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Serving Indiana Franchised Dealers Since 1937

# IT'S THE LAW ...

## Laws for Indiana New Vehicle Dealers

The following Indiana Statutes (laws) represent the most common areas of law new car dealers are exposed to. This brochure does not represent the entire Indiana Code and is only designed to educate ADAI Dealer Members about how to operate your business better.

- Dealer "Do's"
- Dealer "Don'ts"
- Dealer "Bill of Rights"
- Lease Disclosures
- Frequently Requested Statutes
- Advertising Standards
- Record Retention

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*Last Updated 7/1/2017 to include 2017 Passed Legislation*



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**IMPORTANT DEFINITIONS**  
(Which are also referred to in other statutes)

**IC 9-32-2-6 Broker**

Sec. 6. (a) “Broker” means a person that, for a fee, a commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new or used motor vehicle and who is not, at any point in the transaction, the bona fide owner of the motor vehicle involved in the transaction.

(b) The term does not include:

- (1) a dealer licensed under this article or an employee of a dealer licensed under this article acting in an employment arrangement with the dealer, if the motor vehicle being sold is a motor vehicle in the dealer’s inventory or is subject to a consignment agreement between the dealer and the owner of the motor vehicle;
- (2) a distributor licensed under this article, or an employee of a distributor licensed under this article and acting in an employment arrangement with the distributor, if the sale being arranged is a sale to a dealer licensed under this article; or
- (3) a manufacturer licensed under this article, or an employee of a manufacturer licensed under this article and acting in an employment arrangement with the manufacturer, if the sale being arranged is a sale to a dealer licensed under this article.

*(Eff. 7/1/2017)*

**IC 9-32-2-9 Charge back**

Sec. 9 “Charge back” means a manufacturer induced return of incentive payments to a manufacturer by a dealer. The term includes a manufacturer drawing funds from an account of a dealer. *(Eff. 7/1/2013)*

**IC 9-13-2-31 Commercial motor vehicle**

Sec. 31. “Commercial motor vehicle” has the meaning set forth in 49 CFR 383.5. *(Eff. 7/1/ 2016)*

**49 CFR 383.5 Definitions**

Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle is a—(1) Combination Vehicle (Group A)—having a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or (2) Heavy Straight Vehicle (Group B)—having a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or (3) Small Vehicle (Group C) that does not meet Group A or B requirements but that either—(i) Is designed to transport 16 or more passengers, including the driver; or (ii) Is of any size and is used in the transportation of hazardous materials as defined in this section. *(Eff. 12/8/2016)*

**IC 9-13-2-42 Dealer**

Sec. 42. (a) “Dealer” means, except as otherwise provided in this section, a person that:

- (1) sells;
- (2) offers to sell; or
- (3) advertises for sale;

including directly by the Internet or other computer network, at least twelve (12) vehicles within a twelve (12) month period. The term includes a person that sells off-road vehicles, snowmobiles, mini-trucks, or manufactured homes. 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) A person that holds a mechanic’s lien on a vehicle under IC 9-22-6, if the person sells the vehicle:
  - (A) in accordance with requirements in IC 9-22-6; or
  - (B) to an automotive salvage recycler licensed under IC 9-32-9 after the vehicle fails to sell at a public auction conducted in compliance with IC 9-22-6.
- (4) A person that holds a lien for towing services under IC 9-22-1, if the person complies with all applicable requirements in IC 9-22-1 and IC 9-22-6.

(c) “Dealer”, for purposes of IC 9-31, means a person that sells, offers to sell, or advertises for sale at least six

- (6):
- (1) watercraft; or
  - (2) trailers:
    - (A) designed and used exclusively for the transportation of watercraft; and
    - (B) sold in general association with the sale of watercraft; within a twelve (12) month period.
- (d) “Dealer”, for purposes of IC 9–32, and unless otherwise provided, means:
- (1) an automobile auction;
  - (2) an automotive mobility dealer;
  - (3) a converter manufacturer;
  - (4) a dealer;
  - (5) a distributor;
  - (6) a manufacturer;
  - (7) an automotive salvage recycler;
  - (8) a transfer dealer;
  - (9) a watercraft dealer; or
  - (10) before July 1, 2015, a wholesale dealer.
- (Eff. 7/1/2017)*

**IC 9-13-2-43 Designated family member**

- Sec. 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. *(Eff. 7/1/1991)*

**IC 9-13-2-50 Established place of business**

- Sec. 50. (a) “Established place of business” means premises owned or leased and continuously occupied by a dealer licensed or applying to be licensed under IC 9–32 for the primary purpose of the business activity for which the dealer is licensed or applying to be licensed that:
- (1) contains a permanent enclosed building or structure for the purpose of carrying out the business for which the dealer is licensed or applying to be licensed under IC 9–32; and
  - (2) meets any additional requirements established by IC 9–32 or rules adopted by the secretary under IC 4–22–2.
- (b) The term does not include a residence, tent, temporary stand, or permanent quarters temporarily occupied. *(Eff. 7/1/2017)*

**IC 9-13-2-71 Gross vehicle weight or Gross weight**

Sec. 71. “Gross vehicle weight” or “gross weight” means the weight of a vehicle without load, plus the weight of any load on the vehicle. *(Eff. 7/1/2015)*

**IC 9-13-2-71.4 Gross vehicle weight rating**

Sec. 71.4. “Gross vehicle weight rating” means the value specified by the manufacturer as the loaded weight of a motor vehicle. *(Eff. 7/1/2015)*

**IC 9-32-2-105 Motor vehicle**

- Sec. 105. (a) “Motor vehicle” means, except as otherwise provided in this section, a vehicle that is self-propelled. The term does not include a farm tractor, an implement of agriculture designed to be operated primarily in a farm field or on farm premises, or an electric personal assistive mobility device.
- (b) “Motor vehicle”, for purposes of IC 9-21, means:
- (1) a vehicle that is self-propelled; or
  - (2) a vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.
- (c) “Motor vehicle”, for purposes of IC 9-32, includes a semitrailer, trailer, or recreational vehicle. *(Eff. 7/1/2016)*

**IC 9-13-2-111 New motor vehicle**

Sec. 111. "New motor vehicle" means a motor vehicle:

(1) that has not been previously titled under IC 9-17 and carries a manufacturer's certificate of origin; or (2) that has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

**IC 9-13-2-114.5 Offer to sell**

Sec. 114.5. "Offer to sell" means any attempt or offer to dispose of, or solicitation of an offer to purchase, a motor vehicle or interest in a motor vehicle for hire. *(Eff. 7/1/2013)*

**IC 9-13-2-124 Person**

Sec. 124. "Person" means an individual, a firm, a partnership, an association, a fiduciary, an executor or administrator, a governmental entity, a limited liability company, a corporation, a sole proprietorship, a trust, an estate, or another entity. *(Eff. 7/1/2016)*

**IC 9-13-2-149 Rebuilt vehicle**

Sec. 149. "Rebuilt vehicle" means a salvage vehicle that has been restored to an operable condition. *(Eff. 7/1/2016)*

**IC 9-32-2-20 Relevant market area**

Sec. 20. "Relevant market area" 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 of 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.

*(Eff. 7/1/2013)*

**IC 9-32-2-23 Sale**

Sec. 23. "Sale" includes every contract of sale, contract to sell, or disposition of a motor vehicle or interest in a motor vehicle for value. *(Eff. 7/1/2013)*

**IC 9-13-2-161 School bus**

Sec. 161. (a) "School bus" means, except as provided in subsection (b), a bus used to transport preschool, elementary, or secondary school children to and from:

(1) school;

(2) school athletic games or contests; or

(3) other school functions.

(b) "School bus", for purposes of IC 9-21, means a motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school, including project headstart, or privately owned and operated for compensation for the transportation of children to and from school, including project headstart. *(Eff. 7/1/2016)*

**IC 9-13-2-191 Ultimate purchaser**

Sec. 191. "Ultimate purchaser" means the first person, other than a dealer purchasing in the dealer's capacity as a dealer, who in good faith purchases a motor vehicle for purposes other than resale.



**IC 9-13-2-196 Vehicle**

Sec. 196. (a) "Vehicle" means, except as otherwise provided in this section, a device in, upon, or by which a person or property is, or may be, transported or drawn upon a highway. The term does not include the following:

- (1) A device moved by human power.
- (2) A device that runs only on rails or tracks.
- (3) A wheelchair.

(b) For purposes of IC 9-17, the term includes the following:

- (1) Off-road vehicles.
- (2) Manufactured homes or mobile homes that are:
  - (A) personal property not held for resale; and
  - (B) not attached to real estate by a permanent foundation.
- (3) Watercraft.

(c) For purposes of IC 9-22 and IC 9-32, the term refers to a vehicle of a type that must be registered under IC 9-18-2 (before its expiration) or IC 9-18.1, other than an off-road vehicle or a snowmobile under IC 9-18-2.5 (before its expiration) or IC 9-18.1-14.

(d) For purposes of IC 9-30-5, IC 9-30-6, IC 9-30-8, and IC 9-30-9, the term means a device for transportation by land or air. The term does not include an electric personal assistive mobility device. (*Eff. 7/1/2017*)

**21-DAY TITLE LAW**  
**(Transfer of Certificates of Title)**

**IC 9-17-3-0.5 “Third party” defined**

Sec. 0.5. As used in this chapter, “third party” means a person having possession of a certificate of title for a vehicle because the person has a lien or an encumbrance indicated on the certificate of title. (*Eff. 7/1/2016*)

**IC 9-32-4-1 Transfer of title other than by death; sale of vehicle without certificate of title; failure to deliver certificate of title**

Sec. 1. (a) If a motor vehicle or watercraft for which a certificate of title has been issued is sold or if the ownership of the motor vehicle or watercraft is transferred in any manner other than by a transfer on death conveyance under IC 9–17–3–9, in addition to complying with IC 9–17–3–3.4, the person that holds the certificate of title must do the following:

(1) In the case of a sale or transfer between dealers licensed by this state or another state, deliver the certificate of title within thirty-one (31) days after the date of the sale or transfer.

(2) Deliver the certificate of title to the purchaser or transferee within thirty-one (31) days after the date of sale or transfer to the purchaser or transferee of the motor vehicle or watercraft, if all the following conditions exist:

(A) The seller or transferor is a dealer licensed by the state under this article.

(B) The dealer is not able to deliver the certificate of title at the time of sale or transfer.

(C) The dealer provides the purchaser or transferee with an affidavit under section 2 of this chapter.

(D) The purchaser or transferee has made all agreed upon initial payments for the motor vehicle or watercraft, including delivery of a trade-in motor vehicle or watercraft without hidden or undisclosed statutory liens.

(3) Keep proof of delivery of the certificate of title with the dealer records.

(b) A dealer may offer for sale a motor vehicle or watercraft for which the dealer does not possess a certificate of title, if the dealer can comply with subsection (a)(1) or (a)(2) at the time of the sale.

(c) A dealer that fails to deliver the certificate of title within the time specified under subsection (a) is subject to the following civil penalties:

(1) One hundred dollars (\$100) for the first violation in a calendar year.

(2) Two hundred fifty dollars (\$250) for the second violation in a calendar year.

(3) Five hundred dollars (\$500) for all subsequent violations in a calendar year.

Payment shall be made to the secretary and deposited in the dealer enforcement account established under IC 9–32–7–2.

(d) If a purchaser or transferee does not receive a valid certificate of title within the time specified by this section, the purchaser or transferee has the right to return the motor vehicle or watercraft to the dealer ten (10) days after giving the dealer written notice demanding delivery of a valid certificate of title and the dealer’s failure to deliver a valid certificate of title within that ten (10) day period. Upon return of the motor vehicle or watercraft to the dealer in the same or similar condition as delivered to the purchaser or transferee under this section, the dealer shall pay to the purchaser or transferee the purchase price plus sales taxes, finance expenses, insurance expenses, and any other amount paid to the dealer by the purchaser or transferee. The relief referenced in this subsection is relief for the purchaser or transferee only and does not preclude the ability of the division to collect civil penalties under subsection (c).

(e) For purposes of this subsection, “timely deliver”, with respect to a third party, means to deliver to the purchaser or transferee with a postmark dated or hand delivered not more than ten (10) business days after there is no obligation secured by the motor vehicle or watercraft. If the dealer’s inability to timely deliver a valid certificate of title results from the acts or omissions of a third party that has failed to timely deliver a valid certificate of title to the dealer, the dealer is entitled to claim against the third party one hundred dollars (\$100). If:

(1) the dealer’s inability to timely deliver a valid certificate of title results from the acts or omissions of a third party that has failed to timely deliver the certificate of title in the third party’s possession to the dealer; and

(2) the failure continues for ten (10) business days after the dealer gives the third party written notice of the failure; the dealer is entitled to claim against the third party all damages sustained by the dealer in rescinding the dealer’s sale with the purchaser or transferee, including the dealer’s reasonable attorney’s fees.

