

**TENNESSEE MOTOR VEHICLE COMMISSION
BOARD MEETING
January 11, 2010 10:30 A.M.
CONFERENCE ROOM 160
DAVY CROCKETT TOWER, 500 JAMES ROBERTSON PKWY.
NASHVILLE, TENNESSEE 37243**

ROLL CALL:

	<u>PRESENT</u>	<u>ABSENT</u>
BRENT SMITH	X	
EDDIE ROBERTS	X	
JOHN BARKER		X
GEORGE BASS	X	
WILLIAM TARR	X	
MELISSA BLANKENSHIP	X	
KEVIN CULLUM	X	
DONNIE HATCHER	X	
NATE JACKSON	X	
CHAD JONES	X	
ALLEN LEWIS		X
TRAVIS MCDONOUGH		X
STAN MCNABB		X
FARRAR SCHAEFFER	X	
BRENDA SPEER	X	
RONNIE FOX	X	

The Tennessee Motor Vehicle Commission Meeting was called to order by Chairman Brent Smith on January 11, 2010. Roll Call was taken with a total of (12) member's present.

This rulemaking hearing is called to Order.

Good Morning. My name is *Tony Glandorf* and I am Assistant General Counsel for the Tennessee Department of Commerce and Insurance, Division of Regulatory Boards. Would the agency representatives who are present introduce themselves for the record?

Today is *Monday, January 11, 2010 and the time is 9:30 a.m.*. This rulemaking hearing is taking place pursuant to Tennessee Code Annotated, Section 4-5-204, on the first floor conference room of the Davey Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. The purpose of this rulemaking hearing is to afford all interested persons or their representatives an opportunity to present facts, views or arguments relative to the proposed rules.

A rule is defined as an agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of the agency. Proposed rules are filed with the office of the Secretary of State, notice is given to the public for comment, and a rulemaking hearing is held. Upon conclusion of the hearing and adoption of the proposed rules, the rules so adopted are forwarded to the

Attorney General's Office for review of legality. If approved, they are filed with the Secretary of State, which is responsible for publication, and the government operations committee of the General Assembly. The rules must stay in the Secretary of State's Office for 90 days, the end of which time will be the effective date.

This agency will accept and consider all written comments relating to the proposed rules. To the extent possible, the agency will also provide an opportunity for interested persons or their representatives to present oral comments. However, only those persons that have placed their names on the sign-up sheet will be provided an opportunity to speak. Oral comments will not be accepted from any person whose name does not appear on this sheet. Are there any persons present that desire to offer oral comments but who have not signed the sheet? (If so, provide a few minutes to let them sign).

The notice of rulemaking hearing included the entire text of the proposed rules and was filed with posted by the Secretary of State on its Tennessee Administrative Register website on November 17, 2009 in accordance with Chapter 566 of the Public Acts of 2009.

I will read the substance of the proposed rule into the record. *[can summarize or paraphrase]*. There will be time to comment after the reading *of the rules*.

- 1) Rule 0960-01-.03 → Clarifies that all charges made by a motor vehicle dealer to a manufacturer or distributor for warranty work performed must be submitted within 30 days after the repairs or service is completed (not claimed)
 - a. Provides manufactures or distributors with a similar 12 month period, similar to that for warranty repair work, to disallow a payment previously made to a dealer based upon a sales incentives.
- 2) Rule 0960-01-.14 →
 - a. Increases licensing fees for manufacturers, distributors, factory branch, distributor branch from \$800 to \$1600
 - b. Creates a \$50 fee upon each manufacturer and distributor for each franchised dealer.
 - c. Increases licensing fees for motor vehicle dealers from \$200 to \$400.
 - d. Increase in fee for factory or distributor representatives from \$200 to \$400.
 - e. Increase in licensing fee for dismantler and recyclers from \$200 to \$400.
 - f. Increase fee for automobile auctions from \$400 to \$800.
 - g. Increase in fee for vehicle show permits from \$100 to \$200.
 - h. Creates a fee for a name changes to \$400.
 - i. Creates a \$400 for each Re-inspection that is created by the action or inaction of an applicant.
 - j. Allows the Commission to keep 25% of all application fees, forwarding the remaining to the applicant for applicants who fail to submit all necessary documentation within 90 days.
- 3) Rule 0960-01-.15 →
 - a. Amends the previous liability insurance requirement for motor vehicle dealers by requiring dealers to obtain comprehensive garage liability insurance in the amount of \$300,000 per occurrence.

- b. Creates a rule which requires all motor vehicle dealers to comply with existing TN workers compensation laws.
- 4) Rule 0960-01-.21
- a. Creates a rule that requires all motor vehicle dealers licensed on or after July 1, 2010 to have a business facility that does not connect to more than one other business facility.
 - b. Clarifies that motor vehicle dealer facilities must have 15 parking spaces for the dealer's product line, not including customer and staff parking.

