

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

### **Chapter 16. Administration and Legal Proceedings**

#### **IC 9-32-16-1 Version a**

##### **Administration of dealer services by secretary of state**

*Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014 until 1-1-2015, and following version of this section effective 1-1-2015.*

Sec. 1. (a) This chapter shall be administered by the secretary.

(b) The secretary:

- (1) shall employ employees, including a director, investigators, or attorneys, necessary for the administration of this article; and
- (2) shall fix the compensation of the employees with the approval of the budget agency.

(c) It is unlawful for the director or an officer, employee, or designee of the secretary to use for personal benefit or the benefit of others records or other information obtained by or filed with the dealer services division under this article that are confidential. This article does not authorize the director or an officer, employee, or designee of the secretary to disclose the record or information, except in accordance with this chapter.

(d) This article does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(e) The secretary may develop and implement dealer's and vehicle purchaser's education initiatives to inform dealers and the public about the offer or sale of vehicles, with particular emphasis on the prevention and detection of fraud involving vehicle sales. In developing and implementing these initiatives, the secretary may collaborate with public and nonprofit organizations with an interest in consumer education. The secretary may accept a grant or donation from a person that is not affiliated with the dealer industry or from a nonprofit organization, regardless of whether the organization is affiliated with the dealer industry, to develop and implement consumer education initiatives. This subsection does not authorize the secretary to require participation or monetary contributions of a registrant in an education program.

(f) Fees and funds accruing from the administration of this article:

- (1) described in IC 9-32-7-1(d) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited in the dealer compliance account established by IC 9-32-7-1(a);
- (2) described in IC 9-32-7-2(b) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited in the dealer enforcement account established by IC 9-32-7-2(a);
- (3) described in IC 9-29-17-14(b)(2), IC 9-29-17-14(c)(3), IC 9-29-17-15, and IC 9-32-7-3(2) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited in the motor vehicle highway account under IC 8-14-1;

(4) described in IC 9-32-7-3(3) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited with the state police department, and these fees and funds are continuously appropriated to the department for its use in enforcing odometer laws;

(5) described in IC 9-32-7-3(4) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited with the attorney general, and these fees and funds are continuously appropriated to the attorney general for use in enforcing odometer laws; and

(6) described in IC 9-29-1-4(a) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited in the state police building account.

Expenses incurred in the administration of this article shall be paid from the state general fund upon appropriation being made for the expenses in the manner provided by law for the making of those appropriations. However, grants and donations under subsection (e), costs of investigations, and civil penalties recovered under this chapter shall be deposited by the treasurer of state in the dealer enforcement account established by IC 9-32-7-2. The funds in the dealer compliance account established by IC 9-32-7-1 must be available, with the approval of the budget agency, to augment and supplement the funds appropriated for the administration of this article.

(g) In connection with the administration and enforcement of this article, the attorney general shall render all necessary assistance to the director upon the request of the director. To that end, the attorney general shall employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the director as the demands of the division require. Expenses incurred by the attorney general for the purposes stated under this subsection are chargeable against and shall be paid out of funds appropriated to the attorney general for the administration of the attorney general's office. The attorney general may authorize the director and the director's designee to represent the director and the division in any proceeding involving enforcement or defense of this article.

(h) The secretary, director, and employees of the division are not liable in an individual capacity, except to the state, for an act done or omitted in connection with the performance of their duties under this article.

(i) The director and each attorney or investigator designated by the secretary:

(1) are police officers of the state;

(2) have all the powers and duties of police officers in conducting investigations for violations of this article, or in serving any process, notice, or order issued by an officer, authority, or court in connection with the enforcement of this article; and

(3) comprise the enforcement department of the division.

The division is a criminal justice agency for purposes of IC 5-2-4-1(3) and IC 10-13-3-6.

(j) The provisions of this article delegating and granting power to the secretary, division, and director shall be liberally construed to the end that:

- (1) the practice or commission of fraud may be prohibited and prevented; and
- (2) disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured.

