



Motorcycle Dealers Association of Indiana

**Serving Indiana  
Franchised Motorsports  
Dealers Since 1984**



**MOTORSPORTS DEALERS'**

# IT'S THE LAW ...

## Laws for Indiana New Motorsports Dealers

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

- **Off-Road Dealer License**
- **Off-Road Vehicle Titles**
- **Dealer "Do's & Don'ts"**
- **Dealer "Bill of Rights"**
- **Frequently Requested Statutes**
- **Advertising Standards**
- **Record Retention**

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## **IMPORTANT DEFINITIONS**

(Which are also referred to in other statutes)

### **9-13-2-14 “Bicycle”**

Sec. 14. "Bicycle" means any foot-propelled vehicle, irrespective of the number of wheels in contact with the ground.

### **9-13-2-42 “Dealer”**

Sec. 42. (a) "Dealer" means, except as otherwise provided in this section, a person who sells to the general public, including a person who sells directly by the Internet or other computer network, at least twelve (12) vehicles each year for delivery in Indiana. The term includes a person who sells off-road vehicles. A dealer must have an established place of business that meets the minimum standards prescribed by the bureau 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 who is a dealer solely because of activities as a transfer dealer.
- (4) An automotive mobility dealer.

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

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

per year.

### **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.

### **9-13-2-50 “Established place of business”**

Sec. 50. "Established place of business" means a permanent enclosed building or structure owned or leased for the purpose of bartering, trading, and selling motor vehicles. The term does not include a residence, tent, temporary stand, or permanent quarters temporarily occupied.

### **9-13-2-60 “Farm wagon”**

Sec. 60. (a) "Farm wagon" means either of the following:

- (1) A wagon, other than an implement of agriculture, that is used primarily for transporting farm products and farm supplies in connection with a farming operation.
- (2) A three (3), four (4), or six (6) wheeled motor vehicle with a folding hitch on the front of the motor vehicle, manufactured with seating for not more than four (4) individuals, that is used primarily:
  - (A) to transport an individual from one (1) farm field to another, whether or not the motor vehicle is operated on a highway in order to reach the other farm field;
  - (B) for the transportation of an individual upon farm premises; or
  - (C) for both purposes set forth in clauses (A) and (B).

(b) The term includes a motor vehicle described in subsection (a)(2) that is used for the incidental transportation of farm supplies or farm implements at the same time it is used for the transportation of an individual.

### **9-13-2-69.7 “Golf cart”**

Sec. 69.7. "Golf cart" means a four (4) wheeled motor vehicle originally and specifically designed and intended to

transport one (1) or more individuals and golf clubs for the purpose of playing the game of golf on a golf course.

**9-13-2-90 "Labor rate"**

Sec. 90. "Labor rate" means the hourly labor rate charged by a franchisee for service, filed periodically with the bureau as the bureau may require, and posted prominently in the franchisee's service department.

**9-13-2-104 "Motor scooter"**

Sec. 104. "Motor scooter" means a vehicle that has the following:

- (1) Motive power.
- (2) A seat, but not a saddle, for the driver.
- (3) Two (2) wheels.
- (4) A floor pad for the driver's feet.

**9-13-2-105 "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 except a motorized bicycle 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 9-19-10.5 and IC 9-25, means a vehicle that is self-propelled upon a highway in Indiana. The term does not include a farm tractor.

(d) "Motor vehicle", for purposes of IC 9-30-10, does not include a motorized bicycle.

(e) "Motor vehicle", for purposes of IC 9-23-2 and IC 9-23-3, includes a semitractor.

**9-13-2-108 "Motorcycle"**

Sec. 108. "Motorcycle" means a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground. The term does not include a farm tractor or a motorized bicycle.

**9-13-2-109 "Motorized bicycle"**

Sec. 109. "Motorized bicycle" means a two (2) or three (3) wheeled vehicle that is propelled by an internal combustion engine or a battery powered motor, and if powered by an internal combustion engine, has the following:

- (1) An engine rating of not more than two (2) horsepower and a cylinder capacity not exceeding fifty (50) cubic centimeters.
- (2) An automatic transmission.
- (3) A maximum design speed of not more than twenty-five (25) miles per hour on a flat surface.

The term does not include an electric personal assistive mobility device.

**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. *(Added by P.L. 2-1991, §1; chgd. By P.L. 10-1998, §1, eff. 7/1/98)*

**9-13-2-117.3 "Off-road vehicle"**

Sec. 117.3. "Off-road vehicle" has the meaning set forth in IC 14-8-2-185.

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

Sec. 149. "Rebuilt vehicle" means a vehicle for which a certificate of title has been issued by the bureau under IC 9-22-3 or for which a certificate of title has been issued by another state or jurisdiction under a similar procedure for the retitling of salvage motor vehicles.

**9-13-2-151.5 "Relevant market area"**

Sec. 151.5. "Relevant market area", for purposes of IC 9-23-3, 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; or

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

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

**9-13-2-160 "Salvage motor vehicle"**

Sec. 160. "Salvage motor vehicle" means any of the following:

(1) A motor vehicle, motorcycle, semitrailer, or recreational vehicle that meets at least one (1) of the criteria set forth in IC 9-22-3-3.

(2) A vehicle, ownership of which is evidenced by a salvage title or by another ownership document of similar qualification and limitation issued by a state or jurisdiction other than the state of Indiana, and recognized by and acceptable to the bureau of motor vehicle.

**9-13-2-177.5 "Third party"**

Sec. 177.5. "Third party", for purposes of IC 9-17-3, has the meaning set forth in IC 9-17-3-0.5.

**9-13-2-185 "Transfer dealer"**

Sec. 185. "Transfer dealer" means a person other than a dealer, manufacturer, wholesale dealer, or broker who has the necessity of transferring a minimum of twelve (12) motor vehicles during a license year as part of the transfer dealer's primary business functions.

**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.

**14-8-2-185 "Off-road vehicle"**

Sec. 185. (a) "Off-road vehicle", for purposes of IC 14-16-1 and IC 14-19-1-0.5, means a motor driven vehicle capable of cross-country travel:

(1) without benefit of a road; and

(2) on or immediately over land, water, snow, ice, marsh, swampland, or other natural terrain.

(b) The term includes the following:

(1) A multi-wheel drive or low pressure tire vehicle.

(2) An amphibious machine.

(3) A ground effect air cushion vehicle.

(4) Other means of transportation deriving motive power from a source other than muscle or wind.

(c) The term does not include the following:

(1) A farm vehicle being used for farming, including, but not limited to, a farm wagon (as defined in IC 9-13-2-60(a)(2)).

(2) A vehicle used for military or law enforcement purposes.

(3) A construction, mining, or other industrial related vehicle used in performance of the vehicle's common function.

(4) A snowmobile (as defined by section 261 of this chapter).

(5) A registered aircraft.

(6) Any other vehicle properly registered by the bureau of motor vehicles.

(7) Any watercraft that is registered under Indiana statutes.

(8) A golf cart vehicle.

*(As added by P.L. 1-1995, SEC. 1. Amended by P.L. 225-2005, SEC. 6; P.L. 150-2009, SEC. 21.)*

**15-12-3-2 "All terrain vehicle"**

Sec. 2. As used in this chapter, "all terrain vehicle" means a motorized, off-highway vehicle that:

(1) is fifty (50) inches or less in width;

(2) has a dry weight of six hundred (600) pounds or less;

(3) is designed for travel on at least three (3) low pressure tires;

(4) is designed for operator use only with no passengers;

(5) has a seat or saddle designed to be straddled by the operator; and

(6) has handlebars for steering control.

The term includes parts, equipment, or attachments sold with the vehicle.

## OFF-ROAD VEHICLE DEALER LICENSE REQUIREMENT

### DEFINITION OF DEALER:

#### 9-13-2-42 "Dealer"

Sec. 42. (a) "Dealer" means, except as otherwise provided in this section, a person who sells to the general public, including a person who sells directly by the Internet or other computer network, at least twelve (12) vehicles each year for delivery in Indiana The term includes a person who sells off-road vehicles. A dealer must have an established place of business that meets the minimum standards prescribed by the bureau 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 who is a dealer solely because of activities as a transfer dealer.
- (4) An automotive mobility dealer.

