

## **Enforcement – Motor Vehicle Dealers – Disciplinary Matrix**

Texas Occupations Code § 2301.801 allows for a civil penalty of up to \$10,000.00 for each violation, or per day for a continuing violation, of Chapter 2301 and Texas Transportation Code Ch. 503. The Department may also revoke a license for a violation. TEX. OCC. CODE § 2301.651. The Disciplinary Matrix is intended to give licensees a general guideline for how the Department determines the appropriate sanction for the most common violations. The matrix does not contain all possible violations, nor does it limit the Department from seeking sanctions outside the disciplinary matrix recommended low and high sanctions when circumstances require.

### **Aggravating and Mitigating Factors**

In determining the amount of civil penalty to assess, the Department will consider the following aggravating and mitigating factors:

- The seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public;
- The economic damage to the public caused by the violation;
- The history of previous violations;
- The amount necessary to deter a future violation; and
- Any other matter that justice may require, to include:
  - History of violations of a similar nature;
  - Number of violations or number of consumers harmed by violation;
  - Attempted concealment of the violation;
  - Intentional, premeditated, knowing or grossly negligent act constituting a violation; and
  - Violation of an order issued by the Department.

In determining whether revocation is appropriate, the Department will consider the following factors:

- Whether the licensee is unfit under standards governing the occupation, including the qualifications for a license;
- Whether the licensee made a material misrepresentation in any information filed according to the Department's statutes or rules;
- Whether the licensee willfully defrauded a purchaser; and
- Whether the licensee failed to fulfill a written agreement with a retail purchaser of a motor vehicle.

In determining the amount of civil penalty to assess, or whether revocation is appropriate, the Department will consider the following mitigating factors:

- Acknowledgement of wrongdoing;
- Willingness to cooperate with Department;
- Efforts to correct the violation; and
- Any other matter that justice may require, to include:
  - Rehabilitative potential; and
  - Present value to the community.

Violation	Low Sanction	High Sanction
<b>Advertising</b>		
TEX. OCC. CODE § 2301.456 43 TEX. ADMIN. CODE CH. 215, SUBCH. H §§ 215.241-.271		
Advertising -- After previous Cure Letter for same violation	\$2,000	\$8,000
<b>Fraud</b>		
TEX. OCC. CODE § 2301.651(a)(6) TEX. TRANSP. CODE § 503.038(a)(1)-(2) TITLE 49 U. S. C. § 32704 43 TEX. ADMIN. CODE § 215.141(b)(19), (21)		
Willfully defrauded consumer	\$1,000	Revocation
Falsification/Forgery of tax or title document	\$1,000	Revocation
Filing false tax or title document	\$1,000	Revocation
Dehorsing	\$2,000	Revocation
Misrepresenting mileage	\$2,000	Revocation
Failure to properly notify of replaced odometer (with evidence of intent to defraud)	\$1,000	\$4,000
Asserted false lien	\$500	Revocation
Failed to pay Consignor	\$1,000	\$4,000
False statements to Department on application	\$1,000	Revocation
Falsify or forge a title document	\$1,000	Revocation
Filed false statement of sales price in title document	\$500	\$4,000
Filed false statement of sales date in title document	\$500	\$4,000
Filed false statement of GDN in title document	\$500	\$4,000
False VIT statements	\$1,000	Revocation
<b>Unlicensed Activity</b>		
TEX. OCC. CODE §§ 2301.006, 2301.251, 2301.252, 2301.253, 2301.351, and 2301.362(a) TEX. TRANSP. CODE §§ 503.021, 503.022, 503.027, and 503.038(a)(11) 43 TEX. ADMIN. CODE §§ 215.136, 215.140(11)(C), 215.141(b)(6), (20), and (23), and 217.183		
Brokering new or used vehicles	\$1,000	\$4,000
Curbstoning by unlicensed dealer	\$500 per vehicle and/or referral to local law enforcement.	\$2,000 per vehicle
Curbstoning by licensed dealer	\$500 per vehicle	\$2,000 per vehicle
Aiding and Abetting unlicensed sales/ brokering	\$500	\$4,000
Allowed use of GDN	\$500	\$4,000
Aided and abetted unlicensed sales	\$500	\$2,000
Selling new vehicles without license	\$500 per vehicle	\$2,000 per vehicle

