

Regulatory Analysis
LSA Document #24-418**I. Description of Rule**

The Secretary of State, through the Auto Dealer Services Division ("Division") regulates entities related to the automotive industry doing business in Indiana. The Division so regulates through enforcement of Indiana laws codified in [IC 9-32](#), and through the promulgation of rules pursuant to its authority granted by [IC 9-32-3-1](#).

When a violation of either is discovered, [IC 9-32-17-1](#), [IC 9-32-17-9](#), [IC 9-32-16-2](#), and [IC 9-32-16-13](#) enable the Division to take a variety of actions based on the circumstances. Specifically, the Division is authorized to issue a civil penalty not to exceed \$10,000 per violation.

While what constitutes a violation is clearly defined through rule or statute, the exact amount of any civil penalty issued for any violation has historically been set by policy. When developing those policies, the Division has consulted industry representatives through the Motor Vehicle Sales Advisory Board ("MVSAB"), established through [IC 9-32-10-1](#), and with advisory power vested by [IC 9-32-10-8](#).

The recent implementation of HEA 1623-2023 requires that all fines or civil penalties be set out within a rule published in the Indiana Administrative Code ("IAC"). This proposed rule is consistent with the Division's established practices and accomplishes that mandate by promulgating the Division's fines into the IAC.

II. Fiscal Impact Analysis

The anticipated effective date of the rule is July 1, 2025. There is no anticipated fiscal impact on state or local government created by this rule, as the content of this rule is already being enforced by the Division under the safe harbor provision of HEA 1623-2023, and has been in effect since at least 2017.

More generally, the Division employs approximately twelve individuals for its enforcement efforts, including ten field examiners, a senior investigator, and an enforcement attorney. Total state expenditure for salaries and fringe benefits is approximately \$800,000 per year. Enforcement staff compensation is not dependent on fines or civil penalties collected; rather, it is a part of the agency's biannual budgetary distribution from the General Assembly.

Pursuant to [IC 9-32-17-1](#), all civil penalties are deposited into the dedicated dealer enforcement account established by [IC 9-32-7-2](#). Pursuant to [IC 9-32-18-4](#), once per year, the Secretary may deposit a portion of the funds in the enforcement account into a consumer restitution fund which compensates qualifying individuals. A qualifying individual is defined by [IC 9-32-18-3](#) as a consumer victim who is awarded restitution and assists or otherwise cooperates with the Division in the investigation or enforcement of a face.

III. Impacted Parties

As of March, 2024, there are approximately 5,400 valid dealers and transport operators in Indiana. "Dealers" as used in this context is defined by [IC 9-32-2-9.6](#) as "all persons required to be licensed" under [IC 9-32-11-1](#), while transport operator has the meaning set forth in [IC 9-13-2-187](#). Consequently, the Division has jurisdiction over these entities that are already licensed with the Division, as well as any person who would be required to be licensed but is presently doing so without a license.

For context, in 2023, the Division issued 327 enforcement orders that included a fine. In those orders, the Division identified approximately 3500 individual violations. Each year, the Division's most-identified violation is a dealer's failure to deliver a certificate of title to a purchaser within thirty-one days, as required by [IC 9-32-4-1](#). Critically, fines for that violation are set within that statute, and not included in the proposed rule.

Of those 3500 violations identified in 2023, approximately 1000 were for a violation of [IC 9-32-4-1](#). In 2022, the Division issued 209 enforcement orders that included a fine, identifying approximately 1750 individual violations. Of those, 507 were for a violation of [IC 9-32-4-1](#). Thus, statutory fines make up a clear plurality of violations the Division imposes fines for.

Discounting the Division's enforcement orders that contained only statutory fines – i.e., those in which the dealer was fined solely for a violation of [IC 9-32-4-1](#) – reduces the total number of enforcement actions in 2022 to 138 and 2023 to 213. Given this trend, and that the proposed rule will only impact dealers not in compliance with the law, the Division estimates an impact of less than 400 dealers annually. In addition to impacting persons required to be licensed, the Division's rule would impact purchasers of motor vehicles in a variety of ways discussed further

below.