(f) If a motor vehicle or watercraft for which a certificate of title has been issued by another state is sold or delivered, the person selling or delivering the motor vehicle or watercraft shall deliver to the purchaser or receiver of the motor vehicle or watercraft a proper certificate of title with an assignment of the certificate of title in a form prescribed by the bureau.

(g) A dealer shall make payment to a third party to satisfy any obligation secured by the motor vehicle or watercraft within ten (10) days after the date of sale.

(h) Except as provided in subsection (i), a person that violates this section commits a Class C infraction.

(i) A person that knowingly or intentionally violates subsection (a)(1), (a)(2), or (d) commits a Class B misdemeanor.

(j) For purposes of this section, “deliver the certificate of title” means to deliver the certificate of title to the purchaser or transferee by postmark dated mail, certified mail with return receipt, or hand delivery.

(*Eff. 7/1/2017*)

**IC 9-32-4-2 Affidavit of transferring vehicle dealer**

Sec. 2. The affidavit required by section 1(a)(2)(C) of this chapter must be printed in the following form:

STATE OF INDIANA                    )  
  ) ss:  
COUNTY OF \_\_\_\_\_)

I affirm under the penalties for perjury that all of the following are true:

- (1) That I am a dealer licensed under IC 9–32.
- (2) That I cannot deliver a valid certificate of title to the retail purchaser of the motor vehicle or watercraft described in paragraph (3) at the time of sale of the motor vehicle or watercraft to the retail purchaser. The identity of the previous seller or transferor is \_\_\_\_\_. Payoff of lien was made on (date) \_\_\_\_\_. I expect to deliver a valid and transferable certificate of title not later than (date) \_\_\_\_\_ from the State of (state) \_\_\_\_\_ to the purchaser.
- (3) That I will undertake reasonable commercial efforts to produce the valid certificate of title. The vehicle identification number or hull identification number is \_\_\_\_\_.

Signed \_\_\_\_\_, Dealer

By \_\_\_\_\_

Dated \_\_\_\_\_, \_\_\_\_\_

CUSTOMER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AFFIDAVIT.

\_\_\_\_\_  
Customer Signature

**NOTICE TO THE CUSTOMER**

If you do not receive a valid certificate of title within thirty-one (31) days after the date of sale, you have the right to return the motor vehicle or watercraft to the dealer ten (10) days after giving the dealer written notice demanding delivery of a valid certificate of title and after the dealer's failure to deliver a valid certificate of title within that ten (10) day period. Upon return of the motor vehicle or watercraft to the dealer in the same or similar condition as when it was delivered to you, the dealer shall pay you the purchase price plus sales taxes, finance expenses, insurance expenses, and any other amount that you paid to the dealer. If a lien is present on the previous owner's certificate of title, it is the responsibility of the third party lienholder to timely deliver the certificate of title in the third party's possession to the dealer not more than ten (10) business days after there is no obligation secured by the motor vehicle or watercraft. If the dealer's inability to deliver a valid certificate of title to you within the above-described ten (10) day period results from the acts or omissions of a third party that has failed to timely deliver the certificate of title in the third party's possession to the dealer, the dealer may be entitled to claim against the third party the damages allowed by law. (Eff. 7/1/2017)

**IC 9-17-5-1 Satisfaction or discharge of lien; delivery**

Sec. 1. (a) A person having possession of a certificate of title for a vehicle because the person has a lien or an encumbrance on the vehicle must deliver not more than ten (10) business days after receipt of the payment the satisfaction or discharge of the lien or encumbrance indicated upon the certificate of title to the person that:

- (1) is listed on the certificate of title as owner of the vehicle; or
- (2) is acting as an agent of the owner and that holds power of attorney for the owner of the vehicle.

(b) A person that:

- (1) fails to remove a lien or encumbrance; or
- (2) fails to deliver a certificate of title to the owner of a vehicle;

as required under subsection (a) commits a Class C infraction. (Eff. 7/1/2016)

**IC 9-32-5-6 Dealer possession of motor vehicle without certificate of title; application; time limitation; delinquent title fee**

Sec. 6. (a) If a dealer purchases or acquires ownership of a motor vehicle in a state that does not have a certificate of title law, the dealer shall apply for an Indiana certificate of title for the motor vehicle not more than forty-five (45) days after the date of purchase or the date ownership of the motor vehicle was acquired.

(b) The bureau shall collect an administrative penalty as provided in IC 9-17-2-14.7 if a dealer fails to apply for a certificate of title for a motor vehicle as described in subsection (a). (Eff. 7/1/2016)

TITLE 9, ARTICLE 32.

VEHICLE MANUFACTURERS, DISTRIBUTORS, AND DEALERS

**REGULATION OF VEHICLE MERCHANDISING**

To operate a franchised new vehicle dealership in Indiana, the following statutes apply . . . **DO'S**

**IC 9-32-11-1 Persons required to be licensed**

Sec. 1. (a) Subject to IC 9-32-11-20, the following persons must be licensed under this article to engage in the business of buying, selling, or manufacturing motor vehicles:

- (1) An automobile auction.
- (2) A converter manufacturer.
- (3) A dealer.
- (4) A distributor.
- (5) An automotive salvage recycler.
- (6) A watercraft dealer.
- (7) A manufacturer.
- (8) A transfer dealer.
- (9) An automotive mobility dealer.

(b) An automotive mobility dealer who engages in the business of:

- (1) selling, installing, or servicing;
- (2) offering to sell, install, or service; or
- (3) soliciting or advertising the sale, installation, or servicing of;

equipment or modifications specifically designed to facilitate use or operation of a motor vehicle by an individual who is disabled or aged must be licensed under this article.

(c) An automotive mobility dealer that fails to be licensed under this article and engages in the businesses described in subsection (b) commits a Class A infraction.

*(Eff. 7/1/2017)*

**IC 9-32-11-2 Applications for licenses**

Sec. 2. (a) An application for a license under this chapter must:

- (1) be accompanied by payment of the applicable fee required under this section;
- (2) be on a form prescribed by the secretary;
- (3) contain the information the secretary considers necessary to enable the secretary to determine fully:
  - (A) the qualifications and eligibility of the applicant to receive the license; and
  - (B) the ability of the applicant to conduct properly the business for which the application is submitted; and
- (4) contain evidence of a bond required in subsection (e); and
- (5) be completed by a dealer owner or dealer manager.

(b) An application for a license as a dealer must show whether the applicant proposes to sell new or used motor vehicles, or both.

(c) An applicant who proposes to use the Internet or another computer network to facilitate the sale of motor vehicles shall maintain all records at the established place of business in Indiana.

(d) The application must include an affidavit from:

- (1) the person charged with enforcing a zoning ordinance, if one exists; or
- (2) the zoning enforcement officer under IC 36-7-4, if one exists;

who has jurisdiction over the real property where the applicant wants to operate as a dealer. If there is no person or officer that has jurisdiction over the real property, the application must be accompanied by a statement to that effect from the executive of the unit in which the real property is located. The affidavit must state that the proposed location is zoned for the operation of a dealer's establishment. The applicant may file the affidavit at any time after the filing of the application. However, the secretary may not issue a license until the applicant files the affidavit or the statement.

(e) A licensee shall maintain a bond satisfactory to the secretary in the amount of twenty-five thousand dollars (\$25,000). The bond must:

- (1) be in favor of the state;
- (2) secure payment of fines, penalties, costs, and fees assessed by the secretary after:

- (A) notice;
- (B) opportunity for a hearing; and
- (C) opportunity for judicial review; and

- (3) secure the payment of damages to a person aggrieved by a violation of this article by the licensee after a judgment has been issued.

(f) Service under this chapter shall be made in accordance with the Indiana Rules of Trial Procedure.

(g) The fee for a license for a manufacturer or a distributor is thirty-five dollars (\$35).

(h) The fee for a license for a dealer, or an automobile auction other than a manufacturer, converter manufacturer, distributor, watercraft dealer, automotive salvage recycler, or transfer dealer is thirty dollars (\$30).

(i) The fee for a transfer dealer or a converter manufacturer or an automotive mobility dealer is twenty dollars (\$20).

(j) The fees collected under this section are nonrefundable and shall be deposited as set forth in IC 9-32-7-3. (Eff. 7/1/2017)

### **IC 9-32-11-5 Franchises**

Sec. 5. A dealer proposing to sell new motor vehicles or watercraft shall file and maintain with the secretary:

- (1) a current copy of each franchise to which the dealer is a party; or
- (2) if the dealer is a party to multiple franchises that are identical except for stated items, a copy of the franchise form with supplemental schedules of variations from the form.

(Eff. 7/1/2017)

### **IC 9-32-11-6 Display of licenses; change of business names or location; offsite licenses**

Sec. 6. (a) A license issued to a dealer under this article:

- (1) must specify the established place of business; and
- (2) shall be conspicuously displayed at the established place of business.

(b) If a dealer's:

- (1) business name, including a doing business as name;
- (2) established place of business address;
- (3) business entity type;
- (4) contact information; or
- (5) dealer owner;

changes, the dealer shall submit to the secretary an application for approval of the change not later than ten (10) days after the change in a manner prescribed by the secretary.

(c) If the change is to information described in subsection (b)(1) or (b)(2), the dealer shall remit a fee of five dollars (\$5) with the notification and submit any additional information necessary to obtain an amended dealer license. The fee is nonrefundable, and the secretary shall retain the fee.

(d) A dealer that uses the Internet or another computer network to facilitate the sale of motor vehicles as set forth in section 2(c) of this chapter shall notify the secretary not later than ten (10) days after any change in a name, address, or telephone number documented in business records located outside Indiana that have been created in transactions made in Indiana by the dealer. A report made under this subsection is not subject to the fee under subsection (c).

(e) A dealer that wants to change its established place of business location must an affidavit along with its application for approval of the change. affidavit must be from:

- (1) the person charged with enforcing a zoning ordinance described in this subsection; or
- (2) the zoning enforcement officer under IC 36-7-4, if one exists;

that has jurisdiction over the real property where the applicant wants to operate as a dealer.

(f) If there is no person or officer that has jurisdiction over the real property, the application must be accompanied by a statement to that effect from the executive of the unit in which the real property is located. The affidavit must state that the proposed location is zoned for the operation of a dealer's establishment.

(g) The secretary may not approve a change of location or endorse a change of location on the dealer's license until the dealer provides the affidavit or the statement.

(h) For the purpose of this section, an offsite sales license issued under section 11 of this chapter does not constitute a change of location.

(Eff. 7/1/2017)

### **IC 9-32-11-10 Sales at motor vehicle industry sponsored trade show exempt - Offsite sales permit**

Sec. 10. This section does not apply to sales made at a motor vehicle industry sponsored trade show. A dealer that sells to the general public may not sell or offer to sell a motor vehicle at a location away from the dealer's established place of business without obtaining an offsite sales permit under section 11 of this chapter.

(Eff. 7/1/2016)

### **IC 9-32-11-11 Offsite sales license**

Sec. 11. (a) Except as provided in subsections (b) through (g), the secretary shall issue an offsite sales permit to a dealer licensed under this chapter who submits an application for the permit not later than ten (10) business days or two (2) calendar weeks before the offsite sale date. Permit applications under this section shall be made public upon the request of any person.

(b) The secretary may not issue an offsite sales permit to a dealer who does not have an established place of business within Indiana.

(c) The secretary may not issue an offsite sales permit to a licensed dealer proposing to conduct a sale outside a radius of twenty (20) miles from the established place of business of the licensed dealer. The following may conduct an offsite sale with an offsite sales permit outside a radius of twenty (20) miles from the established place of business of the licensed dealer:

- (1) New manufactured home dealers.
- (2) Recreational vehicle dealers.
- (3) A rental company that is a dealer conducting a sale at a site within twenty (20) miles of any of its company owned affiliates.
- (4) Off-road vehicle dealers.

(5) Dealers of motor vehicles classified as classic, collector, or antique under rules adopted under section 18(a)(2)(B) of this chapter.

(d) A motor vehicle display is not considered an offsite sale if it is conducted by a new motor vehicle dealer in an open area where no sales personnel and no sales material are present.

(e) The secretary may not issue an offsite sales permit to a licensed dealer proposing to conduct an offsite sale for more than ten (10) calendar days.

(f) The secretary may not issue an offsite sales permit to a licensed dealer if the dealer does not have certification that the offsite sale would be in compliance with local zoning ordinances or other local ordinances. Authorization under this subsection may be demonstrated with an affidavit from:

- (1) the person charged with enforcing a zoning ordinance, if the person exists; or
- (2) the zoning enforcement officer under IC 36-7-4, if a zoning enforcement officer exists;

who has jurisdiction over the real property where the dealer wants to conduct an offsite sale. If there is no person or officer that has jurisdiction over the real property, the application must be accompanied by a statement of authorization from the executive (as defined in IC 36-1-2-5) of the unit in which the real property is located. The secretary may not issue an offsite sales permit until the dealer files an affidavit under this subsection.

(g) The secretary may not issue an offsite sales permit to a licensed dealer who has held more than three (3) nonconsecutive offsite sales in the year ending on the date of the offsite sale for which the permit application is being submitted.