(k) Copies of any statements and documents filed in the office of the secretary and of any records of the secretary certified by the director are admissible in any prosecution, action, suit, or proceeding based on, arising out of, or under this article to the same effect as the original of the statement, document, or record would be if actually produced.

*As added by P.L. 92-2013, SEC. 78. Amended by P.L. 2-2014, SEC. 49.*

#### **IC 9-32-16-1 Version b**

##### **Administration of dealer services by secretary of state**

*Note: This version of section effective 7-1-2014 until 1-1-2015. See also preceding version of this section, effective until 7-1-2014, and following version of this section, effective 1-1-2015.*

Sec. 1. (a) This chapter shall be administered by the secretary.

(b) The secretary:

- (1) shall employ employees, including a director, investigators, or attorneys, necessary for the administration of this article; and
- (2) shall fix the compensation of the employees with the approval of the budget agency.

(c) It is unlawful for the director or an officer, employee, or designee of the secretary to use for personal benefit or the benefit of others records or other information obtained by or filed with the dealer services division under this article that are confidential. This article does not authorize the director or an officer, employee, or designee of the secretary to disclose the record or information, except in accordance with this chapter.

(d) This article does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(e) The secretary may develop and implement dealer's and vehicle purchaser's education initiatives to inform dealers and the public about the offer or sale of vehicles, with particular emphasis on the prevention and detection of fraud involving vehicle sales. In developing and implementing these initiatives, the secretary may collaborate with public and nonprofit organizations with an interest in consumer education. The secretary may accept a grant or donation from a person that is not affiliated with the dealer industry or from a nonprofit organization, regardless of whether the organization is affiliated with the dealer industry, to develop and implement consumer education initiatives. This subsection does not authorize the secretary to require participation or monetary contributions of a

registrant in an education program.

(f) Fees and funds accruing from the administration of this article:

(1) described in IC 9-32-7-1(d) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited in the dealer compliance account established by IC 9-32-7-1(a);

(2) described in IC 9-32-7-2(b) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited in the dealer enforcement account established by IC 9-32-7-2(a);

(3) described in IC 9-29-17-14(b)(2), IC 9-29-17-14(c)(3), and IC 9-32-7-3(2) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited in the motor vehicle highway account under IC 8-14-1;

(4) described in IC 9-32-7-3(3) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited with the state police department, and these fees and funds are continuously appropriated to the department for its use in enforcing odometer laws;

(5) described in IC 9-32-7-3(4) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited with the attorney general, and these fees and funds are continuously appropriated to the attorney general for use in enforcing odometer laws; and

(6) described in IC 9-29-1-4(a) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited in the state police building account.

Expenses incurred in the administration of this article shall be paid from the state general fund upon appropriation being made for the expenses in the manner provided by law for the making of those appropriations. However, grants and donations under subsection (e), costs of investigations, and civil penalties recovered under this chapter shall be deposited by the treasurer of state in the dealer enforcement account established by IC 9-32-7-2. The funds in the dealer compliance account established by IC 9-32-7-1 must be available, with the approval of the budget agency, to augment and supplement the funds appropriated for the administration of this article.

(g) In connection with the administration and enforcement of this article, the attorney general shall render all necessary assistance to the director upon the request of the director. To that end, the attorney general shall employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the director as the demands of the division require. Expenses incurred by the attorney general for the purposes stated under this subsection are chargeable against and shall be paid out of funds appropriated to the attorney general for the administration of the attorney general's office. The attorney general may authorize the director and the director's designee to represent the director and the division in any proceeding involving enforcement or defense of this

article.

(h) The secretary, director, and employees of the division are not liable in an individual capacity, except to the state, for an act done or omitted in connection with the performance of their duties under this article.

(i) The director and each attorney or investigator designated by the secretary:

(1) are police officers of the state;

(2) have all the powers and duties of police officers in conducting investigations for violations of this article, or in serving any process, notice, or order issued by an officer, authority, or court in connection with the enforcement of this article; and

(3) comprise the enforcement department of the division.

The division is a criminal justice agency for purposes of IC 5-2-4-1(3) and IC 10-13-3-6.

