



SECRETARY OF STATE  
STATE OF INDIANA  
AUTO DEALER SERVICES  
DIVISION

CONNIE LAWSON  
SECRETARY OF STATE

MELISSA REYNOLDS  
Division Director

ADMINISTRATIVE PROCEDURES  
FOR UNFAIR PRACTICE PROTESTS & COMPLAINTS

*Disclaimer: This document is intended solely to provide guidance and shall be used in conjunction with applicable rules and laws. It does not replace or add to applicable rules and laws, and if it conflicts with these rules or laws, the rules and laws shall control.*

**General**

A dealer who claims an injury due to an unfair practice set forth in Indiana Code §§ 9-32-13 or 9-32-15 may file a complaint, protest, or petition (hereinafter collectively referred to as “complaint”) with the Auto Dealer Services Division (“ADSD”). A complaint may not be filed with the ADSD unless a written demand for mediation has been served on the manufacturer or distributor by certified mail, and, prior to or contemporaneously with filing of the complaint. A copy of the written demand must be included with the complaint together with the status of the mediation request. *See* Ind. Code § 9-32-16-15. A dealer may include any relevant documents or submissions with their complaint, which shall be included in the record.

**Relevant Law**

Ind. Code § 4-21.5  
Ind. Code § 9-32-13  
Ind. Code § 9-32-15  
Ind. Code § 9-32-16-2  
Ind. Code § 9-32-16-13  
Ind. Code § 9-32-16-14  
Ind. Code § 9-32-16-15

**Division Procedures**

Unfair Practices

In general, a dealer who claims an injury due to an unfair practice under Indiana Code §§ 9-32-13 or 9-32-15 committed by a manufacturer or distributor may file a written complaint with the ADSD, which must include a copy of the written demand for mediation. Upon receipt of a complaint, the ADSD will investigate the allegation(s) per Indiana Code § 9-32-16-14. If the ADSD finds that the manufacturer or distributor did not commit the alleged unfair practice under Indiana Code §§ 9-32-13 or 9-32-15, the ADSD will mail a non-action letter to the complainant. Under Indiana Code § 4-21.5-2-5(8) the ADSD does not consider a decision to not take enforcement action to be appealable.

If the ADSD finds that there is reason to believe that the manufacturer or distributor violated Indiana Code §§ 9-32-13 or 9-32-15 following an investigation, the extent of which shall be determined by the ADSD, the

Secretary of State or his or her designee (collectively, “Secretary”) for the ADSD may issue an order per Indiana Code § 9-32-16-2 setting forth the findings and enforcement action to be taken, if any. Possible enforcement actions include, but are not limited to, restricting, suspending, or revoking the license; imposing a fine; and/or ordering restitution. In addition to taking administrative enforcement action, Secretary may also initiate an action in circuit or superior court per Indiana Code § 9-32-16-13 to seek an injunction and enforce compliance with Indiana Code § 9-32.

If an order is issued, an administrative hearing may be requested by a party within thirty (30) days of the date the order was served in accordance with Indiana Code § 9-32-16-2. If no hearing is requested within thirty (30) days, the order becomes final by operation of law. If a hearing is requested, the ADSD will schedule a hearing and notify the parties of the date, time, and location. Following the hearing, the Secretary will issue a final order. A party may seek judicial review of the final order, provided all administrative remedies have been exhausted.

Specific procedures exist for certain unfair practice protests, such as the relocation or addition of a new vehicle dealer and the termination of a franchise. The administrative procedures available in these situations are described below.

#### Relocation or Proposed New Vehicle Dealer

Within thirty (30) days of notice from a franchisor that the franchisor intends to enter into a franchise establishing a proposed new vehicle dealer or relocating a new vehicle dealer of the same line make within the dealer’s relevant market area or from the end of an appeal procedure provided by the franchisor, the dealer may bring a declaratory judgment action before the ADSD under Indiana Code § 9-32-13-24. A copy of the written demand for mediation must be included with the request for declaratory judgment. If a timely declaratory judgment action is brought before the ADSD, the ADSD may set an administrative hearing to determine whether the ADSD has jurisdiction over the matter subject to Indiana Code § 9-32-13-24. In order for the ADSD to have jurisdiction over the matter, the intended site of the proposed new vehicle dealer or the relocation of an existing new vehicle dealer must be within the relevant market area, as defined by Indiana Code § 9-32-2-20, of the dealer entitled to receive notice.

If the Secretary finds that the ADSD does not have jurisdiction over the matter, the Secretary may dismiss the action. If the Secretary finds that the ADSD has jurisdiction over the matter, the Secretary will conduct an administrative hearing to determine whether good cause exists for the establishment of a proposed new vehicle dealer or the relocation of an existing new vehicle dealer by considering the statutory factors in Indiana Code § 9-32-13-24(f). If the Secretary determines that good cause exists for the establishment of a proposed new vehicle dealer or the relocation of an existing new vehicle dealer, the Secretary may issue an order and the franchisor may proceed with the action. If the Secretary determines that good cause does not exist, the Secretary may issue a final order declaring that good cause does not exist for the establishment of a proposed new vehicle dealer or the relocation of an existing new vehicle dealer. A party may seek judicial review of the final order, provided all administrative remedies have been exhausted.

#### Termination of a Franchise

Not more than thirty (30) days after a franchisee receives notice from the franchisor that the franchisor is cancelling or refusing to extend or renew a franchise, the franchisee may bring a declaratory judgment action before the ADSD under Indiana Code § 9-32-13-27 by filing a protest. If the protest is timely, the ADSD will



SECRETARY OF STATE  
STATE OF INDIANA  
AUTO DEALER SERVICES  
DIVISION

CONNIE LAWSON  
SECRETARY OF STATE

MELISSA REYNOLDS  
Division Director

schedule an administrative hearing. The declaratory judgment action will include a determination of whether good cause exists for the franchisor's proposed action.

**Revision History**

1. May 18, 2015: Initial Release.
2. October 18, 2016: Updated to reflect 2016 legislative changes.

Approved by:

Connie Lawson  
Connie Lawson  
Indiana Secretary of State

11/4/16  
Date