

Automobile Dealers
Association of Indiana

Indiana's FRANCHISE PROTECTION LAWS

... **IN PLAIN
LANGUAGE**

*"Let ADAI open the
door for you...."*



Automobile Dealers
Association of Indiana

150 W. Market Street
Suite #812
Indianapolis, IN 46204

Phone: 317-635-1441
Fax: 317-685-1028
Email: cindy@adai-inc.org

Last Updated 4/30/13 to include
2013 passed legislation.

**YOUR
ASSOCIATION
AT WORK FOR
YOU !**

PREFACE

A substantial number of states including Indiana have enacted franchise laws. The principal underlying purpose of all of these laws has long been clear: **To protect dealers from overreaching and unfair manufacturer restrictions on their ability to operate and sell the businesses they have worked to build.**

Over two decades ago, the U.S. Supreme Court spoke to the purpose and intent behind these laws. “The disparity in bargaining power between automobile manufacturers and their dealers prompted Congress and some 25 states to enact legislation to protect retail car and truck dealers from perceived abusive and oppressive acts by the manufacturers.” The Automobile Dealers Association of Indiana (ADAI) succeeded in convincing the Indiana Legislature of the need to protect dealers.

This is a comprehensive compilation ... in plain language ... of those Indiana franchise protection laws. ADAI fought for and was successful in enactment of these laws to protect and enhance the value of your franchise. While you review and store this information brochure for future use, keep in mind ***YOUR ADAI DOESN'T COST ... IT PAYS!***

PURPOSE STATEMENT

The purpose of the Automobile Dealers Association of Indiana is to maintain and enhance the franchise distribution system of motor vehicles in Indiana. The ADAI believes the franchise system of independently owned and operated licensed new vehicle dealers best serves the interests of manufacturers and consumers by insuring the most competitive and efficient means of distributing and servicing high quality new and used motor vehicles.

POSITION STATEMENT

A level playing field, with fair and open competition among all dealers, is the best assurance Indiana consumers will continue to obtain the highest level of value and service for their automobiles, trucks and motorcycles. ADAI is committed to taking whatever actions are necessary to accomplish this mission, including enacting legislation to protect dealers in their relationship with the manufacturer. The ADAI will work to protect members from overreaching and unfair manufacturer restrictions on their ability to operate and sell the businesses they have worked hard to build. The ADAI will also work to support legislation to protect members from perceived abuses and oppressive acts by the manufacturer.

The ADAI believes any Indiana state budget surplus is a result of over taxation. The ADAI believes in maintaining the ‘Rainy Day Fund.’ However, all additional surpluses should be either returned to the taxpayers in the form of tax cuts or invested in economic development. The ADAI will work for and support legislation aimed at increasing Indiana’s economic development. The ADAI will work against and oppose legislation harmful to members and their employees.

GRASS ROOTS LEGISLATIVE NETWORK

A franchised new car, truck or motorcycle dealer in Indiana honors their annual dues request for one and only one reason: To protect his business from statutory, regulatory and predatory laws, rules and industry special interests that might otherwise lend to a devaluation or destruction of his business. For this reason the ADAI should, first and foremost, provide members with the best and most comprehensive government relations effort possible.

To accomplish this the ADAI established a grass roots political action network. The grass roots political action network includes member dealers contributing to Indiana Dealers Election Action for Survival (IDEAS), the political action committee (PAC) of ADAI, identifying members who personally know members of the Indiana General Assembly and matching them with other dealers in their respective legislative districts additionally coordinating PAC contributions to legislators within these same members’ districts. The result of the network is ADAI dealer members can instantly respond to requests to contact legislators considering both pro and adverse legislation affecting ADAI (franchised automobile dealers, ITDA (franchised heavy duty truck dealers), and MDAI (franchised motorcycle dealers) members.

IMPORTANT DEFINITIONS

The definition of a dealer is:

PLAIN LANGUAGE

(IC 9-13-2-42)

(See also IC 9-32-11-2(c) and IC 9-32-11-17)

• (a) “Dealer” means, except as otherwise provided in this section, a person who sells to the general public, including a person who sells directly by the Internet or other computer network, at least twelve (12) vehicles each year . The term includes a person who sells off-road vehicles. A dealer must have an established place of business that meets the minimum standards prescribed by the secretary of state under rules adopted under IC 4-22-2.

(b) The term does not include the following:

- (1) A receiver, trustee, or other person appointed by or acting under the judgment or order of a court.
- (2) A public officer while performing official duties.
- (3) An automotive mobility dealer.

(c) “Dealer”, for purposes of IC 9-31, means a person that sells to the general public at least six (6):

- (1) boats; or
- (2) trailers:
 - (A) designed and used exclusively for the transportation of watercraft: and
 - (B) sold in general association with the sale of watercraft;

per year.

“Designated family member” means:

(IC 9-13-2-43)

• (a) “Designated family member” means a franchisee’s spouse, child, grandchild, parent, or sibling who has been nominated as the franchisee’s successor under a written document filed by the franchisee with the franchisor.

(b) If no such document has been filed, the term means a franchisee’s spouse, child, grandchild, parent, or sibling who:

- (1) if the franchisee is deceased, is entitled to inherit the franchisee’s ownership interest in the franchisee’s business under the franchisee’s will or under the laws of intestate succession:
or
- (2) if the franchisee is incapacitated, is appointed by the court as the legal representative of the franchisee’s property.

