



STATE OF CONNECTICUT

DEPARTMENT OF MOTOR VEHICLES

Legal Services Bureau
60 State Street, Wethersfield, CT 06161; (860) 263-5130
<http://ct.gov/dmv>



NOTICE OF INTENT TO AMEND REGULATION

In accordance with the provisions of subsection (a) of Section 4-168 of the Connecticut General Statutes, notice is hereby given that the Commissioner of Motor Vehicles, pursuant to Section 14-63 of the Connecticut General Statutes, proposes to amend the regulations regarding "Complaints Against and Stipulation by Motor Vehicle Dealers and Repairers", Section 14-63-45b to 14-63-45c, inclusive, and to repeal Sections 14-63-45d and 14-63-45e, inclusive, of the Regulations of Connecticut State Agencies.

Statement of purpose: The purpose of the amendment to the regulation is to simplify and streamline the procedures regarding the operations of and services provided by the Consumer Complaint Center of the Department of Motor Vehicles, which will enhance its effectiveness. The amendment also clarifies the role of the agency investigator in such matters. In addition, the amendment incorporates changes from the 2013 legislative session that provide greater flexibility for the Commissioner in cases where one or more violations of law have occurred.

Comments regarding this proposed regulation may be submitted in writing within thirty (30) days following the electronic posting of this notice to Anne F. Howroyd, Division Manager, Legal Services Division, 60 State Street, Wethersfield, CT 06161; or via e-mail at anne.howroyd@ct.gov.

Persons interested in obtaining a copy of the complete text of the proposed regulation, the fiscal note, or the small business impact statement may contact Anne F. Howroyd, Division Manager, Legal Services Division, 60 State Street, Wethersfield, CT 06161, via telephone at (860) 263-5460, or e-mail at anne.howroyd@ct.gov.

Anne F. Howroyd, *Division Manager*
Legislation & Regulations Unit
Legal Services Division

Howroyd, Anne

From: Howroyd, Anne
Sent: Thursday, February 06, 2014 11:36 AM
To: SOTS Regulations
Cc: Howroyd, Anne
Subject: DMV - Notice of Intent - Complaints against and stipulation by MV Dealers & Repairers
Attachments: noticeof intent 14-63.45b and 45c.2.6.14.doc

Hello there!

Attached hereto this e-mail correspondence, please find DMV's Notice of Intent concerning amendments to 14-63-45b to 14-63-45c, inclusive and the repeal of section 14-63-45d to 14-63-45e, inclusive of the Regulations of Connecticut State Agencies.

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

Anne F. Howroyd, Division Manager
Legislative & Regulations Unit
Legal Services Division
CT Department of Motor Vehicles
(860) 263-5460

Instructions: (1) Save a copy of this document to your computer; (2) Review the detailed *Instruction Page* provided for important specific directions and legal disclaimer; (3) To enter data, use the Tab key to move between fields, or click-and-highlight an entire <text field>; (4) When complete, submit to your agency's legal counsel for review and approval; (5) After approval by counsel, submit as an email attachment in Word or text-searchable PDF format to regulations.sots@ct.gov.

This notice must be posted to the regulations webpage of the Secretary of the State at least twenty (20) days before the proposed regulation is submitted to the LRRC and before the final wording of the proposed regulation is submitted to the Attorney General for review

Notice of Decision to Take Action on Proposed Regulations

In accordance with the provisions of Section 4-168(d) of the *General Statutes of the State of Connecticut (CGS)*, as amended, the **Department of Motor Vehicles** hereby gives notice that it has decided to proceed with proposed regulations concerning "**Complaints Against and Stipulation by Motor Vehicle Dealers and Repairers**". Notice of intent to adopt, amend, or repeal these regulations was posted to the regulations webpage of the Secretary of the State on **February 7, 2014**.

As required by the Freedom of Information Act and CGS Section 4-168(d), the following items are available for copying at the address specified below, and, if applicable, by the alternate methods detailed:

- (A) The final wording of the proposed regulation;
- (B) A statement of the principal reasons in support of this intended action;
- (C) A statement of the principal considerations in opposition to this intended action;
- (D) A statement of the agency's reasons for accepting or rejecting such considerations.

