



DEALER DIGEST

Volume 6

License Suspension
Did You Know?
BMW Policy Change
Reminder from the
Indiana Dept. of
Financial Institutions

PLUS

Consumer Credit Division Advisory Letter


License Suspension

Effective with the launch of our new system, the Division began suspending the licenses of dealers that do not have current bond or insurance on file with our office. This is in lieu of the prior practice of issuing a fine.

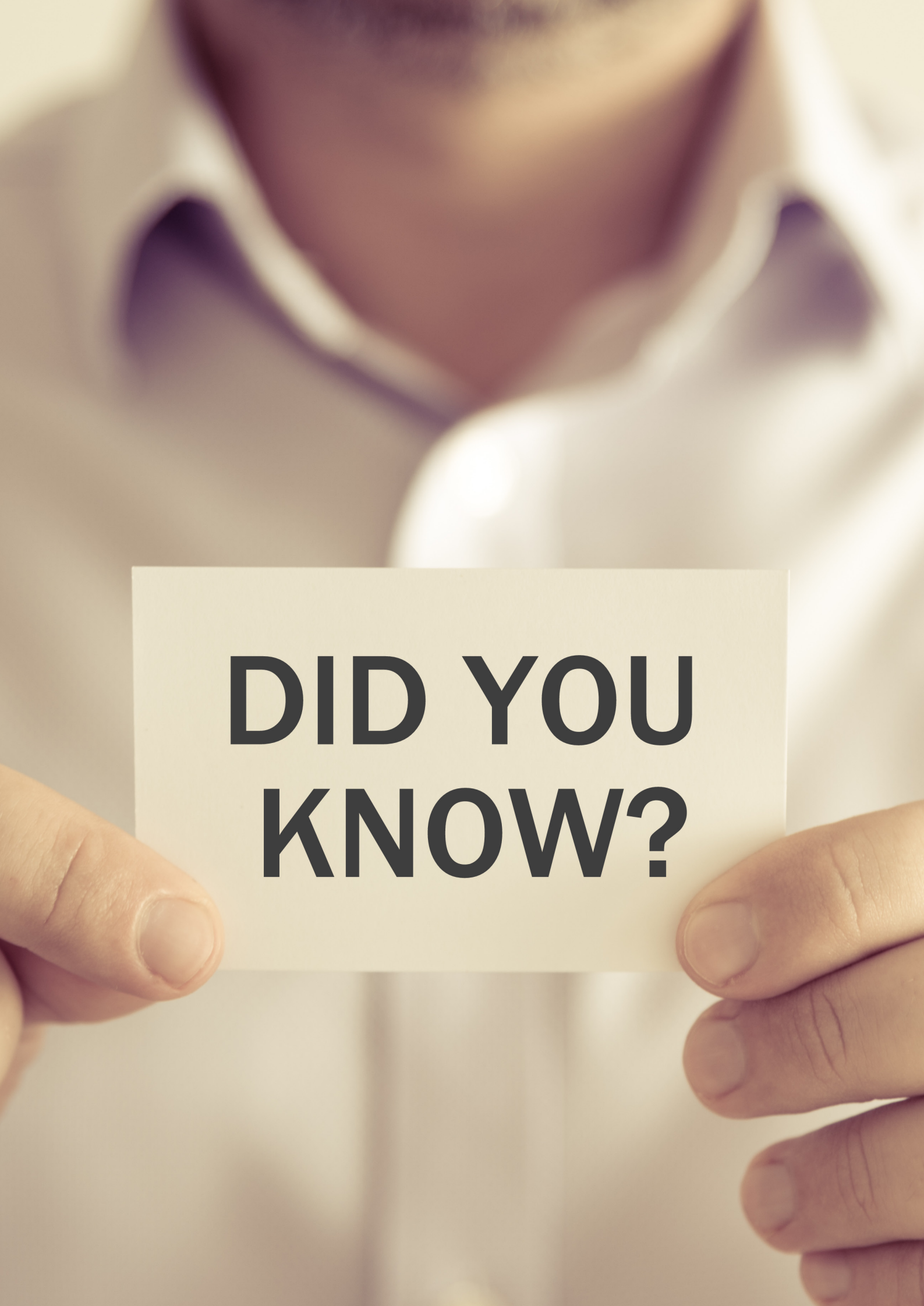
If your bond or insurance has an upcoming cancellation or expiration date, you must submit your new bond or insurance directly to the Division **before** that date in order to avoid license suspension. This is especially critical as suspended licenses do not have access to Plates on Demand. **Do not assume** that the surety or insurance company has provided us with the updated documentation.

