

# Oklahoma Independent Automobile Dealers Association

# DEALERS' RESOURCE

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- Car Dealers to repair safety recalls...
- Auction List..
- Revisiting the 3 Day Cancellation ...
- Top 30 Legal Trends..
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# Newly License Dealers

## 1st Quarter , 2024

31 JUNCTION AUTO SALES	JERRY STANDIFER	SPIRO, OK	H&H RADIATOR PLUS USC	GIL ALVAREZ	TULSA, OK
ASAL MOTORS, LLC	HASANAIN ALGHEZ	BROKEN AR	JABA AUTO SALES	JAMIE GARZA BADILLO	OKC, OK
ATLANTIC MOTORS	MANUEL MORFIN	OKC, OK	J&P AUTO SALES	JUSTIN GOBER	OKC, OK
BILL KNIGHT MTSUBISHI	BILL KNIGHT	TULSA, OK	NOWCO MOTORSPORTS	MARK NOWELL	ARDMORE, OK
BRUCKNER TRUCK SALES	BRIAN BRUCKNER	BIG CABIN, OK	DEAN AUTO CENTER	FELTON DEAN	LAWTON, OK
CAR2 MOTORS AUTO, LLC	LUCY PENA	BROKEN ARR	CHARGERS AUTO SALES	HADI ATTAWIL	TULSA, OK
DRIVE MAX OF OKC	SEYEDALI ALVI	OKC, OK	LONEWOLF AUTO & WR	MATTHEW D WILSON	NEWCASTLE ,
EDWARDS FAMILY AUTO	LOREN EDWARDS IV	TULSA, OK	TLC AUTO GALLERY	TL CARTER	TULSA, OK
HEARTLAND CAR CO, LLC	WILLIAM HAYS	OKMULGEE	T&O WHOLESALE CARS &	DENNETH DAUGHTY	THACKERVILL
HOFFMAN AUTO SALES	CODY, ROY HOFFMAN	TECUMSEH,	AMPHIBIOUS POWERSPORTS	PAULA WOLF	NORMAN, OK
JEB AUTO SALES	JASON BRIDGEMAN	SALINA, OK	AUTO WORLD OF MUSK	RONNIE BOSWELL	MUSKOGEE, O
MINGO AUTO AUCTION	ARNIE MURILLO	TULSA, OK	CAR SOLUTIONS	BARBARA WALLACE	OKC, OK
MORA AUTO SALES	MARIANA MORA	TULSA, OK	DEILY MOTOR SPORTS	ROBERT DEILY	CHICKASHA, O
MTS TRUCK SALES	BRENNAN SLOAN	MANNFORD, O	DRIVEN AUTO PLEX	DAKOTA FERREL	TULSA, OK
N.E.O. TRUCKS	JOHN ALLEMAN	MIAMI, OK	MCKINNEY AUCTIONS	MANDY MCKINNEY	WAGONER, OK
OPULENT MOTORCARS	BRAIDEN BOND	EDMOND, OK	MATT'S ATV & OFROAD	MATTHEW STRAWN	TULSA, OK
PEPE'S AUTO SALES	JOCELYN LOZORIA	TULSA,OK	PARAMOUNT ELITE MOT	RAMEE AAMER	TULSA, OK
PREOWNED NATION AS	DANIEL HILLCOCK	TULSA, OK	SILVER AUTO SALES	YASSINE ZOUAOUI	OKC, OK
ROCKET MOTORS	NICHOLAS LENARD	BROKEN AR	THE COLLECTOR'S CAR S	SHANE JANSSEN	TULSA, OK
TIO CHUY'S AS #3	RICHARD BARNARD	YUKON, OK	BEST WAY AUTO, INC	TAREK SAMARA	OKC,OK
TRADESMAN AUTOS	AMANDA & ERIK LEE	GUTHRIE, OK	CARRERA LIMITED AU	ALAN TRACHTENBERG	OKC, OK
CAPITAL AUTO REMARK	MHD ALCHAMMAT	TULSA, OK	HASHIMI AUTO SALES	AHMED AL HASHIMI	BETHANY,OK
COOL CAR SALES	ABDUL QADERI	TULSA, OK	DIRECT AUTO REMARK	MARCO ARREOLA	OWASSO,OK
HILL COUNTRY AUTOM	CHAD MORRIS	TULSA, OK	ONWARD FLEET SOL	TIM DENNY	EDMOND,OK
SELECTIVE AUTO WHOLE	GERRY ROMERO	TULSA, OK	MODS AUTO LLC	NIMA MODARESI	EDMOND,OK
BAYAT MOTRS WHOLE	AMIR BAYAT	MOORE, OK	SCHICK AUTO GROUP	JOE VERNON SCHICK	OKC,OK
BOYD'S AUTO SALES	ANTIONIA BOYD	TULSA, OK	TS AUTO SALES	ABDLIL AOUIZIZ	EDMOND, OK
CHARRO MOTORS	YAHIR LIMON	OKC, OK			
E&P AUTO SALES	EMMANUEL AYEBODE	OKC, OK			
ELGIN AUTO SALES	FRED BREWER	ELGIN, OK			



