



**Newsletter of the
Colorado Motor Vehicle
Dealer Board
and
Auto Industry
Division**
April 2000, Vol. XXVI, No. 2

Certificate of Emissions Compliance

Recently the Motor Vehicle Emissions Section requested an opinion from an Assistant Attorney General on whether the failure of a seller to give a certificate of emissions compliance at the time of a sale voids the contract. Assistant Attorney General Carolyn Livers wrote an opinion. Following are the paraphrased highlights of her memorandum, under the assumption that the vehicle will be registered in a county that requires the emissions testing.

When a seller turns over a vehicle to a buyer and does not give the buyer a certificate of emissions compliance at the same time, the seller violates the emissions statutes and undermines the purpose of both the State and federal clean air laws. Under the emissions statutes, buyers have no right to waive emissions compliance including no right to waive the issuance of a certificate of emissions compliance. Also, sellers have no authority to request that a buyer waive a certificate of emissions compliance and act upon such a waiver.

A seller does not have the option to separate the sale of a roadworthy vehicle from delivery of the emissions compliance. Colorado statute identifies the only exception to the requirement that sellers provide a certificate of emissions compliance at the time of sale or transfer of a roadworthy vehicle in Colorado as: vehicles that are inoperable or otherwise cannot be tested. The General Assembly expressly intends that vehicles on Colorado's roads comply with the federal Clean Air Act. A vehicle

that does not meet the emissions standards or one where it is not determined whether the vehicle meets the clean air standards undermines the express purpose of the emissions standards.

A seller that does not deliver the certificate of emissions compliance at the time the buyer takes physical custody of the vehicle violates the emissions statutes. Thus a sale without the certificate of emissions compliance is not a sales recognizable under the law.

The dealer cannot enforce a contract provision waiving a certificate of emissions compliance because the dealer cannot enforce a contract provision that violates the emissions statutes and the clear public policy which underlies the Clean Air Act. Buyers and sellers are required to unwind sales that do not conform to emissions statutes. A consumer would have to bring a civil suit based on the void contract to unwind the deal if the dealer does not agree voluntarily or in settlement.

Colorado statute gives the Dealer Board the authority to take action against a dealer's license. Colorado statute also prohibits the defrauding of buyers by violating any federal or state law, such as violating emissions statutes. In lieu of a certificate of emissions compliance, a dealer that sells a vehicle subject to the enhanced emissions program may comply by providing the consumer an emissions voucher at the time of sale.

Emissions compliance questions may be directed to the Emissions Section at (303) 205-5603.

Director's Desk by Kirk Martelon, Executive Secretary

Revenue Director **Fred Fisher** recently announced that **Aurora Ruiz-Hernandez** has been appointed the Senior Director of the Motor Vehicle Group. Ms. Ruiz-Hernandez assumed her new position on Monday March 20, 2000.

Aurora comes to Revenue from the General Support Services / Personnel Department. She oversaw the divisions of Central Services, Real Estate Services, Colorado Information Technology Services and the Information

Management Commission staff. She has also worked for the Colorado Attorney General.

She is a graduate of the University of Texas El Paso and has earned her J.D. degree from the University of Denver College of Law.

The Motor Vehicle Group consists of the Title Section, Registration Section, Emissions Section, Drivers License, Driver Services and Motor Carrier Services.

Licensing Lot by Janet Swaney, Licensing Manager

In early May, renewal applications will be mailed to dealers and wholesalers that have licenses expiring on June 30, 2000.

Renewal applications for salespersons with licenses expiring on June 30, 2000 will also be mailed in early May to the dealership. The forms will be pre-printed and will contain the name, social security number, address and telephone number of each salesperson who has a license expiring on June 30. Only the people listed will need to be renewed unless they are no longer employed.

Instructions regarding the renewal process will be mailed with the renewal application forms. Read the instructions carefully to avoid any delays in receiving your 2000-2001 license.

Starting in July 1998, the Auto Industry Division began issuing staggered 12-month licenses to first time dealer, wholesaler or salesperson applicants. The majority of dealer and salesperson licenses still expire on June 30.

Telephone assistance, if required, is available by calling (303)205-5604. The Division will provide walk-in assistance for renewals on the following dates:

FT. Collins: May 24, 2000 10:00am-3:00pm
300 E. Foothills Pkwy

Colorado Springs: May 25, 2000 10:00am-3:00pm
3650 Austin Bluffs Pkwy #188

Lakewood: May 26, 2000 9:00am-4:00pm
1881 Pierce St Conference Rm C

Investigation Insight by Mary Marvin, Investigator Supvr.

