

CONNECTICUT AUTOMOTIVE RETAILERS ASSOCIATION

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Written Testimony of Mr. James Fleming of Simsbury, Connecticut
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HB 6495 "An Act Concerning Revisions to the Motor Vehicle Statutes", Raised Bill No 6495 contains five (5) provisions that are cause for alarm among members of the Connecticut Automotive Retailers Association the trade association that I represent. Each of the proposed amended sections I'll speak about have been revised with increased penalty designations which we believe to be unnecessary, misguided and, in several cases, just plain wrong.

But first, a little background. For over 30 years, DMV statutory penalties have been characterized as civil violations and infractions. According to the legislative history notes following CGS §14-51aⁱ, the legislature made a conscious effort in 1981 to decriminalize DMV statutes. As an offset, the legislature then saw fit to raise the fines for DMV infractions and violations to enhance their bite. That was the trade off, decriminalization in return for higher civil fines.

Despite decriminalization, the Commissioner of Motor Vehicles still retained broad discretionary powers under CGS §14-64 (See Attachment A) to insure that licensees toe the line. She has the power to impose fines (up to \$2,000 per violation), order restitution and, if need be, to suspend or revoke licenses of its dealers and repairers. If you would but review §14-64 (see footnotes), I believe that you would find ample existing authority to bring to bear against licensees who are repeat offenders.

For instance, take a look at the first of the twelve specific "trip" provisions in the statute.ⁱⁱ The Commissioner need only establish that a licensee "*has violated any provision of any statute or regulation of any state or any federal statute or regulation pertaining to tifs business as a licensee...*" Why create new statutory edicts when, arguably, all state and federal statutes and regs can already be brought to bear? Other "trip" provisions are specific to licensee business and may be very pointed in their application. If there is a need to amend a DMV statute to address a regulatory loophole, then do so by amending or augmenting the twelve trip provisions. Our position is this: If a licensee has an occasional offense, fine him. If he or she is a chronic offender, consider the suspension of the license to do business or, ultimately, its revocation. *These are significant and measured powers.*

Recently, our licensed dealer constituents have noticed the creep back toward criminalization. What once was characterized as an infraction or violation is now deemed a Class B Misdemeanor. Let me give you some examples:

1. CGS § 14-52(d) [Line 719] makes it a Class B Misdemeanor offense for any DMV Licensee to sell a motor vehicle on consignment or as a broker for another person. A similar misdemeanor designation was added to this subsection back in 2002 and directed at "any person, firm or corporation" operating without a license. Why is it necessary to

specifically criminalize the involvement of a Licensee when the Commissioner already has the power to fine, suspend or yank the license? See §14-64 (1), (4) or (5)?

2. CGS § 14-62(d) [Line 843] makes it a Class B Misdemeanor offense for any Dealer to sell a Used vehicle without giving the buyer a valid Certificate of Title at the time of sale with applicable lien information. This amendment apparently applies to both retail and wholesale transactions. A fine would seem to be a much more appropriate and measured penalty for this type of offense than the possibility of six months in jail. If this amendment should pass, determining “the time of sale” could become important. It’s conceivable that an unintended and significant hardship might occur if there was any delay (a day? an hour?) in providing the paperwork after the initial delivery. Violations, even those resulting from inadvertent oversight, must result in conviction due to non discretionary (“shall”) language. A lack of criminal intent would not appear to be defense. The Commissioner should rely on §14-64 (1), (2), (7)(B), (8).
3. CGS § 14-62(g) [Line 892] makes it a Class B Misdemeanor for any Dealer to violate the new safety inspection provisions which were passed last year for used vehicles. Performing the inspection and repair of the vehicle may be the easiest aspect of the statute. Repetitive notations and signatures on multiple transactional documents (the retail purchase order, the sales invoice and the safety inspection forms) with copies to the prospective buyer *at time of execution* (not delivery) create an opportunity for confusion and inadvertent mistakes. Instead of creating new Misdemeanor status, why not employ tools in 14-64 (1), (2), (4), (5)?
4. CGS § 14-62(h) [Line 900] makes it a Class B Misdemeanor for any Dealer delivering a retail used vehicle before payment has been made or financing approved. As in 2. above, this offense is more appropriately addressed by a fine than the prospect of criminalization. Consider using tools in 14-64 (7) and (8) instead.
5. And CGS § 14-65j(e) [Line 1716] makes it a Class B Misdemeanor for any violation of this section. I imagine that the intended target of this amendment is false and misleading dealer statements (subsection (a)) and charging for repairs not performed (subsection (b)) for repairs charged but not performed, but the amending language is anything but specific and will, doubtless have some unintended consequences. Why not simply rely on the very specific provisions of § 14-64 (4) and (9)?

