

## **IC 9-32-13**

### **Chapter 13. Unfair Practices**

#### **IC 9-32-13-1**

##### **Requiring purchase of equipment, part, or accessory as a condition of sale**

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

- (1) already installed on the motor vehicle when the motor vehicle is received by or offered for sale by the dealer; or
- (2) required by law.

*As added by P.L.92-2013, SEC.78.*

#### **IC 9-32-13-2**

##### **Willful failure of dealer to perform vehicle delivery and preparation obligations**

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

*As added by P.L.92-2013, SEC.78.*

#### **IC 9-32-13-3**

##### **Willful failure of dealer to perform warranty obligations**

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

*As added by P.L.92-2013, SEC.78.*

#### **IC 9-32-13-4**

##### **Sale of vehicle having trade name or mark for which dealer lacks franchise**

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

*As added by P.L.92-2013, SEC.78.*

#### **IC 9-32-13-5**

##### **Willful failure of dealer to perform fiduciary duty to collect and remit gross retail tax**

Sec. 5. It is an unfair practice for a dealer to willingly fail to perform the fiduciary duty imposed on the dealer by IC 6-2.5-2-1 with regard to the collection and remittance of the state gross retail tax. Willful violation of the fiduciary duty includes written or oral agreements between a dealer and a prospective purchaser that would give the appearance that a bona fide trade-in has taken place, when in fact the purpose of the agreement is to reduce the prospective purchaser's state gross retail tax and thereby deprive the state of revenue.

*As added by P.L.92-2013, SEC.78.*

#### **IC 9-32-13-6**

##### **Sale, exchange, or transfer by dealer of rebuilt vehicle without disclosure that vehicle was rebuilt**

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

*As added by P.L.92-2013, SEC.78.*

#### **IC 9-32-13-7**

##### **Document preparation fees**

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

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

*As added by P.L.92-2013, SEC.78.*

#### **IC 9-32-13-8**

##### **Violation of deceptive franchise practices provisions**

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

(b) It is an unfair practice for a manufacturer or distributor to enter into an agreement in which a dealer is required to waive the provisions of:

- (1) this chapter; or
- (2) IC 23-2-2.7.

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

*As added by P.L.92-2013, SEC.78.*

**IC 9-32-13-9****Manufacturer or distributor coercing dealers to order**

Sec. 9. It is an unfair practice for a manufacturer or distributor to coerce a dealer to order parts, accessories, equipment, machinery, tools, appliances, or any other commodity from a person.

*As added by P.L.92-2013, SEC.78.*

**IC 9-32-13-10****Manufacturer or distributor requiring changes in capital structure or financing**

Sec. 10. It is an unfair practice for a manufacturer or distributor to prevent or require, or attempt to prevent or require, by contract or otherwise, a change in the capital structure of a dealer or the means by or through which the dealer finances the dealer's operation, if the dealer at all times meets reasonable capital standards agreed to by the dealer and the manufacturer or distributor. A change in capital structure does not cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor.

*As added by P.L.92-2013, SEC.78.*

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

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

*As added by P.L.92-2013, SEC.78.*

**IC 9-32-13-12****Restraint by manufacturer or distributor of sale or transfer of interest by dealer**

Sec. 12. It is an unfair practice for a manufacturer or distributor to prevent or require, or attempt to prevent or require, by contract or otherwise, a dealer or an officer, a partner, or a stockholder of a dealer to sell or transfer a part of the interest of the officer, partner, or stockholder to any other person. A dealer, an officer, a partner, or a stockholder may not sell, transfer, or assign the franchise or a right under the franchise without the consent of the manufacturer or distributor. This consent may not be withheld unreasonably.

*As added by P.L.92-2013, SEC.78.*

**IC 9-32-13-13****Manufacturer or distributor preventing dealer from fair competition**

Sec. 13. It is an unfair practice for a manufacturer or distributor to prevent or attempt to prevent a dealer from receiving fair and

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

*As added by P.L.92-2013, SEC.78.*

#### **IC 9-32-13-14**

##### **Employment of unlicensed representative for manufacturer or distributor**

Sec. 14. It is an unfair practice for a manufacturer or distributor to employ a person as a representative who has not been licensed under this article.