(j) The provisions of this article delegating and granting power to the secretary, division, and director shall be liberally construed to the end that:

(1) the practice or commission of fraud may be prohibited and prevented; and

(2) disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured.

(k) Copies of any statements and documents filed in the office of the secretary and of any records of the secretary certified by the director are admissible in any prosecution, action, suit, or proceeding based on, arising out of, or under this article to the same effect as the original of the statement, document, or record would be if actually produced.

*As added by P.L.92-2013, SEC.78. Amended by P.L.2-2014, SEC.49; P.L.62-2014, SEC.40.*

### **IC 9-32-16-1 Version c**

#### **Administration of dealer services by secretary of state**

*Note: This version of section effective 1-1-2015. See also preceding version of this section, effective until 7-1-2014, and preceding version of this section, effective 7-1-2014 until 1-1-2015.*

Sec. 1. (a) This chapter shall be administered by the secretary.

(b) The secretary:

(1) shall employ employees, including a director, investigators, or attorneys, necessary for the administration of this article; and

(2) shall fix the compensation of the employees with the approval of the budget agency.

(c) It is unlawful for the director or an officer, employee, or designee of the secretary to use for personal benefit or the benefit of others records or other information obtained by or filed with the dealer services division under this article that are confidential. This article does not authorize the director or an officer, employee, or designee of the secretary to disclose the record or information, except

in accordance with this chapter.

(d) This article does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(e) The secretary may develop and implement dealer's and vehicle purchaser's education initiatives to inform dealers and the public about the offer or sale of vehicles, with particular emphasis on the prevention and detection of fraud involving vehicle sales. In developing and implementing these initiatives, the secretary may collaborate with public and nonprofit organizations with an interest in consumer education. The secretary may accept a grant or donation from a person that is not affiliated with the dealer industry or from a nonprofit organization, regardless of whether the organization is affiliated with the dealer industry, to develop and implement consumer education initiatives. This subsection does not authorize the secretary to require participation or monetary contributions of a registrant in an education program.

(f) Fees and funds accruing from the administration of this article:

(1) described in IC 9-32-7-1(d) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited in the dealer compliance account established by IC 9-32-7-1(a);

(2) described in IC 9-32-7-2(b) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited in the dealer enforcement account established by IC 9-32-7-2(a);

(3) described in IC 9-29-17-14(b)(2), IC 9-29-17-14(c)(3), and IC 9-32-7-3(2) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited in the motor vehicle highway account under IC 8-14-1;

(4) described in IC 9-32-7-3(3) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited with the state police department, and these fees and funds are continuously appropriated to the department for its use in enforcing odometer laws;

(5) described in IC 9-32-7-3(4) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited with the attorney general, and these fees and funds are continuously appropriated to the attorney general for use in enforcing odometer laws; and

(6) described in IC 9-29-1-4(a) (before its amendment January 1, 2015) shall be accounted for by the secretary and shall be deposited with the treasurer of state to be deposited in the state police building account.

Expenses incurred in the administration of this article shall be paid from the state general fund upon appropriation being made for the expenses in the manner provided by law for the making of those appropriations. However, grants and donations under subsection (e), costs of investigations, and civil penalties recovered under this chapter shall be deposited by the treasurer of state in the dealer enforcement account established by IC 9-32-7-2. The funds in the

dealer compliance account established by IC 9-32-7-1 must be available, with the approval of the budget agency, to augment and supplement the funds appropriated for the administration of this article.

(g) In connection with the administration and enforcement of this article, the attorney general shall render all necessary assistance to the director upon the request of the director. To that end, the attorney general shall employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the director as the demands of the division require. Expenses incurred by the attorney general for the purposes stated under this subsection are chargeable against and shall be paid out of funds appropriated to the attorney general for the administration of the attorney general's office. The attorney general may authorize the director and the director's designee to represent the director and the division in any proceeding involving enforcement or defense of this article.

(h) The secretary, director, and employees of the division are not liable in an individual capacity, except to the state, for an act done or omitted in connection with the performance of their duties under this article.