IV. Changes in Proposed Rule

The proposed rule creates a new chapter within Title 75 of the Indiana Administrative Code. The addition does not represent a change from long-standing Division enforcement policy. The following is a table of violations, fines, and IC/IAC which sets forth the substance of the violation being assessed a fine:

Violation	Fine Amount	IC / IAC
Offsite sale	\$1,000	IC 9-32-11-10
Multiple issuances of interim plates	\$500	75 IAC 6-3-8(b)(1)
Misuse of interim plates	\$500	75 IAC 6-3-8
Issuance of interim plates to salvage vehicles	\$1,000	75 IAC 6-3-8(b)(5)
Misuse of dealer plates	\$500	IC 9-32-6-10 ; 75 IAC 6-3-8(b)(5)
Failure to disclose salvage or rebuilt status of vehicle	\$1,000	IC 9-32-13-6
Failure to maintain complete records	\$100	IC 9-32-11-21 , IC 9-32-4-1(b)(3) , IC 9-32-6-14 , IC 9-32-16-6
Failure to produce records	\$500	IC 9-32-11-21 , IC 9-32-4-1(b)(3) , IC 9-32-6-14 , IC 9-32-16-6
Purchase of detached catalytic converter without affidavit	\$1,000	IC 25-37.5-1-9
Failure to pay off trade-in within 10 days	\$500	IC 9-32-4-1(h)
Failure to collect and remit sales tax	\$500 + uncollected sales tax	IC 9-32-13-5 ; IC 6-2.5-2-1
Failure to add all dealer owners and/or submit to background check	\$250	IC 9-32-16-11(f)
Failure to notify the division of change of name/address/entity	\$250	IC 9-32-11-6(b)
Unauthorized consignment sale	\$500	75 IAC 6-2-8
Sunday sale	\$500	IC 24-4-6-1

To provide scope as to the quantity of possible violations that the Division is charged with preventing: Division records indicate that there were approximately 700,000 interim plates issued in 2023. This number is the closest approximation that the Division has to the total number of sales conducted by licensed dealers. There are multiple different aspects to a particular sale that the Division regulates, including, for example, deal jacket contents, title delivery requirements, and interim license plate issuance irregularities. Based on the best data available, the Division estimates the total number of potential avenues for violation to be around three million.

In terms of compliance rates, the Division focuses on the resolution of consumer complaints received by the Division. The Division understands that not every purchaser has an issue with their purchase, and those that do don't always file a complaint. Even when a complaint is filed, that does not necessarily mean that a violation occurred. Nonetheless, in 2023, the Division received 1,203 complaints against 638 unique dealers. Comparing that number against the 5,400 licensed dealers would suggest an 88% compliance rate.

From another perspective, of the 1,100 complaints that the Division received and completed investigation on in 2023, only 357 were investigated and closed without action, which would suggest a 29% compliance rate in instances where a consumer felt compelled to file a complaint. It can occasionally be the case that when a dealer receives a complaint, it is a sign of larger problems.

This is established by the fact that while there were 743 complaints which were investigated and found to have merit, only 429 reports were required to be created and submitted for enforcement action. In other words, each report was written to address an average of 1.88 complaints. This number is particularly skewed by a few dealers who receive multiple complaints actors.

To illustrate that, of the 638 unique dealers that received any complaint, 407 dealers only received a single complaint in 2023. On the other end of the spectrum, the dealers in the 99th percentile of complaints went on to receive 10% of all complaints that were filed in 2023. An important caveat to this data is that a dealer's sales volume will heavily correlate with the amount of violations that occur, as a dealer who has a thousand sales a year will be more likely to have at least one complaint, as compared to a dealer who only has twelve sales within

a year.

The Division may also initiate an investigation based on information that is observed by staff, volunteered by a dealer itself, or reported to the Division by other dealers. When considering the volume of interactions that Division staff has with the industry, and given that there are approximately 5400 licensed dealers, the 327 enforcement actions where fines were issued in 2023 would be indicative of a 94% compliance rate.

V. Benefit Analysis

The primary direct benefit for this rule is consumer protection. As discussed, nearly all of the Division's dealer investigations, audits, and resulting enforcement actions are initiated by a complaint filed by a member of the public – typically an individual who purchased a vehicle from the dealer. Over the past five years, the Division has received more complaints than the year prior:

Complaints Received by Year				
2019	2020	2021	2022	2023
953	972	1045	1184	1203

The Division attributes the consistent year-over-year increases to its effectiveness in helping Hoosiers resolve their issues, particularly in assisting to obtain a title from the dealer, and that success spreading through word-of-mouth. The Division's primary goal with any complaint is to assist the complainant with their issue. As shown earlier, the bulk of the Division's complaints are related to title delivery issues. Without a title, the purchaser cannot register and plate their vehicle, and in some cases cannot get it insured.