(c) If a franchisee is deceased, the term includes the appointed and qualified personal representative and testamentary trustee of the deceased franchisee.

♦ **Internet dealers must be licensed in the State of Indiana.**

♦ **Internet dealers must have a place of business in Indiana and deliver vehicles sold at the place of business in Indiana.**

♦ **Franchisee’s spouse, child, grandchild, parent, or brother/sister, or, in the event of death the personal representative /trustee of estate may take over ownership of the franchise with or without written documentation to the franchisor under certain circumstances.**

“Relevant Market Area” means:

(IC 9-13-2-151.5)

- “Relevant market area”, for the purposes of IC 9-32, has the meaning set forth in IC 9-32-2-20.

(IC 9-32-2-20)

..... means the following:

(1) With respect to a new motor vehicle dealer who plans to relocate the dealer’s place of business in a county having a population of more than one hundred thousand (100,000), the area within a radius of six (6) miles of the intended site of the relocated dealer. The six (6) mile distance shall be determined by measuring the distance between the nearest surveyed boundary of the existing new motor vehicle dealer’s principal place of business and the nearest surveyed boundary line of the relocated new motor vehicle dealer’s place of business.

(2) With respect to a:

- (A) proposed new motor vehicle dealer; or
- (B) new motor vehicle dealer who plans to relocate the dealer’s place of business in a county having a population that is not more than one hundred thousand (100,000);

the area within a radius of ten (10) miles of the intended site of the proposed or relocated dealer. The ten (10) mile distance shall be determined by measuring the distance between the nearest surveyed boundary line of the existing new motor vehicle dealer’s principal place of business and the nearest surveyed boundary line of the proposed or relocated new motor vehicle dealer’s principal place of business.

- ◆ **Relocated dealership of the same make may not be located less than six (6) miles from your dealership in a county with population greater than 100,000.**
- ◆ **New dealership of the same make may not be located less than ten (10) miles from your dealership (*regardless of the size of the county population*) or relocated dealership of the same make may not be located less than ten (10) miles from your dealership in a county with population of less than 100,000.**

UNFAIR MANUFACTURERS PRACTICES

It is unfair for a vehicle manufacturer to:

(IC 9-32-13-8)

- (b).....to enter into an agreement in which a dealer is required to waive the provisions of:
 - (1) this chapter; or
 - (2) IC 23-2-2.7.

However, this subsection does not apply to a voluntary agreement in which separate consideration is offered and accepted.

(IC 9-32-13-9)

- ... to coerce a dealer to order parts, accessories, equipment, machinery, tools, appliances, or any other commodity from a person.

(IC 9-32-13-10)

- ... to prevent or require or attempt to prevent or Require, by contract or otherwise, a change in the capital structure of a dealer or the means by or through which the dealer finances the dealer's operation, if the dealer at all times meets reasonable capital standards agreed to by the dealer and the manufacturer or distributor. A change in capital structure does not cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor.

(IC 9-32-13-12)

- ... to prevent or require, or attempt to prevent or Require, by contract or otherwise, a dealer or an officer, a partner, or a stockholder of a dealer to sell or transfer a part of the interest of the officer, partner, or stockholder to any other person. A dealer, an officer, a partner, or a stockholder may not sell, transfer, or assign the franchise or a right under the franchise without the consent of the manufacturer or distributor. This consent may not be withheld unreasonably.

(IC 9-32-13-13)

- ... to prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business as a going concern. The dealer may not transfer or assign the dealer's franchise without the consent of the manufacturer or distributor, and the manufacturer or distributor may not unreasonably withhold consent.

(IC 9-32-13-15)

- (a) to fail to compensate to a dealer the posted hourly labor rate for the work and services the dealer is required to perform in connection with the dealer's delivery and preparation obligations under any franchise, or fail to compensate a dealer the posted rate for labor and other expenses incurred by the dealer under the manufacturer's warranty agreements as long as the posted rate is reasonable. Judgment of the

PLAIN LANGUAGE

The manufacturer:

- ◆ **can't make you sign a franchise agreement requiring you to waive state franchise unfair practice or franchise protection laws.**
- ◆ **can't make you order things (listed in the left hand column) you don't want or need.**
- ◆ **may not make you come up with more operating capital.**
- ◆ **make you sell your dealership.**
- ◆ **may not prevent you from selling your dealership for a fair price.**
- ◆ **must pay your posted hourly labor rate for warranty work.**

It is unfair for a vehicle manufacturer to:

(IC 9-32-13-15 cont'd)

reasonableness includes consideration of charges for similar repairs by comparable repair facilities in the local area as well as mechanic's wages and fringe benefits.

(b) This section does not authorize a manufacturer or distributor and its franchisees in Indiana to establish a uniform hourly labor reimbursement rate effective for the entire state.

(IC 9-32-13-16)

• (a) A manufacturer or distributor and at least thirty percent (30%) of its franchisees in Indiana of the same line make may agree in an express written contract citing this section to a uniform warranty reimbursement policy to be used by franchisees for the performance of warranty repairs. The contract must include the reimbursement for parts used in warranty repairs or the use of a uniform time standards manual, or both. The allowance for diagnosis within the uniform time standards manual must be reasonable and adequate for the work and service to be performed. The manufacturer or distributor :

(1) may have only one (1) contract with each line make; and

(2) must have a reasonable and fair procedure for franchisees to request a modification or adjustment of a standard included in the uniform time standards manual.