Address where copies of items (A) through (D) above can be made or obtained:

Department of Motor Vehicles
Legislative & Regulations Unit
Legal Services Division
Room 164
Wethersfield, CT 06161

In addition, these items can be obtained by contacting the following staff member:

Anne F. Howroyd, Division Manager
anne.howroyd@ct.gov
Telephone: (860) 263-5460

Date Prepared: April 10, 2014

Howroyd, Anne

From: Howroyd, Anne
Sent: Thursday, April 10, 2014 3:38 PM
To: SOTS Regulations
Cc: Sladek, Barbara
Subject: Two Notices of Decision to Take Action for DMV
Attachments: NOD.Assessment of Points.pdf; Notice of Decision - Consumer complaints against dealers and repairers.pdf

Good Afternoon SOS-

Attached hereto this e-mail, please find two NOD's for posting on your website:

Assessment of Points Against an Operator's License for Motor Vehicle Law Violations;
Complaints Against and Stipulation by Motor Vehicle Dealers and Repairers.

Thank you.

Sincerely,

Anne F. Howroyd
Division Manager
Legislation & Regulations Unit
Legal Services Division
CT Department of Motor Vehicles
(860) 263-5460

Howroyd, Anne

From: jparese@buckleywynne.com
Sent: Sunday, March 09, 2014 4:55 PM
To: Howroyd, Anne
Cc: Andrew Markowski
Subject: ABAC Comments on Proposed Regulations § 14-63-45c
Attachments: ABAC Comments re Proposed Amendments to 14-63-45c 2014.pdf

Ms. Howroyd,

I am the attorney for the Auto Body Association of Connecticut. We are also represented by our lobbyist, Andrew Markowski. Andrew may have already filed this, but I have been unable to confirm the same. I apologize if this is redundant.

Thank you for your attention. Please contact me with any question or concerns.

John Parese

John M. Parese

BUCKLEY & WYNNE

685 State Street

New Haven, CT 06511

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BUCKLEY & WYNNE

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JOHN F. WYNNE
(1951-2008)

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(860) 560-2278

PLEASE REPLY TO NEW HAVEN

JOHN F. BUCKLEY, JR.
JOHN F. WYNNE, JR.

JOHN M. PARESE

March 9, 2014

The Honorable Melody Currey
Department of Motor Vehicles
60 State Street
Wethersfield, CT 06161

**Re: Proposed Regulatory Amendments
Regulations § 14-63-45c
Complaints Against and Stipulation by Motor Vehicle Dealers and Repairers**

Dear Commissioner Currey:

The undersigned, on behalf of the Auto Body Association of Connecticut, respectfully submits the following comments and concerns regarding the above referenced proposed regulatory amendments. The stated purpose of these proposed revisions includes simplification and streamlining of the current consumer complaint process. What is contemplated in the proposed revisions appears more significant.

Section 14-63-45c

Subsection (a)

By changing the complaint process from a "review" (or inspection) to an "investigation" (or a careful search or examination), the DMV is endeavoring to empower inspectors with significantly greater discretion and authority to act upon an initial complaint. We see this as problematic for several reasons. First, the DMV has already resolved that insurance companies can serve as the customer for purposes of filing complaints. Historically, insurance companies have utilized the services of the DMV and its regulatory authority to pursue its cost cutting and profit driven motives against licensees. Thus, empowering DMV inspectors and thus insurers with greater discretion to interfere in the business of licensees without oversight, or prior to an administrative hearing, is concerning.

Second, consumer complaints are often false or misleading, or may be used to harass licensees. These types of complaints have historically been resolved without the need for investigation. Third, if a licensee is to be held accountable for alleged violations, it should be afforded an opportunity to know what is being alleged; it should be afforded an opportunity to consult with legal counsel; and it should

The Honorable Melody Currey
March 9, 2014

be afforded an opportunity to fashion an appropriate response before an invasive investigation is commenced. Amending the regulations to provide for an immediate investigation is putting the cart before the horse.

