TITLE 49
MOTOR VEHICLES

CHAPTER 16
DEALERS AND SALESMEN LICENSING

49-1601. UNLICENSED DEALERS AND SALESMEN PROHIBITED. It shall be unlawful for any person to act as a dealer or salesman, wholesaler, manufacturer of vehicles or a manufacturer, distributor, factory branch, or distributor branch representative, without first having procured a license from the department. It shall be unlawful for any person other than a licensed dealer to display a vehicle for sale unless the title is in the name of the displayer. It shall be unlawful to solicit sales of vehicles without a dealer's license, unless the title is in the name of the seller. The provisions of this section shall not apply to the sale or solicitation of specialty vehicles to governmental entities within the state. Specialty vehicles shall be defined as fire trucks, fire engines, urban transit buses, ambulances, street sweepers and hazardous material response vehicles.

[49-1601, added 1988, ch. 265, sec. 374, p. 758; am. 1993, ch. 230, sec. 1, p. 803.]

49-1602. ADMINISTRATION -- POWERS AND DUTIES. The department shall:

(1) Issue, and for reasonable cause shown, refuse to issue an applicant any license authorized under the provisions of this chapter. The department may refuse to issue all license types to any applicant, other than a partnership or corporation, if the applicant fails to comply with the terms and provisions of this chapter or the rules of the board, or if the applicant has been convicted of a violation of any of the provisions of this chapter, chapter 5, title 49, Idaho Code, section 49-1418, Idaho Code, chapter 6, title 48, Idaho Code, any felony committed in conjunction with a dealership or of any federal odometer law or regulation. Should the applicant be a partnership or a corporation, the department may refuse to issue a license to the applicant where it determines that one (1) or more of the partners of a partnership, or one (1) or more of the stockholders or officers of a corporation, was previously the holder of a license which was revoked or suspended, and the license revoked never reissued or the suspended license never reinstated, or that one (1) or more of the partners, stockholders, or officers, though not previously the holder of a license, has violated any of the provisions of this chapter or of an applicable rule or regulation, or of federal motor vehicle safety standards.

(2) For just cause shown, revoke or suspend, on terms, conditions, and for a period of time as the department shall consider fair and just, any license or licenses issued pursuant to the provisions of this chapter. No license shall be revoked or suspended unless it shall be shown that the licensee has violated a provision of this chapter or of an applicable rule or regulation, or of federal motor vehicle safety standards. An Idaho licensed motor vehicle dealer or licensed motor vehicle salesman who is convicted of one (1) or more of the offenses set forth in subsection (1) of this section shall not be eligible to reapply for a motor vehicle dealer's or salesman's license until all outstanding customer complaints have been resolved to the department's satisfaction and for the following time periods from the date of conviction: misdemeanor convictions: three (3) years for the first conviction and seven (7) years for every subsequent conviction; felony convic-

tions: ten (10) years for the first conviction and ten (10) years for every subsequent conviction. The holder of a motor vehicle dealer's license shall not be eligible to apply for a motor vehicle salesman's license within the same time periods set forth in this subsection when convicted of one (1) or more of the offenses set forth in subsection (1) of this section.

(3) On its own motion, upon the sworn complaint of any person, investigate any suspected or alleged violation by a licensee of any of the provisions of this chapter or of an applicable rule or regulation.

(4) Prescribe forms for applications for licenses and qualifications for an applicant for licensure. Every application for a license shall contain, in addition to other information required by the department, the following:

(a) The name and residence address of the applicant and the trade name, if any, under which he intends to conduct his business. If the applicant is a copartnership, the name and residence address of each member, whether a limited or general partner, and the name under which the partnership business is to be conducted. If the applicant is a corporation, the name of the corporation and the name and address of each of its principal officers and directors.

(b) A complete description, including the city with the street number, of the principal place of business and any other and additional places of business operated and maintained by the applicant in conjunction with the principal place of business.

(c) Copies of any letters of franchise for new vehicles that the applicant has been enfranchised to sell or exchange, and the name or names and addresses of the manufacturer or distributor who has enfranchised the applicant.

(d) Names and addresses of the persons who shall act as salesmen under the authority of the license, if issued.

(e) A copy of the certificate of assumed business name, if required, shall be filed with the secretary of state.

(f) For a manufacturer's license, the name or names and addresses of each and every distributor, factory branch, and factory representative.

(g) For a salesman's license, certification by the dealer by whom the salesman will be employed, that he has examined the background of the applicant, and to the best of the dealer's knowledge, is qualified to be licensed under the sponsorship of the licensed dealer.

(h) Before a dealer who is not exempted from the continuing education requirements as provided in section 49-1637(2), Idaho Code, may apply for a renewal of a vehicle dealer's license, he shall provide to the department a certification from an accredited educational system, private vocational school, correspondence school or trade association approved by the department stating that the vehicle dealer has satisfied the four (4) hour continuing education requirements as specified in section 49-1637(1), Idaho Code.

(i) Before any vehicle dealer's license is issued by the department to an applicant who is not licensed with the department as a dealer within the previous twelve (12) calendar months and who is not exempted from the continuing education requirements as provided in section 49-1637(2), Idaho Code, the applicant shall provide to the department a certification from an accredited educational institution, private vocational school, correspondence school or trade association ap-

proved by the department stating that the applicant has satisfactorily completed the prelicensing class or program requirements, including a written examination of material presented, specified in section 49-1637(1), Idaho Code.

(5) Refuse to issue any license under the provisions of this chapter if, upon investigation, the department finds that any information contained in the application is incomplete, incorrect or fictitious.

(6) Require that a dealer's principal place of business, and other locations operated and maintained by him in conjunction with his principal place of business, have erected or posted signs or devices providing information relating to the dealer's name, location and address of the principal place of business, and the number of the license held by the dealer.

(7) Provide for regular meetings of the dealer advisory board, to be held not less frequently than semiannually. Notices of meetings of the advisory board shall be mailed to all members not less than five (5) days prior to the date on which the meeting is to be held.

(8) Inspect, prior to licensing, the principal place of business and other sites or locations as may be operated and maintained by the applicant.

(9) Seek and consider the advisory board's recommendations and comments regarding proposed rules promulgated for the administration of the provisions of this chapter.

(10) Require the attendance of not less than one (1) or more than three (3) advisory board members at all hearings held relating to this chapter.

[49-1602, added 1988, ch. 265, sec. 375, p. 759; am. 1991, ch. 272, sec. 6, p. 695; am. 1998, ch. 392, sec. 20, p. 1225; am. 2003, ch. 98, sec. 1, p. 315; am. 2010, ch. 329, sec. 1, p. 873; am. 2017, ch. 234, sec. 1, p. 574.]

49-1603. DEALER ADVISORY BOARD -- DUTIES. (1) There shall be a dealer advisory board to consist of eleven (11) members to assist and advise the department in the administration of the provisions of this chapter. Five (5) members shall be appointed from licensed dealers selling new vehicles, four (4) members appointed from licensed dealers selling used vehicles, one (1) member shall be appointed from licensed dealers selling new recreational vehicles and one (1) member shall be appointed to represent new and used motorcycle and ATV dealers. The governor shall appoint the board with consideration to recommendations of the board of directors of the Idaho automobile dealers association, recommendations of the board of directors of the recreational vehicle dealers association of Idaho and recommendations of the independent dealer association representing used vehicle dealers. The term of office of each member shall be three (3) years. Vacancies occurring on the board other than by expiration of the term shall be filled for the unexpired term only, and each member of the board shall serve until his successor is appointed and qualified. Members of the advisory board shall be compensated as provided by section 59-509(b), Idaho Code, and payments of compensation shall be paid from the state highway account as part of the expenses of administering the provisions of this chapter. A majority of the members of the advisory board shall constitute a quorum, the presence of which at any meeting duly called by the department shall have full and complete power to act upon and resolve in the name of the advisory board any matter, thing or question referred to it by the department, or which by reason of any provisions of this chapter, it has power to determine.

(2) The advisory board on the first day of each July, or as soon thereafter as practicable, shall elect a chairman, vice-chairman and secretary from among its members, who shall hold office until their successors are elected. As soon as the board has elected its officers, the secretary shall certify the results of the election to the department. The chairman shall preside at all meetings of the advisory board and the secretary shall make a record of their proceedings. All members of the advisory board shall be entitled to vote on any question, matter, or thing which properly comes before it.

[49-1603, added 1988, ch. 265, sec. 381, p. 766; am. 1989, ch. 310, sec. 27, p. 799; am. 1991, ch. 272, sec. 7, p. 697; am. 1996, ch. 135, sec. 1, p. 460; am. 2010, ch. 221, sec. 1, p. 494; am. 2013, ch. 136, sec. 1, p. 317.]

49-1604. RECORDS AS EVIDENCE. Copies of all records and papers in the office of the director, authenticated under the hand and seal of the director, shall be received in evidence in all cases equally and with like effect as the original.

[49-1604, added 1988, ch. 265, sec. 377, p. 762.]

49-1605. CHANGE OF FRANCHISE STATUS. Should the dealer change to, or add another franchise for the sale of new vehicles, or cancel or, for any cause whatever, otherwise lose a franchise for the sale of new vehicles, he shall immediately notify the department.

[49-1605, added 1988, ch. 265, sec. 378, p. 763.]

49-1606. CLASSES OF LICENSES -- NONRESIDENT DEALERS. Licenses issued under the provisions of this chapter shall be as follows:

(1) A dealer's license shall permit the licensee to engage in the business of selling or exchanging new and used vehicles, new and used motorcycles, motor-driven cycles and motorbikes, new and used all-terrain vehicles, utility type vehicles, snow machines and travel trailers, truck campers, and new and used motor homes. This form of license shall permit licensees who are owners or part owners of the business of the licensee to act as vehicle salesmen.

(2) A vehicle salesman's license shall permit the licensee to engage in the activities of a vehicle salesman.

(3) A wholesale dealer's license shall permit the licensee to engage in the business of wholesaling used vehicles to Idaho vehicle dealers. The holder of this license must meet all the requirements for a principal place of business, except for the requirement of display area and adequate room to repair vehicles.

(4) A vehicle manufacturer's license shall permit the licensee to engage in the business of constructing or assembling vehicles, of the type subject to registration under this title at an established place of business within Idaho.

(5) A distributor, factory branch, or distributor branch license shall permit the licensee to engage in the business of selling and distributing vehicles, parts, and accessories to their franchised dealers.

(6) A representative (factory branch or distributor, etc.) license shall permit the licensee to engage in the business of contacting his respec-

tive authorized dealers, for the purpose of making or promoting the sale of his, its, or their vehicles, parts, and accessories.

(7) Pending the satisfaction of the department that the applicant has met the requirements for licensure, it may issue a temporary permit to any applicant for a license. A temporary permit shall not exceed a period of ninety (90) days while the department is completing its investigation and determination of facts relative to the qualifications of the applicant for a license. A temporary permit shall terminate when the applicant's license has been issued or refused.

(8) The department may issue a probationary vehicle salesman's license, subject to conditions to be observed in the exercise of the privilege granted either upon application for issuance of a license or upon application for renewal of a license. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license but shall, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department.