Selling type of vehicle without appropriate type license	\$500 per vehicle	\$2,000 per vehicle
Operating as a wholesale auction without a license	\$2,000 per vehicle	\$8,000
Illegal sales of salvage vehicles by GDN holder	\$500 per vehicle	\$2,000
Advertising as a lessor without a license	Warning Letter	\$2,000
Operating as a lessor or lease facilitator without a license	\$500	\$2,000
Operating as a manufacturer or distributor without a license	\$5,000	Referral to OAG
Selling from right-of-way	Warning Letter	\$2,000
Unlicensed Converter	\$500	\$1,000 per vehicle
<b>Lienholder Violations</b>		
TEX. TRANSP. CODE § 501.115(a) TEX. FIN. CODE § 348.408(c)		
Failed to release lien within 10 days of payment	\$500	\$2,000
Failure to timely forward payoff for trade-in	\$500	\$2,000
<b>Agent Violations</b>		
43 TEX. ADMIN. CODE § 215.148		
Use of unauthorized agents	\$500	\$2,000
Failure to verify authority of agents	\$500	\$2,000
Failed to have record of agents and representatives	\$500	\$2,000
<b>Tag and Title Violations</b>		
TEX. TAX CODE §§ 23.122, and 152.0411 TEX. TRANSP. CODE §§ 501.0234, 501.152, 502.491, 503.038(a)(5), 503.061, 503.062, 503.0625, 503.0626, 503.063, 503.0631, 503.068, 503.070, and 504.901 37 TEX. ADMIN. CODE § 3.76(c) 43 TEX. ADMIN. CODE §§ 215.138, 215.141(b)(9)-(13), (24), 215.144(g), 215.147, and CH. 215, SUBCH. E §§ 215.150-.159		
Failed to timely transfer title	Warning Letter	\$2,000
Failed to timely transfer title to Out of State Buyer	Warning Letter	\$2,000
Selling without title	Warning Letter	\$2,000
Failed to take assignment of title	Warning Letter	\$2,000
Failed to assign title	Warning Letter	\$2,000
Gave title directly to buyer	Warning Letter	\$2,000
Gave Manufacturer's Certificate of Origin directly to buyer	Warning Letter	\$2,000
Failed to use "Export Only" stamp	\$500	\$2,000
Insufficient fund check for Sales Tax	Warning Letter	\$2,000
Insufficient fund check for VIT fee	Warning Letter	\$2,000
Failure to allow purchaser to select county of registration	Warning Letter	\$2,000
Misuse of Dealer Plate	Warning Letter	\$2,000
Failed to keep metal plate record	Warning Letter	\$2,000
Use of another dealer's metal plates	\$500	\$2,000
Issuing dealer's plate to unauthorized user	\$500	\$2,000

Misuse/ failed to follow procedure for issuance/recordkeeping of Converter E-Tag	Warning Letter	\$2,000 per tag
Misuse/ failed to follow procedure for issuance/recordkeeping of Dealer E-Tag	Warning Letter	\$2,000 per tag
Misuse/ failed to follow procedure for issuance/recordkeeping of Buyer's E-Tag	Warning Letter	\$2,000 per tag
Failed to remove out of state plates from dealer's vehicles	Warning Letter	\$2,000 per tag
Misuse/ failed to follow procedure for issuance/recordkeeping of Supplemental E-Tag	Warning Letter	\$2,000 per tag
No valid inspection when affixing buyer's tag	Warning Letter	\$2,000 per tag
Failure to Remove Texas Plates and Registration	Warning Letter	\$2,000 per tag
Misuse/ failed to follow procedure for issuance/recordkeeping of Internet Down E-Tag	\$500 per tag	\$2,000 per tag
Misuse/ failed to follow procedure for issuance/recordkeeping of Emergency E-Tag	\$500 per tag	\$2,000 per tag
Failure to provide E-Tag Notice or Receipt	Warning Letter	\$2,000
<b>Failure to Notify Department or Tax Authority</b>		
<p>TEX. OCC. CODE §§ 2301.356, and 2301.358  TEX. TAX CODE §§ 23.121, and 23.122  TEX. TRANSP. CODE §§ 503.006, and 503.038(a)(10)  43 TEX. ADMIN. CODE §§ 215.141(b)(7)-(8), and 215.145</p>		
Failed to timely notify of change of name/ownership	Warning Letter	\$2,000
Failed to timely report change of contact information	Warning Letter	\$2,000
Failed to timely report change of ownership or name	Warning Letter	\$2,000
Failed to get approval for show or display	\$1,000	\$4,000
Failed to file annual declaration	Warning Letter	Revocation
Failed to file initial declaration	Warning Letter	Revocation
Failed to file monthly statements	Warning Letter	Revocation
<b>Premises Violations</b>		
<p>TEX. TAX CODE § 23.121  TEX. TRANSP. CODE §§ 503.032, 503.033, 503.038(a)(8)-(9), and 728.002  43 TEX. ADMIN. CODE §§ 215.140, 215.141(b)(1), (14), (18), and 215.145</p>		
Violation of Blue Law	Warning Letter	\$2,000
Failed to meet location requirements	\$500	Revocation
No business hours posted	Warning Letter	\$2,000
Failure to post copy of GDN license	Warning Letter	\$2,000
No dealer or employee present	Warning Letter	\$2,000
No one answering phone	Warning Letter	\$2,000
Failed to maintain proof of security	Revocation	Revocation
Improper name on bond	Revocation	Revocation
Failed to show proof dealer still in business	\$500	Revocation
Sold less than 5 motor vehicles in a year	Warning Letter	Revocation

