

**STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION**

PROPOSED ORDER AMENDING EMERGENCY RULE

The Wisconsin Department of Transportation proposes an order to:

Create ss. Trans 138.02 (13m) and 138.0225, relating to motor vehicle auction dealers and affecting small businesses.

The Statement of Scope for this Emergency Rule, SS 054-22, was approved by the Governor on June 3, 2022, published in Register No. 799A1 on July 5, 2022, and approved by Secretary of the State of Wisconsin Department of Transportation (“department”) Craig Thompson, as required by s. 227.135(2), Stats, on May 27, 2022. The emergency rule was approved by the Governor on April 13, 2023. The analysis below was prepared by the department.

ANALYSIS

Finding of emergency:

The welfare of retail consumers in the state of Wisconsin are at risk of harm from the sale of motor vehicles from unlicensed motor vehicle dealers. Previously, the department interpreted provisions of s. 218.34, Stats., as authorizing the department to issue motor vehicle buyer licenses only after the statutory procedure for assessing and issuing licenses has concluded, and only permits persons holding said license to bid on automobiles at an auction after the license process is completed. However, the department’s interpretation of the language in s. 218.34, Stats., and the department’s procedures have been invalidated by a recent court decision. The result is that unlicensed dealers can obtain vehicles at Wisconsin motor vehicle auctions through an existing licensing process, where applicants can bid on and purchase vehicles while their license is applied for with the department. The department is seeking a change to ch. Trans 138 through emergency rulemaking in order to close this loophole in the licensing process.

Statutes Interpreted: s. 218.34, Stats.

Statutory Authority: ss. 218.0111 (1), 218.0114 (1) and (4), 218.0152, 218.34, 227.10 (1), Stats.

Explanation of Agency Authority:

Section 218.0111 (1), Stats., requires that the department be the entity to issue all motor vehicle buyer licenses. Sections 218.0114 (1) and (4), Stats., set forth the licensing requirement the legislature has adopted for entities to engage in business as a motor vehicle dealer in Wisconsin. Section 218.0152 (3), Stats., authorizes the department to promulgate rules necessary for the effective administration and enforcement of permits it issues. Section 218.34, Stats., prohibits motor vehicle auctions from accepting bids from customers who do not possess a valid motor vehicle dealer, motor vehicle wholesaler, or motor vehicle

buyer license. Section 227.10 (1), Stats., requires the department is required to promulgate a rule when interpreting an ambiguous statute.

Related Statute or Rule: ch. Trans 138

Plain Language Analysis:

In 2004, the department recognized the need to implement policy consistent with the statutory requirements of s. 218.34, Stats. To this end, the department permitted motor vehicle auctions to accept bids from customers under the following conditions: 1) the auction collected a buyer's license application from the customer; 2) the auction issued a receipt of application to the customer; and 3) the auction forwarded the application to the department. This allowed customers to obtain motor vehicles at auction while the department reviewed their application and issued a license.

Over time, the department observed increases in unlicensed motor vehicle dealer sales and odometer fraud directly connected to the sale of motor vehicles allowed under the 2004 policy. To correct this trend, the department changed policy regarding buyer's licenses in 2018, prohibiting out-of-state customers from bidding at an auction until their application was reviewed and a valid license was issued by the department. In 2021, this policy was further refined to encompass all buyers, regardless of whether they were in Wisconsin or out-of-state.

In 2021, five plaintiffs representing Wisconsin motor vehicle auctions filed an injunction to prevent the department from implementing the 2018 policy. An order from the Jefferson County Circuit Court, in the case, 21CV172, issued January 11, 2022, prohibited the department from implementing the 2018 policy against the named plaintiffs. The department has continued to enforce the 2018 policy against auctions not involved in the injunction. This has created an uneven playing field for auctions and buyers, leading to potential adverse economic impacts to businesses without fully addressing the problem of illegal vehicle sales. Adding to the regulatory uncertainty, on October 31, 2022, 2 additional auto auctions filed a lawsuit against the department in Milwaukee Circuit Court, case 22CV7001, seeking a court order that the pre-2018 policy apply to those plaintiffs as well.

