

# Newsletter of the Colorado Motor Vehicle Dealer Board and Auto Industry Division

February 2001, Vol. XXVII, No. 1

## Gretchen Eberhardt Joins Board

**Governor Bill Owens** appointed **Gretchen Eberhardt** to the Motor Vehicle Dealer Board to fill one of three public member positions. Her term will run through June, 2003.

Ms. Eberhardt is an attorney in private practice. Gretchen is a partner with Eberhardt and Eberhardt.

She is a Colorado native and a Littleton High School graduate. After graduating from the University of Colorado-Boulder, she attended law school in California. Gretchen received her law degree from Whittier Law School.

Ms Eberhardt is a Board Member with the Arapahoe/ Douglas Mental Health Network. She volunteers with the Jefferson County Adult Diversion program, Lawline 9, Rocky Mountain PBS as a phone bank supersvisor, Children's Hospital and performs estate planning seminars for AARP and Kaiser Permanente.

Gretchen stated, "It is an honor to be appointed to the Motor Vehicle Dealer Board by Governor Bill Owens. I look forward to working with the other Board

Finance Manager		
General Manager		r
Sales I	Manager	
	0	

**ROUTING BOX** 

members, the industry, the public and the Auto Industry Division."

## Director's Desk by Kirk Martelon, Exec. Secretary/Director

## **Board Meetings Open To Licensees**

Dealers are reminded that Motor Vehicle Dealer Board meetings and hearings are open to the public. Licensees are welcome to attend.

The Board meets the second Tuesday of every month at 9:00 a.m. The meetings are normally held at the Department of Revenue offices at 1881 Pierce Street, Lakewood in conference room A (room 116). Meeting notices stating the location will appear in the calendar section of *Wheels*. The next two meetings will be held February 13, 2001 and March 13, 2001.

Anyone interested in attending a meeting may call the Board office at (303) 205-5696 for a copy of the agenda and location of future meetings.

At the meetings, the Board reviews and then approves or denies new applications for dealers, salespersons and wholesalers. The agenda often includes hearings on licensees. Other Board business may include the reviewing of complaints filed, changes in licenses, discussion of problem areas and review of standards and policies relating to the regulation of the motor vehicle industry.

You are encouraged to get to know your Dealer Board. We hope to see you at a future meeting.

# Licensing Lot by Larry Dyslin, Licensing Manager

## REMINDER-LIABILITY INSURANCE REQUIRED

Motor vehicles cannot be operated on public highways in Colorado unless the vehicle owner has insurance or a certificate of self-insurance in full force. Dealers must either be self-insured or have insurance for their vehicles. C.R.S. 42-4-1409 Compulsory insurance. (1) No owner of a motor vehicle required to be registered in this state shall operate the vehicle or permit it to be operated on the public highways of this state when the owner has failed to have a complying policy or certificate of self-insurance in full force and effect as required by sections 10-4-705 and 716, C.R.S. (2) No person shall operate a motor vehicle on the public highways of this state without a complying

policy or certificate of self-insurance in full force and effect as required by sections 10-4-705 and 716, C.R.S.

#### **USE CURRENT SALESPERSON APPLICATION**

The salesperson application (Form DR115) requires an applicant to provide full details of **any arrests, charges or criminal convictions or disciplinary actions** against a professional or occupational license within the last ten years. If there has been a criminal conviction, a copy of the final court judgment must be attached to the application. These disclosures are required for the Board and for the benefit of the hiring dealer. We will no longer accept obsolete application forms that do not request this information.

Page 2 February 2001/Wheels

# Investigation Insight by Mary Marvin, Investigator Supvr.

UCCC promulgated new rules regarding GAP insurance, which became effective November 1, 2000. A fee or charge for guaranteed automobile protection ("GAP") may be contracted for and received as an additional charge if the consumer has provided written authorization for the purchase of GAP after receiving written notice of the conditions required by UCCC Rules.