Stolen Vehicles Not Really Stolen?

Dealers - before reporting a vehicle as stolen to your local law enforcement agency, check your inventory thoroughly to ensure that the vehicle is missing. If the dealership reported the vehicle stolen and later locates the vehicle, the dealership needs to contact the law enforcement agency and advise them that the vehicle has been found.

Two recent reported thefts have left dealerships facing lawsuits. In one case, a dealer reported the theft of a vehicle to the local law enforcement agency. Later, the dealership found the vehicle in its inventory but failed to inform the law enforcement agency that the vehicle had been located. The vehicle remained on law enforcement's unrecovered theft list. The dealership later sold the

vehicle to a retail customer. The purchaser was pulled over on a routine traffic stop by a law enforcement officer. The officer ran the VIN of the vehicle and it was shown as stolen. The legal purchaser of the vehicle was put under arrest, handcuffed, taken to the police station, booked and had his vehicle impounded.

The second incident was similar; however, in this incident, the vehicle was sold to an out-of-state customer. The owner of the vehicle was stopped, arrested and had his vehicle impounded as well.

Both individuals have brought lawsuits against the dealership. The party reporting a theft must notify the law enforcement agency **immediately** if the vehicle is found, thereby protecting both the dealership and law enforcement agencies.

DEALERBOARD MEMBERS

President, Ron Rakowsky

First Vice President, Clair Villano,

Second Vice President, Mike Faricy

John Covert, Dwayne Dodd, Fred Emich,

Lee Payne, Steve Perkins, Jim Varner

Executive Secretary, Kirk J. Martelon

AUTO INDUSTRY DIVISION

Division Director, Kirk J. Martelon

Licensing Manager, Janet Swaney,

Investigator Supervisor, Mary Marvin

Correspondence is welcome. Address to:

Larry Herold, Auto Industry Division

1881 Pierce Street, Lakewood, CO 80214

Phone: (303) 205-5604 FAX: (303) 205-5977

E-mail: dealers@spike.dor.state.co.us

Internet: www.mv.state.co.us/dealer.html

C A L E N D A R

Dealer Board Business Meeting: Second Tuesday of each month at 9:00 am, 1881 Pierce St, Lakewood.

Dealer Board Hearings: Fourth Tuesday of each month, if necessary, at 9:00 am, 1881 Pierce St, Lakewood.

License Law Seminar - Colorado Springs: First Tuesday of each month at 10:00 am, 3650 Austin Bluffs Pkwy, Ste. 188, in the Shops of the Bluffs Mall, Colorado Springs.

License Law Seminar - Lakewood: Third Tuesday of each month at 9:00 am, 1881 Pierce St, Conf. Rm. A, Lakewood.

Note: Times and locations are subject to change.

Call the Auto Industry Division at (303) 205-5604.

Please note: While every effort is made to make the information in *Wheels* as accurate and helpful as possible, it is not offered as a substitute for legal advice.

Compliance Corner by Mary Marvin

Division Conducts Plate Audit

In the April 1999 edition of *Wheels*, it was reported that the Dealer Board directed the Auto Industry Division to conduct audits to determine if those dealers claiming full-use dealer plates are completing the affidavit correctly and reporting the actual number of vehicles sold. Colorado law requires that a dealer had sold at least twenty-six vehicles in the preceding twelve months for that dealer to obtain full-use plates. The Board further announced an amnesty program that allowed dealers to turn in full-use plates that were not properly authorized, giving dealers

until July 1, 1999 to surrender such plates without facing disciplinary action.

Since July 1, 1999, the Division has conducted 130 full-use plate compliance audits resulting in stipulated agreements with 12 dealers. In the stipulation, the dealer agrees to surrender the full-use plates and pay a fine of \$500 with an additional \$500 fine held in abeyance during a six-month probation period.

When a dealer completes the dealer plate affidavit, that dealer must be sure to accurately report the number of vehicles sold to avoid such penalties.

1999 Stats For Compliance & Investigations

Complaints, Audits & Investigations

The Investigation Section and Compliance Section under the direction of Investigator Supervisor **Mary Marvin** were busy in 1999.

Investigators **Jerry Smith, Richard Predovich, Alan Pfeiffer, Connie Hatch, Chuck Halberstadt, Jean Cruza and Wayne Brautigam** completed 1177 investigations in 1999 including 469 into unlicensed dealer and/or salesperson activity.