Subsection [(e)](d)

This section contemplates eliminating the DMV's duty to inform licensees in writing of the investigative findings and of the licensee's duties to respond. The amendment then goes on to change the timeframe given to the licensee from thirty (30) to ten (10) days. This opens the door to a host of problems, including the potential for miscommunication and ambiguity concerning matters that could result in a licensee's suspension. At a minimum, a licensee should be given written notice of the allegations and a fair opportunity to respond. Oral notice and ten days to respond inhibits a licensee's ability to fully appreciate the nature of the charges and/or secure adequate legal counsel. This may be more convenient for the DMV's prosecution of certain charges, but it is unworkable and unfair to licensees, many of whom have valid defenses and explanations for complaints.

Subsection (g)

The proposed amendment to subsection (g) includes a penalty provision if a licensee does not comply with the terms of a stipulated agreement or consent order, which includes the suspension of a licensee's license "in accordance with the terms of the stipulated agreement or consent order." There may be occasion to seek the suspension of one's license for failure to comply with a settlement agreement, but this is hardly something that would always be appropriate. A late payment or misunderstanding for example, should not be grounds for such draconian measures. What is more, the regulations do not define the scope of such suspension. If the terms of a stipulation are not upheld, there should be a process and/or hearing to determine if, in fact, a violation occurred and what penalties should appropriately flow therefrom.

Subsection (h)

Subsection (h) is probably the most problematic of the proposed amendments. It provides for the prosecution of a licensee "regardless of whether the matter has or has not been settled between the customer and the licensee." This opens the door to unnecessary prosecutions and a waste of state resources.

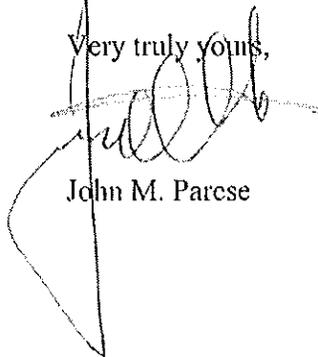
The Honorable Melody Currey
March 9, 2014

I suspect this revision comes in response to a matter that I litigated last year (for a non-ABAC member). In that case, a consumer sought advice from the DMV, partially completed a complaint form, but did not sign it, then subsequently on his own worked out a deal with the licensee. The consumer advised the DMV of the same and that he reached an accord with the licensee. The consumer, under subpoena, testified that his signature must have been forged and he informed the DMV of the same. Despite these circumstances, the DMV nevertheless chose to prosecute the licensee. It should be noted that the consumer was hardly cooperative and only appeared at the administrative hearing upon my subpoena and threat of a *capias* (i.e. he was not in cahoots with the licensee). Instead of conceding a lack of jurisdiction, the DMV instead insisted on prosecuting the licensee. The initial hearing was heavily attended by a room full of jeering and snickering inspectors, presumably seeking to intimidate the licensee.

I relay this story not to cast aspersions on the DMV's investigative division, which is typically exceptionally professional and adept, but to highlight the industry's skepticism and concerns with further empowering DMV inspectors to "investigate" without a formal process and to prosecute even after an amicable settlement has been reached with the consumer. While there are circumstances in which these amendments have the potential to expedite certain cases, they also have the potential to unfairly penalize licensees, or deprive licensees of a fair process to explain the circumstances of an allegation. There are always two sides of the story.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "John M. Parse", written over a horizontal line. The signature is fluid and cursive.

John M. Parse

cc: Anthony Ferraiolo
William Denya
Andrew Markowski



STATE OF CONNECTICUT
DEPARTMENT OF MOTOR VEHICLES
Legal Services Division
60 State Street, Wethersfield, CT 06161
<http://ct.gov/dmv>



Via E-Mail

April 10, 2014

John M. Parese, Esquire
Buckley & Wynne
685 State Street
New Haven, CT 06511

**RE: Proposed Amendments to Department of Motor Vehicles ("DMV")
Regulations Concerning "Complaints Against and Stipulation by Motor
Vehicle Dealers and Repairers"**

Dear Attorney Parese:

Thank you for your comments submitted on behalf of the Auto Body Association of Connecticut concerning the proposed amendments to the above-mentioned regulation.

The Department of Motor Vehicles has carefully considered your comments.