(9) A nonresident dealer who is currently authorized to do business as, and has an established place of business as a vehicle dealer in another state, is not subject to licensure under the provisions of this chapter as long as the sales are limited to the exportation of vehicles for sale to, and the importation of vehicles purchased from, licensed Idaho vehicle dealers.

[49-1606, added 1988, ch. 265, sec. 379, p. 763; am. 1991, ch. 272, sec. 8, p. 697; am. 2008, ch. 106, sec. 4, p. 300; am. 2008, ch. 198, sec. 7, p. 642.]

49-1607. FEES -- FUNDS -- EXPENSES -- EXPIRATION OF LICENSES. (1) The department shall collect with each application for licensure the following fees:

(a) Dealer's, wholesale dealer's and vehicle manufacturer's license, initial application, two hundred dollars ($200). Ten dollars ($10.00) of such fee shall be either retained by the department or authorized agent, if collected and processed by the department or authorized agent, or deposited in the county current expense fund. Renewal application, one hundred seventy-five dollars ($175).

(b) Vehicle salesman's license, thirty-six dollars ($36.00). Ten dollars ($10.00) of such fee shall be either retained by the department or authorized agent, if collected and processed by the department or authorized agent, or deposited in the county current expense fund.

(c) Distributor-factory branch-distributor branch license, one hundred seventy-five dollars ($175).

(d) Representative's license, forty-four dollars ($44.00).

(e) To reissue a license, salesman and dealer identification cards or other licensing documents at a dealer's request, not resulting from an error by the department, a fee of eighteen dollars ($18.00) per document.

(f) Supplemental lot license or relocated principal place of business, and temporary supplemental lot, forty-four dollars ($44.00) for license issued to a single dealer. A fee of eighty-eight dollars ($88.00) for a license issued to a group of dealers for a temporary supplemental lot.

(2) All fees shall be paid over to the state treasurer for credit to the state highway account, out of which shall be paid the expenses of the department and the expenses incurred in enforcing the provisions of this chapter.

(3) Dealer licenses, if not suspended or revoked, may be renewed from year to year upon the payment of the fees specified in this section to accompany applications, and renewals shall be made in accordance with the provisions of section 49-1634, Idaho Code.

(a) There shall be twelve (12) licensing periods, starting with January and ending in December. A dealer's license shall be in effect from the month of initial licensing through the last day of the next year's calendar month that precedes the month of the initial licensing.

(b) Any renewal license application received or postmarked after thirty (30) days from the end of the previous year's license period shall be processed as an initial application and initial fees shall be paid.

(4) Salesman licenses, if not suspended or revoked, shall be valid for three (3) years from the date of issue and may be renewed upon application and payment of the fees specified in this section provided that:

(a) Employment remains with the sponsoring dealership; and

(b) The sponsoring dealership has a valid license issued by the department.

[49-1607, added 1988, ch. 265, sec. 380, p. 765; am. 1991, ch. 272, sec. 9, p. 698; am. 1993, ch. 297, sec. 1, p. 1095; am. 1998, ch. 392, sec. 21, p. 1227; am. 2009, ch. 331, sec. 7, p. 958; am. 2020, ch. 37, sec. 1, p. 73.]

49-1608. LICENSE BOND. (1) Before any dealer's license shall be issued by the department to any applicant, the applicant shall procure and file with the department good and sufficient bond in the amount shown, conditioned that the applicant shall not practice any fraud, make any fraudulent representation or violate any of the provisions of this chapter, rules of the department, or the provisions of chapter 5, title 49, section 49-1418, or chapter 6, title 48, Idaho Code, or federal motor vehicle safety standards, or odometer fraud in the conduct of the business for which he is licensed.

(a) A dealer exclusively in the business of motorcycle, motor-driven cycle and motorbike sales, all-terrain vehicles, utility type vehicles, truck campers and snow machine sales, ten thousand dollars ($10,000).

(b) Any wholesale dealer in the business of wholesaling used vehicles of all types, forty thousand dollars ($40,000). Such wholesale dealer licensees shall be exempt from participating in the Idaho consumer asset recovery fund as provided in sections 49-1608B through 49-1608F, Idaho Code.

(c) All other dealers, twenty thousand dollars ($20,000).

(2) The bond required in this section may be continuous in form and the total aggregate liability on the bond shall be limited to the payment of the amounts set forth in this section. The bond shall be in the following form:

(a) A corporate surety bond, by a surety licensed to do business in this state; or

(b) A certificate of deposit, in a form prescribed by the director; or

(c) A cash deposit with the director.

(3) If a bond is canceled or otherwise becomes invalid, upon receiving notice of the cancellation or invalidity, the department shall immediately

suspend the dealer's license and take possession of the license itself, all vehicle plates used in the business and all unused title applications of the licensee. The licensee is entitled to a hearing which shall be held within twenty (20) days of the suspension. Upon receiving notice that a valid bond is in force, the department shall immediately reinstate the license.

(4) The bond requirements of this section shall be satisfied if the applicant is a duly licensed manufactured home dealer in accordance with chapter 21, title 44, Idaho Code, and the bond required by section 44-2103, Idaho Code, otherwise meets the requirements of this section. The amount of the bond shall be in the amount as required in this section or that required in section 44-2103, Idaho Code, whichever is greater. The applicant shall furnish a certified copy of the bond as required in section 44-2103, Idaho Code, to the department.

[(49-1608) 49-2409, added 1978, ch. 243, sec. 5, p. 530; am. 1979, ch. 187, sec. 2, p. 548; am. 1982, ch. 95, sec. 112, p. 257; am. 1985, ch. 117, sec. 11, p. 260; am. 1987, ch. 109, sec. 1, p. 221; am. 1988, ch. 140, sec. 1, p. 253; am. and redesig. 1988, ch. 265, sec. 381, p. 766; am. 1989, ch. 310, sec. 28, p. 800; am. 1990, ch. 152, sec. 1, p. 337; am. 1991, ch. 272, sec. 10, p. 699; am. 2006, ch. 42, sec. 7, p. 129; am. 2008, ch. 106, sec. 5, p. 301; am. 2008, ch. 198, sec. 8, p. 643; am. 2015, ch. 53, sec. 1, p. 125.]

49-1608A. DEALER AND MANUFACTURER LIABILITY INSURANCE. Every dealer and vehicle manufacturer shall, as a condition of issuance or renewal of a dealer or vehicle manufacturer license by the department, continuously provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person arising out of the ownership, maintenance or use of vehicles owned by or under the control of the licensee and used in conduct of the business of the dealer or vehicle manufacturer. Such insurance shall be in an amount not less than twenty-five thousand dollars ($25,000) because of bodily injury to or death of one (1) person in any one (1) accident and, subject to the limit for one (1) person, in the amount of fifty thousand dollars ($50,000) because of bodily injury to or death of two (2) or more persons in any one (1) accident, and in the amount of fifteen thousand dollars ($15,000) because of injury to or destruction of property of others in any one (1) accident. The applicant for a dealer or vehicle manufacturer license shall maintain on file with the department a certificate of liability insurance, issued by an insurance or surety company authorized to do business in this state or by an authorized agent of such company, in such form as may be prescribed by the director of the department of insurance as set forth in section 49-1231, Idaho Code.

[49-1608A, added 2006, ch. 208, sec. 1, p. 637.]

49-1608B. IDAHO CONSUMER ASSET RECOVERY FUND ESTABLISHED -- EXPENDITURES AUTHORIZED. (1) There is hereby created in the state treasury an account to be known as the "Idaho consumer asset recovery fund" (ICAR), hereinafter referred to as the "fund." Moneys in the fund are hereby continuously appropriated to the department and shall be used exclusively to satisfy unpaid judgments as provided for in section 49-1608C, Idaho Code. The fund shall consist of moneys appropriated by the legislature and other moneys as provided for in law. All interest earned on investment by the department of moneys in the fund shall be returned to the fund.

(2) Except as provided for in subsection (3) of this section, moneys paid out of the fund shall be known as expenditures and shall be limited to awards based upon claims or final judgments of fraud, fraudulent representation or any violation of: provisions of this chapter; provisions of chapter 6, title 48, Idaho Code; provisions of chapter 5, title 49, Idaho Code; provisions of section 49-1418, Idaho Code; or provisions of federal motor vehicle safety standards or odometer fraud as provided for in this chapter. All expenditures from the fund by the board pursuant to the provisions of this act, including expenditures provided for in subsection (3) of this section, shall be paid out on warrants drawn by the department upon presentation of proper vouchers approved by the Idaho consumer asset recovery control board as established in section 49-1608C, Idaho Code.

(3) Notwithstanding any other provision of this act, no expenditures shall be made from the fund until the fund has accumulated one (1) full year of fees. When the fund reaches or exceeds two million dollars ($2,000,000), the fee provided for in section 49-1608C, Idaho Code, shall be temporarily suspended upon approval of the Idaho consumer asset recovery control board.

(4) Claims made against a dealer with an existing bond, pursuant to section 49-1608, Idaho Code, shall first be paid by the bond before claims may be approved for payment by the board from the fund. From July 1, 2013, through June 30, 2014, all dealers shall be required to maintain the surety bond required pursuant to the provisions of 49-1608, Idaho Code.

[49-1608B, added 2013, ch. 136, sec. 2, p. 318.]

49-1608C. CREATION OF BOARD AND FEES. (1) The Idaho consumer asset recovery fund (ICAR) shall be administered by the Idaho consumer asset recovery control board, hereinafter referred to as the "board." The board shall be comprised of the director of the Idaho transportation department or his designee and the dealer advisory board or their designee(s), as established by section 49-1603, Idaho Code.

(2) In addition to fees authorized pursuant to section 49-1607, Idaho Code, and in addition to any fees authorized elsewhere in this chapter, the Idaho consumer asset recovery control board shall establish a fee to be collected from each applicant for a new or renewing license issued pursuant to this chapter. The fee provided for in this section shall be charged for each applicant for a motor vehicle dealer's license and the amount of such fee shall be set annually by the board. In setting the amount of the fee, the board shall take into consideration the balance of the fund and expenditures of moneys from the fund by all required participants. All fees collected pursuant to the provisions of this section shall be paid into the Idaho consumer asset recovery fund as established in section 49-1608B, Idaho Code. The department shall maintain an accurate record of all transactions involving the fund and report to the board at each meeting.

[49-1608C, added 2013, ch. 136, sec. 3, p. 319.]

49-1608D. NEW APPLICANTS AND SUSPENSION OF FEES. In addition to the fees collected pursuant to section 49-1608C, Idaho Code, applicants for an initial motor vehicle dealer's license shall maintain a license bond pursuant to section 49-1608, Idaho Code, for three (3) consecutive years. If the fee has been temporarily suspended pursuant to section 49-1608B(3), Idaho Code, the new dealer shall pay the last set fee into the fund during the initial three (3) year licensing period. Only those renewing licensees

who have not been the subject of a claim against their bond or against the fund for three (3) consecutive years shall be exempt from the requirement to maintain such bond as required pursuant to the provisions of section 49-1608, Idaho Code.

[49-1608D, added 2013, ch. 136, sec. 4, p. 319.]

