



PENNSYLVANIA AUTOMOTIVE ASSOCIATION

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March 11, 2003

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DOS LEGAL COUNSEL

Thomas A. Blackburn, Counsel
State Board of Vehicle Manufacturers,
Dealers and Salespersons
Commonwealth of Pennsylvania
116 Pine Street, 4th Floor
Harrisburg, PA 17101

RE: Proposed Regulations on Consignment Sales

Dear Mr. Blackburn:

PAA has reviewed the proposed regulations of the Board regarding consignment sales and has several comments. Overall the Board has outlined the parameters to ensure that a seller providing a vehicle to a dealer on consignment and the buyer of the consigned vehicle are protected with the procedures put into place. PAA is, however, concerned with the one requirement that the dealer must hold title for the consigned vehicle as part of the paperwork evidencing the agreement to consign the vehicle. PAA believes the owner/seller should have the right to choose whether to leave the title with the dealer or keep it in the seller's possession as leverage to know when the sale is to occur and when to expect payment for the vehicle sold on consignment. Otherwise the few unscrupulous dealers could sell the vehicle and deliver title, while the seller may not know the vehicle was sold and end up not being paid for the consigned vehicle's sale.

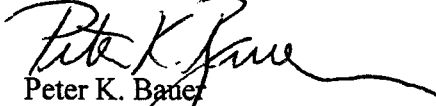
As the owner/seller of the vehicle, the ability to hold the title until the vehicle is to be sold is the only check the seller has to let him know when the vehicle is to be sold. The seller holding the title requires the dealer to contact him and have the seller bring the title to the vehicle, so that the vehicle and the title may be delivered to the buyer. As the proposed regulations require the dealer to identify the vehicle as a consignment vehicle, the buyer would be put on notice that this is a different type of sale than buying direct from the dealership. The buyer may not be able to take delivery of the vehicle on the spot, because there is an owner/seller that has interest in knowing that the vehicle is to be sold and entitled to payment. It would be explained to the buyer that the seller must bring the title to the dealership for the transaction to be completed. While the sales process is potentially slowed down, the option for the owner/seller to retain title ensures all parties are aware as to what is transpiring, as opposed to a dealer that could act improperly when he has both the title and the vehicle in his possession. Finally, the buyer is also protected

because he is aware that the vehicle is being sold on consignment and relinquishes his payment for the vehicle at the time that the delivery is made for both the vehicle and the title.

One additional note is that the reference to the dealer using an executed power of attorney in (b)(3) does not permit the dealer to sign on behalf of the seller on the back of the title. Federal odometer law restricts the dealer from signing as both the buyer and seller on a title or other secure paper document for odometer disclosure purposes even when using a power of attorney. The rationale was that this could promote odometer fraud where one person signs as both parties. The only exception to this is where the dealer uses a secure power of attorney to receive the odometer mileage disclosure from the seller. The dealer can then transfer that mileage and sign on behalf of the seller on the back of the title and then also sign on the back of the title as the buyer. Under federal law, the secure power of attorney can only be used in limited instances, and a consignment sale is not one of them. This section (b)(3) may need to be revised.

PAA appreciates the Board's willingness to entertain PAA's comments, though late in coming, and hopes that PAA can be of assistance as the Board further refines the wording. If you have questions regarding this matter, please do not hesitate to contact me at (717) 255-8311, ext. 3352.

Respectfully yours,


Peter K. Bauer
General Counsel

Original: 2317



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MAR 24 2003

DOS LEGAL COUNSEL

March 21, 2003

Ms. Teresa Woodall
Board Administrator
State Board of Vehicle Dealers
Manufacturers and Salespersons
P.O. Box 2649
Harrisburg, PA 17105

Re: Proposed Regulations on Consignment Sales,
Pa. Bulletin, Doc. No. 02-2229, Vol. 32, 32-50

Dear Ms. Woodall:

I am writing to you about the above-referenced proposed consignment sale regulations. Although this letter of comment is after the official comment period, I would appreciate if you and the Vehicle Board would consider the following comments that I make on behalf of PIADA.