## **Car Dealers to repair safety recalls on new and used vehicles before selling them.**

US Senators Richard Blumenthal (D-CT), Edward J. Markey (D-MA), and Elizabeth Warren (D-MA) introduced legislation on March 22, 2024 . The bill “The Used Car Safety Recall Repair Act”, requires car dealers to repair any outstanding safety recalls in used cars prior to selling them.

Federal law currently does not prohibit car dealers from selling cars with open recalls. In Blumenthal’s press release , he says “manufacturers will be required to provide dealers with parts to make the necessary repairs within 60 day or reimburse the dealers”.

The full text of the bill can be found here:

<https://www.blumenthal.senate.gov/imo/media/doc/3222024usedcarsafetyrecallrepairactbilltext.pdf>

*According to National Highway Traffic Safety Administration report issued earlier this month, it issued 1,000 recalls for vehicles, tires, RV’s, car seats and other equipment in 2023. Nearly 35 million vehicles were recalled in 2023.*

# AUCTION

70W AUTO AUCTION	9219 HIGHWAY 70 W	DURANT, OK	580.916.3050
ALTUS AUTO AUCTION	20864 US HWY 62E	ALTUS, OK	580.477.1255
ARDMORE CAR AUCTION	438 LOGDE RD	ARDMORE,OK	580.226.7710
BRINKLEY AUCTIONS	401 N LINCOLN RD	IDABEL, OK	580.286.6539
CHUPPS AUTOCITON CO	9530 S 426 RD	CHOUTEAU,OK	918.543.6601
CREEK EAST AUTO	5955 E 580 RD	CATOOSA, OK	918.266.4488
DAKIL AUTO AUCTION	200 NW 114TH	OKC,OK	405.751.6179
ENLOW 66 AUCTION	8711 STATE HWY 66	TULSA	918.224.7676
HOBART AUTO AUCTION	630 S BROADWAY	HOBART, OK	580.726.6666
I-44 AUTO AUCTION	7300 S HWY 137 S.B	MIAMI, OK	918.540.2886
INSURANCE AUTO AUC.	5555 SW 44TH	OKC, OK	405-680.9211
HAYES AUCTION	1417 JOHN B HAYED RD	PONCA CITY, OK	580.762.6334
LAWTON CACHE AA	9 SW 112TH ST	LAWTON,OK	580.536.4645
MAPLE BROTHERS AA	9421 E 54TH	MCALESTER,OK	918.236.9556
MCALESTER AUTO A	1635 S.GEORGE NIGH E	MCALESTER,OK	918.426.1290
MIDTOWN AA	11910 E 11TH ST	TULSA, OK	918.27070W
AUTO AUCTION	9219 HIGHWAY 70 W	DURANT, OK	580.916.3050
ALTUS AUTO AUCTION	20864 US HWY 62E	ALTUS, OK	580.477.1255
ARDMORE CAR AUCTION	438 LOGDE RD	ARDMORE,OK	580.226.7710
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MCALESTER AUTO A	1635 S.GEORGE NIGH E	MCALESTER,OK	918.426.1290
MIDTOWN AA	11910 E 11TH ST	TULSA, OK	918.270.4449
MINGO AUTO AUCTION	9955 E 21ST	TULSA, OK	918.467.2277
RT 66 AUTO AUCTION	4399 E HWY 66	EL RENO, OK	405.262.5471
Z66 AUTO AUCTION	66 N MINGO RD	TULSA, OK	918.794.0660
DEALERS AUTO AUCTION	1028 S PORTLAND AVE	OKC, OK	405.947.2886
MANHEIM TULSA AA	9101 N FRANKOMA RD	SAPULPA, OK	918.227.3542
OKLAHOMA AUTO AUCT.	2728 SW 25TH S	OKC, OK	405.680.8660
ADESA TULSA	16015 E ADMIRAL PL	TULSA, OK	888.526.7326
AMERICA'S AA TULSA	8544 E ADMIRAL PL	TULSA, OK	918.832.1050