49-1608E. SUBMISSION OF CLAIMS. (1) Except as otherwise provided in this section, whenever any person is awarded a final judgment certified in a court of competent jurisdiction in the state of Idaho for:

(a) Any actual loss or damage in connection with the purchase or lease of a motor vehicle by reason of any fraud practiced on him or fraudulent representation made to him by a licensed motor vehicle dealer; or

(b) Any actual loss or damage by reason of a violation by a dealer of any of the provisions of chapter 6, title 48, Idaho Code, chapter 5, title 49, Idaho Code, or section 49-1418, Idaho Code, in connection with the purchase or lease of a motor vehicle on or after July 1, 2014, the judgment creditor may file a verified claim with the board requesting payment from the fund of the amount unpaid on the judgment subject to the following conditions:

(i) Unless the judgment has been appealed, the claim shall be filed with the department, acting on behalf of the board, no sooner than forty-five (45) days and no later than one (1) year after the judgment becomes final.

(ii) The board shall not consider claims submitted by motor vehicle dealers, financial institutions or institutions providing floorplans for motor vehicle dealers.

(2) To be eligible to receive any payment from the fund, any action instituted by a person against a licensee that may become a claim against the fund shall be served to the board in a manner consistent with the provisions of section 48-613, Idaho Code.

[49-1608E, added 2013, ch. 136, sec. 5, p. 319.]

49-1608F. PAYMENT OF CLAIMS -- MAXIMUM. (1) The maximum claim of one (1) judgment creditor against the fund, based on an unpaid certified judgment arising out of any loss or damage by reason of a claim submitted pursuant to section 49-1608E, Idaho Code, involving a single transaction, shall be limited to fifty thousand dollars ($50,000), regardless of the amount of the unpaid certified final judgment of one (1) judgment creditor.

(2) The aggregate of claims against the fund based on unpaid final judgments arising out of any loss or damage by reason of a claim submitted pursuant to section 49-1608E, Idaho Code, involving more than one (1) transaction shall be limited to one hundred twenty thousand dollars ($120,000) per licensee, regardless of the total amounts of the unpaid certified judgments of judgment creditors.

(3) If a claim has been made against the fund, and the board has reason to believe that there may be additional claims against the fund from other transactions involving the same licensee, the board may withhold any payment from the fund involving the licensee for a period not to exceed the end of the relevant license period. After this period, if the aggregate of claims against the licensee exceeds one hundred twenty thousand dollars ($120,000), a total of one hundred twenty thousand dollars ($120,000) shall

be prorated among the claimants and paid from the fund in proportion to the amounts of their unpaid certified judgments against the licensee.

(4) (a) Claims against motor vehicle dealers or their salespersons participating in the Idaho consumer asset recovery fund pursuant to section 49-1608E, Idaho Code, shall be prorated when the aggregate exceeds one hundred twenty thousand dollars ($120,000) against one (1) dealer.

(b) Claims shall be prorated only after the dealer's twenty thousand dollar ($20,000) bond has been exhausted and utilized first. Such additional claims shall be prorated when the aggregate exceeds one hundred thousand dollars ($100,000) against one (1) dealer.

(5) Upon receipt of a certified judgment filed in support of a claim against the fund, the board shall send written notice to the licensee who is the subject of the unpaid judgment that a claim has been filed and that the licensee should satisfy the unpaid judgment. If the unpaid judgment is not fully satisfied within thirty (30) days following the date of the written notice by the board, the board shall make payment from the fund subject to the other limitations provided for in this act.

(6) If at any time the fund is insufficient to fully satisfy any claims or claim filed with the board and authorized by this act, the board shall pay such claim, claims or portion thereof to the claimants in the order that the claims were filed with the board.

(7) On payment by the board to a claimant from the fund, the board shall, within five (5) business days, notify the licensee in writing of the board's payment to the claimant and request full reimbursement be made to the board within thirty (30) days of the notification. Failure to reimburse the fund in full within the specified period shall be grounds for suspension or revocation of the license pursuant to title 49, chapter 16, Idaho Code. Any person whose license is revoked shall not be eligible to apply for a license as a motor vehicle dealer or for a license as a salesperson until the person has repaid in full the amount paid from the fund on his account, plus interest to be calculated pursuant to the provisions of section 28-22-104, Idaho Code.

(8) Nothing contained in this article shall limit the authority of the department to take disciplinary action against any licensee for any violation of this chapter or any rule promulgated thereunder, nor shall full repayment of the amount paid from the fund on a licensee's account nullify or modify the effect of any disciplinary action against that licensee for any violation.

(9) The department is authorized to promulgate reasonable rules not inconsistent with this chapter for the purpose of carrying out the provisions of this section.

[49-1608F, added 2013, ch. 136, sec. 6, p. 320.]

49-1609. MANUFACTURER OR DEALER TO GIVE NOTICE OF SALE OR TRANSFER. Every manufacturer or dealer, upon transferring a vehicle, whether by sale, lease or otherwise, to any person other than a manufacturer or dealer, shall within thirty (30) calendar days, give written notice of the transfer to the department or the assessor upon the official form provided by the department. Every notice shall contain the date of transfer, the time of transfer, the names and addresses of the transferor and transferee, any liens, a current odometer reading and a description of the vehicle as may be called for in the official form.

[49-1609, added 1988, ch. 265, sec. 382, p. 767; am. 1989, ch. 35, sec. 3, p. 47; am. 1991, ch. 272, sec. 11, p. 700.]

49-1609A. SATISFACTION OF LIENS PRIOR TO RESALE OF VEHICLE. (1) When a motor vehicle dealer licensed pursuant to this chapter takes possession of a vehicle for purposes of resale, the dealer shall have ten (10) business days from the date of possession to satisfy in full any and all lienholders who are perfected at the time of taking possession, unless the owner relinquishing possession of the vehicle agrees in writing to directly pay the perfected lienholder.

(2) No such vehicle shall be resold or transferred to any retail purchaser until all perfected liens have been satisfied in full.

(3) It shall be a misdemeanor punishable as provided in section 49-236, Idaho Code, for any person or licensee to violate the provisions of this section.

[49-1609A, added 2001, ch. 190, sec. 1, p. 653.]

49-1610. RIGHT OF ACTION FOR LOSS BY FRAUD -- PROCESS. (1) If any person shall suffer any loss or damage by reason of any fraud practiced on him or fraudulent representation made to him by a licensed dealer or one (1) of the dealer's salesmen acting for the dealer, in his behalf or within the scope of the employment of salesman, or shall suffer any loss or damage by reason of the violation by the dealer or salesman of any of the provisions of this chapter, or chapter 5, title 49, Idaho Code, or section 49-1418, Idaho Code, or chapter 6, title 48, Idaho Code, or any applicable rule or regulation of the board, or federal odometer law or regulation, that person shall have a right of action against the dealer and his salesman.

(2) Notwithstanding the terms, provisions or conditions of any agreement or franchise, or other terms or provisions of any novation, waiver or other written instrument, any person who is or may be injured by a violation of a provision of this chapter, or any party to a franchise who is so injured in his business or property by a violation of a provision of this chapter relating to that franchise, or any person so injured because he refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of the provisions of this chapter, may bring an action for damages and equitable relief, including injunctive relief.

(3) A license or a renewal shall not be issued to any applicant unless and until the applicant shall file with the director a good and sufficient instrument in writing in which he shall appoint the director as the true and lawful agent of the applicant upon whom all process may be served in any action or actions which may subsequently be commenced against the applicant arising out of any claim for damages suffered by any person by reason of the violation of the applicant of any of the terms and provisions of this chapter or provisions of chapter 5, title 49, section 49-1418, or chapter 6, title 48, Idaho Code, or of federal motor vehicle safety standards, or federal odometer laws and regulations. The applicant shall stipulate and agree in the appointment that any process directed to the applicant in such a case which is served upon the director, or in his absence his designee, shall be of the same legal force and effect as if served upon the applicant personally. The applicant shall further stipulate and agree in writing that the agency created by the appointment shall continue for and during the period covered by any license that may be issued and so long thereafter as the applicant may be made to answer in damages for a violation of the provisions of this chap-

ter. The instrument appointing the director as agent for the applicant for service of process shall be acknowledged by the applicant before an officer authorized to take and certify acknowledgments under the laws of this state. In any case wherein the licensee be served with process by service upon the director, two (2) copies of the process shall be left with the director. Not later than two (2) days after the service of the process upon him, the director shall mail one (1) copy to the licensee at his principal place of business, as the same appears of record in the office of the director, postpaid, by certified mail with request for return receipt. The remaining copy shall be retained on file with the director. The licensee shall then have and be allowed thirty (30) days from and after the service within which to answer any complaint or other pleading which may be filed in the cause. For the purpose of venue where the licensee is served with process upon the director, the service shall be deemed to have been made upon the licensee in the county in which he has or last had his principal place of business.

(4) Whenever any person is awarded a final judgment in a court of competent jurisdiction in the state of Idaho for any loss or damage by reason of the violation by such dealer or salesman of any of the provisions of this chapter, chapter 5, title 49, section 49-1418, or chapter 6, title 48, Idaho Code, or any rule or regulation of the department in connection with the purchase of a vehicle, or federal motor vehicle safety standards, or in connection with the purchase of a vehicle if the loss or damage is a result of odometer tampering, or odometer fraud, the judgment creditor may file a verified claim with the corporate surety who has provided the dealer's surety bond, or with the chairman of the dealer advisory board where the dealer has deposited with the director a cash bond or certificate of deposit.

(a) The claim shall be filed no sooner than thirty (30) days and no later than one (1) year after the judgment has become final.

(b) The claim shall:

1. Be accompanied by a certified copy of the judgment;

2. State the amount of the claim if different from the judgment amount; and

3. State that demand has been made upon the dealer for payment of the judgment, and the dealer has failed to pay the judgment in full within thirty (30) days.

(5) Where a dealer has satisfied the bonding requirement with cash or a certificate of deposit, the chairman shall make written notification to the dealer against whom the judgment was obtained, that a claim has been made. The dealer may, within ten (10) days from the date of receipt of the notice, submit written objections to the dealer advisory board as to why the judgment should not be satisfied from the cash deposit or certificate of deposit.

(6) Within sixty (60) days from the date the claim was filed with the dealer advisory board, if it has found the claimant complied with the provisions of subsection (4) of this section, the board shall authorize the director to satisfy the judgment from the dealer's deposited funds in so far as he is able. Upon receipt of any payment, the claimant shall deliver a properly executed satisfaction of judgment or a partial satisfaction of judgment to the director. If additional claims have been filed prior to payment, or the chairman of the dealer advisory board has knowledge that additional claims are pending which may exceed the amount of the bond, the chairman may delay any payments until all claims are finalized. If the claims exceed the amount of the bond, the deposited funds shall be prorated among the claimants based on the amount of their judgments.

(7) A judgment against a dealer or salesman for violation of the provisions of this chapter, rules and regulations of the department, the provisions of chapter 5, title 49, section 49-1418, or chapter 6, title 48, Idaho Code, the federal motor vehicle safety standards or odometer fraud, shall be grounds for revocation of the dealer and the salesman's licenses.

(8) The Idaho transportation board is authorized to promulgate reasonable rules and regulations not inconsistent with this chapter for the purpose of carrying out the provisions of section 49-1610, Idaho Code [this section].