Dealers are issued both an electronic and paper notice by our office upon license suspension. Notices are also sent in advance of suspension at the following intervals:

- **When our office receives notice from the carrier of the bond/insurance cancellation**
-At least 14 days from suspension
- **70 days from expiration**
- **45 days from expiration**
- **30 days from expiration**

A man with dark hair and glasses, wearing a maroon sweater, is sitting at a wooden desk in a bright, modern office. He is looking down at a laptop, with his hands on the keyboard. To his right, there is a smartphone and a tablet on the desk. The background shows a large window with a view of a city skyline, and the lighting is warm and natural, suggesting daytime.

The electronic notice will only go to the individual designated as the primary owner unless other users have been subscribed to receive online notifications. You can review the steps for subscribing to receive notifications on the “Online Dealer Account Info” page of our website at <https://secure.in.gov/sos/dealer/4461.htm>. Watch, or review the posted slides for, the Dealer Account Registration webinar found near the bottom of the page. It is available in both English and Spanish. You can also find this information in the Frequently Asked Questions document on the same page.



**DID YOU
KNOW?**

Our office assigns work to its examiners and licensing clerks based on county.

- Each examiner and clerk has a list of counties for which they are responsible.
- This means that if you have dealerships spread throughout the state, there may be multiple clerks assigned to assist your dealerships.
- Assigning work by county helps evenly distribute workload across clerks to allow for faster processing.



Our correspondence is new and improved.

- If your application or request is missing information, the letter sent to you will now display the name and direct contact information of the clerk who sent the letter, so you can reach out to that person directly instead of having to go through our main line. There's a good chance this will get you connected to help faster!



Loose checks, like dead men, tell no tales.



- If you mail us a check and don't put your dealer number on it, we will be unable to match it up with the appropriate dealer record. This is especially true if you have multiple dealerships/dealer licenses.
- If you send a check without any accompanying paperwork, we may have trouble determining for what it is you are attempting to pay. Including a brief note or a copy of the invoice will save us time and allow us to get your transaction processed that much faster.

We don't always know "who's the boss?"

- Your dealership is best served by designating one contact person that handles all communication with our office. When your dealership has multiple diligent employees checking up on your license and applications, this can make it difficult for our office to know who it is we need to be keeping in the loop. And our clerks end up spending a lot more time on the phone as those who have been involved at various stages of the issue call for updates.

Checking this (see below) box on the Request for Additional Plates form (State Form 12798) is not how you get dealer designee license plates?

A screenshot of a form section with a black border. The text reads "Plates Requested Are Dealer Designee?". Below the text are two checkboxes: "Yes" and "No". Both checkboxes are currently unchecked.

- If you qualify and want dealer designee license plates, you need to fill out and submit State Form 56304 aka Request for Dealer Designee Plates.
- Do not check this box if you are simply requesting Additional Dealer Plates.
- If you don't know what dealer designee license plates are, you probably shouldn't be checking this box! At least not before checking with our office first.



REMINDER

from the Indiana Dept. of Financial Institutions

For dealers engaged in financing and registered with the Indiana Department of Financial Institutions (“DFI”), annual renewals (State Form 70 – Creditor’s Notification Return) will be placed in the mail in early December. This form must be completed and returned to DFI by January 31, 2018. If you do not receive the annual renewal form by the end of December, or if you have any questions on completing the form, please email DFI at dfilicensing@dfi.in.gov.