*As added by P.L.92-2013, SEC.78.*

#### **IC 9-32-13-15**

##### **Labor rates**

Sec. 15. (a) It is an unfair practice for a manufacturer or distributor to fail to compensate a dealer the posted labor rate for the work and services the dealer is required to perform in connection with the dealer's delivery and preparation obligations under any franchise, or fail to compensate a dealer the posted hourly labor rate for labor and other expenses incurred by the dealer under the manufacturer's warranty agreements as long as the posted rate is reasonable. Judgment of the reasonableness includes consideration of charges for similar repairs by comparable repair facilities in the local area as well as mechanic's wages and fringe benefits.

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

*As added by P.L.92-2013, SEC.78.*

#### **IC 9-32-13-16**

##### **Contract for uniform warranty reimbursement policy**

Sec. 16. (a) A manufacturer or distributor and at least thirty percent (30%) of its franchisees in Indiana of the same line make may agree in an express written contract citing this section to a uniform warranty reimbursement policy to be used by franchisees for the performance of warranty repairs. The contract must include reimbursement for parts used in warranty repairs or the use of a uniform time standards manual, or both. The allowance for diagnosis within the uniform time standards manual must be reasonable and adequate for the work and service to be performed. The manufacturer or distributor:

- (1) may have only one (1) contract with regard to each line make; and
- (2) must have a reasonable and fair procedure for franchisees to request a modification or adjustment of a standard included in the uniform time standards manual.

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

criteria:

- (1) Establish a uniform parts reimbursement rate that must be greater than the manufacturer's or distributor's nationally established parts reimbursement rate in effect at the time the contract becomes effective. A subsequent contract must include a uniform reimbursement rate that is equal to or greater than the rate in the immediately prior contract.
- (2) Apply to all warranty repair orders written while the agreement is in effect.
- (3) At any time during the period the contract is in effect:
  - (A) be available to any franchisee of the same line make as the franchisees that entered into the contract with the manufacturer or distributor; and
  - (B) be available to a franchisee of the same line make on the same terms as apply to the franchisees that entered into the contract with the manufacturer or distributor.
- (4) Be for a term not to exceed three (3) years.
- (5) Allow any party to the uniform warranty reimbursement policy to terminate the policy with thirty (30) days prior written notice to all parties upon the annual anniversary of the policy, if the policy is for at least one (1) year.
- (6) Remain in effect for the entire original period if the manufacturer and at least one (1) franchisee remain parties to the policy.

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

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

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

- (1) Certify to the secretary under oath, in a writing signed by a representative of the manufacturer or distributor, that at the time the contract was entered into at least thirty percent (30%) of the franchisees of the line make were parties to the contract.
- (2) File a copy of the contract with the bureau at the time of the certification.
- (3) Maintain a file that contains the information upon which the certification required under subdivision (1) is based for three (3) years after the certification is made.

*As added by P.L.92-2013, SEC.78.*

### **IC 9-32-13-17**

#### **Payment or disapproval of dealer claims; notice of disapproval; audits and chargebacks**

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

- (1) fail to pay a claim made by a dealer for compensation for:
  - (A) delivery and preparation work;
  - (B) warranty work; and
  - (C) incentive payments;

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

- (2) fail to approve or disapprove a claim not later than thirty (30) days after receipt of the claim; or
- (3) disapprove a claim without notice to the dealer in writing of the grounds for disapproval.

(b) A manufacturer or distributor may:

- (1) audit a claim made by a dealer; or
- (2) charge back to a dealer any amounts paid on a false or unsubstantiated claim;

for up to one (1) year after the date on which the claim is paid. However, the limitations of this subsection do not apply if the manufacturer or distributor can prove fraud on a claim. A manufacturer or distributor shall not discriminate among dealers with regard to auditing or charging back claims.