(9) Should a dealer's license be revoked, voluntarily surrendered or not renewed, leaving funds on deposit with the department, those funds shall be refunded within thirty (30) days after the expiration of a five (5) year period from the date of revocation, surrender, or nonrenewal of the license unless the dealer advisory board has been notified in writing that a claim or cause of action is pending. In that case, the refund, if any, will be made upon the resolution of the claim or claims. In no case shall the dealer advisory board, the department, the state of Idaho, or any of their employees or agents be liable to any claimant for any amounts other than the funds deposited by the dealer.

[49-1610, added 1988, ch. 265, sec. 383, p. 767; am. 1989, ch. 310, sec. 29, p. 801; am. 1991, ch. 272, sec. 12, p. 700.]

49-1611. DISPLAY, FORM AND CUSTODY OF DEALER'S AND SALESMAN'S LICENSE. The department shall prescribe each form of the vehicle dealer's and salesman's license. It shall be the duty of each dealer to display conspicuously his own license in his place of business. The department shall prepare and deliver a pocket identification card, which shall certify that the person whose name appears on the card is a licensed vehicle dealer or vehicle salesman, as the case may be, and each vehicle dealer's or vehicle salesman's card shall contain a current photograph of the applicant and the date of expiration of the license. Each and every vehicle dealer and vehicle salesman shall, upon request, display his card.

[49-1611, added 1988, ch. 265, sec. 384, p. 768; am. 1991, ch. 272, sec. 13, p. 703; am. 1993, ch. 297, sec. 2, p. 1096; am. 1998, ch. 392, sec. 22, p. 1228.]

49-1612. NOTICE OF CHANGE OF ADDRESS. (1) The department shall not issue a dealer's license to any applicant who does not have a principal place of business. Should the dealer change the site or location of his principal place of business, he shall immediately upon making the change notify the department, and a new license shall be granted for the unexpired portion of the term of the license, providing the new location meets all the requirements for a principal place of business. Should a dealer cease to be in possession of a principal place of business from and on which he conducts the business for which he is licensed, he shall immediately notify the department and upon demand by the department shall deliver the dealer's license, which shall be held and retained until it shall be made to appear to the department that the licensee has again come into possession of a principal place of business, whereupon the dealer's license shall be reissued to him, without charge. Nothing in the provisions of this chapter shall be construed to prevent a dealer from conducting the business for which the dealer is licensed at one (1) or more licensed supplemental lots or locations not contiguous to

the dealer's principal place of business but operated and maintained in conjunction with it.

(2) The department shall not issue a vehicle manufacturer's license to any applicant who does not have an established place of business within Idaho. Should the vehicle manufacturer change his established place of business within Idaho, the licensee shall immediately upon making the change, notify the department of the location and address of the new established place of business, and a new license shall be granted for the unexpired portion of the term of the license.

[49-1612, added 1988, ch. 265, sec. 385, p. 768; am. 2006, ch. 108, sec. 1, p. 301.]

49-1613. UNLAWFUL ACTS BY LICENSEE. (1) It shall be unlawful for the holder of any license issued under the provisions of this chapter to:

(a) Intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold or furnished by a licensed dealer;

(b) Violate any of the provisions of this chapter or any of the applicable rules;

(c) Knowingly purchase, sell or otherwise acquire or dispose of a stolen vehicle;

(d) Violate any law respecting commerce in vehicles or any lawful rule respecting commerce in vehicles promulgated by any licensing or regulating authority now existing or hereafter created by the laws of the state;

(e) Engage in the business for which the dealer is licensed without at all times maintaining a principal place of business;

(f) Engage in a type of business respecting the selling or exchanging of vehicles for which he is not licensed;

(g) Knowingly purchase a vehicle which has an altered or removed vehicle identification number plate or alter or remove a vehicle identification number plate;

(h) Violate any provision of this title or any rules promulgated;

(i) Violate any provision of the federal motor vehicle safety standards, federal odometer laws or regulations; or

(j) Display for sale, exchange, or sell any vehicle for which the vehicle dealer does not hold title or consignment agreement or other documentary evidence of his right to the possession of every vehicle in his possession.

(2) It shall be unlawful for any manufacturer or distributor licensed under this chapter to require, attempt to require, coerce, or attempt to coerce, any new vehicle dealer in this state to:

(a) Order or accept delivery of any new vehicle, part or accessory, equipment or any other commodity not required by law which shall not have been voluntarily ordered by the new vehicle dealer. This paragraph is not intended to modify or supersede any terms or provisions of a franchise requiring dealers to market a representative line of vehicles which the manufacturer or distributor is publicly advertising.

(b) Order or accept delivery of any new vehicle with special features, accessories or equipment not included in the list price of such vehicles as publicly advertised by the manufacturer or distributor.

(c) Participate monetarily in an advertising campaign or contest, or to purchase any promotional materials, training materials, showroom or other display decorations or materials at the expense of the dealer.

(d) Enter into any agreement with the manufacturer or distributor or to do any other act prejudicial to the dealer by threatening to terminate or cancel a franchise or any contractual agreement existing between the dealer and the manufacturer or distributor. This paragraph is not intended to preclude the manufacturer or distributor from insisting on compliance with reasonable terms or provisions of the franchise or other contractual agreement, and notice in good faith to any dealer of the dealer's violation of those terms or provisions shall not constitute a violation of the provisions of this chapter.

(e) Change the capital structure of the dealer or the means by or through which the dealer finances the operation of the dealership, provided that the dealer at all times meets any reasonable capital standards determined by the manufacturer or distributor in accordance with uniformly applied criteria. No change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor. Consent shall not be unreasonably withheld.

(f) Refrain from participation in the management of, investment in, or the acquisition of any other line of new vehicle or related products. This paragraph does not apply unless the dealer maintains a reasonable line of credit for each make or line of new vehicle, and the dealer remains in compliance with any reasonable facilities requirements of the manufacturer or distributor, and no change is made in the principal management of the dealership.

(g) Prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this chapter or to require any controversy between a dealer and a manufacturer, distributor, or representatives, to be referred to any person other than the duly constituted courts of the state or the United States, or to the director, if that referral would be binding upon the dealer.

(h) Either establish or maintain exclusive facilities, personnel, or display space.

(i) Expand facilities without a written guarantee of a sufficient supply of new vehicles so as to justify an expansion, in light of the market and economic conditions.

(j) Make significant modifications to an existing dealership or to construct a new vehicle dealership facility without providing a written guarantee of a sufficient supply of new vehicles so as to justify modification or construction, in light of the market and economic conditions.

(3) It shall be unlawful for any manufacturer or distributor licensed under this chapter to:

(a) Delay, refuse, or fail to deliver new vehicles or new vehicle parts or accessories in a reasonable time, and in reasonable quantity, relative to the dealer's facilities and sales potential in the dealer's relevant market area, after acceptance of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by the franchise, if the vehicle, parts,

or accessories are publicly advertised as being available for delivery or actually being delivered. These provisions are not violated, however, if failure is caused by acts or causes beyond the control of the manufacturer or distributor.
(b) Refuse to disclose to any dealer handling the same line, the manner and mode of distribution of that line within the relevant market area.
(c) Obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to the dealer.
(d) Increase prices of new vehicles which the dealer had ordered for consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a consumer shall constitute evidence of each such order, provided that the vehicle is in fact delivered to that customer. In the event of manufacturer or distributor price reductions or cash rebates paid to the dealer, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Price reductions shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by the addition to a vehicle of required or optional equipment, or revaluation of the United States dollar, in the case of foreign-make vehicles or components, or an increase in transportation charges due to increased rates imposed by a carrier, shall not be subject to the provisions of this subsection.
(e) Release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or distributor or dealer, any business, financial, or personal information which may be provided from time to time by the dealer to the manufacturer or distributor without the express written consent of the dealer.
(f) Deny any dealer the right of free association with any other dealer for any lawful purpose.
(g) Unfairly compete with a dealer in the same line make, operating under an agreement or franchise from the aforementioned manufacturer or distributor, in the relevant market area. A manufacturer or distributor shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period, in any case not to exceed one (1) year, or in a retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of that dealership on reasonable terms and conditions. Upon a showing of good cause by the manufacturer or distributor to the department, the period of temporary ownership may be extended up to one (1) additional year, resulting in a maximum temporary ownership period of two (2) years.
(h) Unfairly discriminate among its dealers with respect to warranty reimbursement.
(i) Unreasonably withhold consent to the sale, transfer, or exchange of the franchise to a qualified buyer capable of being licensed as a dealer

in this state or to condition the sale, transfer, or exchange of a franchise agreement upon site control or an agreement to renovate or make improvements to a facility, unless required by the technology of a motor vehicle being sold at the facility. Provided however, that a voluntary acceptance of such conditions by the dealer in writing including, but not limited to, a written agreement for which the dealer has accepted separate and valuable consideration, shall not constitute a violation.

(j) Fail to respond in writing to a request for consent as specified in paragraph (i) of this section [subsection] within sixty (60) days of receipt of a written request on the forms, if any, generally utilized by the manufacturer or distributor for those purposes and containing the required information. Failure to respond shall be deemed to be consent to the request.

(k) Prevent or attempt to prevent, by contract or otherwise, any dealer from changing the executive management control of the dealership unless the manufacturer or distributor, having the burden of proof, can show that the change of executive management will result in executive management or control by a person or persons who are not of good moral character or who do not meet reasonable, preexisting and, with consideration given to the volume of sales and service of the dealership, uniformly applied minimum business experience standards. Where the manufacturer or distributor rejects a proposed change in executive management control, the manufacturer or distributor shall give written notice of his reasons to the dealer within sixty (60) days of notice to the manufacturer or distributor by the dealer of the proposed change; otherwise, the change in the executive management of the dealership shall be presumptively considered approved.

(l) Terminate, cancel or fail to renew any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer or distributor relied in the granting of the franchise.

(m) Prevent or attempt to prevent the dealer, by written instrument or otherwise, from either receiving the fair market value of the dealership in a sale transaction, or from transferring the dealership to a spouse or legal heir, as specified in this chapter.

(n) Engage in any predatory practice or discrimination against any dealer.

(o) Resort to or to use any false or misleading advertisement in the conducting of his business as a manufacturer or distributor in this state.

(p) Make any false or misleading statement, either directly or through any agent or employee, in order to induce any dealer to enter into any agreement or franchise, or to take any action which is prejudicial to that dealer or his business.

(q) Require or coerce dealers to participate in local or national advertising campaigns or contests or to require or coerce dealers to purchase promotional or display materials.

(r) Charge back, deny motor vehicle allocation, withhold payments, or take other actions against a dealer, or to condition a franchise agreement, or renewal of a franchise agreement, or to condition sales, service, parts, or finance incentives upon site control or an agreement to renovate or make improvements to a facility unless required by the technology of a motor vehicle being sold at the facility. Provided however,

that a voluntary acceptance of such conditions by the dealer in writing including, but not limited to, a written agreement for which the dealer has accepted separate and valuable consideration, shall not constitute a violation.

(s) Charge back, deny motor vehicle allocation, withhold payments, or take other actions against a motor vehicle dealer if a motor vehicle sold by the motor vehicle dealer is exported from Idaho or the dealer's assigned area of responsibility unless the manufacturer, distributor, or manufacturer representative proves that the motor vehicle dealer knew or reasonably should have known a motor vehicle was intended to be exported, which shall operate as a rebuttable presumption that the motor vehicle dealer did not have such knowledge. This paragraph does not apply if exporting of motor vehicles outside of the state of Idaho is provided for by the manufacturer or distributor.