A list of all entities registered, licensed, or chartered with the DFI can be found at:

- http://extranet.dfi.in.gov/ConsumerCredit/LicenseeListGenerator?Type_ID=-1&Description=Search%20All%20Entities%20by%20Name.

If you are engaged in financing and are not registered with the DFI, you may need to submit a Notice of Intent – Uniform Consumer Credit Code (State Form 83) to DFI; see the form and instructions at

- <https://forms.in.gov/Download.aspx?id=12615>.”



BMV Policy Change – Potential Customer Impact

If a vehicle was traded, the BMV now requires that customers also bring in proof of the trade in order to transfer the license plate and receive a tax credit. The purchase invoice/Bill of Sale that shows the description of the vehicle trade may be used as proof.

As customers are going through the process of purchasing a vehicle from you, it would be extremely helpful if you could remind them that they will need a purchase invoice/Bill of Sale along with an Application for Certificate of Title when visiting a BMV branch to apply for registration. Your assistance in this matter would result in fewer people being turned away as they try to register their vehicles, which helps the BMV run more smoothly.

If you have any questions about the BMV’s new policy, you may email Betsy Manikis (bmanikis@bmv.in.gov) or Jessica McEwen (jmcewen@bmv.in.gov).

New Online Functionality Coming Soon

Our office is currently working with our vendor to add new online functionality. We have heard from several of you that you want the ability to pay your plate renewal fee quicker, pay by credit card, and submit applications online. We are actively working with our vendor on these items. Specifically, we are working on the ability for you to complete your renewal applications online, and pay for your license renewal at that time by credit card, debit card, or guaranteed e-check. We are also working on updates to allow for the payment of invoices online from your Dashboard. We hope to have this functionality in place by the end of the year. In addition to online renewals and payment of invoices, we will be working to add the following items early next year: the ability for you to request additional plates, replace a plate, and amend information on your license all from your Dashboard. Stay tuned for updates as we get closer to implementing these features.





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**CONSUMER CREDIT DIVISION
ADVISORY LETTER 2017 - 03
October 6, 2017**

TO: Indiana registered automobile dealers (“Registrants”)
FROM: Ryan E Black, Deputy Director, Consumer Credit Division
RE: Lease-Here, Pay-Here business model for used motor vehicles

This Advisory Letter is being issued by the Consumer Credit Division of the Indiana Department of Financial Institutions (“the Department”). Certain examination findings and trends have raised concerns that Registrants subject to Indiana’s Uniform Consumer Credit Code (“IUCCC”) providing financing for the sale of motor vehicles may be engaging in disguised credit sales, either knowingly or unknowingly, by utilizing a Lease-Here, Pay-Here (“LHPH”) business model for used motor vehicles. All comments outlined in this Advisory Letter pertain only to transactions for a personal, family, or household purpose.¹

Background

A long-standing practice of many used automobile dealers, and some new automobile dealers, includes engaging in consumer credit sales² that are retained in-house, commonly known as Buy-Here, Pay-Here (“BHPH”) transactions. In the typical BHPH transaction, a consumer enters into a retail installment contract with a Registrant whereby the consumer is obligated to make more than four payments or to pay a finance charge in order to pay for the purchase of the vehicle over time. Such transactions are subject to the IUCCC, specifically Ind. Code §24-4.5-2. Significant provisions that a creditor must comply with include but are not limited to: maximum rate of finance charge (or credit service charge)³; permitted additional charges⁴; delinquency charges⁵; rebate upon prepayment of a precomputed transaction⁶; and restrictions on deficiency judgments in consumer credit sales⁷.

During recent routine examinations of Registrants, the Department has observed an increased prevalence of a business model where the transactions are structured as leases. In these transactions, a consumer does not obtain ownership of the motor vehicle at consummation. Rather, the seller/creditor retains ownership of the vehicle until such time that the consumer exercises either an early purchase option or end of term purchase option, if provided for in the contract.