(b) A contract described in subsection (a) must meet the following criteria:

(1) Establish a uniform parts reimbursement rate that must be greater than the manufacturer's or distributor's nationally established parts reimbursement rate in effect at the time the contract becomes effective. A subsequent contract must include a uniform reimbursement rate that is equal to or greater than the rate in the immediately prior contract.

(2) Apply to all warranty repair orders written while the agreement is in effect.

(3) At any time during the period the contract is in effect:

(A) be available to any franchisee of the same line make as the franchisees that entered into the contract with the manufacturer or distributor; and

(B) be available to the franchisee of the same line make on the same terms as apply to the franchisees that entered into the contract with the manufacturer or distributor.

(4) Be for a term not to exceed three (3) years.

(5) Allow any party to the uniform warranty reimbursement policy to terminate the policy within thirty (30) days prior written notice to all parties upon the annual anniversary of the policy, if the policy is for at least one (1) year.

(6) Remain in effect for the entire life of the original period if the manufacturer and at least one (1) franchisee remain parties to the policy.

The manufacturer:

◆ **may not pay you a standard hourly labor rate set for the whole state.**

◆ **may enter into a contract with at least 30% of the same line make dealers in Indiana to pay warranty part reimbursements at a higher rate.**

◆ **must pay warranty parts rate higher than nationally established rate (if have contract listed above).**

◆ **Must make contract available to new dealers of the same line make not in the original contract and on the same terms.**

◆ **contract is valid for 3 or less years.**

◆ **allow termination of policy on annual date if more than 1 year.**

It is unfair for a vehicle manufacturer to:

(IC 9-32-13-16 cont'd)

- (c) A manufacturer or distributor that enters into a contract with its franchisees under subsection (a) may seek to recover only its costs from a franchisee that receives a higher reimbursement rate, if authorized by law, subject to the following:

(1) Costs may be recovered only by increasing invoice prices on new vehicles received by the franchisee.

(2) A manufacturer or distributor may make an exception for vehicles that are titled in the name of a purchaser in another state. However, price increases imposed for the purpose of recovering costs imposed by this section may vary from time to time and from model to model and must apply uniformly to all franchisees of the same line make that have requested reimbursement for warranty repairs at a level higher than provided for in the contract.

- (d) A manufacturer or distributor that enters into a contract with its franchisees under subsection (a) shall do the following:

(1) Certify to the secretary under oath, in a writing signed by a representative of the manufacturer or distributor, that at the time the contract was entered into at least thirty percent (30%) of the franchisees of the line make were parties to the contract.

(2) File a copy of the contract with the bureau at the time of the certification.

(3) Maintain a file that contains the information upon which the certification required under subdivision (1) is based for three (3) years after the certification is made.

(9-32-13-17)

....

- (a)

(1) fail to pay a claim made by a dealer for compensation for:

- (A) delivery and preparation work;
- (B) warranty work; and
- (C) incentive payments;

not later than thirty (30) days after the claim is approved;

(2) fail to approve or disapprove a claim not later than thirty (30) days after receipt of the claim; or

(3) disapprove a claim without notice to the dealer in writing of the grounds for disapproval.

(b) A manufacturer or distributor may:

(1) audit a claim made by a dealer; or

(2) charge back to a dealer any amounts paid on a false or unsubstantiated claim;

for up to one (1) year after the date on which the claim is paid. However, the limitations of this subsection do not apply if the manufacturer or distributor can prove fraud on a claim.

The manufacturer:

- ◆ **may only increase costs on the invoice price on new vehicles received by the dealer.**

This is what is referred to as the ‘surcharge.’

- ◆ **must notify SOS of at least 30% franchisee participation in contract.**

- ◆ **must file copy of contract with SOS.**

- ◆ **Must pay claim for delivery/prep work, warranty work and incentive payments within 30 days of approval.**

- ◆ **Must approve or disapprove within 30 days of receipt of claim.**

- ◆ **Audit claims or charge back within one (1) year after the date the claim is paid.**

It is unfair for a vehicle manufacturer to:

(IC 9-32-13-18)

... (b) This subsection applies if a dealer sells or leases a motor vehicle to a customer that resells the motor vehicle to a customer that resells the motor vehicle or export the motor vehicle to a foreign country. A manufacturer or distributor may not take or threaten to take adverse action or otherwise discriminate against the dealer unless the dealer knew or reasonable should have known before the dealer sold or leased the motor vehicle to the customer that the customer intended to resell or export the motor vehicle. Titling and registering a motor vehicle in any state in the name of the customer to whom the dealer sold or leased the motor vehicle establishes a rebuttable presumption that the dealer did not know or should not reasonably have known that the customer intended to resell or export the motor vehicle.

(c) For purposes of subsection (b), adverse actions by a manufacturer or distributor include the following conduct by a manufacturer or distributor, whether actual or threatened:

(1) Failing or refusing to allocate, sell, or deliver a motor vehicle to the dealer.

(2) Discriminating against the dealer in the allocation of motor vehicles.

(3) Charging back or withholding payments or other consideration for which a dealer is eligible under a warranty reimbursement, sales promotion, incentive program, or contest.

(4) Disqualifying a dealer from participating in a sales promotion, incentive program, or contest.

(5) Terminating a franchise.

(IC 9-32-13-19)

• ... refuse or fail to indemnify and hold harmless a dealer, upon written notification from the dealer, from all losses, costs, and expenses that result or arise from or are related to a complaint, claim, defense, or suit against the dealer that concerns defects in a motor vehicle or other goods or services that are the responsibility of the manufacturer.