(h) Section 2(c) of this chapter does not apply to the application or issuance of an offsite sales permit under this section.

(i) The fee for an offsite sales permit is twenty-five dollars (\$25). The fee is nonrefundable and shall be deposited as set forth in IC 9-32-7-3.

*(Eff. 7/1/2016)*

### **IC 9-32-11-11.5 Out-of-state dealer applications for special event permits**

Sec. 11.5. (a) A person that is a licensed dealer in a state other than Indiana may apply for an out-of-state dealer special event permit from the secretary for a special event auction if the following conditions are met:

(1) The event is a motor vehicle auction conducted by an auctioneer licensed under IC 25-6.1-3.

(2) The motor vehicles to be auctioned are:

(A) at least fifteen (15) years old; or

(B) classified as classic, collector, or antique motor vehicles under rules adopted by the secretary.

(3) At least two hundred (200) motor vehicles will be auctioned during the special event.

(4) The person submits an application for a special event permit to the secretary not later than thirty (30) days prior to the beginning date of the special event auction.

(5) The application for the special event permit includes the following:

(A) Copies of licenses for all auctioneers for the special event auction.

(B) A copy of a valid dealer's license from the other state.

(C) An affidavit from:

(i) the person charged with enforcing a zoning ordinance, if the person exists; or

(ii) the zoning enforcement officer under IC 36-7-4, if a zoning enforcement officer exists;

who has jurisdiction over the real property where the applicant wants to operate the special event auction. If there is no person or officer that has jurisdiction over the real property as described in this clause, the application must be accompanied by a statement to that effect from the executive of the unit in which the real property is located. The affidavit must state that the proposed location is zoned for the operation of a special event auction. The applicant may file the affidavit at any time after the filing of the application. However, the secretary may not issue a special event auction permit until the applicant files the affidavit or the statement.

(b) Not more than one (1) special event auction permit may be issued by the secretary to the same applicant within a twelve (12) month period.

(c) If the application for the special event permit is approved, the dealer must submit a fee of five hundred dollars (\$500). The secretary shall retain the fee.

*(Eff. 7/1/2016)*

### **IC 9-32-11-12.5 Validity of initial or renewed licenses; expiration**

Sec. 12.5. (a) This section applies to licenses (other than wholesale dealer licenses) issued after December 31, 2014.

(b) An initial or renewed license issued under this article is valid from the issue date through the expiration date in accordance with the following schedule:

(1) A license for a person whose business name begins with the letters A through B expires February 1 of each year.

(2) A license for a person whose business name begins with the letters C through D expires March 1 of each year.

(3) A license for a person whose business name begins with the letters E through F expires April 1 of each year.

(4) A license for a person whose business name begins with the letters G through H expires May 1 of each year.

(5) A license for a person whose business name begins with the letters I through J expires June 1 of each year.

(6) A license for a person whose business name begins with the letters K through L expires July 1 of each year.

(7) A license for a person whose business name begins with the letters M through N expires August 1 of each year.

(8) A license for a person whose business name begins with the letters O through P expires September 1 of each year.

(9) A license for a person whose business name begins with

the letters Q through R expires October 1 of each year.

- (10) A license for a person whose business name begins with the letters S through T expires November 1 of each year.
- (11) A license for a person whose business name begins with the letters U through V expires December 1 of each year.
- (12) A license for a person whose business name begins with the letters W through Z expires January 1 of each year.

(c) A dealer license issued to a person whose business name begins with a nonalpha character expires November 1 of each year.

(d) The fee for the renewal of an automotive salvage recycler license is ten dollars (\$10). The fees collected under this subsection are nonrefundable and shall be retained by the secretary.

(e) The fee for the renewal of a watercraft dealer license is thirty dollars (\$30). The fees collected under this subsection are nonrefundable and shall be retained by the secretary.

(f) The fee for the renewal of a manufacturer or distributor license is thirty-five dollars (\$35). The fees collected under this subsection are nonrefundable and shall be retained by the secretary.

(g) The fee for the renewal of a converter manufacturer or transfer dealer license is twenty dollars (\$20). The fees collected under this subsection are nonrefundable and shall be deposited as set forth in IC 9-32-7-3.

(h) The fee for the renewal of a dealer license not described in subsection (d), (e), (f), or (g) is thirty dollars (\$30). The fees collected under this section are nonrefundable and shall be deposited as set forth in IC 9-32-7-3.

(i) A person who violates this section by operating on an expired license issued under this chapter commits a Class A infraction.

*(Eff. 7/1/2017)*

#### **IC 9-32-11-13 Authority to transfer or assign motor vehicle title**

Sec. 13. A person licensed under this article may transfer or assign a title for a motor vehicle or watercraft. *(Eff. 7/1/2017)*

#### **IC 9-32-11-14 Liability insurance or garage liability insurance coverage**

Sec. 14. (a) At the time of each license application and upon request of the secretary, a person licensed under this article shall furnish evidence that the person:

- (1) has liability insurance or garage liability insurance covering the person's place of business; or
- (2) is a member of a risk retention group that is regulated by the Indiana department of insurance.

(b) A policy described in subsection (a)(1) must have limits of at least the following:

- (1) One hundred thousand dollars (\$100,000) for bodily injury to one (1) person.
- (2) Three hundred thousand dollars (\$300,000) for

bodily injury for each accident.

(3) Fifty thousand dollars (\$50,000) for property damage.

The minimum amounts required by this subsection must be maintained during the time the license is valid. *(Eff. 7/1/2016)*

#### **IC 9-32-11-15 Cessation of business activity**

Sec. 15. (a) A person who ceases a business activity for which a license was issued under this article shall do the following:

(1) On a form prescribed by the secretary, notify the secretary of the date that the business activity will cease.

(2) Deliver to the secretary the license and all permanent dealer license plates, including dealer designee license plates, issued to the person not later than ten (10) days after the date the business activity will cease.

(b) A dealer may not transfer or sell the:

- (1) dealer's license;
- (2) use of the dealer's license;
- (3) dealer's dealer license plates; or
- (4) use of the dealer's dealer license plates.

(c) A dealer that changes its form of organization or state of incorporation may continue the dealer's licensure by filing an amendment to the license and registration if the change does not involve a material fact in the financial condition or management of the dealer. The amendment becomes effective when filed or on the date designated by the dealer in its filing. The new organization is a successor to the original dealer for the purposes of this article.

(d) If there is a change in the dealer's ownership, the successive owner shall file a new application for a license under this chapter. *(Eff. 7/1/2017)*

#### **IC 9-32-11-16 Deposit of revenues in motor vehicle highway account**

Sec. 16. Except as otherwise provided in this chapter, all revenues accruing to the secretary under this chapter shall be deposited in the motor vehicle highway account under IC 8-14-1. *(Eff. 7/1/2016)*

#### **IC 9-32-11-17 Sale of motor vehicle through Internet**

Sec. 17. A dealer who sells a motor vehicle through the use of the Internet or another computer network shall deliver the motor vehicle to the customer, or the customer's representative, at the place of business of the dealer in Indiana. *(Eff. 7/1/2016)*

#### **IC 9-32-11-18 Special event permits**

Sec. 18. (a) A person licensed under this article shall be issued a special event permit from the secretary for a special event that meets the following conditions:

(1) The event is a motor vehicle auction conducted by auctioneers licensed under IC 25-

6.1-3.

(2) The motor vehicles to be auctioned are:

(A) at least fifteen (15) years old; or

(B) classified as classic, collector, or antique motor vehicles under rules adopted by the secretary.

(3) At least one hundred (100) motor vehicles will be auctioned during the special event.

(4) The licensee submits to the secretary an application for a special event permit not later than thirty (30) days before the beginning date of the special event.

(5) The application under subdivision (4) includes the following:

(A) An affidavit from:

(i) the person charged with enforcing a zoning ordinance; or

(ii) a zoning enforcement officer under IC 36-7-4; who has jurisdiction over the real property where the applicant wants to operate the special event auction.

(B) A fee of two hundred fifty dollars (\$250). The fee shall be deposited as set forth in IC 9-32-7-3.

(b) If there is no person or officer that has jurisdiction over the real property as described in subsection (a)(5) (A), the application must be accompanied by a statement to that effect from the executive of the unit in which the real property is located. The affidavit must state that the proposed location is zoned for the operation of a special event auction.

(c) The applicant may file the affidavit at any time after the filing of the application. However, the secretary may not issue a special event auction permit until the applicant files the affidavit or statement.

(d) Not more than two (2) special event permits may be issued by the secretary to the same applicant within a twelve (12) month period.

*(Eff. 7/1/2017)*

### **IC 9-32-11-20 Direct Sales**

Sec. 20. (a) This section does not apply to:

(1) a manufacturer of a trailer or semitrailer; or

(2) a manufacturer that produces fewer than one thousand (1,000) units per year.

(b) Except as provided in subsection (c), a manufacturer may not engage in sales directly to the general public in Indiana.

(c) A manufacturer may engage in sales directly to the general public in Indiana only if:

(1) the manufacturer was granted an initial license to sell new motor vehicles before July 1, 2015; and

(2) the manufacturer establishes at least one (1) physical location in Indiana that is a warranty repair service center before January 1, 2018.

(d) A manufacturer described in subsection (c) must stop engaging in sales directly to the general public in Indiana if the manufacturer sells, transfers, or conveys

a majority interest in the manufacturer to another person that is required to be licensed under this chapter. *(Eff. 7/1/2017)*

## **UNFAIR PRACTICES**

The following statutes apply to licensed new vehicle dealers and manufacturers . . .

### **DON'TS**

#### **IC 9-32-13-1 Dealers; requiring purchase of equipment, part, or accessory as condition of sale**

Sec. 1. It is an unfair practice for a dealer to require a purchaser of a motor vehicle, as a condition of sale and delivery of the motor vehicle, to purchase any equipment, part, or accessory not ordered by the purchaser unless the equipment, part, or accessory is:

(1) already installed on the motor vehicle when the motor vehicle is received by or offered for sale by the dealer; or

(2) required by law. *(Eff. 7/1/2013)*

#### **IC 9-32-13-2 Willful failure of dealer to perform vehicle delivery and preparation obligations**

Sec. 2. It is an unfair practice for a dealer to willingly fail to perform the obligations imposed on the dealer in connection with the delivery and preparation of a new motor vehicle for retail sale as provided in the preparation and delivery agreement of the manufacturer or distributor applicable to the motor vehicle. *(Eff. 7/1/2013)*

#### **IC 9-32-13-3 Willful failure of dealer to perform warranty obligations**

Sec. 3. It is an unfair practice for a dealer to willingly fail to perform the obligations imposed on the dealer in connection with the warranty agreement of the manufacturer or distributor applicable to any motor vehicle sold by the dealer. *(Eff. 7/1/2013)*

#### **IC 9-32-13-4 Sale of vehicle having trade name or mark for which dealer lacks franchise**

Sec. 4. It is an unfair practice for a dealer to sell a new motor vehicle having a trade name, trade or service mark, or related characteristic for which the dealer does not have a franchise in effect at the time of the sale. However, a motor vehicle having more than one (1) trade name, trade or service mark, or related characteristic as a result of modification or further manufacture by a manufacturer, converter manufacturer, or an automotive mobility dealer licensed under this article may be sold by a franchisee appointed by that manufacturer, converter manufacturer, or automotive mobility dealer. *(Eff. 7/1/2016)*

#### **IC 9-32-13-5 Dealers; gross tax; willful failure to perform fiduciary duties**

Sec. 5. It is an unfair practice for a dealer to willingly



fail to perform the fiduciary duty imposed on the dealer by IC 6-2.5-2-1 with regard to the collection and remittance of the state gross retail tax. Willful violation of the fiduciary duty includes written or oral agreements between a dealer and a prospective purchaser that would give the appearance that a bona fide trade-in has taken place, when in fact the purpose of the agreement is to reduce the prospective purchaser's state gross retail tax and thereby deprive the state of revenue. *(Eff. 7/1/2013)*

**IC 9-32-13-6 Sale, exchange, or transfer by dealer of rebuilt vehicle without disclosure or rebuilding**

Sec. 6. It is an unfair practice for a dealer to sell, exchange, or transfer a rebuilt vehicle without disclosing in writing to the purchaser, customer, or transferee the fact that the motor vehicle is a rebuilt vehicle if the dealer knows or should reasonably know before consummating the sale, exchange, or transfer that the motor vehicle is a rebuilt vehicle. *(Eff. 7/1/2016)*

**IC 9-32-13-7 Document preparation fees**

Sec. 7. It is an unfair practice for a dealer to require a purchaser of a motor vehicle as a condition of the sale and delivery of the motor vehicle to pay a document preparation fee, unless the fee:

- (1) reflects expenses actually incurred for the preparation of documents;
- (2) was affirmatively disclosed by the dealer;
- (3) was negotiated by the dealer and the purchaser;
- (4) is not for the preparation, handling, or service of documents that are incidental to the extension of credit; and
- (5) is set forth on a buyer's order or similar agreement by a means other than preprinting. *(Eff. 7/1/2013)*

**“DEALER BILL OF RIGHTS”  
(UNFAIR PRACTICES)**

**IC 9-32-13-8 Violation of deceptive franchise practices provisions**

Sec. 8. (a) It is an unfair practice for a manufacturer or distributor to violate IC 23-2-2.7.