¹ The IUCCC does not apply to transactions for a purpose other than a personal, family, or household purpose; extensions of credit primarily for a business, a commercial, or an agricultural purpose are exempt. See Ind. Code §24-4.5-1-202(b).

² Ind. Code §24-4.5-1-301.5(8)

³ Ind. Code §24-4.5-2-201

⁴ Ind. Code §24-4.5-2-202

⁵ Ind. Code §24-4.5-2-203.5

⁶ Ind. Code §24-4.5-2-210

⁷ Ind. Code §24-4.5-5-103

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Analysis of Applicable Statutes

Ind. Code §24-4.5-1-301.5(8) states in pertinent part, “‘Consumer credit sale’ is a *sale of goods*, services, or an interest in land...” (*emphasis added*).

Further, the IUCCC states,

“Sale of goods” includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement⁸.

The Commentary to Ind. Code §24-4.5-2-106 derived from the 1968 Uniform Consumer Credit Code states in pertinent part,

Leasing has become a popular alternative to credit sales as a means of distributing goods to consumers and merits inclusion in a comprehensive consumer credit code... If the transaction, though in form a lease, is in substance a sale within the meaning of Section 2.105(4), it is treated as a sale for all purposes in this Act and the provisions on consumer leases are inapplicable.

In addition, Registrants are advised that Ind. Code §24-4.5-1-101(5) states,

This article applies to a transaction if the director determines that the transaction:

- (a) is in substance a disguised consumer credit transaction; or
- (b) involves the application of subterfuge for the purpose of avoiding this article.

A determination by the director under this subsection must be in writing and shall be delivered to all parties to the transaction. IC 4-21.5-3 applies to a determination made under this subsection.

During future examinations, the Department will be reviewing all transactions in the form of a lease to ensure the transactions are not in substance a “sale of goods” within the meaning of Ind. Code §24-4.5-2-105(4). If the transactions are determined to be in substance a sale of goods, the Department may conform the fees and charges assessed to the limitations under Ind. Code §24-4.5-2. The Department may require refunds of overcharges, impose civil penalties not greater than \$10,000 per violation⁹, or take other enforcement actions.

⁸ Ind. Code §24-4.5-2-105(4)

⁹ Ind. Code §24-4.5-6-113(3)

The Department may consider, among others, the following in determining if transactions are in substance a sale of goods:

1. If the consumer agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved.
2. If the consumer becomes, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his or her obligations under the agreement.
3. To determine if the amount the consumer must pay at the end of the agreement to become the owner is nominal, the Department may compare this amount to the actual cash value of the goods at the end of the agreement as well as the amount of the periodic payment amount due under the agreement. In addition, the Department may review what formula was used or what analysis was conducted to determine the amount.
4. The percentage of consumers that return the goods at the end of the agreement as opposed to the percentage of consumers that acquire ownership.
5. In those instances where consumers do not acquire ownership, the amount the registrant obtains for returned goods and whether goods were subsequently re-sold to the public or at a dealer auction.
6. If a consumer trades in the goods during the term of the agreement for other goods, does the registrant provides the consumer any net trade-in allowance toward the price of the new goods or any discount toward the price of the new goods.
7. If the goods are items that a consumer, at consummation, would not reasonably contemplate returning at the end of the agreement.
8. The age of the goods subject to the transaction at the time of consummation.

All LHPH transactions will be evaluated on their merits to determine if the transactions are in substance disguised credit sales.

Recommended Action

Registrants are advised to review current practices and to make any changes necessary to ensure compliance with Ind. Code §24-4.5 *et seq.* Registrants may wish to seek the advice of legal counsel regarding their business model.

Sellers of motor vehicles may have sales/use tax liabilities and should consult with the Indiana Department of Revenue and review their [Information Bulletin #28L](#) to ensure procedures are compliant.

If you have questions regarding this publication, please contact the Department.

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