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DEALERS AUTCION EXCHANGE OF WICHITA FALLS		DAXOFWICHITAFALL.COM
MID KANSAS AUTO AUCTION	4716 S SANTA FE,	WICHITA, KS
71B AUTO AUCTION	4635 N THOMPSON	SPRINGDALE, AR 479.756.5001
BIG VALLEY AUTO AUCTION	4315 N HUTTO RD	DONNA, TX 956.461.9000



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# Revisiting The Three Day Cancellation of Sale Issue

By David L. Nunn, Esq.

More than once I have had a client call me at my law office to ask about a supposed law that gives an automobile purchaser an automatic right to cancel or rescind a car deal for up to three days after signing the contract. On one occasion, the person who called me was a friend of mine who simply had a case of buyer's remorse (wishing that he had simply fixed up his "trade-in" instead of buying a new vehicle.) Another time, I received an inquiry on behalf of a dealer with a customer wanting to exercise this perceived right. I also remember the "three day rule" coming up many years ago in a Bar exam preparation course I took, and there seemed to be some confusion then too. Let's get the three-day cancellation rule straightened out.

To be sure, a three-day cancellation rule does exist. However, it would be practically impossible for the rule to apply to the sale of an automobile. Under Oklahoma's version of the Uniform Consumer Credit code (UCCC, commonly called the "U Triple C") (not to be confused with the UCC- Uniform Commercial Code), a buyer in a consumer credit sale has an automatic right to cancel a contract in two situations.

The first situation is when the transaction is a "Home Solicitation Sale." Okla. Stat. Tit. 14A, § 2-501. A Home Solicitation Sale involves the sale of goods (other than farm equipment) or services when both the seller's sales pitch and the buyer's agreement or offer to purchase occur in the buyer's home. Okla. Stat. tit. 14A § 2-501. (There is an exception involving requests by a buyer for the seller to

provide goods or services in an emergency.) When a Home Solicitation occurs, the seller is required to give the buyer notice that he has until midnight of the third business day following the sale to cancel. Okla. Stat. tit. 14A § 2-502(1). For instance, if the sale takes place on Monday, the buyer has until midnight on Thursday to cancel. If the sale takes place on Thursday, the buyer has until midnight Tuesday to cancel. The three-day cancellation period does not begin to run until the seller gives the buyer notice of the right to cancel. Okla. Stat. tit. 14A, § 2-503(3). Upon demand by the seller, the buyer has to tender the goods back to the seller at his residence. Okla. Stat. tit. 14A, § 2-5-5(1). The seller has ten days to refund the buyer's money and contract, less a 5% cancellation fee (but not to exceed the down payment). Okla. Stat. tit. 14A, § 2-504(1). If the seller does not retrieve his goods within 40 days, the buyer can keep them without obligation. Okla. Stat. tit. 14A, § 2-505(1).