(4) It is unlawful for any manufacturer or distributor or any officer, agent or representative to coerce, or attempt to coerce, any dealer in this state to offer to sell or sell any extended service contract or extended maintenance plan that is offered, sold, backed by or sponsored by the manufacturer or distributor or to sell, assign or transfer any retail installment sales contract, obtained by the dealer in connection with the sale by him in this state of new vehicles, manufactured or sold by the manufacturer or distributor, to a specified finance company or class of such companies, or to any other specified person, by any of the acts or means set forth, namely by:

(a) Any statement, suggestion, promise or threat that the manufacturer or distributor will, in any manner, benefit or injure the dealer, whether the statement, suggestion, threat or promise is express or implied or made directly or indirectly;

(b) Any act that will benefit or injure the dealer;

(c) Any contract, or any express or implied offer of contract, made directly or indirectly to a dealer for handling new vehicles, on the condition that the dealer shall offer to sell or sell any extended service contract or extended maintenance plan that is offered, sold, backed by, or sponsored by the manufacturer or distributor or sell, assign or transfer his retail installment sales contract in this state to a specified finance company or class of such companies, or to any other specified person; or

(d) Any express or implied statement or representation made directly or indirectly that the dealer is under any obligation whatsoever to offer to sell or sell any extended service contract or extended maintenance plan that is offered, sold, backed by, or sponsored by the manufacturer or distributor or to sell, assign or transfer any of his retail sales contracts, in this state, on new vehicles manufactured or sold by that manufacturer or distributor to a finance company or class of companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and a finance company or companies, or a specified person or persons.

(e) Nothing contained in this subsection shall prohibit a manufacturer or distributor from offering or providing incentive benefits or bonus programs to a retail motor vehicle dealer or prospective retail motor vehicle dealer in this state who makes the voluntary decision to offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed or sponsored by the manufacturer or distrib-

utor to sell, assign or transfer any retail installment sale or lease by him in this state of motor vehicles manufactured or sold by the manufacturer or distributor to a specified finance company or leasing company controlled by or affiliated with the manufacturer or distributor.

Any statement, threats, promises, acts, contracts or offers of contracts, when the effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition, against the policy of this state, and are unlawful.

(5) It is unlawful for any manufacturer or distributor or agent or employee of a manufacturer or distributor to use a written instrument, agreement, or waiver to attempt to nullify any of the provisions of this section, and such agreement, written instrument or waiver shall be null and void.

(6) It shall be unlawful, directly or indirectly, to impose unreasonable restrictions on the dealer relative to the sale, transfer, right to renew, termination discipline, noncompetition covenants, site control (whether by sublease, collateral pledge of lease, or otherwise), right of first refusal to purchase, option to purchase, compliance with subjective standards and assertion of legal or equitable rights.

(7) The provisions of this chapter shall apply to all written franchise agreements between a manufacturer or distributor and a dealer, including the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or mortgages of real or personal property, promises to pay, security interests, pledges, insurance contract, advertising contract, construction or installation contract, servicing contracts and all other agreements where the manufacturer or distributor has any direct or indirect interest.

[49-1613, added 1988, ch. 265, sec. 386, p. 769; am. 1991, ch. 272, sec. 14, p. 703; am. 1994, ch. 317, sec. 1, p. 1015; am. 2005, ch. 144, sec. 1, p. 451; am. 2011, ch. 327, sec. 3, p. 954.]

49-1614. TERMINATION, CANCELLATION OR NONRENEWAL. (1) Notwithstanding the terms, provisions or conditions of any franchise agreement, or any waiver, a manufacturer shall not cancel, terminate or fail to renew any franchise agreement with a dealer unless the manufacturer has satisfied the notice requirement of subsection (2) of this section and has good cause for cancellation, termination or nonrenewal.

(2) Notwithstanding the terms, provisions or conditions of any franchise agreement prior to the termination, cancellation or nonrenewal of any franchise agreement, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the department and the dealer:

(a) In the manner described in subsection (3)(b) of this section; and

(b) Not less than ninety (90) days prior to the effective date of termination, cancellation or nonrenewal; or

(c) Not less than fifteen (15) days prior to the effective date of termination, cancellation or nonrenewal with respect to any of the following:

(i) Insolvency of the dealership, or filing of any petition by or against the dealership under any bankruptcy or receivership law;

(ii) Failure of the dealership to conduct its customary sales and service operations during its customary business hours for seven (7) consecutive business days, except for acts of God or circumstances beyond the direct control of the dealer;

(iii) Conviction of the dealer, or any owner or his operator, resulting in imprisonment exceeding thirty (30) days;

(iv) Revocation of any license which the dealer is required to have to operate a dealership; and

(d) Not less than one hundred eighty (180) days prior to the effective date of termination or cancellation, where the manufacturer is discontinuing the sale of the product line.

(3) Notification under this section shall be in writing, by certified mail or personally delivered to the dealer, and shall contain a statement of intention to terminate, cancel or not to renew the franchise agreement, and a statement of the reasons for and the date on which termination, cancellation or nonrenewal takes effect.

(4) Notwithstanding the terms, provisions or conditions of any franchise agreement or of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when there is a failure by the dealer to comply with a provision of the franchise agreement, where the provision is both reasonable and of material significance to the franchise agreement relationship, and provided that the dealer has been notified in writing of the failure within one hundred eighty (180) days prior to termination, cancellation or nonrenewal. A protest may be filed in accordance with the provisions of section 49-1617, Idaho Code.

(5) Notwithstanding any franchise agreement, the following shall not constitute good cause for a termination, cancellation or nonrenewal of a franchise agreement: the fact that the dealer owns, has an investment in, participates in the management of or holds a franchise agreement for the sale or service of another make or line of motor vehicles; or that the dealer has established another make or line of new motor vehicles or service in the same dealership facilities as those of the manufacturer or distributor which existed prior to January 1, 1997; or is approved in writing by the manufacturer.

(6) The manufacturer shall have the burden of proof under this section concerning the issue of good cause, which shall include, but not be limited to, termination, nonrenewal or cancellation of any franchise agreement by the manufacturer for insolvency, license revocation, conviction of a felony, fraud by a dealer or failure by a dealer to comply with a provision of the franchise agreement, where the provision is both reasonable and of material significance to the franchise agreement relationship.

(7) Notwithstanding the terms, provisions or conditions of any franchise agreement, other written contract or agreement or any waiver, a manufacturer shall not cancel, terminate or fail to renew any franchise agreement with a dealer unless the manufacturer has satisfied the requirements of this section.

(8) Upon the termination, cancellation, or nonrenewal of any franchise agreement by the manufacturer or dealer, the manufacturer shall repurchase from the dealer any new, undamaged and unused motor vehicles of the current model year and previous model year. Any new and unused motor vehicle repurchased by the manufacturer shall be repurchased at the net cost to the dealer. Net cost means the dealer's cost for a new, undamaged, unsold, and complete motor vehicle of the current model year or any previous model year acquired by the dealer within twelve (12) months of the date of termination and in a dealer's inventory purchased from the manufacturer or acquired from another dealer of the same line make in the ordinary course of business:

(a) Plus any charges by the manufacturer, distributor, or representative for distribution, delivery and taxes;

(b) Plus the dealer's cost of any manufacturer approved accessories added on the vehicle, except only those recreational vehicle accessories that are listed in the manufacturer's wholesale product literature as options for that vehicle shall be repurchased; and

(c) Less all allowances paid to the dealer by the manufacturer, distributor or representative.

(9) (a) Upon the termination, cancellation, or nonrenewal of any franchise agreement by the manufacturer or dealer, the manufacturer shall repurchase from the dealer the following:

(i) Any unused, undamaged, and unsold parts which have been acquired from the manufacturer, provided such parts are currently offered for sale by the manufacturer in its current parts catalog and are in salable condition. Such parts shall be repurchased by the manufacturer at the current catalog price, less any applicable discount;

(ii) Any supplies, equipment, and furnishings, including manufacturer or line make signs, required by and purchased from the manufacturer or its approved source within three (3) years of the date of termination, cancellation, or nonrenewal; and

(iii) Any special tools or other equipment purchased from the manufacturer within three (3) years of the date of termination, cancellation, or nonrenewal.

(b) Except as provided in paragraph (a)(i) of this subsection, compensation shall be the fair market value on the effective date of the termination, cancellation, or nonrenewal.

(10) The repurchase of any item under this section shall be accomplished within ninety (90) days of the effective date of the termination, cancellation, or nonrenewal, provided the dealer has clear title to the inventory and other items, or is able to convey such title to the manufacturer and does convey or transfer title and possession of the inventory and other items to the manufacturer.

(11) If the repurchase of any item under this section is subject to a security interest, the manufacturer may make payment jointly to the dealer and to the holder of the security interest.

(12) This section shall not apply to a nonrenewal or termination that is implemented as a result of the sale of the assets or stock of the motor vehicle dealer.

(13) In the event the manufacturer does not pay the dealer the amounts due under this section and a court of competent jurisdiction finds the manufacturer in violation of this section, the manufacturer shall, in addition to any amounts due, pay the dealer:

(a) Interest on the amount due computed at the rate applicable to a judgment of a court; and

(b) Reasonable attorney's fees and costs.

(14) Within ninety (90) days of the termination, cancellation, or nonrenewal of any franchise agreement by the manufacturer for the failure of a dealer to meet sales and service performance obligations or due to elimination, cessation or termination of a line make, the manufacturer shall commence to reimburse the dealer for one (1) year of the dealer's cost to rent or lease the dealership's facility or location or for the unexpired term of the lease or rental period, whichever is less, or, if the dealer owns the facil-

ity or location, for the equivalent of one (1) year of the reasonable rental value of the facilities or location as determined by an Idaho licensed commercial real estate appraiser. If more than one (1) franchise agreement is being terminated, canceled, or not renewed, the reimbursement shall be prorated equally among the different manufacturers. However, if a franchise agreement is terminated, canceled, or not renewed but the dealer continues in business at the same location under a different franchise agreement, the reimbursement required by this subsection shall not be required to be paid. In addition, any reimbursement due under this subsection shall be reduced by any amount received by the dealer by virtue of the dealer leasing, subleasing, or selling the facilities or location during the year immediately following the termination, cancellation, or nonrenewal.

(15) All procedures and protections afforded to a motor vehicle dealer under this section shall be available to a recreational vehicle dealer. However, the remedies afforded under this section shall only apply to recreational vehicle dealers where the manufacturer of recreational vehicles as defined in section 49-119, Idaho Code, terminates or fails to renew any franchise agreement without good cause.

[49-1614, added 1988, ch. 265, sec. 387, p. 774; am. 1997, ch. 312, sec. 1, p. 923; am. 2009, ch. 153, sec. 1, p. 445.]

49-1615. SUCCESSION TO OWNERSHIP. Notwithstanding the terms, provisions or conditions of any franchise:

(1) A licensee may appoint by will, or any other written instrument, a designated family member to succeed in the ownership interest in the dealership.