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

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

per year. (As added by P.L.2-1991, SEC.1. Amended by P.L.71-1991, SEC.4; P.L.66-1992, SEC.2; P.L.74-2001, SEC.1; P.L.219-2005, SEC.1; P.L.41-2006, SEC.1; P.L.107-2008, SEC.6; P.L.131-2008, SEC.34; P.L.147-2009, SEC.3.)

### NEW LAW:

**P.L. 107-2008 (SEA 339), Sec. 20 [Effective July 1, 2008]** SECTION 20. (a) Notwithstanding IC 9-13-2-42, as amended by this act, a person who engages in the business of selling at least twelve (12) off-road vehicles to the general public each year for delivery in Indiana whose business name begins with the letters A through L, inclusive, is not required to apply for a dealer's license under IC 9-23-2 with the bureau of motor vehicles until the month in 2009 required by IC 9-23-2-8.

(b) This SECTION expires December 21, 2009.

**P.L. 107-2008 (SEA 339), Sec. 21 [Effective July 1, 2008]** SECTION 21. IC 9-23-0.5-1 IS REPEALED. The repeal of this law effectively requires off-road dealers to be licensed. [See repealed law below.]

IC 9-23-0.5-1. "Motor vehicle" or "vehicle" does not include off-road vehicle. – For purposes of this article, "motor vehicle" or "vehicle" does not include an off-road vehicle. [P.L. 219-2005. § 13.]

### APPLICATION DEADLINES:

Pursuant to a letter mailed by the Secretary of State (SOS) Dealer Services and Public Law 107-2008 (SEA 339) below are the initial off-road dealer license application deadlines:

1. Off-road vehicle dealers whose business name begins with M through Z, inclusive, will be required to apply for a dealer's license beginning July 1, 2008.

- Business names beginning with letters M through O must register by July 31, 2008.
- Business names P through R must register by August 31;
- S through T by September 30; and
- U through Z by October 31.

2. Business names beginning with letters A through L are not required to apply for a dealer's license until 2009.

- Business names beginning with letters A through B must register by February 28, 2009.
- Business names C through D must register by March 31;
- E through G by April 30;
- H through I by May 31; and
- J through L by June 30.

*Note: A license issued under IC 9-23-2-8 and the aforementioned law is valid for one (1) year.*

### HOW TO REPORT UNLICENSED DEALERS:

Off-road vehicle dealers are required to be licensed if they sell 12 or more vehicles in one year. The State is not going to be aware of all eligible dealers and their business locations.

To report qualifying unlicensed off-road vehicle dealers in your area, you can do the following:

- Call the SOS Dealer Services Division at: (317) 234-7190;
- Email the SOS Dealer Services Division at: [Dealers@sos.in.gov](mailto:Dealers@sos.in.gov) ; or
- File a written complaint (recommended) with the SOS Dealer Services Division by going to their website ([www.in.gov/sos/dealer/](http://www.in.gov/sos/dealer/)) , click on "Forms" then click on "Dealer Complaint - State Form 53607".

## **OFF-ROAD VEHICLE TITLE REQUIREMENTS**

**(General title requirement & dealer must apply for customers' title)**

### **IC 9-17-2-1**

#### **Time period; vehicles requiring certificates; proof of residency**

Sec. 1. (a) This section does not apply to an off-road vehicle that is at least five (5) model years old.

(b) Within sixty (60) days after becoming an Indiana resident, a person must obtain a certificate of title for all vehicles owned by the person that:

(1) are subject to the motor vehicle excise tax under IC 6-6-5; or

(2) are off-road vehicles;

and that will be operated in Indiana.

(c) Within sixty (60) days after becoming an Indiana resident, a person shall obtain a certificate of title for all commercial vehicles owned by the person that:

(1) are subject to the commercial vehicle excise tax under IC 6-6-5.5;

(2) are not subject to proportional registration under the International Registration Plan; and

(3) will be operated in Indiana.

(d) Within sixty (60) days after becoming an Indiana resident, a person must obtain a certificate of title for all recreational vehicles owned by the person that:

(1) are subject to the excise tax imposed under IC 6-6-5.1; and

(2) will be operated in Indiana.

(e) A person must produce evidence concerning the date on which the person became an Indiana resident.

*(As added by P.L.2-1991, SEC.5. Amended by P.L.181-1999, SEC.10; P.L.219-2005, SEC.4; P.L.131-2008, SEC.38.)*

### **IC 9-17-2-1.5**

#### **Title for off-road vehicle; exception**

Sec. 1.5. (a) This section does not apply to an off-road vehicle that is at least five (5) model years old.

(b) A person who purchases an off-road vehicle after December 31, 2005, must obtain a certificate of title for the off-road vehicle from the bureau.

*(As added by P.L.219-2005, SEC.5.)*

### **IC 14-16-1-18**

#### **Duties of dealers**

Sec. 18. (a) A dealer shall maintain in safe operating condition all vehicles rented, leased, or furnished by the dealer. The dealer or the dealer's agents or employees shall explain the operation of a vehicle being rented, leased, or furnished. If the dealer or the dealer's agent or employee believes the person to whom the vehicle is to be rented, leased, or furnished is not competent to operate the vehicle with safety to the person or others, the dealer or the dealer's agent or employee shall refuse to rent, lease, or furnish the vehicle.

(b) A dealer renting, leasing, or furnishing a vehicle shall carry a policy of liability insurance subject to minimum limits, exclusive of interest and costs, with respect to the vehicle as follows:

(1) Twenty thousand dollars (\$20,000) for bodily injury to or death of one (1) person in any one (1) accident.

(2) Subject to the limit for one (1) person, forty thousand dollars (\$40,000) for bodily injury to or death of at least two (2) persons in any one (1) accident.

(3) Ten thousand dollars (\$10,000) for injury to or destruction of property of others in any one (1) accident.

(c) In the alternative, a dealer may demand and must be shown proof that the person renting, leasing, or being furnished a vehicle carries a liability policy of at least the type and coverage specified in subsection (b).

**(d) A dealer:**

**(1) shall prepare an application for a certificate of title as required by IC 9-17-2-1.5 for a purchaser of an off-road vehicle and shall submit the application for the certificate of title in the format required by IC 9-17-2-2 to the bureau of motor vehicles; and**

**(2) may charge a processing fee for this service that may not exceed ten dollars (\$10).**

**(e) This subsection does not apply to an off-road vehicle that is at least five (5) model years old. After January 1, 2008, a dealer may not have on its premise an off-road vehicle that does not have a certificate of:**

**(1) origin from its manufacturer; or**

**(2) title issued by;**

**(A) the bureau of motor vehicles or its equivalent in another state; or**

**(B) a foreign country.**

*(As added by P.L.1-1995, SEC.9. Amended by P.L.219-2005, SEC.18.)*

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

### **1.C. 9-17-3-0.5 “Third party”**

Sec. 0.5. As used in this chapter, “third party” means a person having possession of a certificate of title for a:

- (1) motor vehicle;
- (2) semitrailer; or
- (3) recreational vehicle;

because the person has a lien or an encumbrance indicated on the certificate of title.

### **I. C. 9-17-3-3**

#### **Transfer of title; sale of vehicle without certificate of title; failure to deliver certificate of title**

Sec. 3. (a) If a vehicle for which a certificate of title has been issued is sold or if the ownership of the vehicle is transferred in any manner other than by a transfer on death conveyance under section 9 of this chapter, the person who holds the certificate of title must do the following:

(1) Endorse on the certificate of title an assignment of the certificate of title with warranty of title, in a form printed on the certificate of title, with a statement describing all liens or encumbrances on the vehicle.

(2) Except as provided in subdivisions (4) and (5), deliver the certificate of title to the purchaser or transferee at the time of the sale or delivery to the purchaser or transferee of the vehicle, if the purchaser or transferee has made all agreed upon initial payments for the vehicle, including delivery of a trade-in vehicle without hidden or undisclosed statutory liens.