This rulemaking codifies the department's 2021 interpretation of s. 218.34, Stats. The rule clarifies that a license is valid only when the applicant for the license receives written authorization from the department. This is to close the loophole in the licensing process that previously allowed applicants to participate in auctions while the department reviewed their application.

This rulemaking also clarifies the requirements an applicant must meet in order to hold a valid license. The applicant must be employed by a licensed motor vehicle dealer and, if employed by more than one dealer, be licensed by each employer. The applicant must also be at least 18-years-old and pay the required fees to receive the license. Currently, the fee for an out-of-state buyer's license is \$6 and expires on the same date as the person's home state dealer license or 12 months from the date the department receives the application, whichever is sooner. An in-state buyer's license expiring in one year or less is \$6 and an in-state buyer's license expiring in more than a year is \$12. In-state buyer's licenses expires on the same date as the employer's dealer license.

All requirements for buyer's license issuance, the application form, and instructions for renewal can be found on the department's website: <https://wisconsin.gov/Pages/dmv/dlr-agents/busns-licnse/buyerslicense.aspx>.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

There are no known existing or proposed federal regulations addressing motor vehicle purchases at auctions.

Comparison with Rules in Adjacent States:

Illinois.

625 ILCS 5/5-701

(a) No person, other than a licensed new vehicle dealer, a licensed used vehicle dealer, or municipality, shall engage in this State in the business of auctioning vehicles, for more than one owner, at auction or shall offer to sell, solicit or advertise the sale of a vehicle at auction without first acquiring a commercial vehicle auctioneer license from the Secretary of State under the provisions of this Section. A vehicle auction licensee shall be entitled thereunder to sell, solicit, and advertise the sale of used vehicles belonging to others at auction.

(b) An application for a vehicle auctioneer license shall be filed with the Secretary of State, duly verified by oath, in such form as the Secretary of State..."

Iowa.

Iowa Admin. Code 761-425.20 (322)

425.20(2) *Retail auction sales.* Any person who sells at public auction more than six vehicles in a 12-month period shall obtain the appropriate dealer's license. All certificates of title for the vehicles offered for sale at public auction shall be duly assigned to the dealer.

425.20(3) *Place of business.* A dealer's license issued under this rule does not require a place of business.

425.20(4) *Exceptions.*

- a. The state of Iowa, counties, cities and other governmental subdivisions are not required to obtain a dealer's license to sell their vehicles at retail.
- b. This rule does not apply to a vehicle owner, or to an auctioneer representing the owner, selling vehicles at a retail auction if the vehicles were acquired by the owner for consumer use, the vehicles are incidental to the auction, and only one owner's vehicles are sold.

Michigan.

MCL s. 257.248 (5)

A person shall not carry on or conduct the business of buying, selling, brokering, leasing, negotiating a lease, or dealing in 5 or more vehicles of a type required to be titled under this act in a 12-month period unless the person obtains a dealer license from the secretary of state authorizing the carrying on or conducting of that business. A person shall not carry on or conduct the business of buying, selling, brokering, leasing, negotiating a lease, or dealing in 5 or more distressed, late model vehicles or salvageable parts to 5 or more of those vehicles in a 12-month period unless the person obtains a used or secondhand vehicle parts dealer, an automotive recycler, or a salvage pool license from the secretary of state or is an insurance company admitted to conduct business in this state. A person shall not carry on or conduct the business of buying 5 or more vehicles in a 12-month period to process into scrap metal or store or display 5 or more vehicles in a 12-month period as an agent or escrow agent of an insurance company unless the person obtains a dealer license from the secretary of state. A vehicle scrap metal processor that does not purchase vehicles or salvageable parts from unlicensed persons is not required to obtain a dealer license. A person from another state shall not purchase, sell, or otherwise deal in distressed, late model vehicles or salvageable parts unless the person obtains a foreign salvage vehicle dealer license from the secretary of state under section 248b.3 A person, including a dealer, shall not purchase or acquire a distressed, late model vehicle or a salvageable part through a salvage pool, auction, or broker without a license as a salvage vehicle agent. The secretary of state shall investigate and seek prosecution, if necessary, of persons allegedly conducting a business without a license.”

Minnesota.

