



**SCDCA's
Guide
for
Auto Dealers**



SCDCA's Guide for Auto Dealers contains an overview of the various consumer protection laws that apply to the industry. The South Carolina Department of Consumer Affairs has compiled this guide to assist auto dealers in complying with the laws, but it is not meant to be legal advice. While it is intended to be a resource, it should not be a substitute for reading any Statute/Act discussed, or seeking out opinions or interpretations from the appropriate regulatory authority.

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SCDCA's GUIDE FOR AUTO DEALERS

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What you need to know about

Advertising

The following advertisement methods are subject to regulation by the SCDCA:

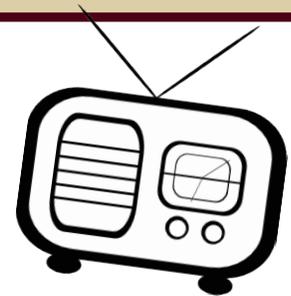
- Verbal/oral ads; Written ads; Graphic/picture ads

Advertisements published via any and all advertising media are subject to regulation.

This includes:

- Radio, Television, Magazines, Newspaper, Internet

Advertisements
MUST



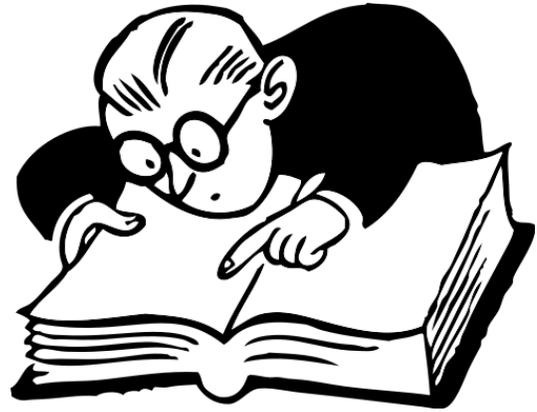
Advertisements
MUST NOT

- Include the name of the motor vehicle dealership making the offer.
- If a price is quoted; the vehicle must be clearly identified as **new or used** and include that **vehicle's make, model and year**.
- If a rebate is advertised for the sale OR lease of a vehicle, it must be one that is available to the **majority of the buying public**.
- When offering discounts on the sale or lease of a new vehicle, **discounts must be deducted from the MSRP of the vehicle as stated on the Monroney sticker**. If the discount is not deducted from the MSRP, the **pre-discounted** price as well as the discounted price should be displayed. **No qualification such as "with trade" or "with down payment" may be used**.
- Comply with **Federal Truth in Lending Act and Regulation Z** when making credit advertisements.
- Comply with **Federal Truth in Leasing Act and Regulation M** when making lease advertisements.

- Be false, deceptive, misleading, or misrepresent a vehicle.
- Use statements that **guarantee the value or range of value** for trade-in vehicles.
- Use the term "free" when the purchase or other consideration is required to obtain the supposed "free" item or service.
- Imply that the dealer has a special arrangement with the manufacturer that is not available at similar dealerships.
- Offer a **rebate** as part of the **advertised price of the vehicle that is not available to the majority of the buying public**. The amount of the rebate may be listed as an additional incentive to those who qualify.

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CLEAR AND CONSPICUOUS Language IN Advertising



- The statement, representation or disclosure regarding a vehicle for sale or lease must be **easily noted and understood**.
- All language and terms, including abbreviations, must be used in accordance with their common usage and meaning.
- When utilizing print ads, **eight point type** or larger must be used in all disclosures.
- In broadcast ads, any spoken statements must be **understandable in pace and volume**. Any visual statements must be displayed so that the average viewer can easily read it. **It must equal the size of twenty scan lines and appear continuously for at least five seconds.**

Violation of the rules can result in fines of up to \$10,000.

Auto dealers are responsible for the content and form of their ads. Advertising agencies or other third parties will be considered agents of the auto dealer and the dealer will be held accountable for failure to comply with rules.

Penalties for Non-Compliance

- Each notice received by an auto dealer concerning an advertisement is considered a single violation. Each notice received by the dealer for a related offense serves as an additional violation. **Example:**

SCDCA sends a violation notice by mail to automobile dealer "X." The auto dealer changes the ad, however, the new ad still violates the rules. SCDCA will send another violation notice to dealer "X." Dealer now has two separate violations.