Tenn. Code Ann. § 4-5-403 requires, as part of the rulemaking process for any rule that may have an impact on small businesses, that the agency prepare an economic impact statement. Please consider following proposed economic impact statement:

Economic Impact Statement:

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;

All small businesses that are motor vehicle dealers and automotive dismantler and recyclers doing business within the State of Tennessee will be directly affected.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

There are possible foreseeable administrative cost increases for those small businesses who currently do not comply with the applicable worker's compensation laws of this state. There are no foreseeable increased reporting or recordkeeping requirements and therefore, increase costs to small businesses are not expected.

3. A statement of the probable effect on impacted small businesses and consumers;

New small business or dismantlers and recyclers may experience an increased cost in acquiring facilities that are not connected to more than one other business. Increased licensure fees and fees for the transfer of dealership ownership, re-inspections are newly created and as such, will be an additional expense of ownership changeover to small businesses. The increased coverage of garage liability insurance will increase costs to small businesses. While the increased costs will create a greater economic burden upon small businesses, it is not foreseeable that their ability to operate or continue to operate will be affected by the licensure and insurance increases.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome on small businesses;

The proposed changes to the existing rules are minimally burdensome/intrusive to small businesses. The necessary costs to small businesses to implement the changes required by the proposed amendments and additions to the rules are offset by the protections provided to citizens of Tennessee.

5. A comparison of the proposed rule with any federal or state counterparts;

There are no federal counterparts to the issues addressed by these rules.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rules.

In order to ensure the health, safety and welfare of the citizens of Tennessee, it is imperative that small businesses are held to the same standards as larger businesses regarding the disallowance of service claims, increased garage liability insurance, increased licensure fees and additional fees for ownership changeover, line-make additions, re-inspections and compliance with the state worker compensation laws. An exemption to small businesses would jeopardize the state's effectiveness in its ability to provide consumer protection for the purchase and sale of motor vehicles.

“The Motor Vehicle Commission conducted a Rule-Making hearing pursuant to TCA 4-5-204 to afford all interested persons or their representatives an opportunity to present facts, views or arguments relative to the proposed rules. Public comments were heard by the Commission. The Commission voted upon and accepted all rule amendments as filed with the Secretary of State's office in the Notice of Rulemaking Hearing dated November 17, 2009 except for proposed amendment to Rule 0960-01-.14(1)(l) and Rule 0960-01-.21(2).”

COMMISSION MEETING IS CALLED TO ORDER

A Motion was made by Commissioner George Bass, and seconded by Commissioner Farrar Schaeffer, to approve the minutes from the October meeting.

MOTION PASSED UNANIMOUSLY

REVIEW COMMITTEE

The Review Committee advised the Commission that the Committee had discussed the attached legal report with counsel and moved that the Commission adopt the attorney's recommendations.

1. Case No.: 2008026701 & 2009003331

Complainant/dealer alleges that he purchased a vehicle from Respondent at auction where the mileage of the vehicle was announced that "miles unknown, possible Rollback, seller is going to guarantee the mileage and fix it." At the time, the vehicle listed 116,000+ miles. The complainant bought the car at auction and sold it to a consumer who later by ECM diagnostic found that the vehicle had in excess of 350,000+ miles on it. The Complainant purchased the vehicle back from the consumer. The Respondent states that he purchased the vehicle from another dealer who informed him that a Carfax report noted the discrepancy of mileage but based upon the condition of vehicle believed it to be true mileage. Based upon this information, Respondent announced that he would "fix" the mileage believing it was the true mileage.

The foregoing acts of failing to advise the next purchaser of the Carfax report and guaranteeing to fix the mileage and subsequently not doing so are deceptive acts.

Recommendation: Authorize a civil penalty of Two thousand dollars (\$2,000) (\$1,000 x 2 acts) to be settled by Consent Order and authorization of a formal hearing.

Commission Action: Revocation of motor vehicle dealer license

2. Case No.: 2009002131

Complainant/consumer alleges that Respondent/dealer sold her a vehicle that did not have operable airbags. Complainant stated the vehicle could not be registered in the state of New York due to lack of airbags after inspection. Respondent had purchased the vehicle as salvaged and after replacing various parts applied for and received a Rebuilt Vehicle Title that passed the appropriate inspection conducted by the Dept. of Revenue. Respondent stated that he did not replace the airbags, but only replaced the airbag covers. Respondent did not make the appropriate notation (which is required) of replacing the airbag covers when applying for a Rebuilt Vehicle Title. Respondent stated he was not aware of any law requiring him to replace the airbag. Respondent subsequently repossessed the vehicle and sold the vehicle to another consumer with similar inoperable airbags concealed by covers.