I reproduce below the text of the proposed regulation, and I have highlighted in gray those portions about which we at PIADA are concerned. Our comments afterwards are referenced to the proposed section, subsection and paragraph's numbers and letters. Brackets "[]" indicate deletions; underlining " _ " indicates insertions.

§ 19.18a. Consignment sales.

(a) A licensed dealer is permitted to engage in consignment sales without being licensed as a wholesale vehicle auction or public or retail vehicle auction, as defined in section 2 of the act (63 P. S. §§ 818.2), if the dealer meets the requirements of this section.

(b) The dealer shall maintain the following documents at the lot where the vehicle is displayed:

(1) A copy of a separate written consignment agreement with the consignor for each vehicle. The written consignment agreement shall contain the following information:

(i) The name and signature of the consignor.

(ii) The make, model, year, vehicle identification number and license plate number of the vehicle.

(iii) The length of the consignment period.

(iv) The terms of sale, including the minimum selling price, if any, and the amount of or formula for determining the dealer's commission.

(v) The terms of insurance coverage during the period of consignment, including the name, address and telephone number of the consignor's insurance agent, if any.

(vi) The express identification of any warranties extended by the consignor.

(vii) The name and address or telephone number of all current lien holders, together with the account number for each lien.

(viii) Any material facts relative to the vehicle, including accident history, vehicle condition and odometer disclosure.

(2) A copy of the current registration card or title.

(3) An executed power of attorney from the consignor to the dealer which authorizes the dealer to assign title of the vehicle.

(4) Either an unexecuted title, if the title is unencumbered, or a title release from each lien holder to pay off all liens, if the title is encumbered.

(c) The dealer shall have the title of the vehicle assigned from the consignor to the dealer prior to applying for title in the name of the buyer.

(d) Whenever a vehicle is displayed for sale on consignment, the dealer shall disclose in writing on or attached to the vehicle that the vehicle is held on consignment and is not owned by the dealer.

1. Comment to 19.18a(b)(1): For dealer to dealer consignments it does not seem necessary to have a separate agreement for each vehicle, as long as the required information appears for each vehicle on one form.

Our suggested revision to 19.18a(b)(1) is as follows:

(1) A copy of [a separate] the written consignment agreement with the consignor [for each vehicle]. The written consignment agreement shall contain for each consigned vehicle the following information:

2. Comment to 19.18a(b)(1)(vii): In the case of a consumer, would not inclusion of the consumer-consignor's lien account number be a breach of privacy? We do not believe that it would be wise to have people's account numbers shown to potential purchasers of the consigned vehicle.

Our suggested revision to 19.18a(b)(1)(vii) is as follows:

(vii) The name and address or telephone number of all current lien holders[, together with the account number for each lien].

3. Comment to 19.18a(b)(1)(viii): This section essentially imposes strict liability upon the selling dealer to know the entire prior accident history of the vehicle, which, for a used car, may simply be unknown by both the selling dealer and the consignor. Furthermore, this provision also has the effect of making it impossible to sell a consigned vehicle AS IS. As long as a dealer displays a supplemental AS IS disclosure prescribed by 37 Pa. Code §304.1(a)(9), consigned vehicles should also be permitted to be sold AS IS.

Our suggested revision to 19.18a(b)(1)(viii) is as follows:

(viii) Any known material facts relative to the vehicle, including accident history[,] and vehicle condition, if a warranty is offered, and an odometer disclosure statement.

4. Comment to 19.18a(b)(4): Section 19.18a(b)(2) already requires that the dealer maintain “A copy of the current registration card or title.” PIADA believes that the risk of fraud to the consignor (not getting paid by the selling dealer) is great if the dealer is entrusted with the *original* certificate of title. We believe that requiring a *copy* of the complete title, *front and back*, is the better solution. However, the Vehicle Board does have a legitimate concern about the buyer not receiving a certificate of title. Therefore, PIADA suggests below a specific remedy addressing this untoward possibility, rather than opening a different avenue for another type of fraud.