*As added by P.L.92-2013, SEC.78.*

### **IC 9-32-13-18**

#### **Selling motor vehicle to unlicensed person for resale; adverse action or discrimination against customer when customer intends to resell motor vehicle or export to foreign country**

Sec. 18. (a) 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.

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

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

- (1) Failing or refusing to allocate, sell, or deliver a motor vehicle to the dealer.
- (2) Discriminating against the dealer in the allocation of motor

vehicles.

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

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

(5) Terminating a franchise.

*As added by P.L.92-2013, SEC.78. Amended by P.L.152-2013, SEC.1.*

#### **IC 9-32-13-19**

##### **Failure to indemnify and hold harmless dealer for losses, costs, and expenses from suit for defect**

Sec. 19. It is an unfair practice for a manufacturer or distributor to refuse or fail to indemnify and hold harmless a dealer, upon written notification from the dealer, from all losses, costs, and expenses that result or arise from or are related to a complaint, claim, defense, or suit against the dealer that concerns defects in a motor vehicle or other goods or services that are the responsibility of the manufacturer or distributor.

*As added by P.L.92-2013, SEC.78.*

#### **IC 9-32-13-20**

##### **False, deceptive, or misleading advertising; deceptive acts or practices**

Sec. 20. 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.

*As added by P.L.92-2013, SEC.78.*

#### **IC 9-32-13-21**

##### **Unfair practices of employees, agents, officers, partners, or representatives**

Sec. 21. It is an unfair practice for an employee, an agent, an officer, a partner, or a representative of a licensee to engage in a practice prohibited by this chapter.

*As added by P.L.92-2013, SEC.78.*

#### **IC 9-32-13-22**

##### **Franchise termination; right of first refusal**

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

(1) notifies the manufacturer or distributor of the dealer's decision to make the transfer, assignment, or sale by written

notice; and

(2) obtains the approval of the manufacturer or distributor.

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

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

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

(1) The manufacturer or distributor notifies the dealer in writing of the intent of the manufacturer or distributor to exercise the right of first refusal within the sixty (60) day notice period under subsection (b).

(2) The exercise of the right of first refusal will result in the dealer and the dealer's owners receiving consideration, terms, and conditions that are either the same as or better than those they have contracted to receive under the proposed change of more than fifty percent (50%) of the dealer's ownership or transfer of more than fifty percent (50%) of the new vehicle dealer's assets.

(3) The proposed change of the dealership's ownership or transfer of the new vehicle dealer's assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one (1) or more of the dealer's owners to any of the following:

(A) A designated family member or members, including any of the following members of one (1) or more dealer owners:

(i) The spouse.

(ii) A child.

(iii) A grandchild.

(iv) The spouse of a child or a grandchild.

(v) A sibling.

(vi) A parent.

(B) A manager:

- (i) employed by the dealer in the dealership during the previous four (4) years; and
  - (ii) who is otherwise qualified as a dealer operator.
- (C) A partnership or corporation controlled by any of the family members described in clause (A).
- (D) A trust arrangement established or to be established:
- (i) for the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards; or
  - (ii) to provide for the succession of the franchise agreement to designated family members or qualified management in the event of the death or incapacity of the dealer or the principal owner or owners.
- (4) Except as otherwise provided in this subsection, the manufacturer or distributor agrees to pay the reasonable expenses, including reasonable attorney's fees, that do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, and that are incurred by the proposed owner or transferee before the manufacturer's or distributor's exercise of the right of first refusal in negotiating and implementing the contract for the proposed change of the dealer ownership or the transfer of the new vehicle dealer's assets. Payment of expenses and attorney's fees is not required if the dealer has failed to submit an accounting of those expenses not later than twenty (20) days after the dealer receives the manufacturer's or distributor's written request for such an accounting. An expense accounting may be requested by a manufacturer or distributor before exercising the right of first refusal.

