

NEWS BULLETIN

Maine Automobile Dealers Association

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- Office Manager
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2008-3

SOUTH PARIS DEALER HONORED BY TIME MAGAZINE

Gene Benner, President and Treasurer of Bessey Motor Sales, the Chrysler, Dodge and Jeep dealership in South Paris, was recently honored for his nomination for the 2008 TIME Magazine Dealer of the Year award. Gene was one of a select group of dealers from across the country recognized at this year's National Automobile Dealers Association (NADA) convention in San Francisco. The announcement of this year's Dealer of the Year finalists was made at the opening business meeting of the convention, which was attended by more than 25,000 individuals involved in the automobile industry.

The TIME Magazine Dealer of the Year award is the automobile industry's most prestigious and highly coveted award for car dealers. Recipients are among the nation's most successful auto dealers. However, they must also demonstrate a long-standing commitment to effective community service. Gene was chosen to represent the Maine Automobile Dealers Association in the national competition -- one of only 51 automobile dealers, from more than 19,500 nationwide, nominated for the 39th annual award. The award is sponsored by TIME Magazine in association with Goodyear Tire, and in cooperation with NADA. A panel of faculty members from the University of Michigan Graduate School of Business Administration selects each finalist.

A Maine native, all New England wide receiver at the University of Maine-Orono, and a onetime NFL draft pick of the Cleveland Browns, Gene spent 13 years as a teacher and coach before entering the automobile business. He signed a long-term purchase agreement with the dealer-owner of Bessey Motors in 1984, taking a 10% ownership stake. He and his wife Ellen bought the dealership outright ten years later. Under his ownership, Bessey Motors has enjoyed consistently outstanding customer service scores and has racked up several industry awards, including the Five-Star Award of Excellence every year since 1994.

In addition to his business successes, Gene and his dealership have also supported a wide range of area organizations and causes. He was a 2002 Paul Harris Fellow, the top honor given by Rotary International to recognize a non-Rotarian for community service. He is also serving as Chairman of the Board at Norway Savings Bank. In addition, Gene and his dealership have given service and contributions to Habitat for Humanity, the Kiwanis Club, Stephens Memorial Hospital and the University of Maine Foundation, among many other youth sports programs and local civic groups. "I came to the automobile business after 13 years of public education and coaching," Gene observed. "I have tried to impact my community in a variety of ways."

MADA congratulates Gene on this richly-deserved honor.

MADA'S 2008 ANNUAL MEETING and CONVENTION

Bar Harbor will be MADA's host city, and the Harborside Hotel and Marina our host site, for your Association's 2008 annual meeting and convention. This event will be held on the weekend of June 27-29, when the last of Maine's record snowfall may have melted.

Our weekend business activities will include discussion of the Maine Legislature's action on a variety of issues affecting dealerships, as well as presentations by speakers addressing dealership operations subjects. Recreational and social events are also being planned. In addition, Bar Harbor, Acadia National Park and Mt. Desert Island offer a wide variety of attractions. Specific information regarding all aspects of our weekend activities will be mailed to you in the coming weeks.

Participants in prior events at Bar Harbor have enjoyed a very fulfilling and relaxing weekend. Set the dates aside and mark your calendar for June 27-29. You will want to be in Bar Harbor that weekend to visit with your fellow dealers, learn about issues affecting your business, and enjoy a beautiful part of Maine.

DEALERS MUST HELP FACILITATE NEW-TIRE REGISTRATION

The National Highway Traffic Safety Administration (NHTSA) is aiming to boost new tire registrations by providing electronic means of doing so. Since 1970, the law has deemed franchised automobile dealers to be independent tire dealers when they sell new replacement tires on new vehicles, new tires on used vehicles, and new tires to service customers. As such, they must provide partially completed registration cards to new tire buyers who, in turn, may complete and return them to the tire manufacturer. This is intended to facilitate recalls of tires later determined to be defective or noncompliant.