(3) Unless the vehicle is being sold or transferred to a dealer licensed under IC 9-23-2, complete all information concerning the purchase on the certificate of title, including, but not limited to:

- (A) the name and address of the purchaser; and
- (B) the sale price of the vehicle.

(4) In the case of a sale or transfer between vehicle dealers licensed by this state or another state, deliver the certificate of title within twenty-one (21) days after the date of the sale or transfer.

(5) Deliver the certificate of title to the purchaser or transferee within twenty-one (21) days after the date of sale or transfer to the purchaser or transferee of the vehicle, if all of the following conditions exist:

(A) The seller or transferor is a vehicle dealer licensed by the state under IC 9-23.

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

(C) The vehicle dealer reasonably believes that it will be able to deliver the certificate of title, without a lien or an encumbrance on the certificate of title, within the twenty-one (21) day period.

(D) The vehicle dealer provides the purchaser or transferee with an affidavit under section 3.1 of this chapter.

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

(b) A licensed dealer may offer for sale a vehicle for which the dealer does not possess a certificate of title, if the dealer can comply with subsection (a)(4) or (a)(5) at the time of the sale.

(c) A vehicle dealer who fails to deliver a certificate of title within the time specified under this section is subject to the following civil penalties:

- (1) One hundred dollars (\$100) for the first violation.

(2) Two hundred fifty dollars (\$250) for the second violation.

(3) Five hundred dollars (\$500) for all subsequent violations.

Payment shall be made to the secretary of state and deposited in the state general fund. In addition, if a purchaser or transferee does not receive a valid certificate of title within the time specified by this section, the purchaser or transferee shall have the right to return the vehicle to the vehicle dealer ten (10) days after giving the vehicle 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 vehicle to the dealer in the same or similar condition as delivered to the purchaser or transferee under this section, the vehicle 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.

(d) For the 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 vehicle. If the dealer's inability to timely deliver a valid certificate of title results from the acts or omissions of a third party who 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 who 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.

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

(f) The original certificate of title and all assignments and subsequent reissues of the certificate of title shall be retained by the bureau and appropriately classified and indexed in the most convenient manner to trace title to the vehicle described in the certificate of title.

(g) A dealer shall make payment to a third party to satisfy any obligation secured by the vehicle within five (5) days after the date of sale. *(As added by P.L. 2-1991, §5; Amended by P.L. 60-1994, §1; P.L. 2-1995, §42; P. L. 59-1998, §1; P.L. 268-2003, §8; P.L.97-2004, §.37; P.L.106-2008, §4; P.L.83-2008, §4;P.L. 131-2008, §42; P.L.1-2009, §79.)*

### **1.C. 9-17-5-1 Delivery of certificate (by Third party)**

Sec. 1. A person having possession of a certificate of title for a motor vehicle, semitrailer, or recreational vehicle because the person has a lien or an encumbrance on the motor vehicle, semitrailer, or recreational 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 who:

- (1) is listed on the certificate of title as owner of the motor

vehicle, semitrailer, or recreational vehicle; or  
(2) is acting as an agent of the owner and who holds  
power of attorney for the owner of the motor vehicle,  
semitrailer, or recreational vehicle. (*P.L. 2-1991, §5;*  
*Amended by P.L. 268-2003, §16, eff. 7/1/2003*)

TITLE 9, ARTICLE 23.

VEHICLE MANUFACTURERS, DISTRIBUTORS, AND DEALERS

REGULATION OF VEHICLE MERCHANDISING

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

**9-23-0.5-1 Repealed**

*(Repealed by P.L. 107-2008, §21; P.L.131-2008, SEC.57.)*

**9-23-2-1 Persons required to be licensed**

Sec. 1. (a) The following persons must be licensed under this article to engage in the business of buying or selling motor vehicles:

- (1) An automobile auctioneer.
- (2) A converter manufacturer.
- (3) A dealer.
- (4) A distributor.
- (5) A distributor branch.
- (6) A distributor representative.
- (7) A factory branch.
- (8) A factory representative.
- (9) A manufacturer.
- (10) A transfer dealer.
- (11) A wholesale dealer.
- (12) 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 vehicle by an individual who is disabled or aged must be licensed under this article.

*(As added by P.L. 2-1991, §11; Amended by P.L. 268-2003, §25; P.L.147-2009, §9.)*

**9-23-2-2 Applications for licenses**

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

- (1) be accompanied by the fee required under IC 9-29-8;
- (2) be on a form prescribed by the secretary of state; and
- (3) contain the information the secretary of state considers necessary to enable the secretary of state to determine fully the following information:

(A) The qualifications and eligibility of the applicant to receive the license.

(B) The location of each of the applicant's places of business in Indiana.

(C) The ability of the applicant to conduct properly the business for which the application is submitted; and

(4) contain evidence of the bond required in subsection (e).

(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 other computer network in aid of its sale of motor vehicles to consumers in Indiana, which activities may result in the creation of business records outside Indiana, shall provide the division with the name, address, and telephone number of the person who has control of those business records. The secretary of state may not issue a license to a dealer who transacts business in this manner who does not have an established place of business in Indiana.

(d) This subsection applies to an application for a license as a dealer in a city having a population of more than ninety thousand (90,000) but less than one hundred five thousand (105,000). The application must include an affidavit 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;

who has jurisdiction over the real property where the applicant wants to operate as a dealer. 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 of state may not issue a license until the applicant files the affidavit.

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

(1) be in favor of the state; and

(2) secure payment of fines, penalties, costs, and fees assessed by the secretary of state after notice, opportunity for a hearing, and opportunity for judicial review, in addition to securing the payment of damages to a person aggrieved by a violation of this chapter by the licensee after a judgment has been issued.

(f) Service shall be made in accordance with the Indiana Rules of Trial Procedure. *(As added by P.L.2-1991, § 11; Amended by P.L. 98-1997, §1; P.L. 74-2001, §2; P.L. 170-2002, §74; P.L. 184-2007, §19; P.L.147-2009, §10.)*

**9-23-2-3 Franchises**

Sec. 3. A manufacturer, distributor, factory branch, distributor branch, or dealer proposing to sell new motor vehicles shall file and maintain with the secretary of state a current copy of each franchise to which the person is a party, or, if multiple franchises are identical except for stated items, a copy of the form franchise with supplemental schedules of variations from the form. *(P.L.2-1991, §11; chgd. P. L. 184-2007, §20, eff. 7/1/2007)*

**9-23-2-4 Display of licenses; change of business names or location; offsite licenses**

Sec. 4. (a) The license issued to a factory branch, a distributor branch, an automobile auctioneer, a transfer dealer, or a dealer under this chapter must specify the location of each place of business and shall be conspicuously displayed at each business location.

(b) If a business name or location is changed, the holder shall notify the secretary of state within ten (10) days and remit the fee required under IC 9-29-8. The secretary of state shall endorse that change on the license if the secretary of state determines that the change is not subject to other provisions of this article.

(c) A dealer who uses the Internet or other computer network to facilitate the sale of motor vehicles as set forth in section 2(c) of this chapter shall notify the secretary of state within ten (10) days upon any change in the name, address, or telephone number of business records located outside Indiana that have been created in transactions made in Indiana by the dealer.

(d) This subsection applies to a dealer in a city having a population of more than one hundred ten thousand (110,000) but less than one hundred twenty thousand (120,000). A dealer who wants to change a location must submit to the secretary of state an application for approval of the change. The application must be accompanied by an affidavit 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;

who has jurisdiction over the real property where the applicant wants to operate as a dealer. The affidavit must state that the proposed location is zoned for the operation of a dealer's establishment. The secretary of state may not approve a change of location or endorse a change of location on the dealer's license until the dealer provides the affidavit.