(b) It is an unfair practice for a manufacturer or distributor 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. *(Eff. 7/1/2013)*

**IC 9-32-13-9 Manufacturer or distributor coercing dealer to order parts, accessories, or equipment**

Sec. 9. It is an unfair practice for a manufacturer or distributor to coerce a dealer to order parts, accessories, equipment, machinery, tools, appliances, or any other commodity from a person. *(Eff. 7/1/2013)*

**IC 9-32-13-10 Manufactures or distributor requiring changes in capital structure or business financing of dealer**

Sec. 10. It is an unfair practice for a manufacturer or distributor 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. *(Eff. 7/1/2013)*

**IC 9-32-13-11 Manufacturer or distributor requiring changes in dealer management**

Sec. 11. It is an unfair practice for a manufacturer or distributor to prevent or require, or attempt to prevent or require, a dealer to change the dealer's executive management, other than the principal dealer operator or operators, if the franchise was granted in reliance upon the personal qualifications of the principal dealer operator or operators. *(Eff. 7/1/2013)*

**IC 9-32-13-12 Restraint by manufacturer or distributor on sale or transfer of interest by dealer or its officers, partners, or stockholders**

Sec. 12. It is an unfair practice for a manufacturer or distributor 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. *(Eff. 7/1/2013)*

**IC 9-32-13-13 Manufacturer or distributor preventing dealer from receiving fair compensation for franchised business**

Sec. 13. It is an unfair practice for a manufacturer or distributor 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. *(Eff. 7/1/2013)*

**IC 9-32-13-15 Payment of dealer for labor costs; uniform hourly labor reimbursement rate**

Sec. 15. (a) It is an unfair practice for a manufacturer or distributor to fail to compensate a dealer at the dealer's retail 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 anything less than the dealer's retail rate for labor and parts under the manufacturer's warranty agreements as long as the dealer's retail rate is reasonable. Judgment of the reasonableness includes consideration of charges for similar repairs by similarly situated repair facilities in Indiana.

(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.

(c) This section does not apply to manufacturers or distributors of manufactured housing, heavy duty vocational vehicles (as defined in 49 CFR 523.8), or recreational vehicles. (*Eff. 7/1/2016*)

### **IC 9-32-13-15.5 Failure to compensate less than retail rate for parts and labor in performance of warranty services; unfair practices; submission for retail rate**

Sec. 15.5. (a) This section does not apply to manufacturers or distributors of manufactured housing, heavy duty vocational vehicles (as defined in 49 CFR 523.8), or recreational vehicles.

(b) Unless otherwise agreed, it is an unfair practice for a manufacturer or distributor to fail to compensate a dealer anything less than the dealer's retail rates for parts and labor the dealer uses in performing the warranty services of the manufacturer or distributor, or for a manufacturer or distributor of a separate vehicle component or major vehicle assembly that is warranted independently of the motor vehicle to fail to compensate a dealer anything less than the dealer's retail rate for the parts and labor the dealer uses in performing the warranty services of the manufacturer or distributor. The dealer's retail rate for parts must be a percentage determined by dividing the total charges for parts used in warranty like repairs by the dealer's total cost for those parts minus one (1) in the lesser of one hundred (100) customer paid sequential repair orders or ninety (90) consecutive days of customer paid repair orders. The dealer's retail rate for labor shall be determined by dividing the total labor sales for warranty like repairs by the number of hours that generated those sales in one hundred (100) customer paid sequential repair orders or ninety (90) consecutive days of customer paid repair orders. A retail rate may be calculated only based upon customer paid repair orders charged within one hundred eighty (180) days before the date the dealer submits the declaration

(c) The dealer's submission for retail rates must include a declaration of the dealer's retail rates for parts and labor along with the supporting service repair orders paid by customers. A manufacturer or distributor may challenge the dealer's declaration by submitting a rebuttal not later than sixty (60) days after the date the declaration was received. If the manufacturer or distributor does not send a timely rebuttal to the dealer,

the retail rate is established as reasonable and goes into effect automatically.

(d) If a rebuttal in subsection (c) is timely sent, the rebuttal must substantiate how the dealer's declaration is unreasonable or materially inaccurate. The rebuttal must propose an adjusted retail rate and provide written support for the proposed adjustments. If the dealer does not agree with the adjusted retail rate, the dealer may file a complaint with the dealer services division within the office of the secretary of state.

(e) A complaint filed under subsection (d) must be filed not later than thirty (30) days after the dealer receives the manufacturer's or distributor's rebuttal. On or before filing a complaint, a dealer must serve a demand for mediation upon the manufacturer or distributor.

(f) When calculating the retail rate customarily charged by the dealer for parts and labor under this section, the following work may not be included:

(1) Repairs for manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs.

(2) Parts sold at wholesale.

(3) Routine maintenance not covered under a retail customer warranty, such as fluids, filters, and belts not provided in the course of repairs.

(4) Nuts, bolts, fasteners, and similar items that do not have an individual part number.

(5) Vehicle reconditioning.

(g) If a manufacturer or distributor furnishes a part or component to a dealer at no cost to use in performing repairs under a recall, campaign service, or warranty repair, the manufacturer or distributor shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section by compensating the dealer the average markup on the cost for the part or component as listed in the manufacturer's or distributor's initial or original price schedule minus the cost for the part or component.

(h) A manufacturer or distributor may not require a dealer to establish the retail rate customarily charged by the dealer for parts and labor by an unduly burdensome or time consuming method or by requiring information that is unduly burdensome or time consuming to provide, including part by part or transaction by transaction calculations. A dealer may not declare an average percentage parts markup or average labor rate more than once in a twelve (12) month period. A manufacturer or distributor may perform annual audits to verify that a dealer's effective rates have not decreased. If a dealer's effective rates have decreased, a manufacturer or distributor may reduce the warranty reimburse-

ment rate prospectively. A dealer may elect to revert to the nonretail rate reimbursement for parts and labor not more than once in a twelve (12) month period.

(i) A manufacturer or distributor is permitted to recover its costs, as defined under this section, only from a dealer that receives retail reimbursement for parts or labor, or both parts and labor. This subsection does not prohibit a manufacturer or distributor from increasing the wholesale price of a vehicle or part in the ordinary course of business.

(j) If a dealer files a complaint with the dealer services division within the office of the secretary of state, the warranty reimbursement rate in effect before any mediation or complaint remains in effect until thirty (30) days after:

(1) a final decision has been issued by a court with jurisdiction; and

(2) all appeals have been exhausted. (*Eff. 7/1/2016*)

### **IC 9-32-13-16 Uniform warranty reimbursement policies; contents**

Sec. 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 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 regard to 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 a 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 with 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 original period if the manufacturer and at least one (1) franchisee remain parties to the policy.

(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 motor vehicles received by the franchisee.

(2) A manufacturer or distributor may make an exception for motor 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. (*Eff. 7/1/2016*)

### **IC 9-32-13-17 Payment or disapproval of dealer claims; notice of disapproval; audits and charge backs**

Sec. 17. (a) It is an unfair practice for a manufacturer or distributor to:

(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. A manufacturer or distributor shall not discriminate among dealers with regard to auditing or charging back claims.

(c) If the motor vehicle dealer has properly submitted the claim in accordance with the manufacturer's or distributor's warranty or incentive program guidelines, a manufacturer or distributor may not deny a claim based solely on a motor vehicle dealer's incidental failure to comply with a specific claim processing requirement, including a clerical error or other administrative technicality that does not call into question the legitimacy of a claim. A motor vehicle dealer may submit an amended or supplemental claim within the time and manner required by the manufacturer for:

(1) sales incentives;

(2) service incentives;

(3) rebates; or

(4) other forms of incentive compensation;

for up to sixty (60) days from the date on which such a claim was submitted, could have been submitted, or was charged back. For purposes of this section, a failure to obtain a required signature may not be considered to be a clerical error or administrative technicality. (*Eff. 7/1/2016*)

#### **IC 9-32-13-18 Selling motor vehicle to unlicensed person for resale**

Sec. 18. (a) It is an unfair practice for a distributor to sell a motor vehicle for resale to a person not licensed under this article.

(b) This subsection applies if a dealer sells or leases a motor vehicle to a customer that resells the motor vehicle or exports 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 reasonably should have known before the dealer sold or leased the motor vehicle to the customer that the cus-

tommer 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. (*Eff. 7/1/2015*)

#### **IC 9-32-13-19 Failure to indemnify or hold harmless dealer for losses, costs, and expenses from suits for defects in vehicles or other goods or services**

Sec. 19. It is an unfair practice for a manufacturer or distributor to 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 or distributor. (*Eff. 7/1/2013*)

#### **IC 9-32-13-20 False, deceptive, or misleading advertising; other deceptive acts or practices**

Sec. 20. It is an unfair practice for any person required to be licensed under this article, in connection with the person's business, to use false, deceptive, or misleading advertising or to engage in deceptive acts or practices. (*Eff. 7/1/2015*)

#### **IC 9-32-13-22 Franchise termination; transaction conditioned upon continuation of franchise**

Sec. 22. (a) It is an unfair practice for a manufacturer to terminate a franchise in violation of IC 23-2-2.7-3. A dealer may not transfer, assign, or sell the business and assets of a dealership or an interest in the dealership to another person under an agreement that contemplates or is conditioned on a continuation of the franchise relationship with the manufac-

turer or distributor unless the dealer first:

- (1) notifies the manufacturer or distributor of the dealer's decision to make the transfer, assignment, or sale by written notice; and
- (2) obtains the approval of the manufacturer or distributor.

The dealer must provide the manufacturer or distributor with completed application forms and related information generally used by the manufacturer or distributor to conduct a review of such a proposal and a copy of all agreements regarding the proposed transfer, assignment, or sale.

(b) The manufacturer or distributor shall send a letter by certified mail to the dealer not later than sixty (60) days after the manufacturer or distributor receives the information specified in subsection (a). The letter must indicate any disapproval of the transfer, assignment, or sale and must set forth the material reasons for the disapproval. If the manufacturer or distributor does not respond by letter within sixty (60) days after the manufacturer or distributor receives the information under subsection (a), the manufacturer's or distributor's consent to the proposed transfer, assignment, or sale is considered to have been granted. A manufacturer or distributor may not unreasonably withhold approval of a transfer, assignment, or sale under this section.

(c) A manufacturer or distributor has a right of first refusal as specified in the franchise agreement to acquire the new motor vehicle dealer's assets or ownership if there is a proposed change of more than fifty percent (50%) of the dealer's ownership or proposed transfer of more than fifty percent (50%) of the new motor vehicle dealer's assets, and all the following are met:

- (1) The manufacturer or distributor notifies the dealer in writing of the intent of the manufacturer or distributor to exercise the right of first refusal within the sixty (60) day notice period under subsection (b).
- (2) The exercise of the right of first refusal will result in the dealer and the dealer's owners receiving consideration, terms, and conditions that are either the same as or better than those they have contracted to receive under the proposed change of more than fifty percent (50%) of the dealer's ownership or transfer of more than fifty percent (50%) of the new motor vehicle dealer's assets.
- (3) The proposed change of the dealership's ownership or transfer of the new motor vehicle dealer's assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one (1) or more of the dealer's owners to any of the following:
  - (A) A designated family member or members, including any of the following members of one (1) or

more dealer owners:

- (i) The spouse.
- (ii) A child.
- (iii) A grandchild.
- (iv) The spouse of a child or a grandchild.
- (v) A sibling.
- (vi) A parent

(B) A manager:

- (i) employed by the dealer in the dealership during the previous four (4) years; and
- (ii) who is otherwise qualified as a dealer operator.

(C) A partnership or corporation controlled by any of the family members described in clause (A).

(D) A trust arrangement established or to be established:

- (i) for the purpose of allowing the new motor vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards; or
- (ii) to provide for the succession of the franchise agreement to designated family members or qualified management in the event of the death or incapacity of the dealer or the principal owner or owners.

(4) Except as otherwise provided in this subsection, the manufacturer or distributor agrees to pay the reasonable expenses, including reasonable attorney's fees, that do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, and that are incurred by the proposed owner or transferee before the manufacturer's or distributor's exercise of the right of first refusal in negotiating and implementing the contract for the proposed change of the dealer ownership or the transfer of the new motor vehicle dealer's assets. Payment of expenses and attorney's fees is not required if the dealer has failed to submit an accounting of those expenses not later than twenty (20) days after the dealer receives the manufacturer's or distributor's written request for such an accounting. An expense accounting may be requested by a manufacturer or distributor before exercising the right of first refusal.

(d) Violation of this section by a manufacturer or distributor is an unfair practice by the manufacturer or distributor.