This section also appears to intend that all liens first be satisfied before a vehicle could be consigned for sale. This is not a realistic regulation, because no financial institution will provide a release, unless its lien has been satisfied first. We believe that the reference to “title release” in relation to paying off a lien may be confusing two or three separate documents. A “title release” is signed by the *vehicle owner* and directed to the lienholder authorizing the lienholder to mail the title directly to the selling dealer, rather than the vehicle owner named on the front of the title. An “authorization for payoff” is a document signed by the vehicle owner authorizing the lienholder to accept payment of the lien from the selling dealer. A “lien release” is a document signed by the lienholder releasing its lien on the title and security interest in the vehicle, *when the title itself is not in the possession of the lienholder* for some reason; otherwise, the lienholder simply signs the lien release section that appears on the front of a Pennsylvania certificate of title and mails it to the vehicle owner.

PIADA suggests that in the case of a vehicle with an encumbered title, the selling dealer shall have on file “a title release and authorization for pay-off” that the vehicle owner has signed. In addition, pursuant to federal law, in the case of an encumbered title within the possession of a lienholder, the selling dealer should also have on file a “secure power of attorney.” PIADA proposes amending paragraph (4) to reference the required “secure power of attorney” and adding paragraph (5) to address the “title release and authorization for pay-off.”

Our suggested revision and addition to 19.18a(b)(4) are as follows:

(4) Either a copy of the front and reverse of an unexecuted title, if the title is unencumbered, or, if the title is encumbered, an executed secure power of attorney [a title release from each lien holder to pay off all liens, if the title is encumbered].

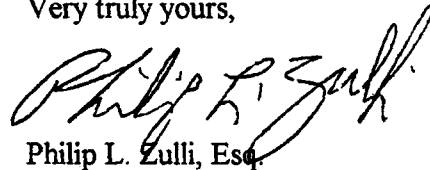
(5) A title release and authorization for pay-off, signed by the vehicle owner, authorizing the dealer to satisfy the lien and receive the title directly from the lienholder, which document or documents the selling dealer shall forward to each lienholder upon paying off all liens.

Our suggested addition to 19.18a is a subsection “(e)”, as a remedy to a dealer who fails to provide a title to the purchaser. We suggest adding the following provisions as subsection “(e)”:

(e) If a dealer sells a vehicle on consignment, but fails to satisfy the lien or deliver an assignment and warranty of title to the transferee within 90 days of the date of purchase, and this failure is the result of an act or omission by the dealer who sold the vehicle, the dealer who sold the vehicle shall accept return of the vehicle from the transferee and shall refund the purchase price less actual depreciation of the vehicle while it was within the possession of the transferee. In refunding the purchase price, the price shall include the listed dollar value of any trade-in vehicle as stated in the sales transaction document, in lieu of the dealer returning the transferee's trade-in vehicle. A dealer which refuses to accept return of the vehicle and refund the purchase price as required by this subsection shall be subject to discipline by the Board.

Please consider these comments. We at PIADA would appreciate the opportunity to discuss these regulations with you and representatives of the State Board of Vehicle Dealers, Manufacturers and Salespersons.

Very truly yours,



Philip L. Zulli, Esq.
Interim Manager

Enclosures: (1)

cc: Edward J. Cernic, Jr., Chairperson,
State Board of Vehicle Dealers, Manufacturers and Salespersons
Thomas Blackburn, Counsel to the State Board of Vehicle Dealers, *etc.*
Mary S. Wyatte, Chief Counsel, Independent Regulatory Review Commission
Mark Singel, Public Affairs Management, LLC
Joe Pantone, President, Pennsylvania Independent Automobile Dealers Association
Vicki Hoover-Price, President-Elect, PIADA
Tim Swift, Chairman of the Board, PIADA
Ed Comas, Vice-President, PIADA