(2) Unless there exists good cause for refusal to honor succession on the part of the manufacturer, any designated family member of a deceased or incapacitated owner of a dealership may succeed to the ownership under the existing franchise, provided the designated family member gives the manufacturer written notice of his intention to succeed to the ownership of the dealership within one hundred twenty (120) days of the owner's death or incapacity, and the designated family member agrees to be bound by all the terms and conditions of the franchise.

(3) The manufacturer may request, and the designated family member shall provide, promptly upon request, personal and financial data that is reasonably necessary to determine whether the succession should be honored.

(4) If a manufacturer believes that good cause exists for refusing to honor the succession to the ownership of a dealership by a family member of a deceased or incapacitated owner of a dealership under the existing franchise agreement, the manufacturer may, not more than sixty (60) days following receipt of notice of the designated family member's intent to succeed to the ownership of the dealership, or any personal or financial data which it has requested, serve upon the designated family member and the department, notice of its refusal to honor the succession and of its intent to discontinue the existing franchise with the dealer no sooner than ninety (90) days from the date notice is served. The notice must state the specific grounds for a refusal to honor the succession. A protest may be filed in accordance with the provisions of section 49-1617, Idaho Code.

(5) If notice of refusal and discontinuance is not timely served upon the family member, the franchise shall continue in effect subject to termination only as otherwise permitted under this chapter.

(6) This chapter does not preclude the owner of a dealership from designating any person as his successor by written instrument filed with the manufacturer and, in the event there is a conflict between that written instrument and the provisions of this section, and that written instrument has not been revoked by the owner of the dealership, in writing, to the manufacturer, then the written instrument shall govern.

[49-1615, added 1988, ch. 265, sec. 388, p. 777.]

49-1616. LIMITATIONS ON ESTABLISHING OR RELOCATING DEALERS. (1) In the event that a manufacturer seeks to enter into a franchise establishing an additional dealership or relocating an existing dealership within a radius of ten (10) miles from where the same line is represented, the manufacturer shall in writing, first notify the department and each dealer for the line within the ten (10) mile radius, at least sixty (60) days prior to the addition or relocation, of the intention to establish an additional dealership or to relocate an existing dealership within the ten (10) mile radius.

(2) This section shall not apply to the relocation of an existing dealer within that dealer's relevant market area, provided that the relocation not be at a site within a radius of seven (7) miles of a licensed franchise for the same line make of vehicle, or if the proposed franchise is to be established at or within a radius of two (2) miles of a location at which a former franchise for the same line make of new vehicle had ceased operating within the previous two (2) years. If the seven (7) and two (2) mile exceptions are not applicable, the relocation may still be possible upon notice and resolution of protest under subsections (1) and (3) of this section.

(3) A protest may be filed in accordance with the provisions of section 49-1617, Idaho Code.

[49-1616, added 1988, ch. 265, sec. 389, p. 778; am. 2000, ch. 184, sec. 1, p. 454.]

49-1617. PROTESTS -- HEARINGS -- COSTS. (1) Within twenty (20) days of receiving notice or within twenty (20) days after the end of any appeal procedure provided by a manufacturer, a dealer, in respect to termination, cancellation or nonrenewal of a franchise, or establishing or relocating a dealership, or a designated family member for a refusal to honor the succession of the dealership, may file with the department to protest termination or refusal to honor the succession. When a protest is filed, the department shall inform the manufacturer that a timely protest has been filed and the manufacturer shall have twenty (20) days to respond to the protest. The manufacturer shall not terminate, establish a new or relocate a dealership, or discontinue the existing franchise until the department has held a hearing, nor subsequently, if the department has determined that there is not good cause for permitting the termination, addition, relocation or succession, or that the manufacturer is not acting in good faith.

(2) The department shall select a hearing examiner to conduct a hearing and render proposed findings of fact. In determining whether good cause for termination exists the proposed findings of fact shall be conclusive unless clearly erroneous and unsupported by the record. In determining whether good cause for the refusal to honor the succession exists, the manufacturer has the burden of proving that the successor is a person who is not of good moral character or does not meet the manufacturer's existing and reasonable standards and, considering the volume of sales and service

of the dealership, uniformly applied minimum business experience standards in the consumer consumption channel. In determining whether good cause had been established for not entering into or relocating an additional franchise for the same line make, the department shall take into consideration the existing circumstances including:

(a) Permanency of the investment of both the existing and proposed franchises;

(b) Growth or decline in population and new car registrations in the consumer consumption area;

(c) Effect on the consuming public in the relevant market area;

(d) Whether it is injurious or beneficial to the public welfare for an additional franchise to be established;

(e) Whether the franchises for the same line make in that relevant consumption area are providing adequate competition and convenient customer care for the vehicles of the line make in the market area, which shall include the adequacy of vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel;

(f) Whether the establishment of an additional franchise would increase competition and be in the public interest.

(3) The department shall render its final determination within one hundred twenty (120) days after the manufacturer responds to the protest. Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does exist for termination, addition, relocation, or nonhonor of the succession, unless the delay is caused by acts of the manufacturer.

(4) All costs of the department, including the cost of the hearing examiner and the cost of preparing the record, shall be borne equally by the parties. The department may in its discretion award costs to the prevailing party in any hearing held pursuant to this chapter.

[49-1617, added 1988, ch. 265, sec. 390, p. 779.]

49-1618. DENIAL OR REVOCATION OF LICENSE REQUIRES HEARING. (1) Before the department shall refuse to issue to any applicant a license provided for in this chapter, and before revoking or suspending any license, it shall give the applicant or licensee written notice of the action which the department contemplates taking with respect to the application or license, which shall provide that on or before a day certain, not less than twenty (20) days from the date on which written notice shall be served, the applicant or licensee shall show cause, if any, in writing duly verified and filed with the department, why the contemplated action should not be taken. Upon receipt of the written showing, the department shall fix a day certain, not less than fifteen (15) days nor more than thirty (30) days from the date on which it received the showing, when it will hear evidence and argument in support of it. Written notice of the date and place of hearing shall be given to the applicant or licensee, not less than ten (10) days prior to the date fixed for hearing. All hearings shall be held in Ada County, Idaho. A record or tape or other recording device of all proceedings had at the hearing shall be made and preserved, pending final disposition of the matter.

(2) Notice to the applicant or licensee that the department contemplates refusing to issue the license applied for or contemplates revoking or suspending a license duly issued by it, shall have attached to it a complete statement of the facts upon which the department bases its contemplated action. In any proceeding under this section, the department shall have the

burden of proving that the applicant is not qualified, or that the licensee has violated a provision of this chapter or a rule or regulation of the department.

(3) The notices provided to be given to an applicant or a licensee shall be served by the department or its employees delivering the notice to the applicant or licensee personally, or by the department mailing the notice by certified mail to:

(a) The applicant for a license at the residence address given in his application for license;

(b) A licensed dealer or at the last known address of the principal place of business of the dealer; and

(c) A licensed salesman at his last known residence address.

(4) The date on which the notice shall be considered to have been served for purposes of computing time shall be the date on which the notice is delivered to the applicant or licensee personally, or the date on which the notice is mailed.

(5) The director or his designee shall preside at all hearings and the department shall request the attendance of the advisory board at hearings. At the conclusion of the hearing, the hearing officer shall make written findings of fact and recommendations to the director. The findings of fact shall be conclusive unless clearly erroneous and unsupported by the record. The director shall issue a written order which shall be the final administrative action of the department.

(6) If a dealer's license is suspended as a result of an order of the director, the department shall conspicuously post two (2) notices of such suspension at each licensed location. The notices shall remain posted for the duration of the suspension and removal of the notice prior to that time shall be deemed a violation of the provisions of this chapter.

[49-1618, added 1988, ch. 265, sec. 391, p. 780; am. 1991, ch. 272, sec. 15, p. 708.]

49-1619. PRODUCTION OF WITNESSES AND DOCUMENTS. In the preparation and conduct of hearings, the department has the power to require the attendance and testimony of any witness, the production of any papers or books, may sign and issue subpoenas, administer oaths and examine witnesses, and take any evidence it considers pertinent to the determination of the matter, and any witnesses so subpoenaed shall be entitled to the same fees and mileage as prescribed by law in judicial proceedings in the district court of this state in civil action, but the payment of fees and mileage must be out of, and kept within the limits of, the funds created from license fees authorized in this chapter. The party against whom the matter may be pending shall have the right to obtain a subpoena from the department for any witnesses he may desire at the hearing, and depositions may be taken as in civil court cases in the district court. Any information obtained from the books and records of the person complained against may not be used against him as the basis for a criminal prosecution under the laws of this state.

[49-1619, added 1988, ch. 265, sec. 392, p. 782.]

49-1620. REPORT OF FINDINGS. The director shall state in writing his decision after the hearing. If the director determines that an applicant is not qualified to receive a license, no license shall be granted, and if the director determines that a license holder has violated any of the provisions

of this chapter or of a rule or regulation promulgated by the department, the director may suspend the license on terms and conditions and for a period of time as to the director appears fair, reasonable and just, or the director may revoke the license.

[49-1620, added 1988, ch. 265, sec. 393, p. 782.]

49-1621. JUDICIAL REVIEW. Any party to a hearing before the department, or any party to a hearing has the right to judicial review in the district court. Appeals shall be as provided in chapter 52, title 67, Idaho Code.

[49-1621, added 1988, ch. 265, sec. 394, p. 782; am. 1993, ch. 216, sec. 49, p. 635.]

49-1622. PRODUCT LIABILITY RESPONSIBILITY. A manufacturer must file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only, as between the manufacturer and the dealer. The provisions of this section shall not affect the obligation of dealers to perform warranty repair and maintenance as may be required by law or contract.

[49-1622, added 1988, ch. 265, sec. 395, p. 783.]

49-1623. PRODUCT LIABILITY INDEMNIFICATION. Notwithstanding the terms of any franchise agreement, it shall be unlawful for any manufacturer to fail to indemnify and hold harmless its franchised dealers against any judgment or settlement for damages, including court costs and reasonable attorney fees of the dealer, arising out of complaints, claims or lawsuits including strict liability, negligence, misrepresentation, warranty (express or implied), or rescission of the sale, to the extent that the judgment or settlement relates to the alleged defective or negligent manufacture, assembly or design of new vehicles, parts or accessories or other functions by the manufacturer, beyond the control of the dealer.

[49-1623, added 1988, ch. 265, sec. 396, p. 783.]

49-1624. DISCLOSURE OF DAMAGE REQUIRED. On any new vehicle, any uncorrected damage or any corrected damage exceeding six percent (6%) of the manufacturer's suggested retail price, as measured by retail repair costs, must be disclosed in writing prior to delivery. Damage to glass, tire and bumpers is excluded from the six percent (6%) requirement when replaced by identical manufacturer's original equipment.

[49-1624, added 1988, ch. 265, sec. 397, p. 783.]

49-1625. REPAIRED DAMAGE NOT GROUNDS FOR REJECTION. Repaired damage to a customer-ordered new vehicle, not exceeding the six percent (6%) requirement, shall not constitute grounds for rejection of the customer order. The customer's right of rejection ceases upon his acceptance of delivery of the

vehicle, provided disclosure as required in section 49-1624, Idaho Code, is made prior to delivery.

