
SENATE BILL No. 458

DIGEST OF INTRODUCED BILL

Citations Affected: IC 9-18-26-18; IC 9-23.

Synopsis: Motor vehicle merchandising. Requires certain motor vehicle merchandising licensees to maintain a bond of \$25,000. Requires certain applicants for motor vehicle merchandising licensing to file an irrevocable consent appointing the secretary of state to be the agent of the applicant to receive service of lawful process in a noncriminal suit, action, or proceeding against the applicant arising from the violation of motor vehicle merchandising law. Specifies the types of records directly related to the use of interim plates by a dealer that must be made available to an investigating employee of the secretary of state upon demand at the dealer's place of business. Adds several categories of persons that commit an unfair practice when using false, deceptive, or misleading advertising or engaging in deceptive acts or practices concerning motor vehicle merchandising. Makes certain other changes pertaining to the regulation of vehicle merchandising.

Effective: July 1, 2009.

Merritt

January 14, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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SENATE BILL No. 458



A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 9-18-26-18, AS AMENDED BY P.L.106-2008,
2 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 18. **(a) As used in this section, "records"**
4 **includes, but is not limited to, the following:**
5 **(1) Bills of sale.**
6 **(2) Finance agreements.**
7 **(3) Titles.**
8 **(4) Inventory records.**
9 **(5) Sales receipts from auctions.**
10 **(6) Form ST-108 (department of state revenue certificate of**
11 **gross retail or use tax paid on the purchase of a motor vehicle**
12 **or watercraft).**
13 **(7) Any document considered relevant by the secretary of**
14 **state to the sale or transfer of a vehicle.**
15 **(b) All records directly related to the use of interim plates by a**
16 **dealer must be made available to an investigating employee of the**
17 **secretary of state upon demand at the dealer's place of business.**



1 SECTION 2. IC 9-23-2-2, AS AMENDED BY P.L.184-2007,
2 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 2. (a) An application for a license under this
4 chapter must:

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

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

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

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

16 **(4) contain evidence of the bond required in subsection (e);**
17 **and**

18 **(5) contain the consent to service of process required in**
19 **subsection (f).**

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

22 (c) An applicant who proposes to use the Internet or other computer
23 network in aid of its sale of motor vehicles to consumers in Indiana,
24 which activities may result in the creation of business records outside
25 Indiana, shall provide the division with the name, address, and
26 telephone number of the person who has control of those business
27 records. The secretary of state may not issue a license to a dealer who
28 transacts business in this manner who does not have an established
29 place of business in Indiana.

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

34 (1) the person charged with enforcing a zoning ordinance
35 described in this subsection; or

36 (2) the zoning enforcement officer under IC 36-7-4, if one exists;
37 who has jurisdiction over the real property where the applicant wants
38 to operate as a dealer. The affidavit must state that the proposed
39 location is zoned for the operation of a dealer's establishment. The
40 applicant may file the affidavit at any time after the filing of the
41 application. However, the secretary of state may not issue a license
42 until the applicant files the affidavit.

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

- 4 (1) be in favor of the state; and
- 5 (2) secure payment of fines, penalties, costs, and fees assessed
- 6 by the secretary of state, in addition to securing the payment
- 7 of damages to a person aggrieved by a violation of this
- 8 chapter by the licensee.

9 (f) An applicant for a license or for renewal of a license shall file
10 an irrevocable consent appointing the secretary of state to be the
11 agent of the applicant to receive service of lawful process in a
12 noncriminal suit, action, or proceeding against the applicant
13 arising from the violation of a provision of this title. Service shall
14 be made in accordance with the Indiana Rules of Trial Procedure.

15 SECTION 3. IC 9-23-2-14, AS AMENDED BY P.L.106-2008,
16 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2009]: Sec. 14. (a) The secretary of state may investigate a
18 violation of this chapter. In conducting an investigation under this
19 subsection, the secretary of state may do the following:

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

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

28 (b) A person may not be excused from:

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

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

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

- 42 (1) Material misrepresentation in the application for the license

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- 1 or other information filed with the secretary of state.
- 2 (2) Lack of fitness under the standards set forth in this article or
- 3 a rule adopted by the secretary of state under this article.
- 4 (3) ~~Willful~~ Failure to comply with the provisions of this article or
- 5 a rule adopted by the secretary of state under this article.
- 6 (4) ~~Willful violation of~~ **Failure to comply with** a federal or state
- 7 law relating to the sale, distribution, financing, or insuring of
- 8 motor vehicles.
- 9 (5) Engaging in an unfair practice as set forth in this article or a
- 10 rule adopted by the secretary of state under this article.
- 11 (6) Violating IC 23-2-2.7.
- 12 (7) Violating IC 9-19-1.
- 13 Except as otherwise provided, a denial, suspension, or revocation of a
- 14 license takes effect after the secretary of state makes a determination
- 15 and notice of the determination has been served upon the affected
- 16 person.
- 17 (d) Upon the entry of an order under subsection (c), the secretary of
- 18 state shall promptly notify all interested parties of the following:
- 19 (1) The date of issuance.
- 20 (2) The reasons for issuance.
- 21 (3) That, upon written request from a party, the matter will be set
- 22 for hearing within fifteen (15) business days after receipt of the
- 23 request.
- 24 (e) An order entered under subsection (c) remains in effect until the
- 25 secretary of state:
- 26 (1) modifies or vacates the summary order; or
- 27 (2) conducts a hearing and issues a final determination.
- 28 (f) Revocation or suspension of a license of a manufacturer, a
- 29 distributor, a factory branch, a distributor branch, a dealer, or an
- 30 automobile auctioneer may be limited to one (1) or more locations, to
- 31 one (1) or more defined areas, or only to certain aspects of the business.
- 32 (g) If the secretary of state conducts a hearing under this section, the
- 33 secretary of state may depose any witness.
- 34 (h) In addition to all other remedies, the secretary of state may seek
- 35 the following remedies against a person that violates, attempts to
- 36 violate, or assists in a violation of or an attempt to violate this chapter:
- 37 (1) An injunction.
- 38 (2) Appointment of a receiver or conservator.
- 39 (3) A civil penalty not to exceed five thousand dollars (\$5,000)
- 40 per violation.
- 41 (4) An action to enforce a civil penalty assessed under subdivision
- 42 (3).

COPY



1 (i) In a court proceeding initiated under this section in which
2 judgment is awarded to the secretary of state, the secretary of state is
3 entitled to recover the costs and expenses of investigation, and the
4 court shall include the costs in its final judgment.

5 SECTION 4. IC 9-23-3-19 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 19. It is an unfair
7 practice for:

- 8 (1) an automobile auctioneer;
- 9 (2) a converter manufacturer;
- 10 (3) a dealer;
- 11 (4) a distributor;
- 12 (5) a distributor branch;
- 13 (6) a distributor representative;
- 14 (7) a factory branch;
- 15 (8) a factory representative;
- 16 (9) a manufacturer;
- 17 (10) a wholesale dealer; or
- 18 (11) a transfer dealer; ~~in connection with the auctioneer's or~~
19 ~~dealer's business,~~
20 to use false, deceptive, or misleading advertising or to engage in
21 deceptive acts or practices.

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