These acts violate TCA § 55-3-208 and 55-3-212 which require any person who applies for a Rebuilt Vehicle Title to provide an affidavit subject to penalty of

perjury that the vehicle has been rebuilt to manufacturer's specification. Similarly, the act is in violation of TCA § 55-9-108 which creates a misdemeanor for "any person who knowingly installs or reinstalls **any object in lieu of an airbag** that was designed in accordance with federal safety regulations for the make, model and year of the vehicle as part of the vehicle inflatable restraint system..." – Enforcement of these violations by the Commission is granted under Rule 0960-1-19

The foregoing involves four (4) acts of unlawful conduct: 1 – fraudulent application for rebuilt title, 2- failing to install airbags, 3 – deceptive act to customer 1 for sale of vehicle, 4 – deceptive act to customer 2 for sale of vehicle.

Recommendation: Imposition of a four thousand dollar (\$4,000) civil penalty with authorization to settle by Consent Order and Formal Hearing if necessary.

Commission Action: Revocation of motor vehicle dealer license

35. Case No.: 2009015021

Complainant/consumer alleged that on March 9, 2009, she negotiated the purchase of a vehicle for \$7,000 including taxes from Respondent/dealer. On March 10, 2009, paid a down payment of \$500 and was given a receipt (but no Bill of Sale). On March 11, 2009 paid \$6,500 cash balance from funds withdrawn from her checking account. Complainant states that Respondent requested the \$500 receipt back and gave her a Bill of Sale evidencing the purchase of the vehicle for \$2000, taxes included to be financed and that this was to pay less sales tax. Respondent allegedly promised title in two weeks. Respondent did not provide title. Complainant states that in April, upon going back to dealership, Respondent insisted that Complainant pay the total amount shown on the Bill of Sale in order to get the title, an additional \$2,654.24. Complainant refused to pay and Respondent did not obtain title. Complainant hired an attorney who eventually received the actual title, but was only endorsed into the Complainant's name on the back of title. The sale amount states \$7,000 and written on the title is "Buyer is responsible for Taxes". The county clerk's office would not process the title for dealer's failure to pay sales tax. An investigation was conducted. Respondent failed to meet the investigator at an agreed upon date. Respondent stated he did not have a deal file on this transaction. Respondent stated in an affidavit that the vehicle was to be transported out of country and therefore did not collect sales tax, however he had no evidence of this. Respondent stated that he would process the title only if Complainant paid the sales tax to do so.

The foregoing constitute violations for 1) TCA 55-17-114 fraudulent/deceptive activity for sale of vehicle for \$7000 and providing Bill of Sale indicating \$2,000 price with sales tax paid (55-3-108); 2) TCA 55-17-114 Deceptive activity for failing to pay sales tax after sale 55-3-105); 3) TCA 55-17-114 Fraudulent/deceptive activity for requesting Complainant to pay an extra

\$2,654.24 in order to obtain title; 4) TCA 55-17-114 Stating in affidavit that the “sales tax” would need to be paid in order to process the title; 5) Rule 0960-1-.11(1) Failure to meet investigator for inspection of records; 6) Rule 0960-1-.11(2) Failure to keep business records.

Recommendation: Imposition of a civil penalty of four thousand five hundred dollars \$4,500 (\$1,000 x 4 fraudulent acts; \$250 x 2 business records, failure to allow inspection) with authorization to settle by Consent Order and a Formal Hearing.

Commission Action: Revocation of motor vehicle dealer license by voluntary revocation or formal hearing.

48. Case No.: 2006035861

Respondent is a licensed salesperson who was denied a change of employer license in December 2008 due to a felony conviction. He appealed his denial at the January 2009 meeting, wherein the Commission granted him a salesperson license. At the time the Commission granted his license on appeal, *this Complaint was outstanding and has not been closed.* A timeline of events appears below:

- December 1989 – Respondent was issued an insurance producer’s license by Dept. of Comm. & Ins.
- December 2004 – Respondent improperly held and misappropriated worker’s compensation insurance funds forwarded to his employer, insurance company.
- July 2006 – Respondent issued a motor vehicle dealer license
- September 2006 - Respondent signed a Consent Order agreeing to voluntary Revocation of his *insurance producer license* and further agreeing that the Order could be used against him to revoke all professional licenses held.
- September 2006 – This complaint was opened against Respondent based upon the Consent Order for revocation of the insurance producer license.
- **July 2007 – This Commission authorized the revocation of Respondent’s motor vehicle dealer license. A Consent Order was delivered and never returned.**
- August 2008 – Respondent convicted of Theft over \$10,000, a Class C felony and sentenced to 4 years to be served by 7 years of Supervised Probation for acts done in 2004.
- December 2008 – Respondent’s change of employer application denied.
- January 2009 – MVC granted Respondent a salesman license with new employer.

Recommendation: Board discussion to either Close the Complaint or to continue revocation of the salesman license.

Commission Action: Revocation of salesperson license by formal hearing.