A partial disclosure requirement is as follows:

- (1) that the purchase of GAP is not required in order to obtain the credit or any particular or favorable credit terms;
  - (2) the fee or premium for GAP;
  - (3) that the consumer may wish to consult an insurance

agent to determine whether similar coverage may be obtained and at what cost:

- (4) that GAP benefits may decrease over the term of the consumer credit sale or consumer loan:
- (5) that the consumer may cancel GAP for any or no reason within thirty (30) days after GAP was purchased and receive a full refund of the GAP fee or premium so long as no loss or event covered by GAP has occurred; and,
- (6) GAP is not a substitute for collision or property damage insurance.

Please see Uniform Consumer Credit Code Rules for the full disclosure requirements before a fee can be charged.

# Salesperson Licensing Requirements Revisited

Several Dealer Board regulations were amended by the Board at a public rule making hearing. The amended regulations include 12-6-104 (3)(d)(II), 12-6-104 (3)(j), 12-6-108 (1)(c), 12-6-118 (3)(b), 12-6-118 (5)(b), and 12-6-118 (5)(g). Most of the changes were house cleaning type changes. Shown below is the regulation regarding salesperson licensing.

**REGULATION 12-6-108 (1)(c).** Temporary salesperson license requirements.

- 1). A temporary license shall not issue, and a salesperson shall not be allowed to offer, negotiate or sell vehicles unless a signed application, complete in every respect, bond, fees, and an examination affidavit have been submitted to the Board. Postmark or date/time stamp shall be evidence of submission. Dealers' payrolls and other evidence will be checked to ascertain that all salespersons for such dealers are licensed.
- 2). All original applicants shall have a criminal history background investigation conducted prior to the issuance of a permanent license.
- 3). No temporary license shall issue to any person who has been the subject of disciplinary proceedings before the Board

within the past 5 years, unless such disciplinary proceedings resulted in dismissal of all charges. Such person's application shall require prior Board review and approval of a license before said person shall be permitted to engage in activities requiring a salesperson license.

- 4). Any salesperson applicant who has been notified by the Auto Industry Division that additional documentation is required by the Board before a license can be approved, and who fails to timely comply with the request for information, shall be deemed not to have submitted a complete application and may not engage in activities requiring a motor vehicle salesperson license until the Board has reviewed and approved the application.
- 5). The Executive Secretary may issue a notice of denial to any applicant who fails to provide documentation as requested, if the application discloses, on its face, grounds for denial under section 12-6-118 (5) or (6), C.R.S.
- 6). Any person who allows such applicant to engage in activities requiring a motor vehicle salesperson license may be subject to disciplinary action for violation of section 12-6-109 C.R.S.

#### **DEALER BOARD MEMBERS**

President, Mike Faricy
First Vice President, Steve Perkins
Second Vice President, Fred Emich
Gretchen Eberhardt, Lee Payne, Greg Sopkin,
Mark Striegnitz, Jim Varner, Mike Weiman
Executive Secretary, Kirk J. Martelon

#### **AUTO INDUSTRY DIVISION**

**Division Director,** Kirk J. Martelon **Licensing Manager,** Larry Dyslin **Investigator Supervisor,** Mary Marvin

Correspondence is welcome. Address to:
Larry Herold, Auto Industry Division
1881 Pierce Street, Lakewood, CO 80214
Phone: (303) 205-5604 FAX: (303) 205-5977
E-mail: dealers@spike.dor.state.co.us
Internet: www.mv.state.co.us/dealer.html

## CALENDAR

**Dealer Board Business Meeting:** Second Tuesday of each month at 9:00 am, 1881 Pierce St, Lakewood.

**Dealer Board Hearings:** Fourth Tuesday of each month, if necessary, at 9:00 am, 1881 Pierce St, Lakewood.

**License Law Seminar - Colorado Springs:** First Tuesday of each month at 10:00 am, 3650 Austin Bluffs Pkwy, Ste. 188, in the Shops of the Bluffs Mall, Colorado Springs.