Minn. Admin. Code 7400.0900.

Subpart 1. *New motor vehicles.* A person who solicits, accepts, offers for sale, or sells new motor vehicles on consignment must be licensed as a new motor vehicle dealer and must have a franchise for each type of new motor vehicle sold on consignment.

Subp. 2. *Used motor vehicles.* A person who solicits, accepts, offers for sale, or sells used motor vehicles on consignment must be licensed as a new motor vehicle dealer, a used motor vehicle dealer, a motor vehicle wholesaler, or a motor vehicle auctioneer.

Subp. 3. *Auctioneers.* This part does not apply to a licensed auctioneer selling motor vehicles at an auction if, in the ordinary course of the auctioneer's business, the sale of motor vehicles is incidental to the sale of other real or personal property.

Summary of the Factual Data and Analytical Methodologies:

No data was collected in developing this rule.

Analysis Regarding Rule's Effect on Small Businesses:

The department has continued to enforce its 2018 interpretation of the policy against auctions not involved in the injunction. Buyers who apply for a license at an auction not involved in the injunction must wait until the department issues them a valid license before participating in an auction. The department may not enforce its 2018 interpretation of the policy against buyers who apply for a license with any of the 5 plaintiffs, meaning that buyers may participate in any of the 5 auctions while waiting for the department to issue them a valid license. Auctions whose buyers may bid and purchase vehicles during the department's review of the application are at an economic advantage over all other Wisconsin auctions. This rulemaking will allow the department to uniformly regulate buyer's licenses. The department's practices for enforcing buyer's licenses remain otherwise unchanged.

The agency contact person listed below is also the small business regulatory coordinator for this proposed rule. This proposed rule, fiscal estimate, and other related documents may be viewed at <https://docs.legis.wisconsin.gov/code>.

Agency Contact Person:

Mark Rather
State of Wisconsin Department of Transportation
Division of Motor Vehicles
4822 Madison Yards Way
Madison, Wisconsin 53705
(608) 266-7737
DOTAdminRules@dot.wi.gov

Place Where Comments Should Be Submitted and Deadline: Comments may be submitted to the agency contact person listed above or through the Legislature's Administrative Rules website <http://docs.legis.wisconsin.gov/code> until the deadline given in the forthcoming notice of public hearing.

TEXT OF RULE

SECTION 1. Trans 138.02 (13m) is created to read:

Trans 138.02 (13m) “Valid license” means a written authorization issued by the department that authorizes the holder to bid on or to purchase at a motor vehicle auction dealer, to an applicant that meets the requirements under s. Trans 138.0225.

SECTION 2. Trans 138.0225 is created to read:

Trans 138.0225 (intro.) License requirements. Only persons specified in s. 218.34 (1) (a), Stats., who hold a valid license may bid on or purchase motor vehicles at motor vehicle auction dealers. All persons must keep the valid license on their person prior to bidding on or purchasing vehicles at a motor vehicle auction.

(1) Applicants for a valid license must:

(a) Be an employee of a licensed motor vehicle dealer.

(b) Have separate buyer licenses for each employer and an application signed by each dealer, if buying for more than one employer.

(c) Be at least 18-years-old.

(d) Pay applicable fees.

(2) No applicant for a license is considered holding a valid license until the department receives a complete application for the license on a form specified by the department, the department approves the application in a manner determined by the department, and the department issues a license to the applicant.

(a) The effective period of a valid license begins when the department issues the license. Motor vehicle buyer licenses expire on the date printed on the license or the expiration date as the sponsoring employer’s motor vehicle dealer license, whichever is sooner. Motor vehicle buyer licenses for persons who live outside this state expire on the same date as the person’s home state dealer license or 12 months from the date the department issues the license, whichever is sooner.

(3) No person may submit bids or purchase motor vehicles at a motor vehicle auction unless they have a valid license in their possession.

(4) Any person whose valid license expires must renew their license in a manner specified by the department.

SECTION 3. This rule takes effect upon publication in the official state newspaper, as provided in s. 227.24 (1) (c), Stats.

(END OF RULE TEXT)

Signed this ____ day of _____ 2023.

Craig Thompson, Secretary
State of Wisconsin Department of Transportation