

“RIGHT TO CURE”

EFFECTIVE JULY 1, 2005

As a result of the passage of Senate Bill 509, dealers will have a level of protection against frivolous lawsuits that never existed before! This legislation gives merchants the ability to solve a problem before getting sued. Our mission with this legislation is to ensure that the consumer is taken care of in a timely and satisfactory manner. It is also to curtail unnecessary legal cost for both the dealership and consumer.

The Automobile Dealers Association of Indiana (ADAI) worked hard for passage of this law and will continue to monitor the impact of this legislation. This is a major change in the way consumers, lawyers and dealerships have operated in the past and we hope this changes the way complaints are settled.

The following briefly explains the “right to cure” law and provides a sample form to be printed on your letterhead and signed by the dealer, general manager or a person with the authority in the dealership to affect the completion of the offer. Also, the offer should be mailed by certified mail to ensure that the consumer receives the offer.

Cure Offer

Senate Bill 509 was passed on May 6, 2005, and amended Article 5 of the Indiana Consumer Credit and Protection Act by creating the concept of the “cure offer.” This change is extremely important and beneficial to ADAI members because it provides you with the opportunity to resolve consumer complaints prior to expensive litigation. The statutory change also creates incentives for consumers to resolve such disputes or face potential financial penalties should they attempt to overreach.

Indiana Code 24-5-0.5-2(5), the definition of a “cure,” was amended to include:

“... an offer in writing of one (1) or more items of value, including monetary compensation, that the supplier delivers to a consumer or a representative of the consumer if accepted by the consumer.”

Indiana Code 24-5-0.5-2(6) was added to define an “offer to cure” as:

“... a cure that:

(A) is reasonably calculated to remedy a loss claimed by the consumer; and

(B) includes a minimum additional amount that is the greater of:

(i) ten percent (10%) of the value of the remedy under clause (A), but not more than four thousand dollars (\$4,000); or

(ii) five hundred dollars (\$500);

as compensation for attorney’s fees, expenses and other costs that a consumer may incur in relation to the deceptive act.”

Significant provisions were further added to Indiana Code 24-5-0.5-4 which state:

“(i) An offer to cure is:

(1) not admissible as evidence in a proceeding initiated under this section unless the offer to cure is delivered by a supplier to the consumer or a representative of the consumer before the supplier files the supplier’s initial response to a complainant; and

(2) only admissible as evidence in a proceeding initiated in a proceeding initiated under this section to prove that a supplier is not liable for attorney’s fees under subsection (j).

If the offer to cure is timely delivered by the supplier, the supplier may submit the offer to cure as evidence to prove in the proceeding in accordance with the Indiana Rules of Trial Procedure that the supplier made an offer to cure.

(j) A supplier may not be held liable for the attorney’s fees and court costs of the consumer that are incurred following the timely delivery of a n offer to cure as described in subsection (i) unless the actual damages awarded, not including attorney’s fees and costs, exceed the value of the offer to cure.”

The passage of this “right to cure” legislation provides a tremendous opportunity for dealers to avoid the expense of litigation, encourages consumers to resolve disputes without engaging overly zealous or greedy plaintiff’s lawyers, and requires the dealer or any merchant to make reasonable attempts to resolve consumer disputes in a timely fashion.

[On Dealer Letterhead]

(Date)

Dear (Consumer):

I have received your letter of (date). On behalf of the dealership, please allow me to state we are disappointed we have not been able to immediately make you one of our many satisfied customers.

In accordance with Indiana Code 24-5-0.5-2(6), we would like to make the following cure offer to resolve this matter. We offer the following to you to completely settle this matter:

1. _____ as payment for actual damages or costs of repair:
2. _____ as payment for annoyance and inconvenience: and
3. _____ for attorney fees and costs.

I do wish to advise you that you have 10 days from receipt of this cure offer to accept, or it is deemed refused and withdrawn automatically. Furthermore, this cure offer may be admissible in court should you reject it and decide to proceed to a lawsuit.

Please understand we make this cure offer without any admission of liability. Our goal is simply to make you, our customer, satisfied and to avoid expensive litigation. We do reserve the right to assert all legal rights and defenses should you decline to accept this cure offer.

We thank you for the opportunity to resolve this matter and look forward to working with you towards that goal.

Sincerely,

(Your Name)