(e) For the purpose of this section, an offsite license issued under section 7 of this chapter does not constitute a change of location. (*P.L.2-1991, §11; chgd. by P.L. 98-1997, §2; P.L. 74-2001, §3; P.L. 170-2002, §75; P.L. 184-2007, §21, eff. 7/1/2007*)

**9-23-2-6 Sales at motor vehicle industry sponsored trade show exempt - Offsite sales license**

Sec. 6. This section does not apply to sales made at a motor vehicle industry sponsored trade show. A dealer may not sell a vehicle at a location away from the dealer's established place of business without obtaining an offsite sales license under section 7 [IC9-23-2-7] of this chapter. (*P.L. 2-1991, §11*)

**9-23-2-7 Offsite sales licenses; issuances; duration**

Sec. 7. (a) Except as provided in subsections (b) through

(g), the secretary of state shall issue an offsite sales license to a dealer licensed under this chapter who submits an application for the license not later than ten (10) business days or two (2) calendar weeks before the offsite sale date. License applications under this section shall be made public upon the request of any person.

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

(c) The secretary of state may not issue an offsite sales license to a licensed dealer proposing to conduct the sale outside a radius of twenty (20) miles from its established place of business. This subsection does not apply to:

- (1) new manufactured housing 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; or
- (4) off-road vehicle dealers.

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

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

(f) As used in this subsection, "executive" has the meaning set forth in IC 36-1-2-5. The secretary of state may not issue an offsite sales license to a licensed dealer if the dealer does not have authorization that the offsite sale would be in compliance with local zoning ordinances or other local ordinances. Authorization under this subsection may only be obtained from the following:

(1) If the offsite sale would be located within the corporate boundaries of a city or town, the executive of the city or town.

(2) If the offsite sale would be located outside the corporate boundaries of a city or town:

(A) except as provided in clause (B), the executive of the county; or

(B) if the city or town exercises zoning jurisdiction under IC 36-7-4-205(b) over the area where the offsite sale would be located, the executive of the city or town.

(g) The secretary of state may not issue an offsite sales license 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 current license application is being submitted.

(h) The requirements of section 2(c) of this chapter do not apply to the application or issuance of an offsite sales license under this section. (*P.L.2-1991, §11; chgd. by P.L. 98-1997, §3; P.L. 99-1997, §1; P.L. 268-2003, §27; P.L. 63-2006, §1, eff. 3/17/2006; P.L. 184-2007, §23, P.L. 107-2008, §13; P.L. 131-2008, §49*)

**9-23-2-8 Dealer licensee; staggered terms**

Sec. 8. A license issued under this chapter is valid for a one

- (1) year period in accordance with the following schedule:
- (1) A person whose business name begins with the letters A through B, inclusive, shall register before March 1 of each year.
  - (2) A person whose business name begins with the letters C through D, inclusive, shall register before April 1 of each year.
  - (3) A person whose business name begins with the letters E through G, inclusive, shall register before May 1 of each year.
  - (4) A person whose business name begins with the letters H through I, inclusive, shall register before June 1 of each year.
  - (5) A person whose business name begins with the letters J through L, inclusive, shall register before July 1 of each year.
  - (6) A person whose business name begins with the letters M through O, inclusive, shall register before August 1 of each year.
  - (7) A person whose business name begins with the letters P through R, inclusive, shall register before September 1 of each year.
  - (8) A person whose business name begins with the letters S through T, inclusive, shall register before October 1 of each year.
  - (9) A person whose business name begins with the letters U through Z, inclusive, shall register before November 1 of each year.

A sole proprietor shall register based upon the name of the sole proprietorship.

*(P.L. 2-1991, §11; chgd. by P.L. 88-1996, § 3.)*

#### **9-23-2-9 Transfer or assignment of titles**

Sec. 9. A person licensed under this article may transfer or assign a title for a motor vehicle. *(P.L.2-1991, §11.)*

#### **9-23-2-10 Garage liability insurance**

Sec. 10. (a) A person licensed under this article shall furnish evidence that the person currently has liability insurance or garage liability insurance covering the person's place of business. The policy must have limits of not less than 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.
- (b) The minimum amounts required by subsection (a) must be maintained during the time the license is valid. *(P.L.2-1991, §11; chgd. by P.L. 39-2000, §9.)*

#### **9-23-2-11 Cessation of business activity; notice; surrender of dealer license plates and interim license plates**

Sec. 11. A person who ceases a business activity for which a license was issued under this chapter shall do the following:

- (1) Notify the secretary of state of the date that the busi-

ness activity will cease.

(2) Deliver all permanent dealer license plates and interim license plates issued to the person to the bureau within ten (10) days of the date the business activity will cease. *(P.L. 2-1991, §11; chgd. by P.L. 176-2001, §10, eff. 1/1/2002; P.L. 184-2007, §24, eff. 7/1/2007)*

#### **9-23-2-13 Revenues; expenses and compensation; appropriations**

Sec. 13. Except as provided in IC 9-29-1-5 and IC 9-29-8-7, all revenues accruing to the secretary of state under this article shall be deposited into the motor vehicle highway account. *(P.L.2-1991, §11; chgd. by P.L. 184-2007, §25; P.L. 106-2008§29, eff. 7/1/2008)*

#### **9-23-2-14 Denial, suspension, or revocation of licenses; procedures; judicial determination**

Sec. 14. (a) The secretary of state may investigate a violation of this chapter. In conducting an investigation under this subsection, the secretary of state may do the following:

- (1) Administer oaths and affirmations.
- (2) Subpoena witnesses and compel attendance.
- (3) Take evidence.
- (4) Require the production of documents or records that the secretary of state determines are material to the investigation.

Upon a motion by the secretary of state, the court may order a person that fails to obey a subpoena issued under subdivision (2) to obey the subpoena.

(b) A person may not be excused from:

- (1) obeying a subpoena issued by:
- (2) attending a proceeding and testifying as ordered by; or
- (3) otherwise producing evidence as ordered by:

The secretary of state on grounds that the person's testimony or evidence may tend to incriminate the person or subject the person to a penalty or forfeiture. However, a person that asserts the privilege against self-incrimination may not be prosecuted or subject to a penalty or forfeiture for any matter concerning the person's testimony or evidence.

(c) Following an investigation under subsection (a), the secretary of state may, without hearing, issue orders and notices that the secretary of state determines to be in the public interest. The secretary of state may issue an order under this subsection denying, suspending, or revoking a license issued under this chapter for any of the following:

- (1) Material misrepresentation in the application for the license or other information filed with the secretary of state.
- (2) Lack of fitness under the standards set forth in this article or a rule adopted by the secretary of state under this article.
- (3) Willful failure to comply with the provisions of this article or a rule adopted by the secretary of state under this article.

- (4) Willful violation of a federal or state law relating to the sale, distribution, financing, or insuring of motor vehicles.
- (5) Engaging in an unfair practice as set forth in this article or a rule adopted by the secretary of state under this article.
- (6) Violating IC 23-2-2.7.
- (7) Violating IC 9-19-1.

Except as otherwise provided a denial, suspension, or revocation of a license takes effect after the secretary of state makes a determination and notice of the determination has been served upon the affected person.

(d) Upon the entry of an order under subsection (c), the secretary of state shall promptly notify all interested parties of the following:

- (1) The date of issuance.
- (2) The reasons for the issuance.
- (3) That, upon written request from a party, the matter will be set for hearing within fifteen (15) business days after receipt of the request.

(e) An order entered under subsection (c) remains in effect until the secretary of state:

- (1) modifies or vacates the summary order: or
- (2) conducts a hearing and issues a final determination.

(f) Revocation or suspension of a license of a manufacturer, a distributor, a factory branch, a distributor branch, a dealer, or an automobile auctioneer 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) If the secretary of state conducts a hearing under this section, the secretary of state may depose any witness.

(h) In addition to all other remedies, the secretary of state may seek the following remedies against a person that violates, attempts to violate, or assists in a violation of or an attempt to violate this chapter:

- (1) An injunction.
- (2) Appointment of a receiver or conservator.
- (3) A civil penalty not to exceed five thousand dollars (\$5,000) per violation.
- (4) An action to enforce a civil penalty assessed under subdivision (3).