Consistent with NADA's suggestion, NHTSA has proposed to loosen the regulations to allow:

1. Customers to complete tire registrations online or by fax, or
2. Dealers to do registration electronically after first obtaining customer permission.

NADA intends to file comments supporting NHTSA's proposal. Meanwhile, dealership staff should be reminded of their existing responsibilities under this law.

2008 FUEL ECONOMY GUIDES NOW AVAILABLE

The U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy (DOE) have recently published their latest *Fuel Economy Guide* for dealers. Under federal law, dealers are required to have on display a *Fuel Economy Guide* for **each** model year of new vehicles that they have available for sale. So, if you have 2008 and 2007 new products in your new car inventory, in addition to the *Fuel Economy Guide* for 2008, you will need to retain a supply of those Guides for 2007. The Guide is available to download at the EPA website: www.fueleconomy.gov. Dealers wishing to order hard copies of the Guide may do so by e-mailing the Agency via the same website. Although only one copy of the Guide must be on display, copies of the applicable Guide must be made available to customers upon request.

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SPOT DELIVERIES

Recently, licensed Maine dealers received a letter jointly signed by the Bureau of Motor Vehicles and the Bureau of Consumer Credit Protection. This letter (blue page enclosed) addressed the subject of spot deliveries, and has raised a number of questions from dealer members. The joint letter outlines the significant concerns that the two departments have with spot deliveries. The letter also points out, however, that Maine law does not prohibit spot deliveries, but does require specific disclosures which dealerships must make when a spot delivery occurs. In addition, Maine law requires certain remedies if the transaction cannot be completed as originally anticipated.

The issue of spot deliveries can create problems for all parties to a transaction if the projected finance terms are not delivered. Many times, the financial institution that has given preliminary approval to the deal finds errors or omissions in the content of the credit application, or decides that it must have slightly different requirements in order for the loan to be delivered. Obviously, neither the dealer nor the customer is expecting this result. A change in terms does create the potential for certain deals to be cancelled. Depending on the timing of the financial institution's response to the dealer, and the communication of the financial institution's analysis to the customer, there can be an interval of days or even weeks.

Maine law specifies the disclosures which have to be made at the time of sale, as well as the steps that must be taken should the financing arrangements change and the customer cannot receive what was expected at the time of spot delivery. The enclosed page (white paper) provides the language of Maine law on one side (please pay particular attention to all costs reimbursable to the customer). The other side of the page provides a potential form which dealerships might utilize to meet their disclosure obligations in spot delivery situations. Whatever disclosure form your dealership drafts and utilizes in spot delivery situations must comply with the provisions of Maine law, and dealerships are required to follow the remedies detailed in the law in the event that the terms of a spot delivery sale cannot be met.

The Bureau of Motor Vehicles and the Bureau of Consumer Credit Protection expressed significant concern in their letter with the potential problems that arise in situations where financing terms cannot be delivered. The following example was cited to MADA: customer tells dealership personnel that he has had a prior bankruptcy; dealership personnel tells the customer not to list it on the credit application; credit application is submitted to the financial institution without the bankruptcy being noted; financial institution NATURALLY discovers the bankruptcy in its review of the customer's credit history, and rejects the loan application or adjusts the downpayment or interest rate factors required to finance the deal.

The whole scenario in the previous paragraph is not only a major problem, it is fraud. The actions attributed to a dealership employee are totally unacceptable. This is the type of situation that the Bureau of Motor Vehicles and the Bureau of Consumer Credit Protection addressed in their letter by saying that Maine does have a law and the law must be followed. Spot delivery situations are also complicated at times by the use of some sub-prime lenders who, by contract with the dealerships, have extended periods of time in which they can send the proposed contract back to the dealership with changes to the financing terms or outright rejection. Dealerships must be aware of the potential issues with delayed responses to credit applications. Dealerships must be ready to follow the requirements of Maine law with respect to any vehicle which is spot delivered. The obligations to make the customer whole, to return the trade, or provide full dollars for the trade allowance listed in the paperwork, are specific provisions of Maine law. It is immaterial if there is an overallowance on the trade. If the vehicle is unavailable for a return, the listed value applies.

