

MINUTES
AUTO INDUSTRY ENFORCEMENT DIVISION
RULEMAKING WORKING GROUP

Meeting of July 30, 2015
1:00 p.m. – 4:00 p.m.

1881 Pierce St.
Lakewood, CO 80214

Working Group Members Present

Chair, Bruce Zulauf (CDOR – Auto Industry Division)
Co-Chair, Matt Heap (CDOR – Auto Industry Division)
Martin Kenney (CDOR – Auto Industry Division)
Leland Bebee (CDOR – Auto Industry Division)
Michael Dommermuth, Esq. – CADA
Tammi McCoy, CADA
Todd O’Connell, CIADA
Matt Osbourne, Esq.
John Schenden, Former Board member
Steve Perkins, Former Board member
Sean Doyle, Better Business Bureau
Dean Strawn, Auto Dealer
Y.E. Scott (Colorado Attorney General’s Office)

Working Group Members Absent

Michael McKinnon, Esq. - CIADA
Jerry Abboud, PDAC
Steve Perkins, Former Board Member
Rick Wynkoop, Esq.
Sean Doyle, Better Business Bureau
Dean Strawn, Auto Dealer

Director Zulauf, Chair, opened the meeting at 1:15 p.m. Each working group member introduced themselves. Director Zulauf stated that the purpose of today’s meeting is to discuss Mr. Bebee’s research related to statute/regulation history. There will be general discussions of Mr. McKinnon’s July 23, 2015 letter, CADA’s damage disclosure suggestions, Mr. Wynkoop’s and Mr. Osborne’s disclosure suggestions.

Mr. Bebee stated that the primary statute (§12-6-118) has not been altered since 1992 and the regulation related to the statute came in on April 30, 1994. At the time the Spedding decision was written and released on May 16, 1996 the regulation and the statute were both fully in effect. There is nothing in Spedding decision referring to the regulation, which means facts predated the regulation or the court saw no reason to reference the regulation.

There was a general discussion of §6-1-708 in relation to the two Regulations:

- 12-6-118 (3) (i) Motor Vehicle Regulation – Material Damage disclosures and;
- 12-6-520 (3) (h) Powersports Regulation – Material Damage disclosures

Mr. McConnell stated, in conjunction with the letter submitted by Mr. McKinnon referencing Material Damage, CIADA broadly stands by its initial damage disclosure definition and that there needs to be clarity for the sake of the industry. The dealers need to know more than just the material damage definition. He would like to get clarity on the use of the term “as is”.

There was a general discussion of use of the used car term “as is” in the industry.

Mr. Zulauf stated that the Federal Trade Commission (FTC) rule on the used car term “as is” is only related to warranty.

Mr. Heap stated that the industry’s interpretation that the term “as is” covers the suitability of the vehicle, damages and conditions of the vehicle whereas the Division’s opinion, from extension research, finds the used car rule only covers warrant ability. Mr. Heap further stated that in 2008, the Attorney General’s office petitioned the FTC to try to get the regulation expanded to cover disclosure in writing of things that would be material to a buyer.

A general discussion of the used car term “as is” and selling at auctions resumed.

Ms. Mcoy, CADA, suggested no change to the first sentence of the regulation and suggests crossing out “**disclosure**” on the contract form and incorporating the words “**written disclosure**” instead.

Mr. Zulauf stated that Mr. Wynkoop’s and Mr. Osbourne’s suggestion to add the sentence at the end of the regulation “**An “as-is” statement disclaims implied warranties and shall be construed consistent with C.R.S. §4-2-316**”.

The Group took a 10 min. break – Group reconvened at 2:25 p.m.

There was a general discussion of Ms. McCoy’s recommended changes to regulation 12-6-118 (3) (j).

There was a general discussion of material damage and material particulars.

Mr. Zulauf informed the Group that the focus of the next stakeholder meeting will return to Off-Premise Permit discussions and recommendations for change or modification to the current rule.

Mr. Dommermuth suggested removing the word “**damage**” and replace with the word “**particulars**” in the regulation and discuss at the next meeting.

Mr. Dommermuth and Ms. McCoy, CADA will tweak the proposed changes they have made and present the new modifications at the next stakeholder meeting.

The Division will compose a list of examples of the types of material particulars they have encountered during investigations and will discuss further at the next stakeholder meeting.

The next Stakeholder meeting is scheduled for Wednesday, August 19, 2015, 1:30 p.m. in the Boards and Commissions conference room located at 1881 Pierce Street, Lakewood, CO 80214.

Director Zulauf thanked everyone for their participation and adjourned the meeting at 3:40 p.m.

(Note: The minutes of these rulemaking working groups are very general in nature and only summarize the contents of the meeting. They are not verbatim transcripts and are based principally upon the digital recording of the meeting and upon the later collaboration of staff attendees to ensure that the summary faithfully captures the matters before the working group and the discussion the group had. The digital recording of the meeting is a permanent record of the Division, retained in the electronic filing system of Division, and is available on the Division's website.)