The proposed rule directly benefits the Division's consumer protection efforts by providing the Division with the "teeth" necessary to ensure dealer compliance with state law. Without fines, the only other tools available to the Division are far more drastic, such as revocation of the dealer's license. The Division's fine structure represents a middle ground between doing nothing and going overboard relative to the violation that occurred. While the general concept of "consumer protection" may be difficult to assign a monetary value to, some conclusions may be reached with respect to Hoosier time spent trying to resolve their complaints.

Assuming the average consumer took twenty minutes to fill out a Division complaint form, Hoosiers spent a cumulative 401 hours filing complaints in 2023. According to data from the US Bureau of Labor Statistics, the average Hoosier hourly wage in the Indianapolis area (the only area for which data is available) is \$30.13.¹ Indiana, therefore, lost up to \$12,082.13 in economic value in 2023 just due to Hoosiers spending time filing a complaint.

Moreover, in most cases, by the time a consumer files a complaint with the Division, they have already tried to resolve the issue with the dealer directly. The impacted consumer, then, has already devoted some amount of their own time to something that the dealer should have already done as required by law.

For example, when a purchaser does not receive their title on time, and thus cannot register the vehicle, they likely also have been issued an interim license plate that has expired or is going to expire imminently. Some dealers will issue the purchaser a second interim license plate in contravention of Indiana law. Assuming that a purchaser attempts to contact a dealer twice by phone, each time spending twenty minutes, and then files a complaint with the Division, accruing another twenty minutes of personal time to the dealer's negligence, they have already devoted one hour to the issue.

In 2023, the Division documented 1004 delayed title deliveries, thus accounting for 1004 hours of productivity lost to this issue alone. Hoosiers therefore potentially lost \$30,250 in economic productivity attempting to resolve a problem brought solely by a dealer's negligence.

In addition, the Division documented 714 instances of multiple interim issuance in 2023. Interim license plates are valid for 45 days from the date that they are issued. Assuming the dealer needed the full 45 days of the second interim license plate, dealers caused 32,130 days of harm in constituent time "waiting around" that the Division is attempting to combat.

Similarly, when a vehicle's title has been branded "salvage," it is not fit for operation on the public highways of the state. In most situations, the vehicle has been in an accident. When a dealer sells a salvage vehicle to a purchaser and issues an interim, the dealer is effectively assuring the purchaser the vehicle is both safe to drive and can be properly registered with the BMV. Neither of these are true. The latter means that if the purchaser takes ownership of the vehicle and attempts to obtain a proper license plate it, the BMV will deny it, and the

purchaser may be stuck with the vehicle without Division intervention.

Under Indiana law, a vehicle's title must be branded "salvage" when the cost of repairing the vehicle exceeds 70% of the fair market value immediately before the vehicle was damaged, if the vehicle is flood damaged, or if an insurance company determines it is economically impractical to repair the damaged vehicle and made a settlement with a claimant.² This has an impact on the fair market value of the vehicle. Edmunds, for instance, finds that a "salvage" title decreases a vehicle's value by up to the 50% of the true market value for an identical vehicle with a clean title.³ Similarly, Kelley Blue Book states that an "industry rule of thumb" is to deduct 20% - 40% of the Blue Book Value from any price for a salvage vehicle.⁴

According to the National Automobile Dealers Association (NADA), the average price of a used car in the United States in 2023 was \$29,308.⁵ Granting that a vehicle can lose up to 40% of its fair market value when deemed salvage, the average salvage vehicle would be valued at \$17,584. In instances where a consumer purchased a vehicle they expected to be used, but was instead salvage, they have the potential of having overpaid as much as \$11,723.

In 2023, the Division identified 124 instances in which a dealer issued an interim license plate to a salvage vehicle. Hoosiers, therefore, were collectively defrauded out of \$1,435,676 in vehicle value. In an additional 13 cases, the dealer failed to disclose that the vehicle was "salvage" or "rebuilt."⁶ Assuming an average of 25% of the value of the vehicle is lost when it is rebuilt, as opposed to salvage, Hoosiers were defrauded out of a further \$285,753 in value when the proper disclosures were not made.