APPEALS

The following appeals were heard by Commission.

Shawn LaFever-Hickory Hollow Kia, Nashville, TN
Staff denied application

Motion made by Commissioner Brenda Speer, and seconded by Commissioner Ronnie Fox to grant the license.

VOICE VOTE

Brent Smith	Abstain
George Bass	Yes
Bill Tarr	Yes
Melissa Blankenship	Yes
Kevin Cullum	Yes
Ronnie Fox	Yes
Donnie Hatcher	Yes
Nate Jackson	No
Chad Jones	No
Farrar Schaeffer	No
Eddie Roberts	No
Brenda Speer	Yes

Seven (7) yes's, four (4) no's, and one (1) abstaining. Vote passes to grant the license.

Majed Nayef Massad-Clive's Auto Sales, Mt. Juliet, TN
Staff denied application

Motion was made by Commissioner Eddie Roberts, and seconded by Nate Jackson to grant the license.

VOICE VOTE

Brent Smith	Yes
George Bass	No
Bill Tarr	Abstain
Melissa Blankenship	Yes
Kevin Cullum	Yes
Ronnie Fox	Yes
Donnie Hatcher	Abstain
Nate Jackson	Yes
Chad Jones	No
Farrar Schaeffer	Yes
Eddie Roberts	Yes
Brenda Speer	Yes

Eight (8) yes's, and two (2) abstaining. Vote passes to grant the license.

DIRECTORS REPORT

Since the last Commission meeting in October 2009 the following actions have been taken:

Dealers Opened, or Relocated139

Active Licensees as of January 1, 2010

Dealers.....4208
Applications in Process.....58
Distributions/Manufacturers200
Auctions.....32
Representatives.....514
Salespeople.....12469
Dismantlers.....355
RV Dealers.....20
RV Manufacturers.....53

Motor Vehicle Show Permits Issued Since Oct., 2009.....7
Revenue Received \$ 700.00

Presented dates for Commission meetings for the up coming year. January11, April 12, July 12, October 11, 2010. The following dates were also added for Formal Hearing, April 13, and July 13, 2010.

Vote was unanimous to approve the dates that are listed.

Old Business

None

New Business

Show Permits- Rules Committee had voted in the past for one show permit to be issued and one permit to be renewed. The intention was not to have one issued and one renewed continuously for one location. This will be brought up again with the Rules Committee again at the next Rules Committee meeting.

Legal Report

Review Committee Chairman Eddie Roberts went over the recommendations that the Review Committee made.

Motion was made by Commissioner Donnie Hatcher, and seconded by Commissioner George Bass to approve these recommendations.

Motion passed unanimous.

Attorney Tony Glandorf brought up the subject of an Administrative Law Judge holding Formal Hearings. Right now there are three cases that need to be brought before the Commission for a formal hearing. One has already been brought formal charges on, that will be heard in April. It needs to be heard in the April meeting. Other dates have been approved that we can go ahead and file charges against the other two cases. These would be heard in afternoon sessions after the regular Commission meetings are held possibly on the July and October dates. My concern is I expect to have five to ten cases to come available for a formal hearing. The length of time to prosecute these cases can vary greatly from one case to another depending on the charges involved, and the amount of proof. In the case of the hearing at the meeting in April, with the proof that we have it could take 3 to 4 hours of course it will be presented by our Litigation Attorney Richard Averwater. Since we have the other dates approved for the rest of the year, if we could hear 4 to 6 more cases in the afternoons. We may need at least two more dates to commit to between the April and October meetings. That way we could hear these cases and not get a back log. It is very important to have dates set so as they come up, we can file to have them heard on those dates. The Commission sets the dates, and then they are heard before an Administrative Law Judge. I would like to propose to the Commission that they would allow an Administrative Law Judge to hear certain types of cases that it would not be of interest to the Commission to hear. An example may be an unpaid citation where they had an open title, and have ignored the citation. The Litigator could bring cases before the judge of different cases of open titles where the dealer is still open and has not paid the citations. He would put all of these cases together and bring them before the Judge to hear in one afternoon. The Commission would not have to come in, and listen to these cases. Or a second kind of case would be unlicensed activity where they have not been licensed as a dealer, this may be a person that is curbstoning out there. These types of cases would be very straight forward and not be hard to prosecute. I think in the future these types of cases would be good for our Mr. Averwater to bring in front of a Law Judge and not take up the time of the Commission. That way it would leave the type of cases to be brought up in front of the Commission cases that are fraudulent or deceptive acts upon consumers. The Commission asked if the Judges order is final, and Mr. Glandorf explained that there is an appeal process that would then come before the Commission. The Commission voted to set dates for the Administrative Judge to hear cases on April 13, and July 13, 2010.

Meeting Adjourned.

Brent Smith, Chairman

Leon Stribling, Executive Director