**License Law Seminar - Lakewood:** Third Tuesday of each month at 9:00 am, 1881 Pierce St, in the Department of Revenue Building, Conf. Rm. C, Lakewood.

Note: Times and locations are subject to change. Call the Auto Industry Division at (303) 205-5604.

Please note: While every effort is made to make the information in Wheels as accurate and helpful as possible, it is not offered as a substitute for legal advice.

February 2001/Wheels Page 3

# Compliance Corner by Mary Marvin, Investigator Supvr.

#### **Compensation Disclosure Forms**

The Compliance Section has learned that some motor vehicle dealers who negotiate for a consumer, the sale, exchange, or lease of used and new motor vehicles, have failed to comply with the Compensation Disclosure requirements.

Whenever a motor vehicle dealer negotiates this type of sale for a consumer, the dealer must complete the Compensation Disclosure form which discloses whether the motor vehicle dealer will receive any compensation from the consumer and whether the motor vehicle dealer will receive any compensation from the owner of the motor vehicle as a result of such transaction.

**Prior to completion of such sale, exchange or lease**, the dealer shall disclose in writing to all parties the amount of the compensation to be received from the consumer and the amount of compensation to be received from the owner of the motor vehicle. The form must be signed by both the dealer negotiating the sale, the dealer/owner of the vehicle and by the consumer.

#### **Demo Plates**

Note to our Law Enforcement Readers: Please be advised that the Use of Demonstration License Plates has been revised to read: "A dealership employee, during *Normal* business hours of the dealership, may use a dealer demo plate for conducting legitimate dealership business."

## "Detail Work" Scam Victimizes Colorado Dealers

Eight Denver-area dealerships were recently victimized by a scamartist. An individual set up two businesses, Auto Body Touch Up and Body Touch. He invoiced the dealerships using VIN's and vehicle information for detail work that was not performed.

A grand jury indictment indicated that 127 of the 137

invoices were paid. The indictment alleged that the bills also contained forged signatures of dealership managers.

Dealerships in Georgia and Texas were also victimized. The individual faces 10 counts of mail fraud. Each count carries a maximum penalty of five years in federal prison and fines of up to \$250.000.

# Changes To UCCC by Laura E. Udis, UCCC Administrator

During the 2000 General Assembly, the state legislature passed House Bill 00-1185 making significant changes to Colorado's consumer finance law – the Uniform Consumer Credit Code. Some of the more important changes that might impact automobile dealers are summarized below. You should consult an attorney for more detailed information. Note that these changes apply to retail installment sales and may not apply to direct loans.

### Changes Effective July 1, 2000

Warning: these changes apply to credit contracts written on or after July 1, 2000. You may not apply any rate or fee increases to contracts written before that date.

- Late Fees increased to an amount up to \$15 if contracted for, whether or not the contract is precomputed or interest bearing. There are other requirements on when the fee becomes due, how often it may be imposed, and notice of imposition of the fee. [Section 5-2-203(1)(a), C.R.S.].
- · <u>NSF Fees</u> increased to an amount up to \$25 if contracted for. [Section 5-2-202(1)(e)(II), C.R.S.].
- · <u>Finance Charges</u> the graduated or "blended" step rate categories increased to 36% APR for dollar amounts to \$1,000, 21% APR for dollar amounts of more than \$1,000 to \$3,000, and 15% APR for dollar amounts greater than \$3,000 if contracted for. There was no change in the flat 21% APR applicable to all dollar amounts. [Section 5-2-201(2)(a)].
- · <u>Amount Financed</u> UCCC jurisdictional amount increased from \$25,000 to \$75,000.