(i) In a court proceeding initiated under this section in which judgment is awarded to the secretary of state, the secretary of state is entitled to recover the costs and expenses of investigation, and the court shall include the costs in its final judgment. (*P.L.2-1991, §11; chgd. by P.L. 210-2005, §37; P.L. 184-2007, §26; P.L. 106-2008, § 30, eff. 7/1/2008*)

#### **9-23-2-15 Sales through use of internet**

Sec. 15. A dealer who sells a motor vehicle through the use of the Internet or other computer network shall deliver the motor vehicle to the customer at the place of business of the dealer in Indiana. (*As added by P.L. 74-2001, § 4.*)

#### **9-23-2-16 Special event permit**

Sec. 16. (a) A person licensed under this article shall be

issued a special event permit from the secretary of state for a special event meeting the following conditions:

- (1) The event is a vehicle auction conducted by auctioneers licensed under IC 25-6.1-3.
- (2) The vehicles to be auctioned are:
  - (A) at least fifteen (15) years old; or
  - (B) classified as classic, collector, or antique vehicles under rules adopted by the secretary of state.
- (3) At least one hundred (100) vehicles will be auctioned during the special event.
- (4) An application for a special event permit has been submitted to the secretary of state not later than thirty (30) days before the beginning date of the special event.
- (5) The application is accompanied by the permit fee required under IC 9-29-8-6.5.

(b) Not more than two (2) special event permits may be issued by the secretary of state within a twelve (12) month period to the same applicant. (*As added by P.L. 156-2006, § 2 ; chgd. by P.L. 184-2007, §27, eff. 7/1/2007*)

#### **9-23-2-17 Final order appeal**

Sec. 17. (a) An appeal may be taken from a final order of the secretary of state under this chapter as follows:

- (1) By an applicant for a license under this chapter, from a final order of the secretary of state concerning the application.
- (2) By a licensee, from a final order of the secretary of state affecting the licensee's license under this chapter.
- (3) By a person against whom a civil penalty is imposed under section 14 of this chapter, from the final order of the secretary of state imposing the civil penalty.
- (4) By a person named as a respondent in an investigation or a proceeding under section 14 of this chapter, from a final order of the secretary of state under section 14 of this chapter. An appeal under this subdivision may be taken in:
  - (A) the Marion County circuit court; or
  - (B) the circuit or superior court of the county in which the appellant resides or maintains a place of business.

(b) A person who seeks to appeal a final order of the secretary of state under this section must serve the secretary of state with the following not more than twenty (20) days after the entry of the order:

- (1) A written notice of the appeal stating:
  - (A) the court in which the appeal will be taken; and
  - (B) the grounds on which a reversal of the final order is sought.
- (2) A written demand from the appellant for:
  - (A) a certified transcript of the record; and
  - (B) all papers on file in the secretary of state's office;

concerning the order from which the appeal is being taken.

(3) A bond in the penal sum of five hundred dollars (\$500) payable to the state with sufficient surety to be approved by the secretary of state, conditioned upon:

(A) the faithful prosecution of the appeal to final judgment; and

(B) the payment of all costs that are adjudged against the appellant.

(c) Not later than ten (10) days after the secretary of state is served with the items described in subsection (b), the secretary of state shall make, certify, and deliver to the appellant the transcript described in subsection (b)(2)(A). Not later than five (5) days after the appellant receives the transcript under this subsection, the appellant shall file the transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal serves as the appellant's complaint. The secretary of state may appear before the court, file any motion or pleading in the matter, and form the issue. The cause shall be entered on the court's calendar to be heard de novo and shall be given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent oral or written evidence concerning the order of the secretary of state from which the appeal is taken. If the order of the secretary of state is reversed, the court shall in its mandate specifically direct the secretary of state as to the secretary of state's further action in the matter. The secretary of state is not barred from revoking or altering the order for any proper cause that accrues or is discovered after the order is entered. If the order is affirmed, the appellant may, after thirty (30) days from the date the order is affirmed, file a new application for a license under this chapter if the application is not otherwise barred or limited. During the pendency of the appeal, the order from which the appeal is taken is not suspended but remains in effect unless otherwise ordered by the court. An appeal may be taken from the judgment of the court on the same terms and conditions as an appeal is taken in civil actions.

(e) IC 4-21.5 does not apply to a proceeding under this chapter. *(As added by P.L. 106-2008 §31 eff. 7/1/2008)*

#### **9-23-2-18 Dealer compliance account**

Sec. 18. (a) The dealer compliance account is established as a separate account to be administered by the secretary of state. The funds in the account must be available, with the approval of the budget agency, for use in enforcing and administering this chapter.

(b) the expenses of administering the dealer compliance account shall be paid from money in the account.

(c) The treasurer of state shall invest the money in the dealer compliance account not currently needed to meet the obligations of the account in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the account.

(d) The dealer compliance account consists of the following:

(1) Money deposited under:

(A) IC 9-29-5-43(b).

(B) IC 9-29-8-7(1).

(2) Appropriations to the account from other sources.

(3) Grants, gifts, donations, or transfers intended for deposit in the account.

(4) Interest that accrues from money in the account.

(e) Money in the dealer compliance account is continuously appropriated to the secretary of state for the purposes of the account. *(As added by P.L. 106-2008, §32 eff. 7/1/2008)*

## **UNFAIR PRACTICES**

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

### **DON'TS**

#### **9-23-3-0.3 "Broker"**

Sec. 0.3. As used in this chapter, "broker" means a person who, 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:

(1) a dealer or an employee of a dealer;

(2) a distributor or an employee of a distributor; or

(3) at any point in the transaction, the bona fide owner of the vehicle involved in the transaction. *(As added by P.L. 268-2003, §28.)*

#### **9-23-3-0.5 "Uniform time standards manual" defined**

Sec. 0.5. As used in this chapter, "uniform time standards manual", for purposes of section 14(c) [IC 9-23-3-14 (c)] of this chapter, means a schedule established by a manufacturer or distributor setting forth the time allowances for the diagnosis and performance of warranty work and service. *(As added by P.L. 78-2002, §5; chgd. By P.L. 1-2003, §51)*

#### **9-23-3-1 Dealers; requiring purchase of equipment or accessories**

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 already installed on the motor vehicle when received by or offered for sale by the dealer or is required by law. *(P.L.2-1991, §11.)*

#### **9-23-3-2 Dealers; willful failure to perform delivery and preparation agreements**

Sec. 2. It is an unfair practice for a dealer to willfully fail

to perform the obligations placed on the dealer in connection with the delivery and preparation of a new motor vehicle for retail sale as provided in the manufacturer's or distributor's preparation and delivery agreement applicable to the motor vehicle. (P.L. 2-1991, §11.)

#### **9-23-3-3 Dealers; willful failure to perform manufacturers' or distributors' warranty agreements**

Sec. 3. It is an unfair practice for a dealer to willfully fail to perform the obligations placed on the dealer in connection with the manufacturer's or distributor's warranty agreement applicable to any motor vehicle sold by that dealer. (P.L.2-1991, §11.)

#### **9-23-3-4 Dealers; sale of vehicles having trade names or service marks without effective franchises**

Sec. 4. It is an unfair practice for a dealer to sell any new motor vehicle having a trade name, trade or service mark, or related characteristics for which the dealer does not have a franchise in effect at the time of the sale. However, vehicles having more than one (1) or more trade name, 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. (As added by P.L. 2-1991, §11; Amended by P.L.147-2009, §13.)

#### **9-23-3-5 Dealers; gross retail tax; willful failure to perform fiduciary duties**

Sec. 5. It is an unfair practice for a dealer to willfully fail to perform the fiduciary duty imposed upon the dealer by IC 6-2.5-2-1 with regard to the collection and remittances of the 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 gross retail tax and thereby deprive the state of revenue. (P.L.2-1991, §11.)

#### **9-23-3-6 Dealers; sale, exchange, or transfer of rebuilt vehicles; disclosure**

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, before consummating the sale, exchange, or transfer, the fact that the vehicle is a rebuilt vehicle if the dealer knows or should reasonably know the vehicle is a rebuilt vehicle. (P.L.2-1991, §11.)