(i) The director and each attorney or investigator designated by the secretary:

- (1) are police officers of the state;
- (2) have all the powers and duties of police officers in conducting investigations for violations of this article, or in serving any process, notice, or order issued by an officer, authority, or court in connection with the enforcement of this article; and
- (3) comprise the enforcement department of the division.

The division is a criminal justice agency for purposes of IC 5-2-4-1(3) and IC 10-13-3-6.

(j) The provisions of this article delegating and granting power to the secretary, division, and director shall be liberally construed to the end that:

- (1) the practice or commission of fraud may be prohibited and prevented; and
- (2) disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured.

(k) Copies of any statements and documents filed in the office of the secretary and of any records of the secretary certified by the director are admissible in any prosecution, action, suit, or proceeding based on, arising out of, or under this article to the same effect as the original of the statement, document, or record would be if actually produced.

*As added by P.L.92-2013, SEC.78. Amended by P.L.2-2014, SEC.49; P.L.62-2014, SEC.40; P.L.216-2014, SEC.159.*

## **IC 9-32-16-2**

**Orders concerning applications and licenses; discipline; revocation and suspension of license; persons not issued a license**

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

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

(1) institute a revocation or suspension proceeding under this subsection based on an order issued under the law of another state that is reported to the secretary or a designee of the secretary more than one (1) year after the date of the order on which it is based; or

(2) issue an order on the basis of an order issued under the dealer services laws of another state unless the other order was based on conduct for which subsection (c) would authorize the action had the conduct occurred in Indiana.

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

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

(2) knowingly violated or knowingly failed to comply with this article, or its predecessor, within the previous ten (10) years;

(3) has been convicted of a:

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

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

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

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

(5) refuses to allow or otherwise impedes the secretary from



conducting an audit or inspection;

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

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

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

(9) violates IC 23-2-2.7;

(10) violates IC 9-19-9;

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

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

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

(1) that the order has been issued;

(2) the reasons for the action; and

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

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

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

(f) Revocation or suspension of a license of a manufacturer, a distributor, 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) Except as provided in subsection (d), an order may not be issued under this section without:

(1) appropriate notice to the applicant or registrant;

(2) an opportunity for a hearing; and

(3) reasons for the action.

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

(i) A person subject to this chapter that has not been issued a license is subject to the same disciplinary fines, costs, and penalties as if a license had been issued.

*As added by P.L.92-2013, SEC.78. Amended by P.L.62-2014, SEC.41.*

### **IC 9-32-16-3**

#### **Information or documents considered law enforcement records**

Sec. 3. Information or documents obtained by the division in the course of an investigation, including an audit conducted under section 6(c) of this chapter, are law enforcement records for the purposes of IC 5-14-3-4(b)(1).

*As added by P.L.92-2013, SEC.78. Amended by P.L.2-2014, SEC.50.*

### **IC 9-32-16-4**

#### **Compliance with request, order, or subpoena for production of documentary evidence**

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

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

### **IC 9-32-16-5**

#### **Dealers to provide staff of division access to dealer's premises**

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

- (1) documents are stored; or
- (2) vehicle sales are offered, made, or processed.

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

### **IC 9-32-16-6**

#### **Dealer required to make and maintain records; data storage; records subject to inspection; retention of records**

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

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

(c) The records of a dealer licensed or required to be licensed under this article are subject to such reasonable periodic, special, or

other audits or inspections by a representative of the secretary, within or outside Indiana, as the secretary considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The representative of the secretary may copy, and remove for audit or inspection copies of, the records the secretary reasonably considers necessary or appropriate to conduct the audit or inspection.

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

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

#### **IC 9-32-16-7**

##### **Secretary of state to provide assistance to other state or foreign jurisdiction**

Sec. 7. At the request of the division or equivalent regulator of another state or foreign jurisdiction, the secretary may provide assistance if the requesting regulator states that the requesting regulator is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to dealer matters that the requesting regulator administers or enforces. The secretary may provide assistance by using the authority to investigate and the powers conferred by this article as the secretary determines are necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this article or other law of Indiana if occurring in Indiana. In deciding whether to provide the assistance, the secretary may consider:

- (1) whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within the state or foreign jurisdiction of the requesting regulator to the secretary on dealer matters when requested;
- (2) whether compliance with the request would violate or prejudice the public policy of Indiana; and
- (3) the availability of resources and employees of the division to carry out the request for assistance.