Usually, criminal statutes are enacted to punish bad acts resulting from criminal intent. But that hasn’t happened here, necessarily. As a whole, these misdemeanors punish “technical” violations, often without criminal intent. For instance, in (3) above, what would happen if a dealer correctly inspected a vehicle and then prepared and completed all safety related documentation. Then, imagine, amid all of the shuffling and execution of the multiple forms required, the dealer neglects to give a copy of one form to the customer *at the time of execution*. Should that oversight warrant a misdemeanor prosecution? Or, in (5) above, wouldn’t the proposed amendment criminalize a repair facility’s failure to notify a customer that his car repair would not be complete at the end of the day (subsection (c)). That may not have been the original intention but it will likely be the result if these misdemeanor amendments are enacted.

I mentioned discretionary power and that is worth pondering. The language of 14-64 permits the Commissioner to weigh the circumstances in each case. The language in § 14-64 is permissive (“may”), not mandatory (“shall”). Not so with the Misdemeanor language that’s been proposed. In each of the noted cases, the language is mandatory.

What happens if a licensee is convicted of one of these misdemeanors?

Dealers have much to lose. First, under CGS § 14-52aⁱⁱⁱ, a *conviction* under the DMV statutes would automatically result in the dealer's DMV license being placed in jeopardy. If not immediately, the dealer would face a DMV hearing at the time of his license expiration. The Commissioner would have discretion as to whether to renew or revoke the license. Assuming the latter, if the licensee was also a new vehicle franchisee, the franchise, too, might be terminated under the dealer's sales and service agreement with the manufacturer. Virtually all manufacturer franchises have provisions which terminate upon the happening of adverse dealer specific events that impact the dealers' qualification to continue. Conviction of felonies and of misdemeanors or crimes of moral turpitude routinely results in franchise termination.

Similarly, the loss of a dealer license (as a result of an adverse ruling before the Commissioner) would automatically terminate the franchise. Either way, the dealer would likely be an ex-dealer very soon. For a dealer licensee, even lower level misdemeanors can topple a going concern and jeopardize many millions of dollars worth of investment.

Who are targets of these new Misdemeanor provisions?

It has been voiced that the Misdemeanor sanctions of the proposed legislation are intended toward licensees other than the new vehicle dealers. That may be but it is of little solace. The proposed statutory language does not distinguish as to whom it will apply and, as noted above, a new vehicle dealer cannot afford to find himself convicted of any crime on a technical basis. The stakes are simply too high.

In closing, CARA believes:

a. Proposed misdemeanor penalty designations are unnecessary.

- The legislature consciously chose to decriminalize the DMV statutes ('81).
- The Commissioner has ample powers to enforce compliance on licensees who are repeat offenders in CGS 14-64 (fines, suspensions, revocations & restitution).

b. Misdemeanors are too harsh a tool for the circumstances addressed.

- Non discretionary.
- The acts complained of do not evidence an appropriate degree of criminal intent.
- Inadvertent acts should not be the basis of criminal convictions; and,
- The effect of a criminal conviction on a licensed new car dealer would likely result in a termination of DMV dealer license and, thereafter, a termination of a manufacturer's franchise.