- UCCC Notification Fees car dealers are required to pay the UCCC notification fee only if they keep and collect credit contracts for more than 30 days. If all credit contracts are sold or assignment within 30 days after they are written, no filing or fee is required. Notification and volume fees decreased to \$5 and \$1 per \$100,000, respectively. These are the yellow forms mailed to you at the end of each calendar year. [Sections 5-6-201 & 202, C.R.S.]
- · Records UCCC Rule 10 on record maintenance was expanded to include all creditors, rather than just direct lenders. Effective November 1, 2000, creditors must retain all credit records to reflect their compliance with the UCCC. See the rule for details.

#### **Changes Effective January 1, 2001**

Warning: these changes apply to all actions taken on or after January 1, 2001, regardless of the date the credit contract was written.

· <u>Cosigners</u> – creditors cannot accelerate the balance of an account as to a cosigner nor report the debt on the cosigner's credit report until after sending the cosigner a right to cure default notice and expiration of the cure period. [Sections 5-5-110 & 111, C.R.S.].

You can view the new UCCC and information on the legislative changes at <a href="www.ago.state.co.us">www.ago.state.co.us</a> under the "Uniform Consumer Credit Code" heading on the left-hand side. We regret that we cannot draft or approve contracts. If you have questions, please contact the UCCC at (303) 866-4494, <a href="www.uccc@state.co.us">wccc@state.co.us</a>, or (303) 866-5691 (fax).

Page 4 February 2001/Wheels

## **DEALER BOARD ACTIONS**

Charles J. Cusumano dba C J Auto - Loveland - #8769 - purchasing full-use plates when not authorized to do so. \$1000 FINE, 6-MONTH PROBATION.

John Burnside dba Main Motor Company - Brighton - #2585 - failure to deliver title and required disclosure form showed both cash contract and finance agreement. \$1000 FINE, 1-YEAR PROBATION

Patrick Spence dba American Brokerage Co. - Commerce City - #7137 - failure to honor a written agreement (failure to honor a draft or check). LICENSE REVOKED.

King Credit Auto Sales - Thornton - #2554 - salesperson having made an illegal transaction. \$1000 FINE, 6-MONTH PROBATION.

Michael Bahr dba Executive Auto - Denver - #3362 - failure to deliver title, failure to perform written agreement and failure to comply with emissions requirements. LICENSE REVOKED. Duane J. Peterson, Salesperson - improperly withholding, misappropriating or converting to one's own use any money belonging to customers or other persons. \$10,000 FINE, 2-YEAR PROBATION.

## Title & Registration Tips & Rules by Mary Tuttle, Title/Reg Admin.

#### Taxable Value For Tax Class A & B Vehicles

HB01-1140, effective August 2, 2000, set forth that we use the "actual purchase price" to determine the taxable value for Tax Class A & B vehicles when being sold on an MSO. Tax Class A includes all IRP (apportioned plates) vehicles and Tax Class B includes all trucks (includes light trucks and pick-ups), truck tractors, utility trailers weighing over 2001 pounds, and semi-trailers. When a vehicle is being leased, the "Gross

Capitalized Cost", which is the value of the vehicle agreed upon by leasing agent and lessee of the vehicle at the time of the lease agreement, will be used to determine the taxable value. Gross Capitalized Cost is not reduced or increased by any prior credit or lease balance or by trade-in or down payment. Therefore, the "Gross Capitalized Cost" will need to be indicated on any title application (form DR2411) that involves a leased vehicle for Tax Class B being titled from an MSO.

## New Electric/Gas Vehicle Is Exempt From Emissions Testing

We recently received information from the United States Environmental Protection Agency regarding the Toyota Prius hybrid-electric vehicle that is propelled by a combination of electric motor and internal combustion (IC) engine, or electric motor only, depending on the operating conditions. Because the IC engine in the Toyota Prius does not run continuously under

normal operations, it is incompatible with all emissions test procedures.

The U.S. Environmental Protection Agency has granted the Prius an exemption from exhaust emissions testing under a specific provision of the Code of Federal Regulations (40 CFR 86.1427(d).

**ВЕТИРИ SERVICE REQUESTED**