The proposed rule also provides Hoosiers indirect benefits. The Division's enforcement activity ensures an even playing field among the dealer community, as well as lending legitimacy to an industry that historically has been plagued by negative customer experience. The vast majority of the dealer community are honest and hardworking; however, the industry's reputation is often marred by a few bad actors taking advantage of unsuspecting victims via a complicated, intimidating process.

These actors seek out perceived gray areas, regardless of the veracity of their perception, to obtain unfair competitive advantages through non-compliance. The dealer community, through the MVSAB, has been appreciative of the Division's efforts to help in "cleaning up" the worst parts of its public image, and its assistance in relieving the pressure that honest dealers face when it comes to staying competitive in the industry.

At its August 6, 2024 public MVSAB meeting, the Division provided a draft copy of the proposed rule and engaged in a question-and-answer session with MVSAB. The MVSAB expressed no concern with the proposed rule, and indeed complimented the Division on its continued enforcement efforts.

Similarly, fines are ultimately an alternative to harsher penalties available to the Division by statute. [IC 9-32-16-2\(b\)](#) authorizes the Division to revoke a dealer's license if the order would be in the public interest. Fines provide an opportunity for good faith dealers to resolve problematic practices before the Division would need to issue a revocation.

This is exemplified by the fact that subsequent audits from the Division typically result in lower fines than initial visits, as Dealers will take significant steps towards compliance after the initial monetary penalty. Six anonymized samples from dealers with more than three enforcement actions issued against them in 2023 are shown below.

1st Order Date	Fine Issued	2nd Order Date	Fine Issued	3rd Order Date	Fine Issued
1/6/23	\$ 1,750	5/25/23	\$ 800	8/11/23	\$ 350
4/14/23	\$ 28,600	5/25/23	\$ 500	10/26/23	\$ 350
6/30/23	\$ 13,000	7/31/23	\$ 350	9/22/23	\$ 850
1/23/23	\$ 1,000	3/28/23	\$ 600	11/28/23	\$ 100
4/12/23	\$ 8,000	5/19/23	\$ 250	7/31/23	\$ 500
5/11/23	\$ 4,450	10/5/23	\$ 500	11/2/23	\$ 500

VI. Cost Analysis

There are no new requirements created or imposed by this rule. A dealer that is in compliance with existing law will never have cause to be fined. Instead, the proposed rule sets forth the penalties for violating existing rule or statute. As such, there are no costs associated with the proposed rule. There are no new administrative expenses imposed by the proposed rule.

The amount of the fines set forth in this proposed rule have been in place since at least 2015, without increase. The only changes made to the Division's fine policies have been for new violations based on new or amended statutes.

With regard to the amount of the fines, the Division has based the framework of its fine policies around the statutory fines set forth in [IC 9-32-4-1](#). Under that statute, a dealer that fails to provide a certificate of title to a vehicle purchaser within 31 days is to be fined \$100 for a first violation, \$250 for a second violation, and \$500 for a third and subsequent violation.

While the Division has the authority to issue fines up to \$10,000, it has determined, through its interactions with the dealer community, the Motor Vehicle Sales Advisory Board, and enforcement experience, that the general fine framework should be closer in scope to the fines set forth at [IC 9-32-4-1](#). The Division has engaged in an analysis whereby the severity of the violation is relative to the amount of the fine, using the baselines set forth at [IC 9-32-4-1](#).

For example, the Division has determined that a dealer's failure to maintain a complete deal jacket for a sale is roughly equivalent to a single failure to timely deliver a title in severity, and has set the fine amount at \$100. On the other hand, the Division imposes a fine of \$1000 if a dealer fails to disclose the "salvage" or "rebuilt" status of a vehicle to a purchasing customer – a material condition that the customer certainly needs to be made aware of prior to committing to a purchase.

Other fine amounts, such as \$500 for misusing a dealer plate, or \$1000 for purchasing a detached catalytic converter without the required paperwork, were set at amounts as a specific response to complaints received by the Division in order to deter the targeted conduct in the future. In the case of dealer plates, for example, the Division received a significant number of calls from local law enforcement and toll operators that could not properly track a vehicle due to the transient nature of a dealer plate. Similarly, Indiana law was recently amended to address catalytic converter theft more forcefully. As a consequence of those amendments, the Division determined that a more severe financial penalty would be appropriate should a dealer violate those laws.