(IC 9-32-13-23)

• (a) (1) require, coerce, or attempt to coerce any new motor vehicle dealer in Indiana to:

(A) change location of the dealership;

(B) make any substantial alterations to the use of franchises; or

(C) make any substantial alterations to the dealership premises or facilities;

if to do so would be unreasonable or would not be justified by current economic conditions or reasonable business considerations. This subdivision does not prevent a manufacturer or distributor from establishing and enforcing reasonable facility requirements. However, a motor vehicle dealer may elect to use for the facility alteration locally sourced

The manufacturer:

◆ **May not take adverse action against you because a customer resold or exported a vehicle you sold to him.**

◆ **Types of adverse action prohibited under this subsection...(c) 1-5.**

◆ **This section protects you from all items that are the manufacturer's responsibility.**

◆ **may not make you change location of the dealership.**

◆ **may not make you separate lines.**

◆ **may not make you build a new or make you remodel your dealership.**

◆ **You may use locally sourced materials similar to those required by the manufacturer**

It is unfair for a vehicle manufacturer to:

materials or supplies that are substantially similar to those required by the manufacturer or distributor, subject to the approval of the manufacturer or distributor.

(2) Require, coerce, or attempt to coerce any new motor vehicle dealer in Indiana to divest ownership of or management in another line or make of motor vehicles that the dealer has established in its dealership facilities with the prior written approval of the manufacturer or distributor.

(3) Establish or acquire wholly or partially a franchisor owned outlet engaged wholly or partially in a substantially identical business to that of the franchisee within the exclusive territory granted the franchisee by the franchise agreement or, if no exclusive territory is designated, competing unfairly with the franchisee within a reasonable market area. A franchisor is not considered to be competing unfairly if operating:

- (A) a business for less than two (2) years;
- (B) in a bona fide retail operation that is for sale to any qualified independent person at a fair and reasonable price; or
- (C) in a bona fide relationship in which an independent person or persons have made a significant investment subject to loss in the business operation and can reasonably expect to acquire majority ownership or managerial control of the business on reasonable terms and conditions.

(4) Require a dealer, as a condition of granting or continuing a franchise, approving the transfer of ownership or assets of a new motor vehicle dealer, or approving a successor to a new motor vehicle dealer to:

- (A) construct a new dealership facility;
- (B) modify or change the location of an existing dealership.
- (C) grant the manufacturer or distributor control rights over any real property owned, leased, controlled, or occupied by the dealer.

(5) Prohibit a dealer from representing more than one (1) line make of motor vehicles from the same or a modified facility if:

- (A) reasonable facilities exist for the combined operations;
- (B) the dealer meets reasonable capitalization requirements for the original line make and complies with the reasonable facilities requirements of the manufacturer or distributor; and
- (C) the prohibition is not justified by the reasonable business considerations of the manufacturer or distributor.

Subdivisions (3) through (5) do not apply to recreational vehicle manufacturer franchises.

(b) This section does not prohibit the enforcement of a voluntary agreement between the manufacturer or distributor and the franchisee where separate and valuable consideration has been offered and accepted.

The manufacturer may not:

- ◆ **make you get rid of another line.**
- ◆ **own a dealership if it competes unfairly with you.**
- ◆ **Require you to construct, modify or change location, or grant control of property as a condition of continuing your franchise, approving the transfer of ownership or assets or approval of successor.**
- ◆ **Prohibit you from representing more than one line make at the same or modified dealership with reasonable conditions.**
- ◆ **Prohibit enforcement of a mutual agreement as long as separate and valuable consideration has been offered and accepted.**

It is unfair for a vehicle manufacturer to:

(IC 932-13-24)

• (a) This section does not apply to the relocation of a new motor vehicle dealer to a location that is not more than two (2) miles from its established place of business.

(b) This section does not apply to the reopening or replacement in a relevant market area of a closed dealership that was closed within the preceding three hundred sixty-five (365) days, if the established place of business of the reopened or replacement dealer is within two (2) miles of the established place of business of the closed dealership.

(c) This section does not apply to a new motor vehicle dealer located in a county having a population of more than one hundred thousand (100,000) if:

(1) the new motor vehicle dealer relocates to a site that is located at a distance greater than the existing distance of another new motor vehicle dealer of the same line make before the relocation; and

(2) the site of the relocation is outside an area that is within a radius of four (4) miles from another new motor vehicle dealer of the same line make; but does apply to a new motor vehicle dealer that before January 1, 2013, had been engaged in the process of relocating but had not physically relocated to the new intended site by January 1, 2013, and to a new motor vehicle dealer that began engaging in the process of relocating on or after January 1, 2013.

(d) Before a franchisor enters into a franchise establishing or relocating a new motor vehicle dealer within a relevant market area where the same line make is represented, the franchisor shall give written notice to each new motor vehicle dealer of the same line make in the relevant market area of the franchisor's intention to establish an additional dealer or to relocate an existing dealer within that relevant market area.

(e) Not later than thirty (30) days after:

(1) receiving the notice provided for in subsection (d); or

(2) the end of any appeal procedure by the franchisor;

a new motor vehicle dealer may bring a declaratory judgment action before the division to determine whether good cause exists for the establishing or relocating of a proposed new motor vehicle dealer. If an action is filed under this section, the franchisor may not establish or relocate the proposed new motor vehicle dealer until the division has rendered a decision on the matter. An action brought under this section shall be given precedence over all other matters pending before the division.