Enclosed for your review are the following documents:

- Agency's Notice of Decision to Take Action on Proposed Regulations;
- Discussion of Comments and Agency's Response; and
- Copy of the final proposed text of the regulation.

The proposal will be sent to the Connecticut Attorney General for approval as to legal sufficiency. Once this approval is obtained, the proposed regulation will be submitted to the Joint Legislative Regulation Review Committee of the General Assembly for its approval.

Thank you again for your comments.

Sincerely,

Anne F. Howroyd
Division Manager
Legislative & Regulations Unit
Legal Services Division

Enclosures



STATE OF CONNECTICUT
DEPARTMENT OF MOTOR VEHICLES
Legal Services Division

60 State Street, Wethersfield, CT 06161
<http://ct.gov/dmv>



Proposed Regulation Amending “Complaints Against and Stipulation by Motor Vehicle Dealers and Repairers”

On February 8, 2014, the Secretary of the State's Office posted a notice of intent to amend sections 14-63-45b to 14-63-45c, inclusive, and to repeal sections 14-63-45d to 14-63-45e, inclusive, of the Regulations of Connecticut State Agencies, entitled “Complaints Against and Stipulation by Motor Vehicle Dealers and Repairers.” These regulations govern the Consumer Complaint Center of the Department of Motor Vehicles and are being amended under the authority of section 4-168 and section 14-63 of the Connecticut General Statutes. The public comment period closed on March 9, 2014, at 5:00 p.m.

Section 14-63 of the Connecticut General Statutes outlines the framework for a procedure whereby customers of dealers and repairers may file complaints with the agency regarding the operations of and services provided by any such licensed dealers or repairers. It also allows for a licensee to stipulate to a complaint and waive such licensee's right to an administrative hearing.

The statutory framework requires the following:

- Commissioner shall contact each licensee that is the subject of a complaint and inform such licensee the particular matters alleged by the complainant;
- Commissioner may attempt to mediate a voluntary resolution of the complaint acceptable to both parties;
- If no acceptable resolution can be reached, the Commissioner shall complete her investigation of the facts and shall take action against the licensee if she has reason to believe that the licensee has violated any provision of section 14-64 of the Connecticut General Statutes;
- If the Commissioner's investigation results in no action against the licensee, she shall notify both the complainant and the licensee, in writing, stating the reason(s) why no action has been taken;
- Commissioner shall inform the complainant and the licensee that, in the event that a complaint remains unresolved, without out evidence of any statutory or regulatory violation, such complaint shall be recorded in the records of the department; and

- An agreement between the licensee and the complainant shall not preclude the Commissioner from proceeding to take action if she has reason to believe that the licensee has violated any provision of section 14-64 of the Connecticut General Statutes.

The proposed regulation to the current procedure seeks to streamline the process by which complaints are investigated, mediated and adjudicated (if necessary). The responsibility to review and mediate a complaint is performed by an investigator. The amendment clarifies this current procedure, as the reviewer and mediator are one and the same during the course of an investigation. Furthermore, by repealing sections 14-63-45d and 14-63-45e, and incorporating its language in section 14-63-45c of the proposal, the results provide for a more readable, precise procedure that maintains the statutory requirements and objectives found in section 14-63 of the Connecticut General Statutes

The proposed amendments to the regulation also accomplish the following:

- Updates the division within the Department of Motor Vehicles responsible for receiving and investigating consumer complaints;
- Incorporates the statutory change found in PA 2013-271 which allows rather than mandates the commissioner's efforts to mediate a voluntary resolution of the complaint; and
- Allows for the agency to communicate with the complainant and the licensee via the telephone during the investigation in order to expedite consumer complaint cases.

Summary of Comments and Agency Response

Comments In opposition of the proposed regulation were submitted by Attorney John M. Parese, on behalf of the Auto Body Association of Connecticut, by letter dated and received on March 9, 2014.