#### **9-23-3-6.5 Dealers; requiring purchasers to pay document preparation**

Sec. 6.5. 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.
- (As added by P.L. 102-1991, §1.)

## **“DEALER BILL OF RIGHTS”**

#### **9-23-3-8 Manufacturers or distributors; coercion of dealers**

Sec. 8. It is an unfair practice for a manufacturer or distributor to coerce a dealer to order from a person parts, accessories, equipment, machinery, tools, appliances, or any other commodity. (P.L. 2-1991, §11.)

#### **9-23-3-9 Manufacturers or distributors; preventing or requiring change in dealers' capital structure**

Sec. 9. It is an unfair practice for a manufacturer or distributor to prevent or require or attempt to prevent or require by contract or otherwise, any 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 any 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. (P.L.2-1991, §11.)

#### **9-23-3-10 Manufacturers or distributors; preventing or requiring change in dealers' executive management**

Sec. 10. 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 those persons. (P.L.2-1991, §11.)

#### **9-23-3-11 Manufacturers or distributors; preventing or requiring sale or transfer of interests; consent to sale, transfer, or assignment of franchises**

Sec. 11. 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 any of them to any other person or persons. 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, which consent may not be unreasonably withheld. (P.L. 2-1991, §11)

**9-23-3-12 Manufacturers or distributors; franchises; preventing dealers' receipt of fair value; consent to transfer or assignment**

Sec. 12. 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. (P.L. 2-1991, SEC. 11.)

**9-23-3-14 Manufacturers or distributors, failure to compensate dealers; determination of reasonableness of rates; warranty reimbursement contract/policy**

Sec. 14. (a) 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.

(b) It is an unfair practice for a manufacturer or distributor to fail to compensate to a dealer the posted hourly labor rate for the work and services the dealer is required to perform in connection with the dealer's delivery and preparation obligations under any franchise or fail to compensate to a dealer the warranty agreements as long as the posted rate is reasonable. Judgment of the reasonableness includes consideration of charges for similar repairs by comparable repair facilities in the local area as well as mechanic's wages and fringe benefits.

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

(1) only one (1) agreement with each line make; and

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

(d) A contract described in subsection (c) 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 become 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 who entered into the contract with the manufacturer or distributor; and

(B) be available to the franchisee of the same line make on the same terms as apply to the franchisees who 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 life of the original period if the manufacturer and at least one (1) franchisee remain parties to the policy.

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

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

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

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

(1) Certify to the secretary of state 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.

(P.L. 2-1991, §11; chgd. by P.L. 78-2002, §6 ; P.L. 184-2007, §28, eff. 7/1/2007)

**9-23-3-15 Manufacturers or distributors; failure to timely pay or disapprove of dealers' claims**

Sec. 15. (a) It is an unfair practice for a manufacturer or distributor to:

(1) fail to pay all claims made by dealers for compensation for delivery and preparation work and warranty work within thirty (30) days after approval;

(2) fail to approve or disapprove the claims within

thirty (30) days after receipt; 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 claims made by a dealer; or

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

for up to two (2) years after the date on which a 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. (P.L.2-1991, §11; chgd. by P.L. 76-2007, §1, eff. 7/1/2007)

### **9-23-3-16 Manufacturers or distributors; sale of vehicles for resale to unlicensed persons**

Sec. 16. It is an unfair practice for a manufacturer or distributor to sell a motor vehicle for resale to a person not licensed under this article. (P.L.2-1991, §11.)

### **9-23-3-17 Manufacturers or distributors; refusal or failure to indemnify dealer**

Sec. 17. 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. (P.L.2-1991, §11.)

### **9-23-3-19 Automobile auctioneers, wholesale dealers, or transfer dealers; deceptive advertising and practices**

Sec. 19. It is an unfair practice for an automobile auctioneer, a wholesale dealer, or a transfer dealer, in connection with the auctioneer's or dealer's business, to use false, deceptive, or misleading advertising or to engage in deceptive acts or practices. (P.L.2-1991, §11; P.L. 268-2003, §29.)

### **9-23-3-23 Manufacturer, distributor, officer or agent; changes or alterations to location, franchise or premises of dealership; franchisor owned or operated dealership**

Sec. 23. 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 any new motor vehicle dealer in Indiana to:

(A) change location of the dealership;

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

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

if to do so would be unreasonable or would not be justified by current economic conditions or reasonable business considerations. This subdivision does not prevent a manufacturer or distributor from establishing and enforcing reasonable facility requirements.

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

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

(A) a business for less than two (2) years;

(B) in a bona fide retail operation that is for sale to any qualified independent person at a fair and reasonable price; or

(C) in a bona fide relationship in which an independent person or persons have made a significant investment subject to loss in the business operation and can reasonably expect to acquire majority ownership or managerial control of the business on reasonable terms and conditions.

This subdivision shall not apply to recreational vehicle manufacturer franchisors. (Added by P.L. 152-1999, §2; chgd. by P.L. 118-2001, §3; P.L. 49-2007, §1, eff. 7/1/2007.)

### **9-23-3-24 Establishing or relocating new motor vehicle dealership; relevant market area**

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 has been closed within the preceding year, 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) 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.

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

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

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

a new motor vehicle dealer may bring a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the establishing or relocat-

ing of a proposed new motor vehicle dealer. If an action is filed, the franchisor may not establish or relocate the proposed new motor vehicle dealer until the circuit court has rendered a decision on the matter. An action brought under this section shall be given precedence over all other civil matters on the court's docket.

(e) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line make, the court 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 the market area, including the adequacy of motor vehicle sales and qualified service personnel.
- (5) Whether the establishment or relocation of the new motor vehicle dealer would promote competition.
- (6) Growth or decline of the population and the number of new motor vehicle registrations in the relevant market area.
- (7) The effect on the relocating dealer of a denial of its relocation into the relevant market area. *(Added by P.L. 118-2001, §4.)*

#### **9-23-3-25 Acting as a broker**

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 at least twelve (12) new or used vehicles per year. *(Added by P.L. 268-2003, §30, eff. 7/1/2003.)*

## **DAMAGE TO NEW MOTOR VEHICLES**

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

#### **9-23-4-1 Dealers' liability after acceptance from carriers**

Sec. 1. Notwithstanding the terms, provisions, or conditions of any agreement or franchise, the dealer is solely liable for damage to a new motor vehicle after acceptance from the carrier or transporter and before delivery to the ultimate purchaser. *(P.L. 2-1991, §11)*

#### **9-23-4-2 Manufacturers' liability before delivery to car-**

#### **riers**

Sec. 2. Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer, converter manufacturer, or automotive mobility dealer is liable for all damage to a new motor vehicle before delivery to a carrier or transporter. *(As added by P.L. 2-1991, §11. Amended by P.L.147-2009, §14.)*

#### **9-23-4-3 Method of transportation selected by dealers; dealers liability**

Sec. 3. The dealer is liable for damage to a new motor Vehicle after delivery 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. *(P.L. 2-1991, §11.)*

#### **9-23-4-4 Disclosure of damage**

Sec. 4. (a) This section does not apply to damage to glass, radios, tires, and bumpers when replaced by identical manufacturer's original equipment.

(b) Any uncorrected damage or any corrected damage exceeding 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 in writing before delivery to an ultimate purchaser. *(P.L.2-1991, §11.)*

#### **9-23-4-5 Repaired damage; nondisclosure**

Sec. 5. Repaired damage to a customer-ordered new motor vehicle not exceeding four percent (4%) of the manufacturer's suggested retail price does not need to be disclosed at the time of sale. *(P.L.2-1991, §11.)*

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

#### **9-23-5-1 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) franchisee's spouse;
  - (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.