**Required Disclosures**

TEX. OCC. CODE § 2301.651(a)(4), (6), and (7)

TITLE 15 U.S.C. § 1233(c)

TITLE 49 U.S.C. § 32704

16 C.F.R. § 455.2

43 TEX. ADMIN. CODE § 215.141(b)(26)

No Buyer's Guide displayed	Warning Letter	\$2,000
Removed or altered MSRP	\$500	\$2,000
Failed to fulfill written agreement	\$500	\$4,000
Failure to properly notify of replaced odometer (without intent to defraud)	\$500	\$2,000
Failed to disclose damage	\$500	\$2,000

**Records Violations**

TEX. FIN. CODE § 348.006(c) (2)-(3)

43 TEX. ADMIN. CODE §§ 215.115, 215.141(b)(2)-(4), (15), 215.144, and 217.5

Sold or leased vehicle not meeting emissions requirements	Warning Letter	\$4,000
Failed to keep required records – no records	Warning Letter	\$4,000
Failed to keep required records – inadequate/missing records	Warning Letter	\$2,000
Failed to comply with request for records	Warning Letter	\$4,000
Failed to make records available for inspection	Warning Letter	\$2,000
Failed to retain copy of compliant buyer identification	Warning Letter	\$2,000
Overcharging documentary fees	Warning Letter	\$2,000
No written consignment agreement	Warning Letter	\$2,000

## **Enforcement – Salvage Vehicle Dealers – Disciplinary Matrix**

Texas Occupations Code § 2302.354 allows for an administrative penalty of up to \$1,000 for each violation, or per day for a continuing violation, of Chapter 2302. The Department may also revoke a license for a violation. TEX. OCC. CODE § 2302.108. The Disciplinary Matrix is intended to give licensees a general guideline for how the Department determines the appropriate sanction for the most common violations. The matrix does not contain all possible violations, nor does it limit the Department from seeking sanctions outside the disciplinary matrix recommended low and high sanctions when circumstances require.

### **Aggravating and Mitigating Factors**

In determining the amount of administrative penalty to assess, or whether revocation is appropriate, the Department will consider the following aggravating and mitigating factors:

- The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- The economic harm caused by the violation;
- The history of previous violations;
- The amount necessary to deter a future violation; and
- Any other matter that justice requires, to include:
  - History of violations of a similar nature;
  - Number of violations or number of consumers harmed by violation;
  - Attempted concealment of the violation;
  - Intentional, premeditated, knowing or grossly negligent act constituting a violation; and
  - Violation of an order issued by the Department.

In determining the amount of administrative penalty to assess, or whether revocation is appropriate, the Department will consider the following mitigating factors:

- Acknowledgement of wrongdoing;
- Willingness to cooperate with Department;
- Efforts to correct the violation; and
- Any other matter that justice may require, to include:
  - Rehabilitative potential; and
  - Present value to the community.