(f) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line make, the division shall take into consideration the existing circumstances, including the following:

(1) Permanency of the investment.

(2) Effect on the retail new motor vehicle business and the consuming public in the relevant market area.

The manufacturer may not:

◆ **“Relevant Market Area” exemptions.**

- **relocation less than 2 miles away from current location;**

- **reopening or replacement within 1 year and 2 miles of closed dealership;**

- **in a county with 100,000+ population:**

- **Site located greater than the current existing distance from a dealership of the same line make; and**
- **Site is greater than 4 miles from a dealership of the same line make.**

◆ **relocate or establish a new dealership of the same line within your ‘relevant market area’ without prior written notice.**

◆ **You can file an action with the dealer services division of the secretary of state to determine good cause resulting in preventing the relocation or establishment of a new dealership until the dealer services division of the secretary of state makes a decision.**

◆ **SOS-DSD will consider the following points 1-7 to determine good cause.**

It is unfair for a vehicle manufacturer to:

(IC 9-32-13-24 (f) cont'd)

(3) Whether it is injurious or beneficial to the public welfare.

(4) Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line make in the market area, including the adequacy of motor vehicle sales and qualified service personnel

(5) Whether the establishment or relocation of the new motor vehicle dealer would promote competition.

(6) Growth or decline of the population and the number of new motor vehicle registrations in the relevant market area.

(7) The effect on the relocating dealer of a denial of its relocation into the relevant market area.

(IC 9-32-13-27)

.....(a)

(1) Cancel or terminate a franchise or selling agreement of a franchisee, or fail or refuse to extend or renew a franchise or selling agreement upon the franchise's or selling agreement's expiration, without good cause or notice to the franchisee by certified mail, return receipt requested:

(A) at least ninety (90) days before the cancellation or termination: or

(B) at least ten (10) days before the cancellation or termination if any of the following apply:

(i) The franchisee has abandoned business operations or otherwise failed to conduct sales and service operations during regular business hours for at least seven (7) consecutive business days, unless the abandonment or closure is due to an act of God, or another act over which the franchisee has no control.

(ii) The franchisee or another operator of the franchise has been convicted of or pled guilty to an offense punishable by at least one (1) year of imprisonment.

(iii) The dealer files for bankruptcy or enters into receivership.

(iv) The license of the dealer is revoked under IC 9-32-11 or IC 9-32-16.

(v) The dealer commits fraud.

(2) Offer a renewal, replacement, or succeeding franchise or selling agreement that substantially changes or modifies the sales and service obligations, facilities standards, capital requirements, or other terms of the original franchise or agreement of a franchisee without notice to the franchisee by certified mail, return receipt requested, at least ninety (90) days before the expiration or termination of the original franchise or agreement.

Notice provided under this subsection must include a detailed statement setting forth the specific grounds for the proposed action.

The manufacturer may not:

◆ **Cancel or terminate or fail to renew your franchise without good cause.**

Must give:

- **90 day written notice; or**
- **10 days written notice if:**
 - **failure to conduct business for 7 days or more is due to circumstances out of your control,**
 - **you will be serving a prison sentence of at least 1 year,**
 - **have filed for bankruptcy or enter into receivership,**
 - **your license is revoked, or**
 - **you commit fraud.**

◆ **Offer renewal, replacement or succeeding franchise that substantially changes or modifies the sales & service obligations, facilities standards, capital requirements or other terms of the original franchise without 90 days written notice explaining the grounds for the changes or modifications.**

It is unfair for a vehicle manufacturer to:

(IC 9-32-13-28)

(a) This section applies when a dealer requests payment from a manufacturer or distributor following:

(1) the termination, cancellation, or nonrenewal by the manufacturer or distributor of a franchise between the dealer and the manufacturer; or

(2) the discontinuance of a line make by the manufacturer or distributor.

(b) Not more than ninety (90) days after a manufacturer or distributor receives a request for payment from a dealer described in subsection (a), the manufacturer or distributor shall pay to the dealer the following amounts for items that are in the dealer's inventory or possession at the time of termination, cancellation, nonrenewal, or discontinuance, that the dealer delivers to the manufacturer or distributor, and as to which the dealer conveys clear title to the manufacturer or distributor under subsection (c):

(1) For:

(A) current model year motor vehicles; or

(B) immediately preceding model year motor vehicles with less than three hundred (300) miles;

acquired from the manufacturer or distributor in the usual course of business, the cost at acquisition less any discounts or allowances received from the manufacturer or distributor.

(2) For all new, unused, and undamaged parts in original packaging that were purchased from the manufacturer or distributor;

(A) the cost listed in the manufacturer's or distributor's parts catalog in effect at the time of termination, cancellation, nonrenewal, or discontinuance; minus

(B) any allowances authorized by the manufacturer or distributor.

(3) For required special tools, equipment, or computer equipment that was used for reporting financial data to the manufacturer or distributor, used solely for the franchise being terminated, and purchased by the dealer during the two (2) years immediately preceding the termination, cancellation, nonrenewal, or discontinuance, fair market value.

(4) For signs that bear a trademark or trade name, that the dealer was required by the manufacturer or distributor to purchase, and that the dealer purchased within three (3) years of termination, cancellation, nonrenewal, or discontinuance, fair market value.

