

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- Upon inspection by a Board field representative, a licensed dealer was found to have several violations including, failure to maintain dealer records on premises, failure to post the processing fee, failure to make application for a title within 30 days from the sale date, failure to keep a written record of dealer plates, and failure to keep a written record of temporary tags. After receiving correspondence from the dealer that all violation items had been fixed, additional inspections were conducted. The field representative found that all items had not been fixed.

The Board determined that the dealer be assessed a civil penalty and that the field representative conduct an inspection in 30 days. If all of the violation items were not taken care of at this inspection, the dealer's license would be suspended for 30 days for failing to comply with a written warning.

- Upon inspection by a Board field representative, a licensed dealer was found to have several violations including, failure to maintain dealer records on premises, failure to be open for business, and failure to endorse and show an assignment on the title in the name of the dealer. After receiving correspondence from the dealer that all violation items had been fixed, additional inspections were conducted. The field representative found that all items had not been fixed.

The Board determined that the dealer be assessed a civil penalty and that the field representative conduct an inspection in 30 days. If all of the violation items were not taken care of at this inspection, the dealer's license would be suspended for 30 days for failing to comply with a written warning.

Editors Note: Dealers have the option of "appealing" any of the above Dealer Board decisions by requesting a hearing in front of a hearing officer.

ADVERTISING

At the May Advertising Committee and Board meetings, the topic of advertisements that give the impression that a dealer has a "special arrangement" with the manufacturer was discussed. After reviewing sample advertisements, the Board concluded that this type of advertisement was becoming more popular and that all dealers, through this newsletter, receive information regarding the prohibition of this type of advertising.

Specifically, the law states: "Any advertisement which gives the impression a dealer has a special arrangement or relationship with the distributor or manufacturer, as compared to similarly situated dealers, shall not be used." Further, the advertising regulations read as follows: "Special arrangements or relationship" advertisements. Statements **such as** (emphasis added) "big volume buying power", "manufacturer's outlet", "factory authorized outlet", and "factory wholesale outlet", shall not be used. Any term that gives the consumer the impression the dealer has a special arrangement with the manufacturer or distributor as compared to similarly situated dealers, is misleading and shall not be used."

It is important to ask yourself if the advertisement gives the reader the **impression** that you have a special relationship with the manufacturer. That is what staff will be keying in on when reviewing advertisements. By way of further example, the Committee determined that an advertisement stating that a dealer was a "Factory Authorized Regional Dodge Truck Center" gave the impression of a special relationship. A second example where the Committee determined that the advertisement gave the impression of a special relationship read as follows: "Special Volume Factory-To-Dealer Cash Up To \$1,650".

AIR-BAG SWITCHES

Recently, the National Highway Traffic Safety Administration (NHTSA) posted on its Internet website a list of nearly 400 dealers and mechanics nationwide who say they are willing to install on-off switches for air-bags. The list includes five Virginia locations. The agency also posted a letter to dealers and other repair shops urging them to install the switches. The website also includes a list of vehicles, by manufacturer, for which switches are available. At this time, less than half the models on the road with air-bags have switches available from

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General Motors Corp. is providing switches for nearly all its vehicles with air-bags. Ford Motor Co. has the switch available for some models, including 1995-98 Ford Windstar minivans, 1996-97 Taurus cars, and some sport utilities like the Expedition and Explorer. Chrysler Corp. has promised switches for many of its models sometime this summer while Honda says it will have switches for all its models in the fall. Toyota has switches available for its most popular cars, sport utilities and pickup trucks or will have them in July.

The agency's open letter to repair shops says auto manufacturers producing cutoff switches have agreed to indemnify their dealers in lawsuits involving the switches other than negligence in installing them. That's the same policy manufacturers use with other safety parts, such as brakes.

Since last fall, NHTSA has allowed vehicle owners to get the on-off switches if they or their children are at higher risk of being killed by a deploying air-bag. The higher-risk categories include those who must put children in the front seat because they must use every seat or short drivers who cannot sit at least 10 inches from the safety device.

However, since 1995, the agency has allowed cutoff switches in pickup trucks, sports cars and other autos with no back seat for a rear-facing infant seat which experts warn must never be placed in front of an air-bag. There are 3.2 million vehicles with those switches already in vehicles, but agency officials say there have been no lawsuits.

The NHTSA website can be found at www.nhtsa.dot.gov

ATTENTION ALL DEALERS:

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