*(Eff. 7/1/2016)*

**IC 9-32-13-23 Manufacturer or distributor requiring changes in franchise or dealership**

Sec. 23. (a) It is an unfair practice for a manufacturer, distributor, officer, or agent to do any of the following:

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

(A) change the 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 new motor vehicle dealer may elect to use for the facility alteration locally sourced materials or supplies that are substantially similar to those required by the manufacturer or distributor, subject to the approval of the manufacturer or distributor, which may not be unreasonably withheld.

(2) Require, coerce, or attempt to coerce a 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 has 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 ve-

hicle 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; or

(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 franchisors.

(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. (*Eff. 7/1/2016*)

#### **IC 9-32-13-24 Relocation of new motor vehicle dealers**

Sec. 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 provided 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.
- (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 that 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. (*Eff. 7/1/2013*)

### **IC 9-32-13-25 Acting, offering to act, or professing to be a broker of vehicles**

Sec. 25. It is an unfair practice for a person to:

- (1) act as;
- (2) offer to act as; or
- (3) profess to be;

a broker in the advertising, buying, or selling of a new or used motor vehicle. (*Eff. 7/1/2016*)

### **IC 9-32-13-26 Fraud or deceit upon another person**

Sec. 26. It is an unfair practice for a dealer to, in connection with the offer, sale, or purchase of a motor vehicle, directly or indirectly:

- (1) employ a device, scheme, or artifice to defraud;
- (2) make an untrue statement of a material fact or omit to state a material fact necessary to make the statement made, in light of the circumstances under which the statement was made, not misleading; or
- (3) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person. (*Eff. 7/1/2016*)

### **IC 9-32-13-27 Unfair practices**

Sec. 27. (a) It is an unfair practice for a manufacturer or distributor to do the following:

- (1) Cancel or terminate a franchise of a franchisee, or fail or refuse to extend or renew a franchise upon the franchise's expiration, without good cause and 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 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.

(3) Terminate a dealer for the dealer's failure to meet a performance standard that is not statistically valid, reliable, and reasonable.

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

(b) For purposes of subsection (a)(1), the following do not constitute good cause, provided that no unfair practice is committed under IC 9-32-13-12 and no transfer, sale, or assignment is made in violation of IC 9-32-13-22:

(1) A change of ownership or executive management of a dealership.

(2) Requiring the appointment of an individual to an executive management position in a dealership.

(3) Ownership of, investment in, participation in the management of, or holding a license for the sale of any line make of new motor vehicles by a franchisee or an owner of an interest in a franchise.

(c) Good cause exists under subsection (a)(1) with respect to all franchisees of a line make if the manufacturer of the line make permanently discontinues the manufacture or assembly of the line make.

(d) Not more than thirty (30) days after a franchisee receives notice under subsection (a), the franchisee may protest the proposed action by bringing a declaratory judgment action before the division.

(e) If a franchisee makes a timely and proper request under subsection (d) for declaratory judgment to protest a proposed action under subsection (a)(1), the division shall schedule an administrative hearing. The

administrative hearing must comply with IC 4-21-5. The declaratory judgment action must include a determination of whether good cause exists for the proposed action. (*Eff. 7/1/2016*)

### **IC 9-32-13-28 Payment requests following termination, cancellation, or nonrenewal of franchise or discontinuance of a product line**

Sec. 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 distributor; 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 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, non-renewal, 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 the termination, cancellation, nonrenewal, or discontinuance, fair market value.

For purposes of this subsection, fair market value is determined on the date of termination, cancellation, nonrenewal, or discontinuance.

(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. (*Eff. 7/1/2013*)

#### **IC 9-32-13-29 Termination, cancellation, or failure to renew a franchise; expectations**

Sec. 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 be-

ginning 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 a distributor to violate this section. (*Eff. 7/1/2013*)

#### **IC 9-32-13-30 Prohibiting forced improvements; unfair practice**

Sec. 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 a manufacturer or distributor to violate this section.

(c) This section does not apply to a recreational vehicle manufacturer franchisor. (*Eff. 7/1/2013*)

#### **IC 9-32-13-31 Performing an unfair practice; Class A infraction**

Sec. 31. (a) A dealer that alleges the commission of an unfair practice by a manufacturer or distributor in violation of section 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 28, 29, or 30 of this chapter may file a complaint with the division under IC 9-32-16-15.

(b) Upon receipt of a complaint under subsection (a), the division may conduct an investigation under IC 9-32-16-14.

(c) If the division determines that a manufacturer or distributor has committed a violation, including an unfair practice described in subsection (a), the division may take action against the manufacturer or distributor under IC 9-32-16 and IC 9-32-17.

(d) A person that performs an act that is an unfair practice under this chapter commits a Class A infraction.

(e) This section does not limit the ability of a dealer, manufacturer, or distributor to request a hearing under IC 9-32-16-2. (Eff. 7/1/2016)

## **DAMAGE TO NEW MOTOR VEHICLES**

The following statutes apply to dealers and manufacturers regarding "Damage in Transit"

### **IC 9-32-14-1 Liability of Dealer**

Sec. 1. Notwithstanding the terms, provisions, or conditions of an agreement or franchise, a motor vehicle dealer is solely liable for damage to a new motor vehicle:

- (1) after acceptance from the carrier or transporter; and
- (2) before delivery to the ultimate purchaser. (Eff. 7/1/2013)

### **IC 9-32-14-2 Liability of manufacture, converter manufacture, or automotive mobility dealer**

Sec. 2. Notwithstanding the terms, provisions, or conditions of any agreement or franchise, a manufacturer, converter manufacturer, or automotive mobility dealer is liable for all damage to a new motor vehicle before delivery of the motor vehicle to a carrier or transporter. (Eff. 7/1/2013)

### **IC 9-32-14-3 Carrier related damage**

Sec. 3. A motor vehicle dealer is liable for damage to a new motor vehicle after the motor vehicle is delivered to the carrier or transporter only if the dealer selects the method of transportation, mode of transportation, and the carrier or transporter. In all other instances, the manufacturer is liable for carrier related damage to a new motor vehicle. (Eff. 7/1/2013)

### **IC 9-32-14-4 Disclosure to ultimate purchaser of damage exceeding four percent of retail price**

Sec. 4. (a) This section does not apply to damage to:

- (1) glass;
- (2) radios;
- (3) tires;
- (4) air bags;
- (5) navigation systems;
- (6) DVD players;
- (7) voice command devices;
- (8) hands free technology; and
- (9) bumpers;

when replaced by identical manufacturer's original equipment.

(b) Any uncorrected damage or any corrected damage to a new motor vehicle that exceeds four percent (4%)

of the manufacturer's suggested retail price (as defined in 26 U.S.C. 4216), as measured by retail repair costs, must be disclosed by the dealer in writing before delivery of the motor vehicle to the ultimate purchaser.

(c) A person that violates this section commits a Class A infraction. (Eff. 7/1/2016)

### **IC 9-32-14-5 Customer-ordered vehicle; damage not exceeding four percent; disclosure**

Sec. 5. Repaired damage to a new motor vehicle ordered by a customer not exceeding four percent (4%) of the manufacturer's suggested retail price (as defined in 26 U.S.C. 4216) does not need to be disclosed at the time of sale. (Eff. 7/1/2013)

## **SUCCESSION TO FRANCHISE BY DESIGNATED FAMILY MEMBERS**

### **IC 9-32-15-1 Application of chapter**

Sec. 1. This chapter does not apply to a franchise if:

- (1) the franchise is granted to a dealer other than a new motor vehicle dealer; and
- (2) the franchise or other written document filed with the franchisor includes the franchisee's designation of a successor to the franchise who is not the:
  - (A) spouse of the franchisee;
  - (B) child of the franchisee;
  - (C) grandchild of the franchisee;
  - (D) spouse of a:
    - (i) child; or
    - (ii) grandchild;

of the franchisee;

(E) parent of the franchisee; or

(F) sibling of the franchisee. (Eff.

7/1/2013)

### **IC 9-32-15-2 Prerequisites for succession to franchise**

Sec. 2. A designated family member of a deceased or incapacitated franchisee may succeed the franchisee under the existing franchise if:

- (1) the manufacturer or distributor determines, subject to section 3 of this chapter, that the existing franchise should be honored; and
- (2) the designated family member complies with section 4 of this chapter. (Eff. 7/1/2013)

### **IC 9-32-15-3 Good cause refusal to honor franchise**

Sec. 3. A manufacturer or distributor may refuse to honor the succession of an existing franchise under

section 2 of this chapter only for good cause. (*Eff. 7/1/2013*)

#### **IC 9-32-15-4 Qualification of designated family member to succeed franchise**

Sec. 4. To qualify under section 2 of this chapter to succeed a franchisee under the existing franchise, a designated family member must do all the following:

- (1) Not later than one hundred twenty (120) days after the franchisee's death or disability, give the manufacturer or distributor written notice of the designated family member's intention to succeed to the franchise.
- (2) Agree to be bound by all terms and conditions of the existing franchise.
- (3) Meet the criteria generally applied at the time of the death or incapacity of the franchisee by the manufacturer or distributor in qualifying new motor vehicle dealers as franchisees.
- (4) If requested by the manufacturer or distributor, promptly supply personal and financial data that is reasonably necessary for the manufacturer or distributor to determine if the existing franchise should be honored. (*Eff. 7/1/2013*)

#### **IC 9-32-15-5 Notice of refusal to honor franchise; service; contents; date of discontinuance**

Sec. 5. (a) Not later than sixty (60) days after receipt of:

- (1) notice from a designated family member under section 4(1) of this chapter; or
- (2) requested personal or financial data under section 4(4) of this chapter;

a manufacturer or distributor that determines that good cause exists for refusing to honor an existing franchise shall serve notice of the determination on the designated family member.

(b) The notice required under subsection (a) must state the following:

- (1) The specific grounds for the manufacturer's or distributor's determination.
- (2) The date on which the existing franchise will be discontinued, which must be at least ninety (90) days after the date the notice is served.

(c) If notice of the manufacturer's determination is not served within the time specified in subsection (a) and does not comply with subsection (b), the franchise must be honored and is not subject to discontinuance under this chapter. (*Eff. 7/1/2013*)

## **ADMINISTRATION AND LEGAL PROCEEDINGS**

#### **IC 9-32-16-2 Order to deny a dealer license application for registration; conditions**

Sec. 2. (a) An order issued under this article may deny a dealer license or endorsement application for registration if the secretary finds that the order is in the public interest and subsection (c) authorizes the action. An order may condition or limit the license of an applicant to be a dealer and, if the applicant for a dealer license is a partner, officer, director, or person having similar status or performing similar functions, or a person directly or indirectly in control of the dealership, the order may condition or limit the license.

(b) If the secretary finds that an order is in the public interest and subsection (c) authorizes the action, an order issued under this article may deny, revoke, suspend, condition, limit, or permanently bar the granting of a license or endorsement or issuing of a license plate to or an application for a license, endorsement, or license plate from a dealer, owner, dealer manager, or a person having a similar status or performing similar functions as a dealer, or a person directly or indirectly in control of the dealer. However, the secretary may not:

- (1) institute a revocation or suspension proceeding under this subsection based on an order issued under the law of another state that is reported to the secretary or a designee of the secretary more than one (1) year after the date of the order on which it is based; or
- (2) issue an order on the basis of an order issued under the dealer services laws of another state unless the other order was based on conduct for which subsection (c) would authorize the action had the conduct occurred in Indiana.

(c) A person may be disciplined under this section if the person:

- (1) has filed an application for a dealer license or endorsement in Indiana under this article, or its predecessor, within the previous ten (10) years, which, as of the effective date of license or registration or as of any date after filing in the case of an order denying effectiveness, was incomplete as to a material fact or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;
- (2) knowingly violated or knowingly failed to comply with this article, or its predecessor;

sor, within the previous ten (10) years;

(3) has been convicted of a:

(A) felony within the previous ten (10) years;

(B) felony or misdemeanor involving theft or fraud; or

(C) felony or misdemeanor concerning an aspect of business involving the offer, sale, financing, repair, modification, or manufacture of a motor vehicle or watercraft;

(4) is enjoined or restrained by a court with jurisdiction in an action instituted by a state or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving the offer, barter, sale, purchase, transfer, financing, repair, or manufacture of a motor vehicle or watercraft;

(5) refuses to allow or otherwise impedes the secretary from conducting an audit or inspection;

(6) has engaged in dishonest or unethical practices in a business involving the offer, barter, sale, purchase, transfer, financing, repair, or manufacture of a motor vehicle within the previous ten (10) years;

(7) is engaging in unfair practices as set forth in this article;

(8) is on the most recent tax warrant list supplied to the secretary by the department of state revenue;

(9) violates IC 23-2-2.7;

(10) violates IC 9-19-9;

(11) willfully violates federal or state law relating to the sale, distribution, financing, or insuring of motor vehicles or watercraft;

(12) is not compliant with local, state, or federal laws and regulations regarding a dealer license, endorsement, or dealer business;

(13) violates IC 9-32-9-15;

(14) violates IC 9-32-9-16; or

(15) violates IC 9-32-9-29.