Obviously, there will be spot deliveries which will occur during the course of business at a dealership. While it is in everyone's best interest to totally understand the terms of the sale and to have these terms confirmed at the time of delivery, that is not always possible. However, dealership personnel must be aware of the requirements of Maine law with respect to the disclosures and remedies associated with a spot delivery situation. Please review the law with appropriate dealership personnel.

NHTSA PUBLISHES 2008 INSURANCE COST INFORMATION BOOKLET

The 2008 insurance cost information booklet that all car dealers must make available to prospective buyers is now available. Each year, the National Highway Traffic and Safety Administration (NHTSA) produces a new version of the booklet, which includes comparative information regarding differences in vehicle collision loss experience that could affect auto insurance costs. All auto dealers must make the booklet available to customers. NHTSA is mailing a copy of the 2008 booklet to each dealer. Dealers who do not receive a copy of the booklet by April 1 should contact NHTSA at www.nhtsa.gov. NADA suggests that dealers keep a copy of the guide available and reproduce it for customers upon request.

LOANER AND TEMPORARY PLATE LOGS

In a March 11 Memorandum to all licensed dealerships, the Bureau of Motor Vehicles reminded dealerships of the obligation to prepare and retain logs for any loaner or temporary plates the dealership uses to serve its customers. Due to the volume and nature of calls made to your MADA office and the Dealer Section at Motor Vehicle, MADA will be meeting in the next few days with Motor Vehicle to review dealership concerns. Your Association will then distribute another bulletin with complete information.

HAZARDOUS WASTE/RIGHT-TO-KNOW TRAINING SCHEDULED

All MADA member dealerships recently were mailed an announcement of this Spring's employee training sessions. A significant number of training sessions have been scheduled, and as near to your dealership as is practical. Please register your employees as soon as possible to allow for proper accommodations at the training sites. Thanks to those who have already registered.



Department of
the Secretary of State
Bureau of Motor Vehicles
And
Maine Bureau of
Consumer Credit Protection

February 27, 2008

Re: Maine's Restrictions On "Spot Delivery" or "Streeting" Motor Vehicles

To All Maine Auto Dealers:

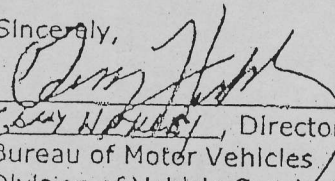
State enforcement agents and regulators have begun hearing from consumers who have been subject to a credit sale practice known as "spot delivery" or "streeting" of vehicles. The purpose of this memo is to inform sellers of new and used vehicles that the Legislature took specific action several years ago to discourage this practice, and also to let you know that the State will be pursuing any alleged violations of the consumer protections and disclosure requirements of Maine's spot delivery law.

Spot delivery occurs when a consumer is asked to sign a retail installment contract, and is given possession of the vehicle, before the dealer has obtained a lender's or finance company's commitment to purchase the completed contract. If dealers cannot locate a purchaser for the contract, they often call the consumer to demand return of the vehicle, or attempt to require that the consumer sign a new, more expensive contract.


It is our general position that a consumer who signs a credit contract and who takes possession of a vehicle has an enforceable agreement. Dealers should not feel free to begin searching for a purchaser of the contract after a sale is made, with the intention of canceling the sale if a financing source cannot be found. Cancellation of the contract can only be done if the dealer complies with all provisions of 10 MRSA §1194, which requires 1) complete advance disclosure; and 2) return of all fees and costs incurred by the consumer on account of the sale. It is our agencies' intention to give a full and liberal reading to the law's requirement that a dealer who requests return of a vehicle pay "all charges" relating to the transaction, "including, but not limited to" registration and tax fees and charges. In addition, if the consumer's trade-in vehicle has been disposed of, then the dealer must, according to the law, pay the consumer the value of the vehicle "as established in the contract," an amount which is often in excess of the vehicle's actual wholesale or resale value.

