

## **Compliance: Setting up a Preventative Maintenance Compliance Budget**

By: Ronald Gorsline and Dailey Wilson

Prioritizing compliance with federal and state law may be the last item on your never-ending to-do list. Most days, you have bigger fish to fry – you want to increase sales and decrease overhead. However, a small investment in good compliance practices on the front-end can keep your dealership in the black on the back-end.

The sale and financing of motor vehicles involves dozens of federal laws, including the Truth-in-Lending Act, the Consumer Leasing Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Electronic Funds Transfer Act, the Federal Trade Commission Act, the Fair Debt Collection Practices Act, and the Gramm-Leach Bliley Act, just to name a few. Various state laws also apply to financing transactions, including laws regarding insurance and unfair or deceptive sales practices.

Knowingly or unknowingly violating these federal and state laws can result in fines, license suspension, injunctive relief, and—in some cases – even criminal penalties. Not to mention the fact that customers can also sue as part of a class action.

You now also have 2 federal agencies—the **Federal Trade Commission** (“FTC”) and the **Bureau of Consumer Financial Protection** or “BCFP” formerly known as the CFPB—that can investigate your compliance practices.

The FTC has obtained numerous settlements against auto dealers, including a \$3.6 million settlement against California-based Sage Auto Group. The FTC alleged the dealer engaged in deceptive advertising, used fake reviews to promote their dealerships while discrediting negative reviews, and violated the advertising provisions of both the Truth-in-Lending Act and the Consumer Lease Act. The FTC also claimed the dealer violated the FTC Act by charging consumers for add-on products without their consent or claiming the products were required or free.

The CFPB has also investigated dealers, entering into an Restitution Agreement with Herbies Auto Sales, a Buy-Here Pay-Here Dealer in Colorado that offered financing to about one thousand people each year. Herbies agreed to pay \$700,000 in restitution to harmed consumers, with a suspended civil penalty of \$100,000. According to the Bureau Herbies unlawfully advertised a misleadingly low 9.99% annual percentage rate (APR), without disclosing a required warranty, a payment reminder device and other credit costs as finance charges.

-Article Continues on page 15

How can you avoid falling prey to the innumerable penalties? Start taking steps now to ensure that your dealership is adequately complying with state and federal law, and don't wait until a violation is identified by a regulator, plaintiff, or court. Now is the time to set up your "preventative maintenance compliance budget" to avoid costly compliance mistakes.

Stay tuned. Through a series of articles, we will explain common compliance pitfalls dealerships face and how you can avoid the dangers posed by them. Topics will include the rules of the road for checking consumer credit; complying with privacy rules; denying customer's credit requests; dealing with active duty servicemembers and family members covered under the Military Lending Act and Servicemembers Civil Relief Act; responsible repossessions; and hot topics in state law compliance.

Ron Gorsline is a partner in the Ooltewah, Tennessee office of Hudson Cook, LLP. Ron was recently selected for inclusion in the 2019 Edition of The Best Lawyers in America. He can be reached at 423-490-7562 or by email at [rgorsline@hudco.com](mailto:rgorsline@hudco.com).

Dailey Wilson is an associate in the Ooltewah, Tennessee office of Hudson Cook, LLP. Dailey can be reached at 423-490-7567 or by email at [dwilson@hudco.com](mailto:dwilson@hudco.com).



Ron Gorsline



Dailey Wilson

**9431 Bradmore Lane  
Suite 201  
Ooltewah, TN 37363  
423.490.7560  
Fax: 423.490.7558**