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

*As added by P.L.92-2013, SEC.78.*

### **IC 9-32-13-23**

#### **Unfair practices by manufacturer, distributor, officer, or agent**

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

- (1) Require, coerce, or attempt to coerce a new motor vehicle dealer in Indiana to:
  - (A) change the location of the dealership;
  - (B) make any substantial alterations to the use of franchises;or
- (C) make any substantial alterations to the dealership premises or facilities;

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

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

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

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

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

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

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

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

(A) construct a new dealership facility;

(B) modify or change the location of an existing dealership; or

(C) grant the manufacturer or distributor control rights over any real property owned, leased, controlled, or occupied by the dealer.

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

(A) reasonable facilities exist for the combined operations;

(B) the dealer meets reasonable capitalization requirements for the original line make and complies with the reasonable facilities requirements of the manufacturer or distributor; and

(C) the prohibition is not justified by the reasonable business considerations of the manufacturer or distributor.

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

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

*As added by P.L.92-2013, SEC.78. Amended by P.L.152-2013,*

*SEC.2; P.L.2-2014, SEC.48.*

**IC 9-32-13-24**

**Relocation of new motor vehicle dealers**

Sec. 24. (a) This section does not apply to the relocation of a new motor vehicle dealer to a location that is not more than two (2) miles from its established place of business.

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

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

- (1) the new motor vehicle dealer relocates to a site that is located at a distance greater than the existing distance of another new motor vehicle dealer of the same line make before the relocation; and
- (2) the site of the relocation is outside an area that is within a radius of four (4) miles from another new motor vehicle dealer of the same line make;

but does apply to a new motor vehicle dealer that, before January 1, 2013, had been engaged in the process of relocating but had not physically relocated to the new intended site by January 1, 2013, and to a new motor vehicle dealer that began engaging in the process of relocating on or after January 1, 2013.

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

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

- (1) receiving the notice provided for in subsection (d); or
- (2) the end of any appeal procedure provided by the franchisor;

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

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

- (1) Permanency of the investment.
- (2) Effect on the retail new motor vehicle business and the consuming public in the relevant market area.
- (3) Whether it is injurious or beneficial to the public welfare.
- (4) Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line make in that market area, including the adequacy of motor vehicle sales and qualified service personnel.
- (5) Whether the establishment or relocation of the new motor vehicle dealer would promote competition.
- (6) Growth or decline of the population and the number of new motor vehicle registrations in the relevant market area.
- (7) The effect on the relocating dealer of a denial of its relocation into the relevant market area.

*As added by P.L.92-2013, SEC.78.*

#### **IC 9-32-13-25**

##### **Acting, offering to act as, or professing to be a broker of vehicles**

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

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

a broker in the advertising, buying, or selling of at least five (5) new or used vehicles per year.

*As added by P.L.92-2013, SEC.78.*

#### **IC 9-32-13-26**

##### **Fraud or deceit, untrue statements of material fact or omission**

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

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

*As added by P.L.92-2013, SEC.78.*

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

##### **Canceling, terminating, or refusing to renew franchise or selling agreement of franchisee; renewal, replacement, or succeeding franchise or selling agreement**

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

- (1) Cancel or terminate a franchise or selling agreement of a franchisee, or fail or refuse to extend or renew a franchise or

selling agreement upon the franchise's or selling agreement's expiration, without good cause or notice to the franchisee by certified mail, return receipt requested:

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

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

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

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

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

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

(v) The dealer commits fraud.

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

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

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

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

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

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

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

(d) Not more than thirty (30) days after a franchisee receives notice under subsection (a), the franchisee may protest the proposed action.

*As added by P.L.152-2013, SEC.3.*

**IC 9-32-13-28**

**Dealer requesting payment for manufacturer or distributor following termination, cancellation, or nonrenewal of franchise; discontinuance of line make**

Sec. 28. (a) This section applies when a dealer requests payment from a manufacturer or distributor following:

- (1) the termination, cancellation, or nonrenewal by the manufacturer or distributor of a franchise between the dealer and the manufacturer or distributor; or
- (2) the discontinuance of a line make by the manufacturer or distributor.