1. Sec. 14-63-45c (a) The commenter states that the motive behind the changes is to empower inspectors with significantly greater discretion and authority to act upon an initial complaint, thus interfering in the business of licensees without oversight, or prior to an administrative hearing. The commenter also contends that consumer complaints are often false or misleading or used as an instrument of harassment to licensees. In addition, the commenter states that a licensee is being held accountable for alleged violations and should be afforded an

opportunity to know what is being alleged, consult with legal counsel and be afforded an opportunity to fashion an appropriate response before an invasive investigation begins. The commenter also states that the regulations will provide for an immediate investigation which is akin to putting the cart before the horse.

Agency Response: The commenter's interpretation of the purpose and legal effect of this regulation is incorrect. The changes put forth by the agency are consistent with our statutory authority which dictates the circumstances and the steps to be taken for investigating consumer complaints. This process has not changed under this amendment to the regulation. In fact the amendment does not afford the inspectors any greater authority than what already exists. Currently, a Motor Vehicle Analyst is assigned to investigate a written complaint received by the Consumer Complaint Center and may collaborate with a Motor Vehicle Inspector to substantiate a particular fact or visit the licensed location, if warranted. The current regulation identifies the process involving a "reviewer" and "mediator" by staff of the division. These two actions are performed by the Motor Vehicle Analyst and may, in some cases, involve assistance from a Motor Vehicle Inspector. However, it does not change the authority of the Motor Vehicle Inspector. By assigning these two actions to an "investigator", the change simply streamlines the process outlined in the statute to more accurately reflect today's process.

In response to the commenter's claim that the licensee should know what is being alleged, pursuant to section 14-63 of the Connecticut General Statutes the Commissioner is required to "contact each licensee that is the subject of a complaint in order to notify such licensee of the complaint and to relate to such licensee the particular matters alleged by the complainant." As such, the licensee is afforded sufficient time under the regulation to respond accordingly, and to seek legal counsel if they so choose.

2. The commenter states that eliminating the agency's notification to the licensee in writing and the reduction in the amount of time to respond to the allegations will inhibit the licensee's ability to fully appreciate the nature of the complaint and/or secure legal counsel.

Agency's Response: The amendment to section 14-63-45c [(e)] (d) seeks to streamline the consumer complaint process and, as a result, expedites the consumer complaint process for the benefit of all parties. Our goal is to provide a reasonable timeframe in which to ascertain the facts of a particular consumer complaint case and respond accordingly. It is the belief of the agency that

allowing too much time for the licensee to respond is not in the best interest of the consumer, as the licensee's records should be readily available at its main office. The prompt means of communicating via the telephone facilitates an expedited process, and in cases involving the loss of a motor vehicle for the complainant, may advance a resolution for such hardship cases.

3. The commenter believes that the penalty provisions in 14-63-45c (g) should be predicated on another process/hearing to determine if a violation occurred and what penalties should be imposed.

Agency's Response: When parties enter into an agreement with the Department of Motor Vehicles (e.g. stipulated agreement), they are waiving their right to a hearing. Said agreement has the same force and effect as an order entered after a full hearing in accordance with the agency's rules of practice found under section 14-137-38(j) of the Regulations of Connecticut State Agencies.

The penalty provision for a violation of a stipulated agreement entered into between the agency and the licensee is currently found in section 14-63-45e of the Regulations of Connecticut State Agencies. This language is being consolidated into section 14-63-45c due to the streamlining of the regulation and has been in existence since the regulation was last revised in 2009.

4. The commenter states that subsection (h) of 14-63-45c is probably the most problematic of the proposed amendments, as it opens the door to unnecessary prosecutions and a waste of state resources. The commenter suspects this revision comes in response to a case that was litigated last year.

Agency's Response: The commenter's suspicions are incorrect. The changes proposed here are technical in nature and are consistent with the statutory authority provided to the agency's inspectors. Due to the reorganization of the Consumer Complaint Unit, the addition of a Motor Vehicle Analyst working in conjunction with the agency's uniformed personnel is an effective management tool in processing these consumer cases for the motoring public. More specifically, section 14-63 authorizes the Commissioner to take action if she has reason to believe that the licensee has violated any provision of section 14-64 of the Connecticut General Statutes, even when an agreement between the licensee and the complainant has been reached.

Therefore, no revisions to the proposed regulation are necessary in response to the comments received on behalf of the Auto Body Association of Connecticut.