(d) The secretary may revoke, suspend, or deny an application, impose fines and costs, restrict, condition, limit, bar, or suspend a dealer license, endorsement, or license plate issued under this article, or order restitution, or do any combination of these actions before final determination of an administrative proceeding. Upon the issuance of an order, the secretary shall promptly notify each person subject to the order:

(1) that the order has been issued;

(2) the reasons for the action; and

(3) that upon receipt of a request in a record from the person, the matter will be scheduled for a hearing within fifteen (15) days.

If a hearing is not requested and no hearing is ordered by the secretary within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the secretary, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) After a hearing, the secretary may suspend or deny an application, impose fines and costs, restrict, condition, limit, bar, suspend, or revoke a dealer license or endorsement or order restitution, or do any combination of these actions.

(f) Revocation or suspension of a license or endorsement of a dealer may be limited to one (1) or more locations, to one (1) or more defined areas, or only to certain aspects of the business.

(g) Except as provided in subsection (d), an order may not be issued under this section without:

(1) appropriate notice to the applicant or registrant;

(2) an opportunity for a hearing; and

(3) reasons for the action.

(h) A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the secretary under subsections (a) and (b) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) A person subject to this chapter that has not been issued a license or endorsement is subject to the same disciplinary fines, costs, and penalties as if a license had been issued. (*Eff. 7/1/2017*)

#### **IC 9-32-16-4 Complying with request, order, or subpoena; retention of originals; copies**

Sec. 4. A person complying with any request, order, or subpoena issued by the division for the production of documentary evidence shall retain the originals and shall provide the division with clearly legible, true, and complete copies of the documents requested, along with a signed cover letter, which must identify those documents with a reasonable degree of specificity. (*Eff. 7/1/2013*)

#### **IC 9-32-16-5 Providing access to premises where documents are stored or vehicle sales are offered, made, or processed**

Sec. 5. All dealers licensed with the division shall, upon request, provide members of the staff of the division prompt access, during reasonable business hours, to that part of the premises at the dealer's place of business where:

(1) documents are stored; or

(2) motor vehicle sales are offered, made, or processed. (*Eff. 7/1/2016*)

#### **IC 9-32-16-6 Maintenance of records**

Sec. 6. (a) A dealer licensed or required to be licensed under this article shall make and maintain the records, accounts, correspondence, memoranda, papers, books, and other records required under this article.

(b) Dealer records required to be maintained under IC 9-32-6-14 and other records required under this article may be maintained in any form of data storage acceptable to the secretary if the records are readily accessible and available to copy by an investigating or auditing employee of the secretary upon demand at the place of business of the dealer.

(c) The records of a dealer licensed or required to be licensed under this article are subject to such reasonable periodic, special, or other audits or inspections by a representative of the secretary, within or outside Indiana, as the secretary considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The representative of the secretary may copy, and remove for audit or inspection copies of, the records the secretary reasonably considers necessary or appropriate to conduct the audit or inspection.

(d) Dealer records required to be maintained under IC 9-32-6-14 and other records required under this article must be maintained at the place of business of a dealer for a period of two (2) years. Following the two (2) year period, records may be moved offsite but must be maintained for a period of five (5) years. (*Eff. 7/1/2013*)

#### **IC 9-32-16-8 Cooperation in inquiry, investigation, or inspection for purpose of determining a violation of article**

Sec. 8. (a) A person shall cooperate in an inquiry, investigation, or inspection conducted by, or on behalf of, the division for purposes of determining whether or not a person has violated or is about to violate any provision under this article. The willful failure of a person to cooperate, absent a bona fide claim of privilege, may:

(1) be considered by the division a violation of statute; and

(2) thus subject the person to denial, suspension, or revocation of licensing or a bar from licensing.

(b) The following are examples of, but are not the only, conduct by a person that may be considered a failure to cooperate:

(1) The failure to timely respond by way of appearance or production of documents to a subpoena or order issued by the division.

(2) The failure to answer any question pertinent to inquiry unless the response to the question is subject to a bona fide claim of privilege.

(3) The failure to grant division personnel access to:

(A) the business premises of a dealer or a person required to be licensed as a dealer; or

(B) the records and documents that the dealer or person required to be licensed as a dealer is required, by statute or rule, to make available for inspection.

(4) The failure to attend a scheduled proceeding at which the appearance of the person is required. If a person elects to retain counsel for the purpose of representation in any such proceeding, it is the responsibility of the person to do so in a timely fashion. The failure of a person to retain counsel, absent a showing of good cause, does not require an adjournment of the proceeding.

(5) The failure to timely respond to or to provide information requested under a demand under this chapter.

(6) Aiding or abetting the failure of another person to cooperate. (*Eff. 7/1/2016*)

#### **IC 9-32-16-11 Maintaining good standing with secretary; filings**

Sec. 11. (a) All dealers operating as a:

- (1) corporation;
- (2) limited liability company;
- (3) limited partnership; or
- (4) limited liability partnership;

shall file and maintain all filings required to remain in good standing with the secretary of state business services division.

(b) A dealer that applies for a license under this article shall provide the secretary:

(1) the federal tax identification number; and

(2) the registered retail merchant's certificate number issued under IC 6-2.5-8; issued to the dealer.

(c) The dealer must, for the entire licensing period, have an established place of business with a physical Indiana address. The dealer may not have a mailing address that differs from the actual location of the business. At the discretion of the secretary, an exception may be granted for dealers with an established place of business in a location not serviced by the United States Postal Service to allow a post box to be used as a mailing address. A dealer using

a post box for this reason must notify the division in writing with the dealer's application.

(d) Before the secretary may issue a license to a dealer, the following must submit to a national criminal history background check (as defined in IC 10-13-3-12) or expanded criminal history check (as defined in IC 20-26-2-1.5) administered by the state police:

- (1) Each dealer owner.
- (2) Each dealer manager.

The secretary shall make the determination whether an individual must submit to a national criminal history background check or an expanded criminal history check under this subsection.

(e) A national criminal history background check or expanded criminal history check conducted under subsection (d):

(1) is at the expense of the dealer and the dealer owners; and

(2) may be completed not more than sixty (60) days before the dealer applies for a license under this article.

(f) The secretary may deny an application for a license if the division finds that a dealer owner or a dealer manager has been convicted of a:

- (1) felony within the previous ten (10) years;
- (2) felony or misdemeanor involving theft or fraud; or

(3) felony or misdemeanor concerning an aspect of business involving the offer, sale, financing, repair, modification, or manufacture of a motor vehicle or watercraft.

(g) If a dealer adds or changes a dealer owner or dealer manager after issuance of the initial license, the dealer must submit an application for a change in ownership in a manner prescribed by the secretary not later than ten (1) days after the change. The new dealer owner or dealer manager shall submit to a national criminal history background check or expanded criminal history check as set forth in subsection (d).

(1) felony within the past ten (10) years;

(2) felony or misdemeanor involving theft or fraud; or

(3) felony or misdemeanor concerning an aspect of business involving the:

- (A) offer;
- (B) sale;
- (C) financing;
- (D) repair;
- (E) modification; or
- (F) manufacture;

of a motor vehicle or watercraft

(i) The dealer and the corporation, company, or partnership must be in good standing with the bureau, the department of state revenue, and the state police department during the entire period for which a license is

valid. (*Eff. 7/1/2017*)

### **IC 9-32-16-12 False or misleading statements**

Sec. 12. It is a violation of this article for a person to:

(1) make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to a material fact; or

(2) in connection with a statement to the division or to a consumer, omit to state a material fact necessary to make the statement made, in light of the circumstances under which it was made, not false or misleading. (*Eff. 7/1/2013*)

### **IC 9-32-16-13 Action to enjoin the act, practice, or course of business; forced compliance; injunction**

Sec. 13. (a) If the secretary believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business:

(1) that constitutes a violation of this article or a rule adopted or order issued under this article; or

(2) that materially aids a violation of this article or a rule adopted or order issued under this article;

the secretary or a designee of the secretary, in addition to any administrative remedies, may maintain an action in the circuit or superior court in the county where the investigation or inquiry in question is being conducted to enjoin the act, practice, or course of business and to enforce compliance with this article or a rule adopted or order issued under this article.

(b) In an action under this section and on a proper showing, a court may:

(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator;

(B) ordering a receiver or conservator appointed under clause (A) to:

(i) take charge and control of the property of the respondent, including investment accounts and accounts in a depository insti-

tution, rents, and profits;  
(ii) collect debts; and  
(iii) acquire and dispose of property;

(C) imposing a civil penalty of up to ten thousand dollars (\$10,000) per violation and an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this article or a rule adopted or order issued under this article; and

(D) ordering the payment of prejudgment and postjudgment interest; or

(3) order other relief that the court considers appropriate.

(c) The director may not be required to post a bond in an action or proceeding under this article.

(d) Penalties collected under this section shall be deposited in the dealer enforcement account established by IC 9-32-7-2. (*Eff. 7/1/2013*)

#### **IC 9-32-16-14 Powers of secretary**

Sec. 14. (a) The secretary may:

(1) conduct public or private investigations within or outside Indiana that the secretary considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this article or a rule adopted or order issued under this article, or aid in the enforcement of this article or in the adoption of rules and forms under this article;

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the secretary determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) publish a record concerning an action, proceeding, or investigation under, or a violation of, this article or a rule adopted or order issued under this article if the secretary determines it is necessary or appropriate and in the public interest and for the protection of dealers or consumers.

(b) For purposes of an investigation under this article, the secretary or a designated employee of the secretary may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take attendance, take evidence, require the filing of statements, and require the production of any records that the secretary considers relevant or material to the investigation. Upon order of the secretary or a hearing officer appointed by the secretary in a hearing, depositions may be taken in the manner prescribed by law for dep-

ositions in civil actions and made returnable to the secretary or a hearing officer appointed by the secretary.

(c) If a person does not appear or refuses to testify, file a statement, or produce records, or otherwise does not obey a subpoena as required by this article, the secretary or hearing officer appointed by the secretary may apply to the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted to enforce compliance. The court may:

(1) hold the person in contempt;

(2) order the person to appear before the secretary or hearing officer appointed by the secretary;

(3) order the person to testify about the matter under investigation or in question;

(4) order the production of records;

(5) grant injunctive relief, including restricting or prohibiting the offer or sale of vehicles;

(6) impose a civil penalty of not more than twenty thousand dollars (\$20,000) for each violation; and

(7) grant any other necessary or appropriate relief.

(d) This section does not preclude a person from applying to the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) If a witness, in any hearing, inquiry, or investigation conducted under this article, refuses to answer any question or produce any item, the secretary may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item. If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the secretary may make a written request that the court grant use immunity to the witness. Upon written request of the secretary, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

(1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and

(2) the witness must answer the questions asked and produce the items requested.

A grant of use immunity does not prohibit the use of evidence that the witness gives in a hearing, investigation, or inquiry from being used in a prosecution for perjury under IC 35-44.1-2-1. If a witness refuses to give the evidence after the witness has been granted use immunity, the court may find the witness in contempt.

(f) In any prosecution, action, suit, or proceeding based upon or arising out of or under this article, a certificate signed by the secretary showing compliance or noncompliance with this article by a dealer constitutes prima facie evidence of compliance or noncompliance with this article and is admissible in evidence in any action at law or in equity to enforce this article.

(g) Each witness who appears before the secretary or a hearing officer appointed by the secretary by order is entitled to receive for the witness's attendance the fees and mileage provided for witnesses in civil cases, which must be audited and paid by the state in the same manner as other expenses of the division are audited and paid when proper vouchers sworn to by the witnesses and approved by the secretary are presented. However, a witness subpoenaed at the instance of parties other than the secretary or a hearing officer appointed by the secretary is not entitled to any fee or compensation from the state. (*Eff. 7/1/2013*)

#### **IC 9-32-16-15 Filing complaint or petition for injury due to unfair practice**

Sec. 15. (a) A dealer who is injured by an unfair practice set forth in IC 9-32-13 or IC 9-32-15 may file a complaint or petition with the division.

(b) A dealer may not file a complaint or petition with the division under subsection (a) based on an alleged violation of IC 9-32-13 or IC 9-32-15 by a manufacturer or distributor unless the dealer serves a demand for mediation upon the manufacturer or distributor:

- (1) before; or
- (2) at the same time as;

filing the complaint or petition. A demand for mediation must be in writing and served upon the manufacturer or distributor by certified mail at an address designated for the manufacturer or distributor in the licensor's records. The demand for mediation must contain a brief statement of the dispute and the relief sought by the dealer serving the demand.

