

You AUTO KNOW®

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Robert A. Poklar, Esq.

Weston Hurd LLP
The Tower at Erieview
1301 East 9th Street
Suite 1900
Cleveland, Ohio 44114-1862
p: 216.687.3243
f: 216.621.8369

rpoklar@westonhurd.com

www.westonhurd.com



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OFFSITE DISPLAY LAW

As most of you already know, the 130th General Assembly amended and substituted House Bill 318 to amend sections of Ohio law regarding the sale and display of motor vehicles. The bill, including its amendments, is 14 pages long and this *You Auto Know* is not going to go page by page to inform you as to the minutiae of the changes. However, there are two very important amendments in the law. The first is addressed in Section 4517.03(B)(1)(b) which specifically states, "A new motor vehicle dealer does not violate division (B)(1) of this section if a customer of a new motor vehicle dealer executes purchase or lease documentation at a location other than the new motor vehicle dealer's established place of business." It must be noted that the previous section (B)(1)(a) specifically stated that, "No new motor dealer shall sell, display, offer for sale, or deal motor vehicles at any place except an established place of business that is used exclusively for the purpose of selling, displaying, offering for sale, or dealing in motor vehicles" What this amendment does is bring the law into the 21st century and the technology that is now commonly used in the sale of motor vehicles, specifically Internet sales. This amendment allows your salespeople to execute sales documents at a location other than the dealership premises.

Section (B)(1)(c) dealing with heavy-duty truck vehicles states that, "if the sale or lease is negotiated and the documents are executed at the customer's business location," then the law will deem that the sale took place at the dealer's established place of business. This is important for those of you with a heavy-duty truck franchise. I remember years ago when I was a young salesperson, selling vehicles at a customer's dining room table and executing the sales documents in their home. Obviously, in the 1990s and early 2000s with the rampant filing of consumer lawsuits this practice fell out of favor inasmuch as any suit-happy consumer would and did utilize it as a CSPA violation.

The one section that is causing the most stir is the ability of dealers to display vehicles offsite. As you were aware prior to the amendment in Ohio law, a dealer could not display offsite without inviting the participation of other same line and competitive dealers to participate in the show. As we all know, this was rarely followed and rarely enforced. In fact, the impetus for modifying the law was simply that some dealers were displaying vehicles and not facing the consequences. The enforcement was sporadic. However, with modern technology finding and penalizing dealers it was easier to enforce. Further, many manufacturers encourage dealer advertising associations and dealers to promote and participate in offsite displays, particularly to benefit charitable organizations. As you know, the prior penalty was a fourth-degree criminal prosecution for display without the proper authorization and approval from the BMV. For motor vehicle shows, the law has been amended at Section 4517.22(5), Motor Vehicle Show. Motor vehicle show is defined as the display of motor vehicles that lasts not more than ten days by more than one motor vehicle dealer. Previous law did not have a time constraint on the motor vehicle show. Further, the sponsor of the show must execute an affidavit in the form provided by the Registrar of Motor Vehicles to be submitted 30 days before the planned show. As always, at the motor vehicle show no contracts or deposits shall be taken or sales consummated. For individual dealers, the law was modified under Section H to specify that display is authorized pursuant to Section 4517.221 of the Revised Code. That section specifically states that a display away from a dealer's established place of business can be held for charitable or civic purposes, being defined as "(b) a benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, or civic objective or any objective that benefits law enforcement personnel, firefighters, or other persons who protect the public safety," and specifically states "that charitable or civic purposes not limited to those purposes for which contributions are tax deductible." The individual dealer can display motor vehicles in order to provide the general public the opportunity to look at the vehicles including their safety features and new technology. However, the displaying dealer can only display his vehicles in that area of responsibility assigned by the manufacturer. Pursuant to the amendment the dealer cannot display more than six vehicles that can be utilized for test drives; the dealer has the ability to have an unlimited number of displays throughout the year. The only caveat is that the dealer must file an affidavit with the Bureau of Motor Vehicles at a minimum three days prior to the date of display with adequate proof that the display is within the dealer's area of responsibility. The affidavit will also ask the beginning and ending dates of the display and that to the best of the dealer's knowledge no other dealer will display a vehicle at that location and that no contracts or deposits will be taken and that the display is for either charitable or civic purposes. Further, a dealer does have the ability to display outside of its area of responsibility. Again, the dealer must provide an affidavit to the Registrar of Motor Vehicles within three days of the display and provide the same information. However, the dealer must get permission from the dealer whose area of responsibility has been assigned to that display area, no test drives are permissible, and display outside a dealer's area of responsibility is limited to six calendar days.

It is interesting to note that the law changes on March 23, but the old penalties of a fourth-degree misdemeanor will remain until September 23. However, after September 23, there will be a monetary penalty of \$1,000 per violation per day. It must be noted that this law applies only to single dealer displays and does not amend the requirements for state or county fairs or big box shows.

There are pros and cons to the amendment of the law and I am not going to provide any editorial comment regarding same. However, the amendments to the law should level the playing field for all dealers.



CONTACT INFORMATION

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As always, these are highlights of the law and are not to be construed as containing the entire law. This is not to be construed or relied upon as a legal opinion. If you are presented with this problem, contact your legal counsel for advice.

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Having been a Chevrolet dealer, Robert A. Poklar's business background and experience in the automotive industry aid him in his representation of numerous Ohio automotive dealerships. He also represents after-market service companies, trade organizations, dealers, advertising associations and corporations. Pursuant to certain ethical standards, this may be construed as advertising.