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

#### **IC 9-32-16-8**

##### **Person required to cooperate with division; failure to cooperate**

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

- (1) be considered by the division a violation of statute; and
- (2) thus subject the person to denial, suspension, or revocation

of licensing or registration or a bar from licensing or registration.

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

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

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

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

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

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

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

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

(6) Aiding or abetting the failure of another person to cooperate.

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

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

##### **Copying of records**

Sec. 9. (a) The division may copy records or require a dealer to copy records and provide the copies to the division to the extent and in the manner reasonable under the circumstances.

(b) The division may impose a reasonable fee for the expense of making copies under subsection (a).

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

#### **IC 9-32-16-10**

##### **Referrals to local prosecuting attorney**

Sec. 10. (a) The secretary or a designee of the secretary may refer the facts drawn from an investigation to the prosecuting attorney of the county in which a crime is alleged to have been committed.

(b) The secretary may assist the prosecuting attorney in prosecuting an action brought subsequent to a referral made under subsection (a), which may include a division attorney serving as a special deputy prosecutor appointed by the prosecuting attorney.

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

#### **IC 9-32-16-11**

##### **Filings with business services division; providing governmental**

**identification numbers; physical Indiana address; national criminal history background check; good standing with state offices**

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

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

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

(b) The dealer shall provide the secretary:

- (1) the federal tax identification number; and
- (2) the registered retail merchant's certificate number issued under IC 6-2.5-8;

issued to the dealer.

(c) The dealer must, for the entire licensing period, have an established place of business with a physical Indiana address. The dealer may not have a mailing address that differs from the actual location of the business.

(d) The applicant and all corporate officers, partners, and owners must submit to a national criminal history background check (as defined in IC 10-13-3-12) administered by the state police at the expense of the applicant and the corporate officers, partners, and owners. The secretary may deny an application if the division finds that the applicant, a corporate officer, a partner, or an owner has been convicted of a:

- (1) felony within the previous ten (10) years;
- (2) felony or misdemeanor involving theft or fraud; or
- (3) felony or misdemeanor concerning an aspect of business involving the offer, sale, financing, repair, modification, or manufacture of a vehicle.

(e) The dealer and the corporation, company, or partnership must be in good standing with the bureau, the department of state revenue, and the state police department.

*As added by P.L.92-2013, SEC.78. Amended by P.L.62-2014, SEC.42.*

**IC 9-32-16-12**

**False or misleading statements or omitted facts**

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

- (1) make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to a material fact; or
- (2) in connection with a statement to the division or to a consumer, omit to state a material fact necessary to make the statement made, in light of the circumstances under which it was made, not false or misleading.

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

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

**Secretary of state to maintain injunctive action; court remedy and relief; director not required to post bond; penalties**

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

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

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

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

- (1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;
- (2) order other appropriate or ancillary relief, which may include:

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

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

- (i) take charge and control of the property of the respondent, including investment accounts and accounts in a depository institution, rents, and profits;
- (ii) collect debts; and
- (iii) acquire and dispose of property;

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

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

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

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

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

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

**IC 9-32-16-14**

**Public or private investigations by secretary; enforcement of compliance with investigation; witness fees and mileage**

Sec. 14. (a) The secretary may:

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

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

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

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

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

(1) hold the person in contempt;

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

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

(4) order the production of records;

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

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

(7) grant any other necessary or appropriate relief.

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

(e) If a witness, in any hearing, inquiry, or investigation conducted under this article, refuses to answer any question or produce any

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

- (1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and
- (2) the witness must answer the questions asked and produce the items requested.

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

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

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

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

### **IC 9-32-16-15**

#### **Dealers; unfair practices; demand for mediation; mediation**

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

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

- (1) before; or



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

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

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