- To enforce the new rules, SCDCA has **been given the authority to issue the following penalties** to dealers who are in violation of said rules:

1st Violation: Written warning

2nd Violation within 6 months: \$500 Administrative Penalty

3rd Violation within 6 months: Up to \$1000 Administrative Penalty

4th Violation within 6 months: Up to \$10,000 Administrative Penalty

Continued violations may be considered grounds for revocation, suspension, and non-renewal of a dealer license.

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a brief overview of **CONSUMER CREDIT**

The following outlines requirements for (1) Credit Grantor Notification and (2) Maximum Rate Schedules.

- 1)** Auto dealers that make consumer credit sales, consumer leases, or consumer loans in SC must file Credit Grantor Notifications with the SC Department of Consumer Affairs; **UNLESS, the annual gross sales for the business are less than \$150,000.**
- 2)** Auto dealers that intend to impose an annual finance charge in **excess of 18% on credit sales or consumer loans** must file a Maximum Rate Schedule with the SC Department of Consumer Affairs and post it at the dealership. Auto dealers that don't file for a rate above 18% are limited to imposing an APR of 18% or below.
- 3)** The maximum late fee permitted is 5% of the installment payment not to exceed \$17.00 (This amount is subject to change.)
- 4)** Prepayment penalties on sales or loans are prohibited.

Debt Collection/Repossession P r o c e d u r e s

When a consumer misses a required payment, the auto dealer must issue a "right to cure" notice before repossessing the vehicle.

- The auto dealer may not send the notice until the consumer has been delinquent for at least 10 days.
- After issuance of the notice, the consumer has 20 days to make the missed payment.
- If the consumer makes the payment within the allotted 20 days, it is as though the default never occurred. However, if the loan is close-ended, and the consumer defaults again, a right to cure notice is not required.
- An auto dealer **CANNOT require the consumer to waive their right to receive the right to cure notice.**
- When hiring a third party repossession company to retrieve property, **the auto dealer is responsible for that company's actions.**



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Truth in Lending

- The Truth in Lending Act requires creditors to provide meaningful and accurate disclosures of credit terms.
- Auto advertisements promoting close-ended credit transactions must disclose credit information, including amount/percent of down payment and terms of repayment, clearly and conspicuously.
- Creditors are required to disclose the actual cost of credit as a dollar amount and an *annual percentage rate*.

Guaranteed Asset Protection

- GAP may be sold in South Carolina as a debt cancellation contract. *GAP is not insurance.*
- GAP may be disclosed as a part of the amount financed, but it does not have to be included in the APR calculation.
- GAP is not a permissible additional charge under SC law, so if the transaction is paid out early, the unearned portion of the GAP charge must be rebated along with other prepaid finance charges.



the L E M O N L A W

A "lemon" is:

- 1.) A new private passenger vehicle (i.e. car, truck or van);
- 2.) With a defect that impairs its use, safety or will lower its market value substantially;
- 3.) And which the manufacturer cannot repair in **reasonable time**.

• **Reasonable time** is considered to be three repair attempts for the same defect or 30 or more days out of service for repairs. The 30 days do not have to be consecutive.

- Vehicles are not covered if the defects are due to the owner's abuse, neglect or unauthorized alteration of the vehicle; or if the defect(s) don't show up within the first 12,000 miles or 12 months, whichever comes first.



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Closing Fees

If an auto dealer intends to charge closing fees on a motor vehicle sales contract they must pay a \$10 registration fee annually to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the dealership.

Protecting Consumer Information

Records Disposal

State Law:

- Businesses must make consumer's personal identifying information unreadable or undecipherable when disposing of records.
- Businesses must also remove it from hardware, storage media and other items before selling, transferring or otherwise disposing of the item.

Federal Law:

- Any business or individual who uses a consumer report for business purposes is subject to the Federal Disposal Rule. The Rule requires that reasonable measures be implemented to ensure the proper disposal of information in consumer reports and records and prevent the unauthorized access to and use of the information.

Security Breach Notification

Auto dealers must notify South Carolina consumers in the event of a breach.

A **security breach** is the unauthorized access to, and acquisition of:

- (1) items containing personal identifying information where;
- (2) the illegal use of this information has occurred or is likely to occur.