(c) Title to items described in subsection (b) transfers from a dealer to a manufacturer or distributor on the date of termination, cancellation, nonrenewal, or discontinuance. The dealer has an enforceable security interest in the transferred items.

(d) It is an unfair practice for a manufacturer or distributor to violate this section.

The manufacturer may not:

♦ **Payments upon franchise termination, cancellation, nonrenewal or line make discontinuance:**

Must pay within 90 days the following:

- **Vehicles: the cost at acquisition minus any discounts or allowances received:**
 - **Current model year vehicles;**
 - **Prior models vehicles with less than 300 miles.**
- **Parts: the parts catalog cost (at the time of termination, etc.) minus any manufacturer authorized allowances:**
 - **New, unused and undamaged parts in original packaging.**
- **Required special tools, equipment, or computer equipment (financial reporting to mfg.): Fair market value**
 - **Purchased within immediate 2 years prior**
 - **Used solely for the terminated franchise**
- **Trademark or Trade Name Signs: Fair market value**
 - **Purchased within 3 years**
 - **Required by manufacturer**

It is unfair for a vehicle manufacturer to:

(IC 9-32-13-29)

(a) This section applies when a manufacturer or distributor terminates, cancels, or fails to renew a franchise between the manufacturer or distributor and a dealer, unless the termination, cancellation, or failure to renew is due to any of the following:

(1) The dealer files for bankruptcy or enters into receivership.

(2) The dealer's license is revoked under IC 9-32-11 or IC 9-32-16.

(3) The dealer has been convicted of or pled guilty to a felony.

(4) The dealer commits fraud.

(5) The dealer has abandoned business operations or otherwise failed to conduct sales and service operations during regular business hours for at least seven (7) consecutive days, unless the abandonment or closure is due to an act of God or another act over which the franchise has no control.

(b) Except as provided in subsection (c), upon termination, cancellation, or nonrenewal, a manufacturer or distributor shall pay to a dealer the following amounts:

(1) If the dealer is leasing the dealership facilities from a person other than the manufacturer or distributor, the lesser of:

(A) the total lease payments remaining unpaid on the date of termination, cancellation, or nonrenewal; or

(B) the total annual lease payments for one (1) year; subject to damages mitigated by the dealer under the terms of the lease.

(2) If the dealer owns the dealership facilities, an amount equal to the reasonable rental value of the facilities for the one (1) year period beginning on the date of termination, cancellation, or nonrenewal, subject to damages mitigated by the dealer.

(c) A manufacturer or distributor may discharge the manufacturer's or distributor's obligations under a lease with a dealer by negotiating with the dealer a lease termination payment, a sublease, or a new lease.

(d) The manufacturer or distributor is entitled to possession of the dealership facilities during the time period for which the manufacturer or distributor makes any lease payments.

(e) It is an unfair practice for a manufacturer or distributor to violate this section.

The manufacturer may not:

◆ Facility or Lease Payments :

Fail to pay within 90 days upon franchise termination, cancellation, nonrenewal or line make discontinuance the following :

- **If dealership is leased, the lesser of the following minus any damages determined by the lessor:**
 - **the total unpaid lease payments on the termination date; or**
 - **1 year lease payments.**
- **If dealership is owned, 1 year reasonable rental value beginning on the date of the termination minus damages determined by dealer.**
- **Payment may be discharged by manufacturer via negotiation between dealer and manufacturer for:**
 - **Lease termination payment;**
 - **Sublease; or**
 - **New lease.**
- **Manufacturer entitled to possession of dealership during period it's making any lease payments.**

It is unfair for a vehicle manufacturer to:

(IC 9-32-13-30)

- (a) A manufacturer or distributor may not coerce or require a dealer to:
- (1) make an improvement to the dealer's facilities; or
 - (2) install signs or other franchisor image elements that would result in replacing or substantially altering improvements or image elements that the dealer made or installed during the immediately preceding seven (7) years as required by the manufacturer or distributor, unless the improvement or installation of signs or visual elements is necessary to comply with the health or safety laws of the state or to sell, service, or display a new motor vehicle due to the unique technology of the new motor vehicle.
- (b) It is an unfair practice for manufacturer or distributor to violate this section.
- (c) This section does not apply to a recreational vehicle manufacturer franchisor.

The manufacturer may not:

- ◆ **Facility, sign or image element improvements**
 - **Not required for improvements made or installed in the previous 7 years unless for health or safety laws or required due to unique technology of new vehicle for sale, service or display .**

FRANCHISE AGREEMENT: DECEPTIVE ACTS & PRACTICES

It is unlawful for a Franchisor to engage in the following acts:

(IC 23-2-2.7-2)

- (1) Coercing the franchisee to:
 - (i) order or accept delivery of any goods, supplies, inventories, or services which are neither necessary to the operation of the franchise, required by the franchise agreement, required by law, nor voluntarily ordered by the franchisee;
 - (ii) order or accept delivery of any goods offered for sale by the franchisee which includes modifications or accessories which are not included in the base price of those goods as publicly advertised by the franchisor;
 - (iii) participate in an advertising campaign or contest, any promotional campaign, promotional materials, display decorations, or materials at an expense to the franchisee over and above the maximum percentage of gross monthly sales or the maximum absolute sum required to be spent by the franchisee provided for in the franchise agreement; in the absence of such provision for required advertising expenditures in the franchise agreement, no such participation may be required;
 - (iv) enter into any agreement with the franchisor or any designee of the franchisor, or do any other act prejudicial to the franchisee, by threatening to cancel or fail to renew any agreement between the franchisee and the franchisor. Notice in good faith to any franchisee of the franchisee's violation of the terms or provisions of a franchise or agreement does not constitute a violation of this subdivision.