Attachment A

ⁱ **Sec. 14-51a. Civil penalties.** The commissioner may, after notice and hearing, impose a civil penalty of not more than one thousand dollars on any person, firm or corporation who violates any provision of sections 14-54 to 14-67a, inclusive, or of not more than two thousand dollars on any person, firm or corporation who violates section 14-52.

History: P.A. 81-206 converted the criminal fines into civil penalties imposed by the commissioner; P.A. 82-303 increased penalty for violations of Sec. 14-52 from \$1,000 to \$2,000 and substituted reference to Sec. 14-53 for reference to Sec. 14-51; P.A. 02-70 deleted reference to repealed Sec. 14-53, effective July 1, 2002.

ⁱⁱ **Sec. 14-64. Suspension and revocation of licenses. Civil penalties. Restitution orders.** The commissioner may suspend or revoke the license or licenses of any licensee or impose a civil penalty of not more than one thousand dollars for each violation on any licensee or both, when, after notice and hearing, the commissioner finds that the licensee (1) has violated any provision of any statute or regulation of any state or any federal statute or regulation pertaining to its business as a licensee or has failed to comply with the terms of a final decision and order of any state department or federal agency concerning any such provision; or (2) has failed to maintain such records of transactions concerning the purchase, sale or repair of motor vehicles or major component parts, as required by such regulations as shall be adopted by the commissioner, for a period of two years after such purchase, sale or repairs, provided the records shall include the vehicle identification number and the name and address of the person from whom each vehicle or part was purchased and to whom each vehicle or part was sold, if a sale occurred; or (3) has failed to allow inspection of such records by the commissioner or the commissioner's representative during normal business hours, provided written notice stating the purpose of the inspection is furnished to the licensee, or has failed to allow inspection of such records by any representative of the Division of State Police within the Department of Public Safety or any organized local police department, which inspection may include examination of the premises to determine the accuracy of such records; or (4) has made a false statement as to the condition, prior ownership or prior use of any motor vehicle sold, exchanged, transferred, offered for sale or repaired if the licensee knew or should have known that such statement was false; or (5) is not qualified to conduct the licensed business, applying the standards of section 14-51 and the applicable regulations; or (6) has violated any provision of sections 42-221 to 42-226, inclusive; or (7) has failed to fully execute or provide the buyer with (A) an order as described in section 14-62, (B) the properly assigned certificate of title, or (C) a temporary transfer or new issue of registration; or (8) has failed to deliver a motor vehicle free and clear of all liens, unless written notification is given to the buyer stating such motor vehicle shall be purchased subject to a lien; or (9) has violated any provision of sections 14-65f to 14-65j, inclusive, and section 14-65i; or (10) has used registration number plates issued by the commissioner, in violation of the provisions and standards set forth in sections 14-59 and 14-60 and the applicable regulations; or (11) has failed to secure or to account for or surrender to the commissioner on demand official registration plates or any other official materials in its custody; or (12) has been convicted, or if the licensee is a firm or corporation, an officer or major stockholder has been convicted, of a violation of any provision of laws pertaining to the business of a motor vehicle dealer or repairer including a motor vehicle recycler, or of any violation involving fraud, larceny or deprivation or misappropriation of property, in the courts of the United States or of any state, or has failed to make full disclosure of any such conviction. In addition to, or in lieu of, the imposition of any other penalties authorized by this section, the commissioner may order any such licensee to make restitution to any aggrieved customer.

ⁱⁱⁱ **Sec. 14-52a. Grounds for refusal to grant or renew license.** The commissioner may, after notice and hearing, refuse to grant or renew a license to a person, firm or corporation to engage in the business of selling or repairing motor vehicles pursuant to the provisions of section 14-52 if the applicant for or holder of such a license, or an officer or major stockholder if the applicant or licensee is a firm or corporation, has been convicted of a violation of any provision of laws pertaining to the business of a motor vehicle dealer or repairer including a motor vehicle recycler, or of any violation involving fraud, larceny or deprivation or misappropriation of property, in the courts of the United States or of any state. At the time of application for or renewal of such a license, each applicant or licensee shall make full disclosure of any such conviction within the last five years.