Investigation Section Investigations

Description	# Completed
Advertising	4
Background/Record Check	14
Contract/Financing	47
Deposit	6
Equipment	8
False Statement On Application	3
Lease Contract	38
Misrepresentation	80
Odometer/Mileage	52
Dealer Plates/Temp Permits	10
Repossession	11
Service Of Process	25
Titles	159
Unlicensed Dealer/Salesperson	469
Warranty/Extended Service Contracts	4
Check/Draft	19
Other Investigations	<u>228</u>
	1177

Compliance Specialists **Kathy Patterson** and **Gloria Breeden** along with Compliance Auditor **Sherry Colborg** combined to conduct 856 audits and resolve 1268 complaints which included 401 title complaints, 270 contact/financing complaints and 108 equipment related complaints.

Compliance Section Complaints Resolved

Description	# Completed
Advertising	63
Contract/Financing	270
Deposit	44
Equipment	108
Lease Contract	35
Misrepresentation	98
Odometer/Mileage	24
Dealer Plates/Temp Permits	42
Repossession	30
Titles	401
Warranty/Extended Service Contracts	68
Check/Draft	9
Miscellaneous	<u>76</u>
	1268

Compliance Section Audits Completed

Description	# Completed
Location	146
Advertising	174
Random	446
Full-Use Dealer Plates	<u>90</u>
	856

DEALER BOARD ACTIONS

Barney Farago dba Carmasters (#8919)(Denver) – failure to deliver title and defrauding a buyer, seller or financial institution to such person's damage. **LICENSE REVOKED.**

Benjamin Sauer dba Sweetheart Motors (#7903)(Loveland) – failure to deliver title, defrauding a buyer, seller or financial institution to such person's damage and failure to honor a draft or check. **LICENSE REVOKED.**

Steven Cronin (salesperson) – improperly withholding, misappropriating or converting to his own use any money belonging to customers or other persons. **LICENSE REVOKED.**

Marvin Schoen dba Quality Used Cars (#8693)(Aurora) – failure to perform written agreement (failure to honor a draft or check). **\$1000 FINE, PAY COMPLAINANT AMOUNT OWED, LICENSED REVOKED.**

Herbert Fulton (salesperson) – having indulged in fraudulent business practice and making false or misleading statements of fact (misrepresenting a lease as a purchase. **LICENSE REVOKED.**

Peter Trela dba Peter's Quality Cars (#3385)(Denver) – failure to maintain required place of business and advertising without including the name of the dealer or the word "dealer". **\$500 FINE, 6-MONTH PROBATION.**

Century Pawn, Inc. (#7515)(Denver) – purchasing full-use plates when not authorized to do so. **\$1000 FINE, 6-MONTH PROBATION.**

Harold Schumacher dba D & L Auto and Parts (#1301)(Byers) – purchasing full-use plates when not authorized to do so. **\$1000 FINE, 6-MONTH PROBATION.**

James L. Young dba James L. Young and Company (#6118)(Pueblo) – misrepresenting mileage on a vehicle sold. **\$1000 FINE, UNWIND DEAL, ONE-YEAR PROBATION.**

Bobby Hayden dba Hayden Brothers Auto Sales (#2243)(Sheridan) – failure to perform written agreement (failure to honor a draft or check). **\$8000 FINE, 30-DAY SUSPENSION, ONE-YEAR PROBATION.**

Mark Alan Cuthill (salesperson) – stipulated to a charge of unfitness of licensing character. **\$3500 FINE.**

Timothy N. Hurlbut (salesperson) – unfitness of licensing character. **\$3000 FINE, ONE-YEAR PROBATION, ATTEND SEMINAR.**

Matthew J. Urland (salesperson) – unfitness of licensing character. **\$3000 FINE.**

Regina Ward dba Arvada's Hometown Auto Sales (#8845)(Arvada) – failure to deliver title, defrauding a buyer, seller or financial institution to such person's damage. **LICENSE REVOKED.**

Robert Wilcox dba J & B Auto Wholesales (#8439)(Blackhawk) – failure to perform written agreement (failure to honor check or draft). **LICENSE REVOKED.**

Richard Benallo Sentenced to 6 Months In Jail

Richard Dennis Benallo was sentenced in the Seventeenth Judicial District Court to serve 6 months in jail after pleading guilty to acting as a Motor Vehicle Dealer Without A License after being issued a criminal summons by the Auto Industry Division.

District Attorney Robert S. Grant thanked **Investigator Richard Predovich** and the Division for their cooperation during the investigation.

FORWARDING & RETURN POSTAGE GUARANTEED
ADDRESS CORRECTION REQUESTED

STATE OF COLORADO
MOTOR VEHICLE DEALER BOARD
DENVER CO 80261-0016

PRST STD
U.S. POSTAGE
PAID
DENVER CO
PERMIT NO. 212