- (2) Refusing or failing to deliver in reasonable quantities and within a reasonable time after receipt of an order from a franchisee for any goods, supplies, inventories, or services which the franchisor has agreed to supply to the franchisee, unless the failure is caused by acts or causes beyond the control of the franchisor.

- (3) Denying the surviving spouse, heirs, or estate of a deceased franchisee the opportunity to participate in the ownership of the franchise under a valid franchise agreement for a reasonable time after the death of the franchisee, provided that the surviving spouse, heirs, or estate maintains all standards and obligations of the franchise.

Franchisor may not:

- ◆ **require you to order things listed on the left that you don't need or want.**

- ◆ **require you to order any product that you don't want or can't sell.**

- ◆ **require you to participate in advertising or promotions not included in your franchise agreement.**

- ◆ **require you to do anything that could hurt your dealership by threatening to cancel your franchise.**

- ◆ **fail to provide you product.**

- ◆ **deny you to pass dealership to family member.**

It is unlawful for a Franchisor to engage in the following acts:

(IC 23-2-2.7-2 cont'd)

(4) Establishing a franchisor-owned outlet engages

- in a substantially identical business to that of the franchisee within the exclusive territory granted the franchisee by the franchise agreement or, if no exclusive territory is designated, competing unfairly with the franchisee within a reasonable area. However, a franchisor shall not be considered to be competing when operating a business either temporarily for a reasonable period of time, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the business operation and can reasonably expect to acquire full ownership of such business on reasonable terms and conditions.

- (5) Discriminating unfairly among its franchisees or unreasonably failing or refusing to comply with any terms of a franchise agreement.

- (6) Obtaining money, goods, services, or any other benefit from any other person with whom the franchisee does business, on account of, or in relation to, the transaction between the franchise and the other person, other than compensation for services rendered by the franchisor, unless the benefit is promptly accounted for, and transmitted to the franchisee.

- (7) Increasing prices of goods provided by the franchisor which the franchisee had ordered for retail consumers prior to the franchisee's receipt of a written official price increase notification. Price increases caused by conformity to a state or federal law, the revaluation of the United States dollar in the case of foreign-made goods or pursuant to the franchise agreement are not subject to this subdivision.

- (8) Using deceptive advertising or engaging in deceptive acts in connection with the franchise or the franchisor's business.

Franchisor may not:

- ◆ **compete unfairly with you (factory store) except for dealer development.**

- ◆ **discriminate against you.**

- ◆ **Get money on the side from your suppliers without your knowledge.**

- ◆ **raise prices after you sold the vehicle.**

- ◆ **do deceptive advertising.**

“ADVERTISING STANDARDS”

INDIANA

On May 17, 2007, the Board of Directors of the Automobile Dealers Association of Indiana, Inc. approved these recommended guidelines, as originally drafted May 18, 1990, for your voluntary compliance in order to “police” ourselves and avoid having mandated and far more restrictive advertising standards imposed upon our industry. The purpose of these standards is to provide for truthful and accurate practices in the sale of new and used vehicles for the benefit of the citizens of this State.

GENERAL PROHIBITION

Licensed dealers shall not use false, deceptive, unfair or misleading advertising. The term “advertising” includes any form of public notice or statement however disseminated or utilized.

MANUFACTURER SALES; WHOLESALE PRICES

Dealers shall not advertise the sale of vehicles in any manner that conveys to the public, either directly or by implication, that the vehicles advertised are being offered for sale by the manufacturer or distributor of the vehicles. Advertisements by dealers shall not contain terms such as “factory sale”, “wholesale prices”, or any other similar terms which indicate sales other than retail sales.

BAIT ADVERTISING

“Bait” advertising is an unfair and deceptive practice and shall not be used by any licensee. Bait advertising is an alluring but insincere offer to sell a product, the primary purpose of which is to obtain leads to persons interested in buying merchandise of the type advertised and to switch consumers from buying the advertised product in order to sell some other product at a higher price or on a basis more advantageous to the advertiser. Advertising a new motor vehicle at a price which does not include all equipment listed as standard equipment by the manufacturer, distributor or dealer, or eliminating any such equipment for the purpose of advertising a low price and “baiting” the customer into charges above the advertised price is prohibited as misleading and deceptive.

ACCURACY

All advertised statements, including those specifying year, make, engine size, model, type, equipment, price, trade-in allowance, terms, or other claims or conditions pertaining to the offer for sale of any vehicle, or to the vehicle itself, shall be accurate and clear.

UNTRUE CLAIMS

The following statements shall not be used in any advertising by any dealer:

- (1) Statements such as “write your own deal”, “name your own price”, “name your own monthly payments”, or statements with similar meaning.
- (2) Statements such as “everybody financed”, “No credit rejected”, “we finance anyone”, and other similar statements representing or implying that no prospective credit purchaser will be rejected because of his/her inability to qualify for credit.
- (3) Statements representing that no other dealer grants greater allowances for trade-ins, however stated, unless such is the case.
- (4) Statements representing that because of its large sales volume, a dealer is able to purchase vehicles for less than another dealer selling the same make of vehicles, unless such is the case.

