STATE OF CONNECTICUT

DEPARTMENT OF MOTOR VEHICLES

Legal Services Division
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SAFETY SECURITY SERVICE 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)] <u>(d)</u> 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.