*(P.L.2-1991, §11; chgd. by P.L. 118-2001, §5; P.L. 1-2002, §43)*

#### **9-23-5-2 Regulations 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. *(P.L.2-1991, §11.)*

#### **9-23-5-3 Good cause to refuse to honor franchises**

Sec. 3. A manufacturer or distributor may refuse to honor the existing franchise for a designated family member only for good cause. *(P.L.2-1991, §11.)*

#### **9-23-5-4 Actions of designated family members necessary to qualify to succeed franchisees**

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

- (1) Within 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 criterion generally applied at the time of the franchisee's death or incapacity by the manufacturer or distributor in qualifying new motor vehicle dealers as franchisees.
- (4) If requested by the manufacturer or distributor, supply promptly personal and financial data that is reasonably necessary for the manufacturer or distributor to determine if the existing franchise should be honored. *(P.L.2-1991, §11.)*

#### **9-23-5-5 Refusal to honor existing franchises; notice of discontinuance**

Sec. 5. Within sixty (60) days after receipt of:

- (1) the 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 who determines that good cause exists for refusing to honor the existing franchise shall serve notice upon the designated family member of the determination. *(P.L.2-1991, §11.)*

#### **9-23-5-6 Notice of discontinuance of franchises; requirements**

Sec. 6. The notice required under section 5 of this chapter 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. *(P.L.2-1991, §11.)*

#### **9-23-5-7 Date of discontinuance of franchises**

Sec. 7. The date for discontinuance under section 6 of this chapter must not be earlier than ninety (90) days after the date the notice is served. *(P.L.2-1991, §11.)*

#### **9-23-5-8 Notice of discontinuance; effect of Noncompliance**

Sec. 8. If notice of the manufacturer's determination is not served within the time periods specified in section 5 of this chapter and does not comply with section 6 of this chapter, the franchise must be honored and is not subject to discontinuance under this chapter. *(P.L.2-1991, §11.)*

## **PENALTIES AND REMEDIES**

#### **9-23-6-1 Class B misdemeanor**

Sec. 1. A person who violates this article commits a Class B misdemeanor. *(P.L. 2-1991, §11; chgd. by P.L. 1-1992, §51.)*

#### **9-23-6-4 Civil Penalties**

Sec. 4. A person who violates this article or a rule or order of the secretary of state issued under this article is subject to a civil penalty of not less than fifty dollars (\$50) and not more than one thousand dollars (\$1,000) for each day of violation and for each act of violation, as determined by the court. All civil penalties recovered under this article shall be paid to the state and deposited into the securities division enforcement account established under IC 23-19-6-1(f). *(As added by P.L. 2-1991, §11. Amended by P.L. 184-2007, §29; P.L.1-2009, SEC.82.)*

#### **9-23-6-5 Revocation of dealer or interim license plates**

Sec. 5. In addition to the penalty imposed under section 4 of this chapter, the bureau may revoke, upon request of the secretary of state, a dealer permanent or interim license plate that was issued to the violator. *(As added by P.L. 2-1991, §11. Amended by P.L. 176-2001, §11; P.L. 184-2007, §30, eff. 7/1/2007)*

#### **9-23-6-6 Dealers or manufacturers; suspension or revocation of license**

Sec. 6. If a manufacturer, converter manufacturer, an automotive mobility dealer or a dealer violates or aids, induces, or causes a violation of this title, the manufacturer's, converter manufacturer's, automotive mobility dealer's or dealer's license may be suspended or revoked in the manner provided for the suspension or revocation of license of persons operating motor vehicles. *(As added*

by P.L. 2-1991, §11. Amended by P.L.147-2009, §15.)

### **9-23-6-7 Secretary of State's actions for injunctive relief or civil penalties**

Sec. 7. Whenever a person violates this article or a rule or order of the secretary of state issued under this article, the secretary of state may institute a civil action in any circuit or superior court of Indiana for injunctive relief to restrain the person from continuing the activity or for the assessment and recovery of the civil penalty provided in section 4 of this chapter, or both. (P.L. 2-1991, §11; chgd. by P.L. 184-2007, §31, eff. 7/1/2007.)

### **9-23-6-8 Duties of attorney general**

Sec. 8. At the request of the secretary of state, the attorney general shall institute and conduct an action in the name of the state for:

- (1) injunctive relief or to recover the civil penalty provided by section 4 of this chapter;
  - (2) the injunctive relief provided by section 6 of this chapter; or
  - (3) both.
- (P.L. 2-1991, §11; chgd. by P.L. 184-2007, §32, eff. 7/1/2007.)

### **9-23-6-9 Dealers' civil action**

Sec. 9. A dealer who is injured by an unfair practice set forth in IC 9-23-3 may sue for relief in a court of competent jurisdiction and may recover damages or may receive injunctive relief, or both, and may recover the cost of the suit, including reasonable attorney's fees. (Added by P.L. 2-1991, §11.)

## TITLE 23, ARTICLE 2

### **DECEPTIVE FRANCHISE PRACTICES**

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

#### **23-2-2.7-1 Franchise agreement; unlawful provisions**

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

scribed 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 pro-

vision 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.

*(As added by Acts 1976, P.L.116, SEC.1. Amended by P.L.238-1985, SEC.5, P.L.111-1987, SEC.27.)*

### **23-2-2.7-2 Franchise agreement; 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 nonresident 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 reasonable area. However, a franchisor shall not be considered to be competing when operating a business either temporarily for a reasonable period of time, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the business operation and can reasonably expect to acquire full ownership of such business on reasonable terms and conditions.

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

(6) Obtaining money, goods, services, or any other benefit from any other person with whom the franchisee does business, on account of, or in relation to, the transaction between the 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. *(As added by Acts 1976, P.L.116, SEC. 1. Amended by P.L.233-1985, SEC.6.)*

### **23-2-2.7-3 Termination or election not to renew franchise; notice**

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. *(As added by Acts 1976, P.L.116, SEC.1.)*

### **23-2-2.7-4 Action to recover damages or reform franchise agreement**

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 I 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. (As added by Acts 1976, P.L.116, SEC.1.)

### 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. (As added by Acts 1976, P.L.116, SEC.1.)

### 23-2-2.7-6 Application 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. (As added by Acts 1976, P.L.116, SEC.1.)

### 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. (As added by Acts 1976, P.L.116, SEC.1.)

## TITLE 24, ARTICLE 5

## DECEPTIVE CONSUMER SALES

### Chapter 0.5. Deceptive Consumer Sales

#### 24-5-0.5-2 Definitions

Sec. 2. (a) As used in this chapter:

(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible, except securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of the state of Indiana, with or without an extension of credit, to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things. However, the term includes the following:

(A) a transfer of structured settlement payment rights under IC 34-50-2.

(B) an unsolicited advertisement sent to a person by telephone facsimile machine offering a sale, lease, assignment, award by chance, or other disposition of a n item of personal property, real property, a service, or an intangible.

(2) "Person" means an individual, corporation, the state of Indiana or its subdivisions or agencies, business trust, estate, trust, partnership, association, nonprofit corporation or

organization, or cooperative or any other legal entity.

(3) "Supplier" means the following:

(A) A seller, lessor, assignor, or other person who regularly engages in or solicits consumer transactions, including soliciting a consumer transaction by using a telephone facsimile machine to transmit an unsolicited advertisement. The term includes a manufacturer, wholesaler, or retailer, whether or not the person deals directly with the consumers.

(B) A person who contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.

(4) "Subject of a consumer transaction" means the personal property, real property services, or intangibles furnished in a consumer transaction.

#### (Right to Cure)

(5) "Cure" as applied to a deceptive act, means either:

(A) to offer in writing to adjust or modify the consumer transaction to which the act relates to conform to the reasonable expectations of the consumer generated by such deceptive act and to perform such offer if accepted by the consumer; or

(B) to offer in writing to rescind such consumer transaction and to perform such offer if accepted by the consumer.

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

(6) "Offer to cure" as applied to a deceptive act is a cure that:

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

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

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

(ii) five hundred dollars (\$500); as compensation for attorney's fees, expenses, and other costs that a consumer may incur in relation to the deceptive act.