We hope this letter helps to clarify our belief that the Legislature does not favor spot deliveries of motor vehicles, and that cancellation of a contract should not be a routine part of any dealership's sales practices. Please contact your attorney, your association or our offices with questions about your responsibilities under Maine law.

Sincerely,



Gary H. Haskins, Director
Bureau of Motor Vehicles
Division of Vehicle Services



William N. Lund, Superintendent
Bureau of Consumer Credit Protection

Addendum to Retail Buyers Order (Retail Installment Contract)

SPOT DELIVERY DISCLAIMER

This addendum shall be incorporated into the Retail Buyers Order (Retail Installment Contract) dated _____ in regard to the vehicle described as follows:

YEAR _____ MAKE _____ MODEL _____ VIN _____

The undersigned customer understands and acknowledges that credit approval for the terms agreed upon in the Retail Buyers Order (Retail Installment Contract) identified above has not been obtained at this time. The undersigned customer further understands and agrees to return the above referenced vehicle to (dealership name) in its original condition immediately (no more than 24 hours) upon notification of credit denial.

The undersigned customer further understands that credit approval may take some time, and hereby agrees not to register the above referenced vehicle or to pay any taxes until (dealership name) notifies the undersigned customer that credit approval has been obtained, which will be no later than two (2) business days after customer began to drive the vehicle.

If financing cannot be obtained for the terms agreed upon in the Retail Buyers Order (Retail Installment Contract) identified above, the customer shall receive:

- a) reimbursement of the entire vehicle purchase price or, if a leased vehicle, the lease payments made to date, including any paid finance charges on the purchased or leased vehicle;
- b) reimbursement of all charges pertinent to the contract, including, but not limited to, sales tax, license and registration fees and similar government charges; and
- c) the vehicle traded in or, if the vehicle is not available, the trade-in value of the vehicle established in the contract.

Sections a, b and c above do not apply to any sale cancelled by (dealership name) due to material misrepresentation made by the undersigned customer.

The undersigned customer understands that (dealership name) does not provide any insurance coverage on the above referenced vehicle, and that it is the undersigned customer's responsibility to secure and maintain liability, property and comprehensive insurance coverage.

The undersigned customer has read and understands the above information, and acknowledges receiving a copy.

Date: _____ Customer Signature: _____

Date: _____ Customer Signature: _____

In addition, the department shall include with the notices to the parties blank forms for use in initiating modification actions.

Approved May 25, 2001.

SALES PRACTICES—MOTOR VEHICLES

CHAPTER 256

H.P. 845

L.D. 1117

An Act Concerning Motor Vehicle Dealer Sale Practices

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA c. 204-A, as amended, is amended by repealing the chapter headnote and enacting the following in its place:

CHAPTER 204-A

DEALER PRACTICES FOR CERTAIN MOTOR VEHICLES

Sec. 2. 10 MRSA § 1194 is enacted to read:

§ 1194. Dealer sale practices for new or used motor vehicles

When selling new or used motor vehicles a dealer must adhere to the following sale practices.

1. Dealer revocation of sale. If a dealer sells a new or used motor vehicle and allows the buyer to take possession of it, the dealer can not at a later date inform the buyer of that vehicle that the dealer is canceling the sale unless the dealer has disclosed at the time of the sale and at the time of cancellation that if financing can not be procured according to the terms agreed upon in the contract, the consumer shall receive:

A. Reimbursement of the entire vehicle purchase price or, if a leased vehicle, the lease payments made to date, including any paid finance charges on the purchased or leased vehicle;

B. Reimbursement of all charges pertinent to the contract, including, but not limited to, sales tax, license and registration fees and similar government charges; and

C. The vehicle traded in or, if the vehicle is not available, the trade-in value of the vehicle established in the contract.

This subsection does not apply to any sale canceled by the dealer due to material misrepresentation made by the buyer.

Approved May 25, 2001.