By its definition, a Home Solicitation Sale does not include sales on your car lot. But you may be asking "what about when the buyer has been to the dealership, picked out a vehicle, and the dealership agrees to deliver the vehicle to the buyer's house and the contract is signed there?" "Will that place the transaction within the definition of a Home Solicitation Sale, and thus trigger the "three-day cancellation rule?" NO. Excluded from the definition is a sale made in the buyer's home which is the result of prior negotiations between the parties at a business establishment where goods and services are offered for sale.

It is common for a dealer, following negotiations at the dealership, to deliver a vehicle to the buyer's house and have the papers signed there. That practice does not make the sale subject to the "three-day rule." So that I am thorough, also excluded from the Home Solicitation Sale is the situation where the buyer agrees to purchase goods or services pursuant to a preexisting revolving charge account, e.g., placing a catalog order by telephone and paying by credit card.

The other time that a consumer has an automatic three-day right to cancel is when a loan is made to him and secured by a security interest (i.e., a consensual lien) or mortgage on the buyer's home. Okla. Stat. Tit. 14A, § 2-502. Purchase money mortgages, construction loans, and refinance/ consolidation loans, are excluded. Under the UCCC, the ability to cross collateralize automobile purchase money consumer loans by a mortgage on a debtor's home is limited to situation where the creditor already has a lien on the home from a prior sale. Okla. Stat. tit. 14A, § 2-408. Unless you are in the home selling business, you should not be taking a lien on a house to secure the debtor's vehicle loan. Accordingly, a dealer abiding by other applicable consumer lending laws will not typically be in this second situation where the "three-day cancellation" could apply.

As you can see, for the "three-day cancellation rule" to apply to a car sale, the dealer would have to be involved in some very bizarre business practices such a "cold calling" on pro-

spective purchasers in their home, or taking an illegal mortgage lien on a debtor's home to secure the vehicle's price. Both of these situations would be unusual indeed. In the usual situation, the purchaser comes to the dealership, and the contract is signed at the dealership, and occasionally at the purchaser's house. Neither of these situations trigger a three-day right of cancellation.

It is good business to be fair and accommodating with customers. If a customer really wants out of a deal, you will have to make a business decision whether to undo the deal based upon the facts and circumstances surround the deal, as well as your business philosophy. There may be other legal theories that can give a purchaser a right to demand a refund, or to revoke acceptance of a vehicle. However, there is no automatic three-day right for a purchaser to get out of his automobile purchase contract simply because he changes his mind. The time my friend called me and asked if he could cancel his contract simply because the buyer's remorse, I told him he should call the dealership and ask nicely if the dealership would take the vehicle back and restore to him his trade-in. However, I also told him that a "deal was a deal" and that the dealer did not have to let him out if he did not want to.

\*\*\*\*

*This article discusses general principles of law. It is not a substitute for obtaining the advice and counsel of a qualified attorney about a specific legal problem*



*David L. Nunn heads the Edmond, Oklahoma law office of David L. Nunn, P.C. which serves the greater metro Oklahoma City area. Mr. Nunn's practice is concentrated in the areas of motor vehicle law, collection law, consumer finance law, consumer and commercial litigation, creditors' rights and bankruptcy. Mr. Nunn has been featured speaker at seminars and continuing legal education presentations dealing with issues facing the automobile industry, the Fair Debt Collection Practices Act, debt collection and debtor/creditor law. Mr. Nunn received his bachelor of arts degree from East Central State University, and his Juris Doctorate degree, graduating with honors from Oklahoma City University. David L. Nunn, P.C. is located at 212 East Second Street, Edmond, OK 73034—Phone 405-330-4053*



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## DEPARTMENT OF CONSUMER AFFAIRS