(c) Not later than twenty (20) days after the date the demand for mediation is served under subsection (b), the parties shall mutually select an independent mediator and meet with the mediator for the purpose of attempting to resolve the dispute. The meeting place must be within Indiana at a location selected by the mediator. The mediator may extend the period in which the meeting must occur for good cause shown by either party or upon stipulation of the parties. (*Eff. 7/1/2013*)

## **PENALTIES AND REMEDIES**

### **IC 9-32-17-1 Civil penalties**

Sec. 1. A person who violates this article, a rule established under this article, or an order issued by the secretary under this article is subject to a civil penalty of up to ten thousand dollars (\$10,000) for each act of violation. Civil penalties recovered under this section shall be paid to the state and deposited into the dealer enforcement account established by IC 9-32-7-2. (*Eff. 7/1/2015*)

### **IC 9-32-17-7 Failure to deliver certificate of origin or title; civil penalties**

Sec. 7. A person who fails to deliver a certificate of origin or title under IC 9-32-5-2 or IC 9-32-5-8 or fails to deliver timely a certificate of title under IC 9-32-4-1(c) is subject to the following civil penalties:

- (1) One hundred dollars (\$100) for the first violation in a calendar year.
- (2) Two hundred fifty dollars (\$250) for the second violation in a calendar year.
- (3) Five hundred dollars (\$500) for all subsequent violations in a calendar year.

Payment shall be made to the secretary and deposited in the dealer enforcement account established under IC 9-32-7-2. (*Eff. 7/1/2013*)

### **IC 9-32-17-9 Additional remedies**

Sec. 9. In addition to all other remedies, the secretary may seek the following remedies against a person that violates, attempts to violate, or assists in a violation of or an attempt to violate IC 9-32-16:

- (1) An injunction.
- (2) Appointment of a receiver or conservator.
- (3) A civil penalty not to exceed ten thousand dollars (\$10,000) per violation.
- (4) An action to enforce a civil penalty assessed under subdivision (3).

Civil penalties recovered under this section shall be paid to the state and deposited into the dealer enforcement account established by IC 9-32-7-2. (*Eff. 7/1/2013*)

## **DECEPTIVE FRANCHISE PRACTICES**

The following statutes represent what is commonly referred to as "**Franchise Protection Laws**"

### **IC 23-2-2.7-1 Franchise agreements; unlawful provisions**

Sec. 1. It is unlawful for any franchise agreement entered into between any franchisor and a franchi-



see who is either a resident of Indiana or a nonresident who will be operating a franchise in Indiana to contain any of the following provisions:

(1) Requiring goods, supplies, inventories, or services to be purchased exclusively from the franchisor or sources designated by the franchisor where such goods, supplies, inventories, or services of comparable quality are available from sources other than those designated by the franchisor. However, the publication by the franchisor of a list of approved suppliers of goods, supplies, inventories, or service or the requirement that such goods, supplies, inventories, or services comply with specifications and standards prescribed by the franchisor does not constitute designation of a source nor does a reasonable right of the franchisor to disapprove a supplier constitute a designation. This subdivision does not apply to the principal goods, supplies, inventories, or services manufactured or trademarked by the franchisor.

(2) Allowing the franchisor to establish a franchisor-owned outlet engaged 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, permitting the franchisor to compete unfairly with the franchisee within a reasonable area.

(3) Allowing substantial modification of the franchise agreement by the franchisor without the consent in writing of the franchisee.

(4) Allowing the franchisor to obtain 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 franchisee and the other person, other than for compensation for services rendered by the franchisor, unless the benefit is promptly accounted for, and transmitted to the franchisee.

(5) Requiring the franchisee to prospectively assent to a release, assignment, novation, waiver, or estoppel which purports to relieve any person from liability to be imposed by this chapter or requiring any controversy between the franchisee and the franchisor to be referred to any person, if referral would be binding on the franchisee. This subdivision does not apply to arbitration before an independent arbitrator.

(6) Allowing for an increase in prices of goods provided by the franchisor which the franchisee had ordered for private retail consumers prior to the franchisee's receipt of an

official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each order. Price changes applicable to new models of a product at the time of introduction of such new models shall not be considered a price increase. Price increases caused by conformity to a state or federal law, or the revaluation of the United States dollar in the case of foreign-made goods, are not subject to this subdivision.

(7) Permitting unilateral termination of the franchise if such termination is without good cause or in bad faith. Good cause within the meaning of this subdivision includes any material violation of the franchise agreement.

(8) Permitting the franchisor to fail to renew a franchise without good cause or in bad faith. This chapter shall not prohibit a franchise agreement from providing that the agreement is not renewable upon expiration or that the agreement is renewable if the franchisee meets certain conditions specified in the agreement.

(9) Requiring a franchisee to covenant not to compete with the franchisor for a period longer than three (3) years or in an area greater than the exclusive area granted by the franchise agreement or, in absence of such a provision in the agreement, an area of reasonable size, upon termination of or failure to renew the franchise.

(10) Limiting litigation brought for breach of the agreement in any manner whatsoever.

(11) Requiring the franchisee to participate in any:

- (A) advertising campaign or contest;
- (B) promotional campaign;
- (C) promotional materials; or
- (D) display decorations or materials;

at an expense to the franchisee that is indeterminate, determined by a third party, or determined by a formula, unless the franchise agreement specifies the maximum percentage of gross monthly sales or the maximum absolute sum that the franchisee may be required to pay. (*Eff. 4/30/1987*)

### **IC 23-2-2.7-2 Franchise agreements; unlawful acts and practices**

Sec. 2. It is unlawful for any franchisor who has entered into any franchise agreement with a franchisee who is either a resident of Indiana or a nonresi-

dent operating a franchise in Indiana to engage in any of the following acts and practices in relation to the agreement:

(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; or

(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.

(4) Establishing a franchisor-owned outlet engaged 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 rea-

sonable 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 franchisee 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. (*Eff. 1985*)

#### **IC 23-2-2.7-3 Terminations or elections not to renew franchises**

Sec. 3. Unless otherwise provided in the agreement, any termination of a franchise or election not to renew a franchise must be made on at least ninety (90) day's notice. (*Eff. 1976*)

#### **IC 23-2-2.7-4 Actions to recover damages or reform agreements**

Sec. 4. Any franchisee who is a party to a franchise agreement entered into or renewed after July 1, 1976 which contains any provision set forth in Section 1 of this chapter or who is injured by an unfair act or practice set forth in Section 2 of this chapter may bring an action to recover damages, or reform the franchise agreement. (*Eff. 1976*)

#### **IC 23-2-2.7-5 Franchise defined**

Sec. 5. For the purposes of this chapter, franchise means any franchise as defined in IC 23-2-2.5-1, clauses (a) (1) (2) and (3), and any agreement meeting the provisions of IC 23-2-2.5-1, clauses (a) (1) and (2) which relates to the business of selling automobiles and/or trucks and the business of selling gasoline and/or oil primarily for use in vehicles with or without the sale of accessory items. (*Eff. 1976*)

**IC 23-2-2.7-6 Applicability of chapter**

Sec. 6. The provisions of this chapter apply only to agreements entered into or renewed, or act or practice occurring after July 1, 1976. (*Eff. 1976*)

**IC 23-2-2.7-7 Limitation of actions**

Sec. 7. No action may be brought for a violation of this chapter more than two (2) years after the violation. (*Eff. 1976*)

**VEHICLE LEASE DISCLOSURES**

**IC 24-5-16.5.1 Adjusted or net capitalized cost defined**

Sec. 1. As used in this chapter, “adjusted or net capitalized cost” means the capitalized cost, less any capitalized cost reduction payments made by a retail lessee at the inception of a lease agreement. The adjusted or net capitalized cost is the basis for calculating the amount of a retail lessee's periodic payment under a lease agreement. (*Eff. 7/1/2015*)

**IC 24-5-16.5-2 “Capitalized cost” defined**

Sec. 2. (a) As used in this chapter, “capitalized cost” means the amount that, after deducting any capitalized cost reduction, serves as the basis for determining the base lease payment, which is the part of the periodic lease payment that is the sum of:

- (1) the average periodic lease charge; plus
- (2) the average periodic depreciation.

(b) For a single payment lease, the base lease payment is the sum of:

- (1) the average periodic lease charge multiplied by the number of months in the term of the lease; plus
- (2) the average periodic depreciation multiplied by the number of months in the term of the lease.

(c) The capitalized cost may include any of the following:

- (1) Taxes.
- (2) Registration fees.
- (3) License fees.
- (4) Insurance charges.
- (5) Charges for guaranteed auto protection or GAP coverage.
- (6) Charges for service contracts and extended warranties.
- (7) Fees and charges for accessories and for installing accessories.
- (8) Charges for delivery, service, and repair.

(9) Administrative fees, acquisition fees, and all fees or charges for providing services incidental to the lease agreement.

(10) The unpaid balance of an amount financed under an outstanding motor vehicle loan agreement or motor vehicle retail installment contract with respect to a motor vehicle used as a trade-in vehicle.

(11) The unpaid part of the early termination obligation under an outstanding lease agreement.

(12) The first periodic payment due at the inception of the lease agreement, if not otherwise paid by the retail lessee. *(Eff. 7/1/2015)*

#### **IC 24-5-16.5-3 “Capitalized cost reduction” defined**

Sec. 3. As used in this chapter, “capitalized cost reduction” means a payment made by cash, check, credit card, debit card, net vehicle trade-in, rebate, or other similar means in the nature of a down payment or credit, made by a retail lessee at the inception of a lease agreement, for the purpose of reducing the capitalized cost and does not include any periodic payments received by the retail lessor at the inception of the lease agreement. *(Eff. 7/1/2015)*

#### **IC 24-5-16.5-4 “Lease agreement” defined**

Sec. 4. As used in this chapter, “lease agreement” means a written agreement entered into in Indiana for the transfer from a retail lessor to a retail lessee of the right to possess and use a motor vehicle in exchange for consideration for a scheduled term exceeding four (4) months, whether or not the retail lessee has the option to purchase or otherwise become the owner of the motor vehicle upon expiration of the agreement. The term does not include an agreement that covers an absolute sale, a sale pending approval, or a retail installment sale. *(Eff. 7/1/2015)*

#### **IC 24-5-16.5-5 “Lease transaction” defined**

Sec. 5. As used in this chapter, “lease transaction” means a presentation made to a retail lessee concerning a motor vehicle, including a sales presentation or a document presented to the retail lessee, resulting in the execution of a lease agreement. *(Eff. 7/1/2015)*

#### **IC 24-5-16.5-6 “Retail lessee” defined**

Sec. 6. As used in this chapter, “retail lessee” means an individual who executes a lease agreement for a motor vehicle from a retail lessor primarily for personal, family, or household purposes. *(Eff. 7/1/2015)*

#### **IC 24-5-16.5-7 “Retail lessor” defined**

Sec. 7. As used in this chapter, “retail lessor” means a person who regularly engages in the business of selling or leasing motor vehicles and who offers or arranges a lease agreement for a motor vehicle. The term includes an agent or affiliate who acts on behalf of the retail lessor and excludes any assignee of the lease agreement. *(Eff. 7/1/2015)*

#### **IC 24-5-16.5-8 “Vehicle” defined**

Sec. 8. As used in this chapter, “vehicle” has the meaning set forth in IC 9-13-2-196. *(Eff. 7/1/2015)*

#### **IC 24-5-16.5-9 Duties**

Sec. 9. A retail lessor shall do the following:

(1) Comply with the requirements of Regulation M (12 CFR 213) for disclosure of gross capitalized cost, capitalized cost reduction, and adjusted capitalized cost adopted under the federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

(2) Disclose to a retail lessee in a separate blocked section in a lease agreement, in capital letters in at least 10 point bold type the following:

THIS IS A LEASE AGREEMENT. THIS IS NOT A PURCHASE AGREEMENT. PLEASE REVIEW THESE MATTERS CAREFULLY AND SEEK INDEPENDENT PROFESSIONAL ADVICE IF YOU HAVE ANY QUESTIONS CONCERNING THIS TRANSACTION. YOU ARE ENTITLED TO AN EXACT COPY OF THE AGREEMENT YOU SIGN.

(3) Provide the retail lessee with a copy of each document signed by the retail lessee during the course of the lease transaction. *(Eff. 7/1/2015)*

#### **IC 24-5-16.5-10 Identification of trade-in vehicles used as payment**

Sec. 10. A trade-in vehicle used, in whole or in part, to pay amounts due at lease signing or delivery of a leased vehicle must be identified:

(1) as a trade-in vehicle in the lease agreement; and

(2) by year, make, and model.

The lease agreement must state the net credit of the trade-in vehicle used to pay amounts due at lease signing or delivery of the leased vehicle. *(Eff. 7/1/2015)*

## FREQUENTLY REQUESTED STATUTES

### OUT-OF-STATE CUSTOMER SALES TAX COLLECTION

#### IC 24-5-16.5-11 Bona fide printing errors

Sec. 11. A bona fide printing error identified on the face of the lease agreement does not constitute a violation of this chapter. *(Eff. 7/1/2015)*

#### IC 24-5-16.5-12 Failure to comply; penalty

Sec. 12. (a) A retail lessor who fails to comply with the requirements of this chapter is liable to the retail lessee for:

- (1) actual damages sustained;
- (2) a civil penalty of not more than one thousand dollars (\$1,000) per lease transaction; and
- (3) reasonable attorney's fees and costs.