Disclosure of the breach must be made within a reasonable time from its discovery. If a breach effects more than 1,000 persons at one time, the business must also notify the Department of Consumer Affairs and the major credit reporting companies.

Gramm-Leach-Bliley Act

This Act and the Safeguards Rule put safety requirements on **financial institutions** with regards to consumers' personal information.

A **financial institution** includes businesses that are "significantly engaged" in providing financial products or services.

Requirements include:

- (1) developing a written information security plan and;
- (2) assessing and addressing risks to customer information in all areas of operation.

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the Buyers Guide

The Federal Trade Commission's (FTC) Used Car Rule requires dealers to post a Buyers Guide in every used car offered for sale. According to the FTC, the Buyers Guide must be easily seen and DISPLAY BOTH SIDES. You may hang it from the rearview mirror, post it on windows or under the windshield wipers. You may remove the guide for a test drive, but must replace it once the test drive is over. In the glove box, trunk or under a seat are not acceptable places to put the Buyers Guide.

Make sure you are following the rules...

- Be sure to complete a Buyers Guide properly for each used vehicle you put up for sale.
- Display it prominently on all used vehicles you offer for sale.
- If your guide has a line for the buyer's signature, you must include the following required disclosure language:

"I hereby acknowledge the receipt of the Buyers Guide at the closing of this sale."

- You must have this disclosure in your sales contract:

"The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale."

- Supply the consumer with the vehicle's Buyers Guide or a copy of it. Ensure that it states the final negotiated warranty coverage.
- When a sale is conducted in Spanish, the Buyers Guide must also be in Spanish.
- When offering a written warranty be sure that it complies with federal law and is available for examination by potential buyers.

What the guide tells consumers...

- If the vehicle has a warranty or will be sold "as is."
- What percentage of repair costs the dealer will pay under warranty.
- That oral promises are hard to enforce and to get them in writing.
- To keep the Buyers Guide for reference after the sale is complete.
- The major mechanical and electrical systems on the car, as well as some of the major problems that consumers should look out for.
- To request that the vehicle be inspected by an independent mechanic before the transaction is complete.

NON-COMPLIANCE

- Dealers who violate the Used Car Rule may be subject to penalties up to \$16,000 per violation in Federal Trade Commission enforcement actions.

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RESOURCES

FOR MORE INFORMATION PLEASE CONSULT THE FOLLOWING:

STATE AGENCIES

SCDCA (SEE CONTACT INFORMATION ON BACK PAGE)

DEBT COLLECTION/REPOSSESSION
CONSUMER CREDIT SALES, LOANS OR LEASES
AUTOMOBILE ADVERTISING
LEMON LAW
FINANCE CHARGES, CLOSING FEES AND GAP
RECORDS DISPOSAL AND SECURITY BREACHES

SC DEPARTMENT OF MOTOR VEHICLES AT [WWW.SCDMV.COM](http://www.scdmv.com) OR (803) 896-5000

DEALER LICENSING
TITLES

FEDERAL AGENCIES

THE FEDERAL TRADE COMMISSION AT [WWW.FTC.GOV](http://www.ftc.gov) OR 1-877-FTC-HELP

RECORDS DISPOSAL
SAFEGUARDS RULE
GRAMM-LEACH-BLILEY ACT
BUYER'S GUIDE/USED CARE SALES RULE
HOLDER IN DUE COURSE RULE
CREDIT PRACTICES RULE
TRUTH IN LENDING
CONSUMER LEASING ACT
EQUAL CREDIT OPPORTUNITY ACT
MAGNUSON-MOSS WARRANTY ACT
REGULATION OF SMALLER "BUY HERE, PAY HERE" DEALERS

CONSUMER FINANCIAL PROTECTION BUREAU AT [WWW.CONSUMERFINANCE.GOV](http://www.consumerfinance.gov) OR (855) 411-CFPB

REGULATION OF LARGER "BUY HERE, PAY HERE" DEALERS

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South Carolina Department of Consumer Affairs

www.consumer.sc.gov • (800) 922-1594 (toll free in S.C.)

Established by the Consumer Protection code in 1974, The South Carolina Department of Consumer Affairs represents the interests of South Carolina consumers. Our mission is to protect consumers from inequities in the marketplace through advocacy, mediation, enforcement and education.