### NOTICE OF GENERAL PUBLIC INTEREST

#### CHANGES IN DOLLAR AMOUNTS

The Administrator of the Department of Consumer Affairs announces changes in dollar amounts pursuant to Sections 37-1-109 and 37-6-104(1)(e). Designated dollar amounts in the Consumer Protection Code are subject to change on July 1 of every even-numbered year based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI) for December of the preceding year. Due to the change between December 1976 CPI and December 2023 CPI, the designated dollar amounts will increase by 410% of the original amount, with the exception of Sections 37-2-203(2) and 37-3-203(2), which have a self-executing formula of 40% of the amount in Sections 37-2-203(1) and 37-3-203(1), respectively. The designated dollar amounts are found in Sections 37-2-104(1)(e), 37-2-106(1)(b), 37-2-203(1), 37-2-407(1), 37-2-705(1)(a), 37-2-705(1)(b), 37-3-104(d), 37-3-203(1), 37-3-510, 37-3-511, 37-3-514, 37-5-103(2), (3) and (4), 37-10-103, and 37-23-80. Pursuant to Section 37-1-109(4), the Administrator is required to announce these changes by publication in the State Register by April 30 of each even-numbered year. The historical dollar amounts and additional information are available on the Department's website at [consumer.sc.gov](http://consumer.sc.gov).

Section		Change Dollar Amount	
		From 7/1/2022 to 6/30/2024	To 7/1/2024 to 6/30/2026
2.104(1)(e)	Consumer Credit Sale	115,000.00	127,500.00
2.106(1)(b)	Consumer Lease	115,000.00	127,500.00
2.203(1)	Delinquency Charge – Sales	23.00	25.50
2.203(2)	Minimum Delinquency Charge	9.20	10.20
2.407(1)	Security Interest – Sales	4,600.00	5,100.00
		1,380.00	1,530.00
2.705(1)(a)	Delinquency Charge – Rental Purchase	18.40	20.40
2.705(1)(b)	Delinquency Charge – Rental Purchase	9.20	10.20
3.104(d)	Consumer Loans	115,000.00	127,500.00
3.203(1)	Delinquency Charge – Loans	23.00	25.50
3.203(2)	Minimum Delinquency	9.20	10.20
3.510	Land as Security – Supervised Loans	4,600.00	5,100.00
3.511	Maximum Loan Term	4,600.00	5,100.00
		1,380.00	1,530.00
3.514	Attorney's Fees – Supervised Loans	4,600.00	5,100.00
5.103(2), (3) & (4)	Deficiency Judgment	6,900.00	7,650.00
10.103	Prepayment Penalty	690,000.00	765,000.00
23.80	Prepayment Penalty	690,000.00	765,000.00

# John W. Maile

Attorney At Law, Former Director of the Oklahoma Used Motor Vehicle Dismantler and Manufactured Housing Commission is now engaged in the practice of law.

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# 2024's Top Thirty Legal Trends for Automobile Dealers

By Eric L. Chase®

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1. The 2024 Elections May Shape or Reshape the Auto Industry and Auto Dealer Direction for 2024/2025 and For Years Beyond (20)
2. Multi-Layered Debates Over EV Development, Sales and Legal Requirements Impact Every Franchised Dealer in America (NR)
3. Cyber Advancement, Digital Retailing, Artificial Intelligence (AI), and Risks that Need Constant Vigilance (11)
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6. State Franchise Laws are Safe, For Now (7)
7. Diversity, Equity and Inclusion: Where We are Headed (8)
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9. Workforce Issues (23)
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11. Succession, Legacy and Estate Planning (27)
12. Customer Satisfaction (19)
13. Self-Driving (Autonomous) Vehicles (26)
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15. Product Shortages and Delays (3)

Principal Eric Chase has authored his annual "2024's Top Thirty Legal Trends for Automobile Dealers" and "Implementing Best Practices in 2024 and Beyond: Legal Audit Checklist for Auto Dealers". These two publications provide useful and practical commentary for the Auto Industry.