Violation	Low Sanction	High Sanction
<b>Fraud</b>		
43 TEX. ADMIN. CODE § 221.112(3), (18)		
Willfully defrauding a purchaser	\$500	Revocation
Made a false statement or material misrepresentation to the Department	\$500	Revocation
<b>Unlicensed Activity</b>		
TEX. TRANSP. CODE § 503.021, TEX. OCC. CODE §§ 2302.102, 2302.103 43 TEX. ADMIN. CODE § 221.11, 43 TEX. ADMIN. CODE § 221.53, § 221.112(6), (7), (12), (14), (16), (20), or (21)		
Buying/Selling Motor Vehicles without GDN	Warning Letter	\$1,000 per vehicle
More than five casual sales	Warning Letter	\$1,000 per vehicle
Operating as Salvage Dealer without proper endorsement	Warning Letter	\$1,000 per vehicle
Aiding and Abetting unlicensed salvage dealer operations	Warning Letter	\$1,000 per vehicle
Operation of Salvage Vehicle on a public highway	Warning Letter	\$1,000 per vehicle
Curbstoning	Warning Letter	\$1,000 per vehicle
Operating from an unlicensed location	Warning Letter	\$1000
<b>Failure to Notify Department</b>		
43 TEX. ADMIN. CODE §§ 221.18, 221.19, and/or 221.112(8) or (9)		
Failed to notify Motor Vehicle Division of additional business locations or of closing location	Warning Letter	\$1000
Failed to notify MVD of change of ownership or name	Warning Letter	\$1000
<b>Premises Violations</b>		
43 TEX. ADMIN. CODE §§ 221.41, 221.43, 221.44, 221.45, 221.46, and/or 221.112(1) or (11)		
Failure to meet location requirements	Warning Letter (if cured)	Revocation (if not cured)
Failure to display permanent sign	Warning Letter (if cured)	Revocation (if not cured)
Failure to post business hours	Warning Letter (if cured)	Revocation (if not cured)
No dealer or employee present during posted business hours	Warning Letter (if cured)	\$1000
No dealer or employee answering the phone during posted business hours	Warning Letter (if cured)	\$1000
Failed to display copy of license	Warning Letter (if cured)	Revocation (if not cured)
Fails to remain regularly and actively engaged in business	Warning Letter (if cured)	Revocation (if not cured)

Failed to provide proof of regular and active business	Warning Letter (if cured)	Revocation (if not cured)
<b>Required Disclosures</b>		
43 TEX. ADMIN. CODE §§ 221.47, 221.48, 221.50, 221.51, 221.52		
Failed to receive evidence of ownership	Warning Letter	\$1,000 per vehicle
Failed to obtain purchaser's signature on salvage vehicle disclosure form	Warning Letter	\$1,000 per vehicle
Failed to obtain purchaser's signature on a non-repairable vehicle disclosure form	Warning Letter	\$1,000 per vehicle
Restriction on sale or transfer of flood damaged vehicles	\$500 per vehicle	\$1,000 per vehicle
Restriction on sale or transfer of export-only vehicles	Warning Letter	\$1,000 per vehicle
Failure to notify Department vehicle will be scrapped or destroyed	Warning Letter	\$1,000 per vehicle
Failure to notify Department vehicle has been scrapped or destroyed	Warning Letter	\$1,000 per vehicle
Failed to identify all salvage vehicles offered for sale	Warning Letter	\$1,000 per vehicle
Failed to identify all non-repairable vehicles displayed or offered for sale	Warning Letter	\$1,000 per vehicle
<b>Records Violations</b>		
TEX. OCC. CODE § 2302.0015 43 TEX. ADMIN. CODE §§ 221.43(b), 221.51(e), 221.71, 221.72, 221.73 and/or 221.112(4) or (5)		
Failed to allow entry or inspection	\$500	Revocation
Failed to provide records to Investigator while at Licensed Premises	Warning Letter	\$1,000 per vehicle
Failed to provide records to Investigator in response to a written request for records	Warning Letter	\$1,000 per vehicle
Failed to maintain a copy of signed disclosures	Warning Letter	\$1,000 per vehicle
Failed to maintain business records as required – no records	Warning Letter	Revocation
Failed to maintain business records as required – inadequate/missing records	Warning Letter	\$1,000 per vehicle