(7) "Uncured deceptive act" means a deceptive act:

(A) with respect to which a consumer who has been damaged by such act has given notice to the supplier under section 5(a) of this chapter; and

(B) either:

(i) no offer to cure has been made to such consumer within thirty (30) days after such notice: or

(ii) the act has not been cured as to such consumer within a reasonable time after the consumer's acceptance of the offer to cure.

(8) "Incurable deceptive act" means a deceptive act done by a supplier as part of a scheme, artifice, or device with intent to defraud or mislead. The term includes a failure of a transferee of structured settlement payment

rights to timely provide a true and complete disclosure statement to a payee as provided under IC 34-50-2 in connection with a direct or indirect transfer of structured settlement payment rights.

(9) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration exceeding one hundred dollars (\$100) for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. The term does not include ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme.

(10) "Promoting a pyramid promotional scheme" means:

(A) inducing or attempting to induce one (1) or more persons to become participants in a pyramid promotional scheme; or

(B) assisting another in promoting a pyramid promotional scheme.

(11) "Elderly person" means an individual who is at least sixty-five (65) years of age.

(12) "Telephone facsimile machine" means equipment that has the capacity to transcribe text or images, or both, from:

(A) paper into an electronic signal and to transmit that signal over a regular telephone line; or

(B) an electronic signal received over a regular telephone line onto paper.

(13) "Unsolicited advertisement" means material advertising the commercial availability or quality of:

(A) property;

(B) goods; or

(C) services;

that is transmitted to a person without the person's prior express invitation or permission, in writing or otherwise.

(b) As used in section 3(a)(15) of this chapter:

(1) "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service.

(2) "Local telephone directory" refers to a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes listings of more than one (1) telephone company.

(3) "Local telephone number" refers to a telephone number that has the three (3) number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800-, 888-, or 900- exchange numbers listed in a local telephone directory. *(Formerly: Acts 1971, P.L.367, §1.) [As amended by Acts 1982, P.L. 152, §1; P.L. 12-1986, §4; P.L. 24-1989, §10; P.L. 233-1995, §1; P.L. 174-1997,*

*§1; P.L. 18-1997, §3; P.L. 219-2001, §1; P.L. 165-2005, §6; P.L.85-2006, §2; P.L. 1-2007, §165.]*

### **24-5-0.5-3 Acts constituting deceptive practices**

Sec. 3. (a) The following acts or representations as to the subject matter of a consumer transaction, made either orally or in writing by a supplier, are deceptive acts:

(1) That such subject or a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have.

(2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.

(3) That such subject of a consumer transaction is new or unused, if it is not and if the supplier knows or should reasonably know that it is not.

(4) That such subject of a consumer transaction will be supplied to the public in greater quantity than the supplier intends or reasonably expects.

(5) That replacement or repair constituting the subject of a consumer transaction is needed, if it is not and if the supplier knows or should reasonably know that it is not.

(6) That a specific price advantage exists as to such subject of a consumer transaction, if it does not and if the supplier knows or should reasonably know that it does not.

(7) That the supplier has a sponsorship, approval, or affiliation in such consumer transaction he does not have, and which the supplier knows or should reasonably know that he does not have.

(8) That such consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false.

(9) That the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a sale or lease in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit, rebate, or discount is contingent upon the occurrence of an event subsequent to the time the consumer agrees to the purchase or lease.

(10) That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the supplier knows or should reasonably know he could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that he will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

(11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.

### **(Repair Estimate Law)**

(12) That the replacement or repair constituting the subject of a consumer transaction can be made by the supplier for the estimate the supplier gives a customer for the replacement or repair, if the specified work is completed and:

(A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate;

(B) the supplier did not obtain written permission from the customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A);

(C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars (\$750); and

(D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of the part repaired or replaced earlier than seventy-two (72) hours after both:

(A) the customer has been notified that the work has been completed; and

(B) the part repaired or replaced has been made available for examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the supplier by listing a fictitious business name or an assumed business name (as described in IC 23-15-1) in a local telephone directory if:

(A) the name misrepresents the supplier's geographic location;

(B) the listing fails to identify the locality and state of the supplier's business;

(C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and

(D) the supplier's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory.

(16) The act of listing a fictitious business name or assumed business name (as described in IC 23-15-1) in a directory assistance database if:

(A) the name misrepresents the supplier's geographic location;

(B) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the local calling area; and

(C) the supplier's business location is located in a county that is not contiguous to a county in the local calling area.

(17) That the supplier violated IC 24-3-4 concerning cigarettes for import or export.

(18) The act of a supplier in knowingly selling or reselling a product to a consumer if the product has been recalled, whether by the order of a court or a regulatory body, or voluntarily by the manufacturer, distributor, or retailer, unless the product has been repaired or modified to correct the defect that was the subject of the recall.

(19) The violation by a supplier of 47 U.S.C. 227, including any rules or regulations issued under 47 U.S.C. 227.

(b) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.

(c) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

(d) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is disclosed to the consumer.

(e) For purposes of subsection (a) (12), a supplier that provides estimates before performing repair or replacement work for a customer shall give the customer a written estimate itemizing as closely as possible the price for labor and parts necessary for the specific job before commencing the work.

(f) For purposes of subsection (a) (15), a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance database unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

(g) For purposes of subsection (a)(18), it is an affirmative defense to any action brought under this chapter that the product has been altered by a person other than the defendant to render the product completely incapable of serving its original purpose. *(Formerly: Acts 1971, P.L.367, SEC.1.) [As amended by Acts 1978, P.L. 127, §2; Acts 1982, P.L.153, §1; Acts 1982, P.L.152, SEC.2; P.L.16-1983, SEC.16; P.L.239-1985, SEC.1; P.L.12-1986, SEC.5; P.L.24-1989, SEC.11; P.L.174-1997, SEC.2; P.L.21-2000, SEC.11; P.L.70-2002, SEC.1; P.L.85-2006, SEC.3; P.L.1-2009, SEC.137.]*

#### **IC 24-5-0.5-4 Actions and proceedings; damages; injunction; civil penalties; offer to cure**

.....

(j) An offer to cure is:

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

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

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

(k) A supplier may not be held liable for the attorney's fees and court costs of the consumer that are incurred following the timely delivery of an offer to cure as described in subsection (j) unless the actual damages awarded, not including attorney's fees and costs, exceed the value of the offer to cure. *(Formerly: Acts 1971, P.L.367, SEC.1.) [As amended by Acts 1978, P.L.127, SEC.3; Acts 1982, P.L.152, SEC.3; P.L.12-1986, SEC.6; P.L.3-1989, SEC.141; P.L.24-1989, SEC.12; P.L.233-1995, SEC.2; P.L.165-2005, SEC.7; P.L.222-2005, SEC.33; P.L.85-2006, SEC.4.]*

### **FREQUENTLY REQUESTED STATUTES**

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

##### **IC 24-4-6-1 Sunday transactions prohibited**

Sec. 1. (a) This section does not apply to a person that holds a special event permit issued under IC 9-23-2-16.

(b) A person who engages in the business of buying, selling, or trading motor vehicles on Sunday commits a Class B misdemeanor. *(As amended by P.L. 156-2006, § 26 eff. 3/24/2006.)*

#### **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. *(Formerly: Acts 1963, c. 317, s. 2-608.)*

### **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 were issued or renewed after August 31, 1983. *(As added by Acts 1980, P.L. 174, SEC. 1. Amended by P.L. 261-1983, SEC. 1; P.L. 226-1993, SEC 2.)*

#### **IC27-8-9-6 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. *(As added by P.L. 261-1983, SEC 2. Amended by P.L. 81-1991, SEC. 11; P.L. 226-1993, SEC. 3.)*

#### **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 pro-

vided by the owner's policy is first exhausted.(As added by P.L. 261-1983, SEC. 3. Amended by P.L. 226-1993, SEC 4;P.L. 74-2009, §1.)

**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. (As added by P.L. 226-1993, SEC 6.)

## **“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 advertis-

ing 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 Members. It is intended as a general guideline only. For questions or clarification, please contact your individual CPA firm.

### 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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