*NOTE: 2023 Rankings are in parentheses; NR (Not Rated in 2023).*

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**DealersEdge**

## 2024's Top Thirty Legal Trends for Automobile Dealers

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(continued)

16. Allocations (3)
17. Continuing Factory Pressure on Facilities and Sales (13)
18. Rights of First Refusal (ROFRs) (24)
19. Coping with Risks of Natural Disaster, Crime, Unrest, Terrorism and Pandemic (22)
20. Franchisor Audits (30)
21. Dealership Leadership: Why It's so Important (18)
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27. Insurance Coverage (15)
28. Over-the-Air ("OTA") Repairs and Updates (10)
29. Affirmative Action and SCOTUS Trends (8)
30. Inflation (3)

*NOTE: 2023 Rankings are in parentheses; NR (Not Rated in 2023).*

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**DealersEdge**

## Introduction

America's dealers say it's an understatement that they face continuing uncertainty across a wide spectrum of legal issues in 2024. Those uncertainties span a swath of subjects that cover the products they sell, how they operate, cost of borrowing, and legal/regulatory developments. For example, will they see more regulatory action, with more rules that govern the workforces of small businesses? How will the 2023 elections and candidates approach this plethora of questions? Will federal and state governments continue to push through subsidies and regulations that encourage EV sales over ICE vehicles? Will inflation and higher interest rates continue to level off, or deter or delay demand for new cars, or will they steer buyers to less costly models? Will cyber and AI change how dealerships operate and how customers buy and lease cars? Once again, elections will drive some answers for consumers and dealers, but also generate even more questions. For that reason, the election cycle is #1 on the chart for legal trends affecting dealers.

As for the EV phenomenon, even though many argue that the consuming public is not even close to where EV advocates want American car buyers to be, some state and all federal agencies continue to push with

monetary incentives to overcome the lack of EV demand. Automakers themselves are also paying to motivate EV sales. See Sean McLain, "EV Makers Turn to Discounts to Combat Waning Demand," Wall Street Journal, Nov. 7, 2023.

2024 presents unprecedented legal and business challenges to automobile dealers, and to practically everyone else as well. Consistent polling shows that Americans are not only seriously divided on almost every major policy issue, but they are also not happy on a purely personal financial level.

Many place some blame on what they perceive as an expanding government colossus, with bureaucracies encroaching on both financial and personal matters. They have less to spend in real dollars than in the recent past. A growing percentage of Americans (perhaps more than 60%, according to multiple sources) live paycheck to paycheck. Unfortunately, that widespread dissatisfaction can and does impact dealers, and it is essential for them to know and understand key legal and financial trends that affect them, their employees, and their customers, so that they can plan to do everything in their power to succeed, and to respond to developments. Hopefully, this publication provides some assistance.

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*The ranking of the top thirty legal issues/trends is based on three factors: (1) the likely number of dealers affected; (2) the probability of change from the current situation; and (3) the seriousness of a trend/issue impact on the lives of dealers.*

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### **1. The 2024 Elections May Shape or Reshape the Auto Industry and Auto Dealer Direction for 2024/2025 and For Years Beyond.**

The 2024 election cycle at all levels is in full swing at the time of this ranking. The country is now into the primary season, to be followed by the presidential election on Tuesday, November 5, 2024. The House and a third of the Senate are also up for grabs, with thousands of state and local contests on the same day. This #1 trend for the year is a decisive selection, because federal/state/local government action (and non-action) will shape the businesses and profitability of auto dealers like never before.

*Bottom line: This annual publication does not include the details of the political wrangling which dominates national and local news media. Rather, we observe a practical and legal reality: Government funding or tax breaks for selected kinds of car purchases will influence millions of consumer decisions to purchase, or not – and what to purchase and when. The election results*

*are critically important to every American dealer, probably more so than with most other kinds of business.*

### **2. Multi-Layered Debates Over EV Development, Sales and Legal Requirements Impact Every Franchised Dealer in America.**

The EV phenomenon has been a years-long obsession with a federal emphasis to move away from internal combustion energy ("ICE") vehicles to the all-electric mode. But on a state-by-state analysis, the EV push is hardly unanimous. See, for example, Hannah Lutz, "State-by-state EV adoption rates show divide: There is a glaring division between EV-friendly and EV-lagging states," *Automotive News*, Sept. 5, 2023. Debates over all aspects of EVs now abound, including whether they are even environmentally sound choices, or cost-saving in the long run. Governments at all levels buy lots of cars. Their buying power in acquiring EVs will influence the entire EV landscape.