[49-1625, added 1988, ch. 265, sec. 398, p. 783.]

49-1626. PAYMENT FOR DELIVERY PREPARATION AND WARRANTY SERVICE. (1) Each manufacturer or distributor shall specify in writing to each of its dealers licensed in this state, the dealer's obligations for predelivery preparation and warranty service on its products, compensate the dealer for service required of the dealer by the manufacturer or distributor, provide the dealer a schedule of compensation to be paid the dealer for parts, work and service in connection with its products, and the time allowance for the performance of that work and service.

(2) In no event shall a schedule of compensation fail to include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed.

(3) It is unlawful for a new vehicle manufacturer or distributor to fail to perform any warranty obligations or to fail to include in written notices of factory recalls to new vehicle owners and dealers, the expected date by which necessary parts and equipment will be available to dealers for the correction of those defects, or to fail to compensate any of the dealers in this state for repairs affected by recall.

(4) A vehicle dealer may submit a warranty claim to a manufacturer or distributor if a warranty defect is identified and documented prior to the expiration of a manufacturer's or distributor's warranty:

(a) While a franchise agreement is in effect; or

(b) After the termination of a franchise agreement if the claim is for work performed while the franchise agreement was in effect.

(5) All claims made by dealers pursuant to this section for labor and parts shall be paid within thirty (30) days following their approval. All claims shall be either approved or disapproved within thirty (30) days after their receipt, on forms and in the manner specified by the manufacturer or distributor, and any claim not specifically disapproved in writing within thirty (30) days after receipt shall be construed to be approved and payment must follow within thirty (30) days.

(6) A dealer whose claim has been denied due to failure to comply with a specific claim processing requirement, such as a clerical error or other administrative technicality that does not put into question the legitimacy of the claim, may resubmit the corrected claim as provided for in subsection (7) of this section.

(7) A dealer shall have thirty (30) days from the date of notification by a manufacturer or distributor of a denial of a claim or a charge-back to the dealer to resubmit a claim for payment or compensation if the claim was denied for any of the reasons described in subsection (6) of this section, whether the charge-back was a direct or an indirect transaction, unless a longer period of time is provided for by the manufacturer or distributor.

(8) Notwithstanding the terms of a franchise agreement or other contract with a dealer and except as provided in subsection (9) of this section, after the expiration of one (1) year after the date of payment of the warranty claim, a manufacturer or distributor shall not audit the records of a motor vehicle dealer to determine compliance with the terms of a warranty claim. Provided however, that the manufacturer or distributor may audit the dealer

for fraudulent claims during any period for which an action for fraud may be commenced.

(9) A manufacturer or distributor may make charge backs to a motor vehicle dealer if, after completion of an audit of the dealer's records, the manufacturer or distributor can show, by a preponderance of the evidence, that:

(a) With respect to a warranty claim, the repair work was improperly performed in a substandard manner or was unnecessary; or

(b) The claim is unsubstantiated in accordance with the manufacturer [manufacturer's] or distributor's requirements.

(10) Nothing in subsection (8) or (9) of this section shall prevent a manufacturer or distributor from instituting a legal action for fraud as provided for in section 5-218, Idaho Code.

(11) The schedule of compensation for warranty parts and labor shall not be less than the rates charged by the dealer for similar service to retail customers for nonwarranty parts and labor; provided that such dealer's retail rate is not unreasonable when compared with other motor vehicle franchises from the same or competitive lines for similar merchandise or services in the geographic area in which the dealer is engaged in business.

(a) For purposes of determining the schedule of compensation paid to a dealer by the manufacturer or distributor, the following shall not be considered in determining amounts charged by the dealer to retail customers:

(i) Menu-priced parts or services;

(ii) Repairs for manufacturer or distributor special events;

(iii) Repairs covered by any insurance or service contract;

(iv) Vehicle emission or safety inspections required by federal, state or local governments;

(v) Parts sold at wholesale or repairs performed at wholesale, which shall include any sale or service to a fleet of vehicles;

(vi) Engine assemblies and transmission assemblies;

(vii) Routine maintenance not covered under any retail customer warranty including, but not necessarily limited to, maintenance involving fluids, filters and belts not provided in the course of repairs;

(viii) Nuts, bolts, fasteners and similar items that do not have an individual part number;

(ix) Tires; or

(x) Vehicle reconditioning.

(b) The dealer shall establish their schedule of compensation under the provisions of this section by submitting to the manufacturer or distributor one hundred (100) sequential customer paid service repair orders or ninety (90) days of customer paid service repair orders, whichever is less, covering repairs made no more than one hundred eighty (180) days before the submission of such customer paid service repair orders and declaring the schedule of compensation. The new schedule of compensation shall take effect within ninety (90) days after the initial submission to the manufacturer or distributor and shall be presumed to be fair and reasonable. However, within thirty (30) days following receipt of the declared schedule of compensation from the dealer, the manufacturer or distributor may make reasonable requests for additional information supporting the declared schedule of compensation. The ninety (90) day time frame in which the manufacturer or distributor shall make the schedule of compensation effective shall

commence following receipt from the dealer of any reasonably requested supporting information. No manufacturer or distributor shall require a motor vehicle dealer to establish a schedule of compensation by any other methodology or require supportive information that is unduly burdensome or time consuming to provide including, but not limited to, part by part or transaction by transaction calculations. The dealer shall not request a change in the schedule of compensation more than once every twelve (12) months.

(12) It is unlawful for a manufacturer or distributor or subsidiary to own, operate or control, either directly or indirectly, a motor vehicle warranty or service facility located in this state except on an emergency or interim basis or if no qualified applicant has applied for appointment as a dealer in a market previously served by a motor vehicle dealer of that manufacturer or distributor's line make except as provided for in section 49-1613(3)(g), Idaho Code.

(13) A manufacturer [or distributor] may not otherwise recover all or any portion of its costs for compensating its dealers licensed in this state for warranty parts and labor either by reduction in the amount due to the dealer or by separate charge, surcharge or other imposition; provided however, a manufacturer or distributor shall not be prohibited from increasing prices for vehicles or parts in the normal course of business.

(14) All procedures and protections afforded to a motor vehicle dealer under the provisions of this section shall be available to a recreational vehicle dealer. However, the schedule of compensation afforded under subsection (11) of this section shall not apply to compensation for parts, systems, fixtures, appliances, furnishings, accessories and features of a recreational vehicle that are designed, used and maintained primarily for nonvehicular residential purposes.

[49-1626, added 1988, ch. 265, sec. 399, p. 784; am. 1997, ch. 312, sec. 2, p. 925; am. 2011, ch. 327, sec. 4, p. 959.]

49-1627. USE OF DEALER AND MANUFACTURER LICENSE PLATE. (1) Any dealer or manufacturer license plate issued may, during the calendar year for which issued, be transferred from one (1) vehicle to another owned or operated by such manufacturer or dealer, in pursuance of his business as a manufacturer or dealer.

(2) Dealer plates shall not be used on vehicles under the following circumstances:

(a) On work or service vehicles not held in stock for sale;

(b) On leased or rented vehicles owned by the licensed manufacturer or dealer;

(c) On a laden vehicle designed for transportation of cargo, unless the manufacturer or dealer has complied with section 49-434, Idaho Code, except as provided in subsection (3) of this section;

(d) On vehicles which have been sold;

(e) On vehicles used by the licensee for furtherance of another business;

(f) On vehicles owned by a licensed wholesaler used for personal use;

(g) On vehicles owned by a licensed wholesaler, operated by their licensed salesmen, used for personal use.

(3) Dealer and manufacturer plates may be used on laden vehicles operated by the manufacturer, dealer or his licensed vehicle salesman, in connection with the manufacturer's or dealer's business. A dealer plate may be

used on a laden trailer in connection with a manufacturer's or dealer's business to move vehicles or trailers from a manufacturer to a dealer, from dealership to dealership or from a dealership to off-site locations in promotion of the dealer's business as long as the power unit is properly licensed under chapter 4, title 49, Idaho Code. A dealer plate may be used on a vehicle assigned for personal use on a full-time basis to the dealer, or licensed full-time vehicle salesman. This personal use exception applies only to the manufacturer, dealer, or licensed full-time vehicle salesman personally, and any other persons, including members of their families, are excluded. A prospective purchaser of a vehicle may have possession of the vehicle with a dealer plate for not more than ninety-six (96) hours or may operate the vehicle when accompanied by the manufacturer, dealer or a licensed vehicle salesman.

(4) Licensed part-time vehicle salesmen may use a dealer plate on a vehicle that is offered for sale only to demonstrate the vehicle to a purchaser, but not for personal use. Other employees or authorized persons, not licensed as a vehicle salesman, may use a dealer plate when testing the mechanical operation of a vehicle or for the necessary operation in pursuance of the dealer's business, including the delivery and pickup of vehicles owned or purchased by that manufacturer or dealer.

(5) Laden dealer and manufacturer plates may be displayed on any power unit in the dealer's or manufacturer's inventory to operate vehicles laden with vehicles that are in the dealer's or manufacturer's inventory in pursuance of the dealer's or manufacturer's business. Such use shall be limited to moving vehicles from a manufacturer to a dealer, from dealership to dealership, or from a dealership to off-site locations in furtherance of the dealer's business. Such uses may include travel to licensed temporary supplemental lot locations, to and from auctions or to a new licensed location.

(a) Laden dealer and manufacturer plates shall not be used for personal use by the dealer or manufacturer or a licensed full—time or part—time salesman of the dealership.

(b) Laden dealer and manufacturer plates shall be valid up to a maximum of twenty-six thousand (26,000) pounds combined gross vehicle weight.

(c) Fees will be as provided in section 49-434(1), Idaho Code, for commercial vehicles at a weight limit of twenty-six thousand (26,000) pounds combined gross vehicle weight.

(d) The dealer or manufacturer may increase the weight limit through the purchase of a temporary weight increase permit, as provided for in section 49-432(2), Idaho Code.

(6) Vehicle manufacturers and dealers shall keep a written record of the vehicles upon which dealer's number plates are used for personal use on a full-time basis, and the time during which each plate is used. The record shall be open to inspection by any peace officer or any officer or employee of the department.

(7) No manufacturer or dealer shall cause or permit any vehicle owned by them to be operated or moved upon a public highway without displaying upon the vehicle a license plate issued to that person, either under the provisions of this section or section 49-428, Idaho Code, except as otherwise authorized in section 49-431, Idaho Code.

[49-1627, added 1988, ch. 265, sec. 400, p. 784; am. 2006, ch. 223, sec. 1, p. 664; am. 2011, ch. 72, sec. 3, p. 154.]

49-1628. USE OF VEHICLE DEALER LOANER PLATE. (1) A dealer shall maintain a log showing the vehicle identification number, date, reason for use, and the name of the person authorized to use the plate.

(2) The user of a loaner plate shall carry identification showing dealer name, number on plate, signature of dealer and year for which the plate is valid.

(3) Loaner plates may be used on vehicles held in stock for sale which are loaned to a customer of a dealership while the customer vehicle is being repaired, and, on vehicles held in stock for sale and operated by the dealer or his family for personal use or for furtherance of dealership business.