Of the 401 enforcement orders issued by the Division in 2023, the top ten account for nearly half of the total fines imposed. These dealers were consistently defrauding their customers, failing to maintain proper records, and misusing both dealer and interim plates to their own advantage. In practice, the Division never actually receives that money, as a settlement is usually reached or the dealer vanishes and leaves only the surety bond behind, but it is accounted for in the amounts provided. Removing those worst actors, the average fine order was \$2041, but importantly, the median fine imposed was \$200.

Finally, the Division is also proposing to formalize its current practice to waive fines for first-time, low-grade offenses. This waiver will apply in the event the Division discovers only a single offense which would usually incur a fine. The Division has found this to be a useful educational tool as an alternative to a strict financial penalty, and have used it on an increasing basis over the past several years:

Total Notices of Violation Issued By Year				
2019	2020	2021	2022	2023
5	43	67	62	155

VII. Sources of Information

The data in this analysis was largely compiled from Division enforcement records. The Division also regularly consults with the MVSAB as established under [IC 9-32-10-1](#). The MVSAB is comprised of members of the auto manufacturing, sales, and salvage industry, and is charged with consulting and advising the Secretary of State with regard to rules related to, among other topics, its methods and procedures for investigating dealers. As part of this proposed rulemaking, the Division presented the MVSAB with its current fine structure.

VIII. Regulatory Analysis

The Division is proposing a rule to codify its long-standing policy with regard to fine amounts for certain violations of Indiana law with respect to automobile dealership activity. The proposed rule contains no new fines. The proposed rule provides the Division with the authority to waive a fine in certain circumstances, instead issuing the dealer a notice of violation.

A. Summary of Costs

The Division believes that there are no direct costs associated with this rule. There are no costs to local government. There are no additional costs to state government – the Division already engages in the practice of

regulating Indiana dealers and taking enforcement action.

There are no costs imposed on the regulated parties by the proposed rule. The fines identified in this rule are only imposed following a violation of Indiana law by a Dealer.

B. Summary of Benefits

The Division believes that the deterrent effect of the proposed rule serves to provide Indiana with significant economic benefit. The Division's complaints are rife with stories of dealers misleading, defrauding, avoiding, and wasting purchaser time. While a small minority of the industry engages in these practices, the Division acts as a bulwark against abuse and consumer fraud. While the benefits of the proposed rule are largely qualitative, the Division is able to ascertain some economic impact of the violations committed by dealers as described in Section V. The Division estimates that dealers defrauded Hoosiers out of at least \$1.7 million by selling them a salvage vehicle as if it were operable. The Division further estimates that Indiana lost approximately \$12,000 in economic activity due to Hoosiers having to spend time filing a complaint with the office, not to mention the days of time that Hoosiers spent waiting on delivery of title to vehicles that should have been delivered within 31 days of the sale.

C. Conclusion

The goal of the proposed rule is to give the Division the tools to continue to fight fraud and abuse. Without those tools, the Division believes that the Hoosier dealership experience will only get worse. In the opinion of the Division, the benefits of the proposed rule greatly outweigh the costs.

IX. Contact Information of Staff to Answer Substantive Questions

Kyle Bonick, Co-Director
kybonick@sos.in.gov
317-233-4610

¹ Bureau of Labor Statistics, "Indianapolis Area Economic Summary," May 6, 2024, https://www.bls.gov/regions/midwest/summary/blssummary_indianapolis.pdf (indicating average weekly wages in the Indianapolis area are \$1204. At 40 hours/week, the Division assumes the average hourly rate to be \$30.13.) Last visited May 23, 2024.

² See [IC 9-22-3-3](#).

³ Edmunds Help Center, "What is the value of a salvage title vehicle?", <https://help.edmunds.com/hc/en-us/articles/206102547-What-is-the-value-of-a-salvage-title-vehicle>. Last visited May 23, 2024.

⁴ Kelley Blue Book Frequently Asked Questions, "My car has a salvage title. How does that affect the value?", <https://www.kbb.com/faq/values/#question-11>. Last visited May 23, 2024.

⁵ Nat'l Auto. Dealer's Assn., "NADA Data 2023" 10, <https://www.nada.org/media/4695/download?inline> (noting average retail selling price of \$29,308).

⁶ A "rebuilt" vehicle is a vehicle that was previously branded "salvage" but was restored to operable condition. See [IC 9-32-2-149](#).

Notice of First Public Comment Period with Proposed Rule: [20241030-IR-075240418FNA](#)

Notice of Determination Received: October 1, 2024

Posted: 10/30/2024 by Legislative Services Agency

An [html](#) version of this document.