(b) In addition to any other remedies provided by law, a retail lessee may bring an action in the circuit court, superior court, or probate court to recover the damages, penalties, and fees described in subsection (a).

(c) The total recovery of damages, penalties, and fees in a class action civil suit brought under this section may not exceed one hundred thousand dollars (\$100,000). *(Eff. 7/1/2015)*

#### IC 24-5-16.5-13 Bringing of civil action

Sec. 13. A civil suit described under section 12 of this chapter may be brought on behalf of a consumer by the attorney general. *(Eff. 7/1/2015)*

#### IC 24-5-16.5-14 Statute of limitations

Sec. 14. An action authorized by sections 12 and 13 of this chapter must be brought not later than three (3) years after the date the lease agreement is signed. *(Eff. 7/1/2015)*

#### IC 6-2.5-2-3

Sec. 3. (a) As used in this section, "motor vehicle" means a vehicle that would be subject to the vehicle excise tax imposed under IC 6-6-5 if the vehicle were to be used in Indiana.

(b) Notwithstanding section 2 of this chapter, the state gross retail tax rate on a motor vehicle that a purchaser intends to:

(1) transport to a destination outside Indiana within thirty (30) days after delivery; and

(2) title or register for use in another state or country; is the rate of that state or country (excluding any locally imposed tax rates) as certified by the seller and purchaser in an affidavit satisfying the requirements of subsection (c).

(c) The department of state revenue shall prescribe the form of the affidavit required by subsection (b). In addition to the certification required by subsection (b), the affidavit must include the following:

(1) The name of the state or country in which the motor vehicle will be titled or registered.

(2) An affirmation by the purchaser under the penalties for perjury that the information contained in the affidavit is true.

(3) Any other information required by the department of state revenue for the purpose of verifying the information contained in the affidavit.

(d) The department may audit affidavits submitted under this section and make a proposed assessment of the amount of unpaid tax due with respect to any incorrect information submitted in an affidavit required by this section. *(Eff. 7/1/2017)*

### AIR BAG REPLACEMENT

#### IC 9-19-10.5-1 "Inflatable restraint system" defined

Sec. 1. As used in this chapter, "inflatable restraint system" means an air bag that is activated in a crash. *(Eff. 7/1/2003)*

### **IC 9-19-10.5-2 Prohibited instillations**

Sec. 2. (a) A person may not knowingly or intentionally install in a motor vehicle, as part of the motor vehicle's inflatable restraint system, an object that does not comply with Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208) for the make, model, and year of the motor vehicle.

(b) A person who knowingly or intentionally violates this section commits a Class A misdemeanor. However, the offense is a Level 6 felony if a person in a motor vehicle is injured or dies as a result of the violation of subsection (a). (*Eff. 1/1/2015*)

### **9-19-10.5-3 Prohibited sales, leases, trades, or transfers**

Sec. 3. (a) A person may not knowingly or intentionally:

- (1) sell;
- (2) lease;
- (3) trade; or
- (4) transfer;

a motor vehicle in which is installed, as part of the motor vehicle's inflatable restraint system, an object that does not comply with Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208) for the make, model, and year of the motor vehicle to an Indiana resident.

(b) A person who knowingly or intentionally violates this section commits a Level 6 felony. (*Eff. 1/1/2015*)

### **SUNDAY CLOSING LAW (BLUE LAW)**

#### **IC 24-4-6-1**

Sec. 1. (a) This section does not apply to the following:

(1) A person that holds a special event permit issued under IC 9-32-11-18.

(2) The buying, selling, or trading of a motor vehicle that is a motorcycle (as defined in IC 9-13-2-108).

(b) A person who engages in the business of buying, selling, or trading motor vehicles on Sunday commits a Class B misdemeanor. (*Eff. 7/1/2013*)

### **RETURN OF VEHICLE**

#### **IC 26-1-2-608 Revocation of acceptance in whole or in part**

Sec. 608. (1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it (a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them. (*Eff. 1963*)

### **PRIMARY MOTOR VEHICLE INSURANCE COVERAGE**

#### **IC 27-8-9-5 Application of chapter**

Sec. 5. This chapter applies only to policies affording motor vehicle insurance coverage that are issued or renewed after August 31, 1983. (*Eff. 1980*)

#### **IC 27-8-9-6 Definitions**

Sec. 6. (a) The definitions set forth in this section apply throughout this chapter.

(b) "Garage liability policy" refers to any motor vehicle liability insurance policy that affords coverage to a named insured engaged in the business of selling, leasing, repairing, servicing, delivering, testing, road testing, parking, or storing motor vehicles, but does not refer to a motor vehicle liability insurance policy that affords coverage to a vehicle used in the business of transporting property for hire.

(c) "Motor vehicle insurance coverage" means any type of insurance coverage described in IC 27-1-5-1, Class 2(f).

(d) "Permittee" means any person who is granted permission to operate a motor vehicle by the owner of the motor vehicle. (*Eff. 1983*)

#### **IC 27-8-9-7 Use of motor vehicle by permittee**

Sec. 7. (a) This section does not apply to cases covered by section 10 or 11 of this chapter.

(b) In any case arising from a permittee's use of a motor vehicle for which the owner of the vehicle has motor vehicle insurance coverage, the owner's motor vehicle insurance coverage is considered primary if both of the following apply:

(1) The vehicle, at the time damage occurred, was operated with the permission of the owner of the motor vehicle.

(2) The use was within the scope of the permission granted.

(c) The permittee may not recover under any other motor vehicle insurance coverage available to the permittee until the limit of all coverage provided by the owner's policy is first exhausted.

(d) In a case arising from an owner's use of a motor vehicle for which the owner of the vehicle has motor vehicle insurance coverage, the owner's motor vehicle insurance policy is considered primary for any claim made by a passenger in the motor vehicle.

(e) A passenger in a motor vehicle at the time a case described in subsection (b) or (d) arises may not recover under any other motor vehicle insurance coverage available to the passenger until the limit of all coverage available to the passenger under the owner's motor vehicle insurance policy is first exhausted. (*Eff. 1983*)

#### **IC 27-8-9-10 Garage liability policy as owner's only coverage; permittee's coverage primary**

Sec. 10. (a) This section applies if the only motor vehicle insurance coverage provided by the owner of the motor vehicle is under a garage liability policy.

(b) Notwithstanding section 7 of this chapter, any coverage available to the permittee is primary.

(c) Recovery may not be made under the garage liability policy until the limits of all coverage available to the permittee have been exhausted. (*Eff. 1993*)

#### **MOTOR VEHICLE & WATERCRAFT FRAUD**

#### **IC 35-43-6.5-1 Knowingly selling or offering to sell a vehicle, vehicle part, or watercraft with a destroyed, altered, defaced, covered, or removed identification number or certificate of title; Class A misdemeanor; Level 6 felony**

Sec. 1. (a) A person that sells or offers for sale a vehicle, a vehicle part, or a watercraft knowing that an identification number or certificate of title of the vehicle, vehicle part, or watercraft has been:

- (1) destroyed;
- (2) removed;
- (3) altered;
- (4) covered; or
- (5) defaced;

commits a Class A misdemeanor. However, the offense is a Level 6 felony if the aggregate fair market value of all vehicles, vehicle parts, and watercraft sold or offered for sale is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000), and a Level 5 felony if the aggregate fair market value of all vehicles, vehicle parts, and watercraft sold or offered for sale is at least fifty thousand dollars (\$50,000).

(b) Subsection (c) does not apply to a person that manufactures or installs a plate or label containing an original identification number:

(1) in a program authorized by a manufacturer of motor vehicles or motor vehicle parts; or

(2) as authorized by the bureau under IC 9-17-

4.

(c) A person that knowingly or intentionally possesses a plate or label that:

- (1) contains an identification number; and
- (2) is not attached to the motor vehicle or motor

vehicle part to which the identification number was assigned by the manufacturer or governmental entity;

commits a Class A misdemeanor, except as provided in subsection (d).

(d) The offense described in subsection (c) is a:

(1) Level 6 felony if:

(A) the person possesses more than one (1) plate or label and the plates or labels are not attached to a motor vehicle or motor vehicle part; or

(B) the aggregate fair market value of all plates and labels, and of all motor vehicles and motor vehicle parts to which the plates or labels are wrongfully attached, is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000); and

(2) Level 5 felony if the aggregate fair market value of all plates or labels, and of all motor vehicles and motor vehicle parts to which the plate or label is wrongfully attached, is at least fifty thousand dollars (\$50,000).

(e) A person that knowingly:

- (1) damages;
- (2) removes; or
- (3) alters;

an original or special identification number commits a Level 6 felony.

(f) A person who counterfeits or falsely reproduces a certificate of title for a motor vehicle, semitrailer, or recreational vehicle with intent to:

- (1) use the certificate of title; or
- (2) permit another person to use the certificate

of title;

commits a Class A misdemeanor. However, the offense is a Level 6 felony if the aggregate fair market value of all motor vehicles, semitrailers, and recreational vehicles for which the person counterfeits or falsely reproduces a certificate of title is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000), and a Level 5 felony if the aggregate fair market value of all motor vehicles, semitrailers, and recreational vehicles for which the person counterfeits or falsely reproduces a certificate of title is at least fifty thousand dollars (\$50,000). (*Eff. 7/1/2016*)

**IC 35-43-6.5-2 Odometer fraud; Level felony**

Sec. 2. (a) A person who, with the intent to defraud:

- (1) advertises for sale;
- (2) sells;
- (3) uses; or
- (4) installs;

any device that causes an odometer to register mileage other than the mileage driven by the vehicle as registered by the odometer within the manufacturer's designed tolerance commits a Level 6 felony.

(b) A person who, with the intent to defraud:

- (1) disconnects, resets, or alters the odometer of any motor vehicle with intent to change the number of miles or kilometers indicated on the odometer; or
- (2) sells a motor vehicle that has a broken odometer or an odometer that is not displaying correct mileage of the vehicle;

commits a Level 6 felony. (*Eff. 1/1/2015*)



## **“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 ADVERTISEMENT**

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.

## RECORDS RETENTION

*The following is a records retention guideline developed for Automobile Dealerships and made available through the Automobile Dealers Association of Indiana, Inc. as a service to our Dealer*

### Retain for a Minimum of TWO Years

All Trial Balances  
(Other Than Accounts & Notes Receivable)  
Customer Credit Applications (Processed & Non-processed)  
Employment Applications  
Purchase Orders  
Repair Order Check Sheet  
Stock Requisitions

### Retain for THREE Years

Accounts & Notes Receivable Trial Balance  
Accounts Payable Record  
Daily Service Sales Summary  
Journal Vouchers  
Petty Cash Summary Envelope  
Petty Cash Vouchers  
Prepaid and Accrued Expense Journal  
Time Tickets

### Retain for FIVE Years

Disclosure of Damage to Motor Vehicle  
Odometer Mileage Statement

### Retain for SIX Years

Business License Filings  
Cash Disbursement Journal  
Cash Received Journal  
Credit Memos  
Correspondence Files  
Fixed Asset Inventory & Depreciation Records  
General Journal  
Interdepartmental Sales Journal  
New Car Sales Journal  
Parts, Accessories and Service Sales Journal  
Payroll Journal  
Payroll Records  
Purchase Journal  
Register Sales Slip  
State and Local Sales and Gross Receipts  
Warranty & Service Contract Copies

### Retain for SEVEN Years

Bills of Lading  
Car Invoices  
Counter Tickets  
Customer Repair Orders (Office & Hard Copy)  
Internal Repair Orders (Office Copy)  
Internal Repair Orders (Hard Copy)  
New and Used Car Record Claim Register  
Office Receipts  
Purchase Journal  
Receiving Reports  
Sales Invoices  
Sundry Invoices

### Retain for TEN Years

Bank Drafts and Paid Notices  
Bank Statements and Reconciliations  
Canceled Checks  
Customer Files  
Duplicate Deposit Tickets  
Form 8300 Files  
Vendor Invoices

### Retain the following Records INDEFINITELY

Accounts Receivable or Payable Ledger  
Audit Reports  
Capital Stock Books  
Construction Contracts  
Corporate Minute Book  
Depreciation Schedules  
Employee Earning and History Records  
Employment Contracts  
Expense Ledger  
Financial Statements  
General Ledger  
Government Contracts  
Insurance Policies  
Investment Purchase Documents  
(until sold/matured)  
Invoices for Fixed Asset Additions  
(until sold/retired)  
LIFO Inventory Index Computations  
LIFO Inventory Reserve Computations  
Notes Receivable Ledger  
Papers Pertaining to Litigation  
Property Tax Returns  
Retirement and Pension Records  
Sales and Cost of Sales Ledger  
Salesmen's Commission Reports  
Social Security Tax Returns  
State and Local Sales Tax Returns  
State Annual Reports  
State Franchise Tax Returns  
Subsidiary Ledger  
Tax Returns  
U.S. Revenue Agents Reports and Related Papers  
U.S. and State Unemployment Tax Returns  
Used and Repossessed Car Journal  
Withholding Tax Returns



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