MANUFACTURER’S SUGGESTED RETAIL PRICE

The suggested retail price of a new motor vehicle when advertised by a manufacturer or distributor shall include all costs and charges for the vehicle advertised, except that destination and dealer taxes, title, and license fees may be excluded from such price, provided the advertisement conspicuously states that such costs and charges are excluded.

LEASE, BALLOON OR RESIDUAL ADVERTISEMENTS

Vehicle lease advertisements shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle. Statements such as “alternative financing plan”, “drive away for \$ per month”, or other terms or phrases that do not use the term “lease”, do not constitute adequate disclosure of a lease. Lease advertisements shall not contain the phrase “no down payment” or words of similar import if any outlay of money is required to be paid by the customer to lease the vehicle. Lease terms that are not available to the general public shall not be included in advertisements directed at the general consuming public, or all limitations and qualifications applicable to the lease terms advertised shall be clearly and conspicuously disclosed.

ADVERTISING AT COST

The term “dealer’s cost”, or other reference to the cost of the vehicle to the dealer shall not be used in advertising since the actual net cost to the dealer for the vehicle is dependent upon a number of variables not known to the dealer at the time the advertisement is placed.

ADVERTISING AT INVOICE

The use of term “invoice” or “invoice price” in advertising must be in reference to the manufacturer’s or distributor’s total invoice price on a vehicle, and such advertisement shall clearly and conspicuously include the following disclosure: “The invoice may not represent actual dealer cost”.

UNFAIR PRACTICE

A dealer may not require a purchaser of a motor vehicle, as a condition of sale and delivery thereof, to purchase any equipment, part, or accessory not ordered by the purchaser unless such equipment, part, or accessory is already installed on the motor vehicle when received by or offered for sale by the dealer or is required by law. (This standard is a part of Indiana Law and can be found under I.C. 9-23-3-1).

TRADE-IN ALLOWANCES

Since the amounts of trade-in allowances will vary depending on the condition, model, mileage, or age of a buyer’s vehicle, no specific trade-in amount or range of amounts shall be featured in advertising.

DEMONSTRATORS, EXECUTIVES’, AND OFFICIALS’ VEHICLES

The word “demonstrator” shall be understood to refer to a vehicle which has never been sold or leased to a member of the public. This term shall include vehicles used by new vehicle dealers or their personnel for demonstrating performance ability but not vehicles purchased or leased by such dealers. Demonstrators may be advertised for sale as such only by a dealer franchised for the sale of such make of new vehicles. “Executives” and “officials” vehicles, when so advertised, shall have been used exclusively by executives of the dealer’s franchising manufacturer or distributor, or by an executive of the franchised dealership. These vehicles, so advertised, shall not have been sold or leased to a member of the public prior to the appearance of the advertisement. “Demonstrators”, “executives”, and “officials” vehicles shall be clearly and prominently qualified as such in immediate conjunction with the year, make, and model offered.

AUCTION

Terms such as “auction” or “auction special” and other terms of similar import shall be used only in connection with vehicles offered or sold at a bona fide auction as defined in I.C. 9-13-2-7.

FREE OFFERS

No equipment, accessory, or other merchandise shall be described as “free” if the vehicle can be purchased for a lesser price without such equipment, accessory, or merchandise, or if the price of the vehicle has been increased to cover the cost or any part of the cost of such equipment, accessory, or merchandise.

AUTHORIZED DEALER

The term “authorized dealer” or similar terms shall not be used in any way so as to mislead as to the make or makes of vehicles for the sale or service of which the advertising dealer is franchised.

BUY-DOWN INTEREST RATES

No buy-down interest rate may be advertised if any of the costs of securing the buy-down are passed on to the customer in any way, unless the dealer discloses that contribution by the dealership may increase the negotiated price of the vehicle to the consumer. All buy-down interest rate ads shall be in compliance with Regulation Z of the Federal “Truth in Lending” Act.

CREDIT TERMS

When credit terms are advertised, they must comply with the specific disclosure requirements of the credit advertising provisions of the “Truth in Lending” Act and Regulation Z.

LEASE TERMS

When lease terms are advertised, they must comply with the specific disclosure requirements of the lease advertisement provisions of the “Truth in Leasing” Act and Regulation M.

TELEVISION DISCLOSURES

Any disclosure appearing in television advertisements must clearly and conspicuously feature all necessary information in a manner that can be read and understood (if type is used) or which can be heard and understood (if audio is used) without unreasonable extra effort.



IDEAS CONTRIBUTION FORM

The Indiana Dealers Election Action for Survival (IDEAS) is the political action committee (PAC) fund of the Automobile Dealers Association of Indiana, Inc. (ADAI). *Voluntary corporate contributions* to IDEAS will help us support those legislators willing to consider the problems of the Indiana retail automobile, truck and motorcycle dealers.

IDEAS Contribution requests in the amount of \$250.00 are included in the ADAI dues invoice totals mailed each year in January. However, you may contribute any amount you choose. Please honor the voluntary contribution request and help ensure ADAI's ability to make your issues heard in the Indiana General Assembly.

Your contribution now may save you thousands of dollars in the future. Please invest in your future today.

Remember: People that have a right to be heard must have the ability to be heard!

Yes, I want to join my fellow dealers in support of IDEAS. My check is enclosed in the amount of \$ _____.

Name: _____
Dealership: _____
Address: _____
City/Zip: _____

Make checks payable to: IDEAS

Mail to: ADAI / IDEAS
150 W. Market Street, Suite 812
Indianapolis, IN 46204