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

- (1) For:
  - (A) current model year motor vehicles; or
  - (B) immediately preceding model year motor vehicles with less than three hundred (300) miles;  
acquired from the manufacturer or distributor in the usual course of business, the cost at acquisition less any discounts or allowances received from the manufacturer or distributor.
- (2) For all new, unused, and undamaged parts in original packaging that were purchased from the manufacturer or distributor:
  - (A) the cost listed in the manufacturer's or distributor's parts catalog in effect at the time of termination, cancellation, nonrenewal, or discontinuance; minus
  - (B) any allowances authorized by the manufacturer or distributor.
- (3) For required special tools, equipment, or computer equipment that was used for reporting financial data to the manufacturer or distributor, used solely for the franchise being terminated, and purchased by the dealer during the two (2) years immediately preceding the termination, cancellation, nonrenewal, or discontinuance, fair market value.
- (4) For signs that bear a trademark or trade name, that the dealer was required by the manufacturer or distributor to purchase, and that the dealer purchased within three (3) years of the termination, cancellation, nonrenewal, or discontinuance, fair market value.

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

(c) Title to items described in subsection (b) transfers from a

dealer to a manufacturer or distributor on the date of termination, cancellation, nonrenewal, or discontinuance. The dealer has an enforceable security interest in the transferred items.

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

*As added by P.L.152-2013, SEC.4.*

### **IC 9-32-13-29**

#### **Manufacturer or distributor terminates, cancels, or fails to renew a franchise between the manufacturer or distributor and dealer; exceptions**

Sec. 29. (a) This section applies when a manufacturer or distributor terminates, cancels, or fails to renew a franchise between the manufacturer or distributor and a dealer, unless the termination, cancellation, or failure to renew is due to any of the following:

- (1) The dealer files for bankruptcy or enters into receivership.
- (2) The dealer's license is revoked under IC 9-32-11 or IC 9-32-16.
- (3) The dealer has been convicted of or pled guilty to a felony.
- (4) The dealer commits fraud.
- (5) The dealer has abandoned business operations or otherwise failed to conduct sales and service operations during regular business hours for at least seven (7) consecutive days, unless the abandonment or closure is due to an act of God or another act over which the franchise has no control.

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

- (1) If the dealer is leasing the dealership facilities from a person other than the manufacturer or distributor, the lesser of:
  - (A) the total lease payments remaining unpaid on the date of termination, cancellation, or nonrenewal; or
  - (B) the total annual lease payments for one (1) year; subject to damages mitigated by the dealer under the terms of the lease.
- (2) If the dealer owns the dealership facilities, an amount equal to the reasonable rental value of the facilities for the one (1) year period beginning on the date of termination, cancellation, or nonrenewal, subject to damages mitigated by the dealer.

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

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

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

*As added by P.L.152-2013, SEC.5.*

**IC 9-32-13-30****Manufacturer or distributor may not require or coerce improvements to dealer's facilities or signs or franchisor image elements; exceptions**

Sec. 30. (a) A manufacturer or distributor may not coerce or require a dealer to:

- (1) make an improvement to the dealer's facilities; or
- (2) install signs or other franchisor image elements;

that would result in replacing or substantially altering improvements or image elements that the dealer made or installed during the immediately preceding seven (7) years as required by the manufacturer or distributor, unless the improvement or installation of signs or visual elements is necessary to comply with the health or safety laws of the state or to sell, service, or display a new motor vehicle due to the unique technology of the new motor vehicle.

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

(c) This section does not apply to a recreational vehicle manufacturer franchisor.

*As added by P.L.152-2013, SEC.6.*

**IC 9-32-13-31****Unfair practice penalty**

*Effective 1-1-2015.*

Sec. 31. A person that performs an act that is an unfair practice under this chapter commits a Class A infraction.

*As added by P.L.217-2014, SEC.174.*