(4) Loaner plates may not be used on:

(a) Work or service vehicles not held in stock for sale;

(b) Leased or rented vehicles owned by the licensed dealer;

(c) A laden vehicle designed for transportation of cargo, unless the dealer has complied with the provisions of section 49-434, Idaho Code;

(d) Vehicles which have been sold;

(e) Vehicles used by licensee for furtherance of another business;

(f) Vehicles used for personal use by licensed salesman or other nonlicensed employees of the dealership;

(g) Vehicles of which the dealer does not have legal ownership;

(h) Vehicles being operated by an actual purchaser.

[49-1628, added 1988, ch. 265, sec. 401, p. 786.]

49-1629. ODOMETERS. (1) Nothing in this chapter shall prevent the service, repair or replacement of an odometer, provided the mileage as defined in section 49-114, Idaho Code, indicated remains the same as before the service, repair or replacement. Where the odometer is incapable of registering the same mileage as before service, repair or replacement, the odometer shall be adjusted to read zero and a notice shall be attached permanently to the left door frame of the vehicle by the owner or his agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced. Provided however, the notice shall not be required if the odometer reading is converted from registering in kilometers to miles, and the mileage on the vehicle after the conversion of the odometer is equivalent to its mileage before the conversion. No person shall:

(a) Fail to adjust an odometer or affix a notice regarding adjustment, as required under this section.

(b) With intent to defraud, remove or alter any notice affixed to a vehicle pursuant to the provisions of this section.

(2) It shall be unlawful for any person to:

(a) Disconnect, turn back, or reset the odometer of any vehicle with the intent to reduce the number of miles indicated on the odometer gauge.

(b) Sell a vehicle in this state if that person has knowledge that the odometer on the vehicle has been turned back or replaced, and if the person fails to notify the buyer prior to the time of the sale, that the odometer has been turned back or replaced, or that he has reason to believe that the odometer has been turned back or replaced.

(c) Advertise for sale, to sell, to use, or to install on any part of a vehicle or on an odometer in a vehicle, any device which causes the odometer to register any mileage other than the true mileage driven.

[49-1629, added 1988, ch. 265, sec. 402, p. 787; am. 2005, ch. 145, sec. 2, p. 458.]

49-1630. PURCHASER PLAINTIFF TO RECOVER COSTS AND ATTORNEY'S FEES. In any suit brought by the purchaser of a vehicle against the seller of that vehicle, the purchaser shall be entitled to recover his court costs and a reasonable attorney's fee fixed by the court, if:

(1) The suit or claim is based substantially upon the purchaser's allegation that the odometer on the vehicle has been tampered with or replaced contrary to this chapter; and

(2) It is found in the suit that the seller of the vehicle or any of his employees or agents knew or had reason to know that the odometer on the vehicle had been tampered with or replaced, and failed to disclose that knowledge to the purchaser prior to the time of sale.

[49-1630, added 1988, ch. 265, sec. 403, p. 787.]

49-1632. APPLICABILITY OF CHAPTER. (1) Any person who engages directly or indirectly in purposeful contacts within this state in connection with the offering or advertising for sale, or has business dealings with respect to a new vehicle sale within this state, shall be subject to the provisions of this chapter and shall be subject to the jurisdiction of the courts of this state.

(2) The applicability of this chapter shall not be affected by a choice of law clause in any franchise, agreement, waiver, novation, or any other written instrument.

(3) Any provision of any agreement, franchise, waiver, novation or any other written instrument which is in violation of any section of this chapter shall be considered null and void and without force and effect.

(4) It shall be unlawful for a manufacturer to use any subsidiary corporation, affiliated corporation, or any other controlled corporation, partnership, association or person to accomplish what would otherwise be unlawful conduct under this chapter on the part of the manufacturer.

(5) Nothing in this chapter shall be construed to impair the obligations of a contract entered into prior to January 1, 1989, or to prevent a manufacturer, distributor, representative or any other person, whether or not licensed under this chapter, from requiring performance of a prior written contract entered into with any dealer, nor shall the requirement of performance constitute a violation of any of the provisions of this chapter. Any contract, or the terms of it, requiring performance, shall have been freely entered into and executed between the contracting parties. This chapter shall apply to any amendments, novations, records or modifications of prior contracts and to any contracts entered into subsequent to March 31, 1989.

[49-1632, added 1988, ch. 265, sec. 405, p. 788.]

49-1633. LIMITATIONS. (1) Actions arising out of any provision of this chapter shall be commenced within a four (4) year period of the accrual of the cause of action. If a person liable under this chapter conceals the cause of action from the knowledge of the person entitled to bring it, the period prior to the discovery of his cause of action by the person entitled shall be excluded in determining the time limited for the commencement of the action.

(2) If a cause of action accrues during the pendency of any civil, criminal or administrative proceeding against a person brought by the United States, or any of its agencies under the antitrust laws, the federal trade commission act, or any other federal act, or the laws or to franchising, such

actions may be commenced within one (1) year after the final disposition of the civil, criminal or administrative proceeding.

[49-1633, added 1988, ch. 265, sec. 406, p. 789.]

49-1634. DEALER SALES -- MINIMUM SALES REQUIRED FOR LICENSE RENEWAL. (1) A vehicle dealer shall certify upon application for renewal of his dealer's license that during the preceding licensing year he sold at least five (5) vehicles, either at retail or wholesale.

(2) Failure to sell or to verify the sale of a minimum of five (5) vehicles shall be grounds for the department to deny renewal of the dealer's license.

(3) Any vehicle dealer who has had his license denied or has failed to meet the requirement to sell a minimum of five (5) vehicles during the preceding licensing year is entitled to a hearing as provided in section 49-1618, Idaho Code.

[49-1634, added 1991, ch. 272, sec. 17, p. 709; am. 1993, ch. 297, sec. 3, p. 1097.]

49-1636. CONSIGNMENT SALES. (1) An owner who consigns a vehicle to a vehicle dealer to be offered for sale or exchange on behalf of the owner to a third party purchaser, shall provide the dealer with either the certificate of title to the vehicle along with a power of attorney designating the dealer as an agent of the owner, or a duly executed consignment agreement between the dealer and the owner, along with a copy of the certificate of title of the vehicle being consigned.

(2) A consignment agreement shall contain at the least, the following:

(a) The name and current address of the owner of the vehicle as shown on the certificate of title;

(b) The name and current address of any person holding a lien on the vehicle;

(c) The name of the consignee;

(d) A description of the vehicle including the vehicle's make, model, vehicle identification number and odometer reading; and

(e) A statement that the owner has appointed the vehicle dealer as his agent for the purpose of offering the vehicle for sale.

[49-1636, added 1991, ch. 272, sec. 19, p. 709.]

49-1637. EDUCATION REQUIREMENTS FOR VEHICLE DEALERS. (1) Except as provided in subsection (2) of this section, the following continuing education requirements shall apply to a vehicle dealer for an initial dealer's license and for the annual renewal, as provided in sections 49-1607(3) and 49-1634, Idaho Code, of a dealer's license:

(a) An applicant for an annual renewal of a dealer's license must complete a four (4) hour education program as described in subsection (3) of this section prior to submitting a renewal application for a vehicle or vessel dealer license.

(b) An applicant requesting an initial vehicle or vessel dealer's license shall be required to provide certification that he has completed a department approved prelicensing class or program, including an examination on the materials that were presented prior to submitting a license application.

(2) The education requirements of subsection (1) of this section do not apply to an applicant for a full-time or part-time vehicle salesman's license, manufacturer's license or distributor's license. The following applicants are also exempt from the provisions of subsection (1) of this section:

(a) A vehicle dealer of nationally advertised and recognized new motor vehicles or vessels; and

(b) A franchise dealer of new recreational vehicles, new motorcycles, new all-terrain vehicles, new snowmobiles or new vessels.

(3) The continuing education programs and prelicensing class requirements required in subsection (1) of this section shall be developed with input from motor vehicle industry organizations including, but not limited to, the Idaho independent automobile dealers association, and shall be approved by the department:

(a) Prelicensing classes shall consist of eight (8) hours of instruction or as otherwise approved by the department, which shall include the written examination.

(b) Fees applicable to the prelicensing class shall not exceed three hundred fifty dollars ($350).

(c) Fees applicable to the dealer education program shall not exceed two hundred dollars ($200).

(d) Any provider as approved by the department shall make the dealer education programs and prelicensing classes available on a monthly basis, at a minimum.

(4) The continuing education programs and the prelicensing class/programs required in subsection (1) of this section may be provided by accredited educational institutions, private vocational schools, correspondence schools or trade associations, provided that the continuing education program and prelicensing class/programs have been approved by the department as required in subsection (3) of this section.

(5) The department may promulgate rules as necessary to implement the provisions of this section.

[49-1637, added 2003, ch. 98, sec. 2, p. 317; am. 2010, ch. 329, sec. 2, p. 874; am. 2013, ch. 93, sec. 1, p. 229.]

49-1638. MANUFACTURER INCENTIVE PROGRAMS FOR MOTOR VEHICLE DEALERS. (1) A manufacturer or distributor shall pay a motor vehicle dealer's claim for payment or other compensation due under a manufacturer incentive program within thirty (30) business days after receiving the claim, unless the claim is disapproved by written notice, with reasons stated, within thirty (30) business days of receipt of the dealer's claim. A claim that is not disapproved or disallowed in writing within thirty (30) business days after the manufacturer or distributor receives the claim is deemed automatically approved.

(2) A manufacturer shall not deny a claim based solely on a motor vehicle dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error or other administrative technicality that does not put into question the legitimacy of the claim.

(3) A dealer shall have sixty (60) days from the date of notification by a manufacturer or distributor of a denial or a charge-back to the dealer to resubmit a claim for payment or compensation if the claim was denied for a dealer's incidental failure as set forth in subsection (2) of this section, whether the charge-back was a direct or an indirect transaction.

(4) A motor vehicle dealer has ninety (90) days after the expiration of a manufacturer or distributor incentive program, or such longer time as provided by the franchise agreement, whichever is greater, to submit a claim for payment or compensation under the program.

(5) Notwithstanding the terms of a franchise agreement or other contract with a dealer and except as provided in subsection (6) of this section, after the expiration of one (1) year after the date of payment of the vehicle claim, a manufacturer or distributor shall not:

(a) Charge back to a motor vehicle dealer, whether directly or indirectly, the amount of a claim that has been approved and paid by the manufacturer or distributor under an incentive program;

(b) Charge back to a motor vehicle dealer, whether directly or indirectly, the cash value of a prize or other thing of value awarded to the dealer under an incentive program; or

(c) Audit the records of a motor vehicle dealer to determine compliance with the terms of an incentive program.

(6) A manufacturer or distributor may make charge-backs to a motor vehicle dealer if, after completion of an audit of the dealer's records, the manufacturer or distributor can show, by a preponderance of the evidence, that:

(a) With respect to a claim under a service incentive program, the repair work was improperly performed in a substandard manner or was unnecessary; or

(b) The claim is unsubstantiated in accordance with the manufacturer's or distributor's reasonable requirements.

(7) Notwithstanding subsections (5) and (6) of this section, a manufacturer or distributor may make charge-backs to a motor vehicle dealer for fraud at any time permitted by section 5-218, Idaho Code.

[49-1638, added 2007, ch. 251, sec. 1, p. 736.]