Other problems interfere with the best laid plans for eventual EV dominance – like service, cost, and/or recharging unavailability. See Nick Cary, Paul Lienert and Giulio Piovaccari, "EV broken? Finding a technician to fix it may take a while," *Reuters*, Sept. 6, 2023. The status of available charges is a consistent problem, and battery disposal makes for environmental debates.

*Bottom line:* Whether robust EV growth will continue apace depends on several factors that are in play. As ever, dealers are caught in the middle.

### **3. Cyber Advancement, Digital Retailing, Artificial Intelligence (AI), and Risks that Need Constant Vigilance.**

Cyber usage and developments in American business are on a breakneck growth pace, as are new laws and regulations intended to keep up. For purposes of this ranking, the topic includes artificial intelligence ("AI"), although AI is often covered as a fully separate subject. For the foreseeable future, we are in a "Cyber Age." According to Elon Musk and many others, AI will change almost every aspect of how Americans work and live. This phenomenon, though, has just begun. Musk contends that millions of Americans will be able to work less and earn more. Customers, too, will increase in doing their buying from their homes or offices.

Unfortunately, the cyber world now includes literally millions of "threat actors" who operate all over the world and can target victims virtually anywhere. Dealerships are popular criminal targets.

Cyber breaches happen all the time, and modern-day thieves attack dealership cyber vulnerabilities with gusto. Curing such vulnerabilities, and notifying affected parties, are key to avoiding the worst outcomes.

*Bottom line:* "Hacking," ransomware, phishing, business email and other cyber invasions are now commonplace risks for businesses (and governments, the military, and individuals as well). In general, they describe various kinds of criminal activities by wrongdoers who aim to steal money and secrets.

Even as they rely on cyber capabilities, digital retailing and other electronic developments to be competitive, dealers must take the necessary precautions to avoid or minimize becoming victims and to take the necessary steps when crime visits. Dealers need to be ever vigilant in this area as they protect not only their own data, but also that of employees and customers. Litigation over cyber invasion is now a booming industry.

Within another year or two, AI and digital retailing, taken alone, could remain at the top of legal trends for dealerships. This reality will multiply the potential rewards, risks, and legal wrangling in the cyber world.

### **4. Factory Direct Sales**

Factories still press for their ability to retail ICE vehicles, but the main focus by auto franchisors is now upon EV sales. They argue that they should fairly and directly compete in retail with other EV manufacturers, like Tesla, Rivian, and several others.

*Bottom line:* Once again, franchisors will not prevail in their nationwide push for direct selling rights of EVs. Dealers are mostly safe, for now, as they should be. Yet they need to stay vigilant and proactive.

#### **5. Regulations and Court Decisions that Impact Dealer Business.**

Dealers uniformly complain about the costs and stresses of unnecessary and duplicative regulations that have no appreciable value to anyone. But, as we've seen, regulations and court decisions are moving targets that tend to grow, not recede.

*Bottom line:* Dealers and their advocates must continue expressing the wisdom that cutting back on unnecessary regulations is a positive goal that saves money for both businesses and consumers. Dealers should work with their associations to stay as current as possible about any relevant new regulations and court decisions.

#### **6. State Franchise Laws are Safe, For Now.**

It is a mainstay of dealer legal protection that every state requires some form of "good cause" for an auto franchisor to terminate involuntarily a dealer agreement. Many states also have detailed protections and requirements across a broad spectrum of potential relationship issues, including facilities, buy-sells, succession, and inventory control.

*Bottom line:* The good news for dealers is that their state associations and NADA are worthy masters of protecting the values to consumers and dealers of state laws that rein in franchisor overreach and abuses.

#### **7. Diversity, Equity and Inclusion: Where We are Headed.**

This topic is controversial, to put it mildly. See related Trend #29 on affirmative action. DEI proponents say it is merely fairness that compels "identity" to drive hiring and promotions. Others say, however, that DEI now goes too far, and suppresses excellence, merit, and initiative.

*Bottom line:* Many now agree: DEI has gone awry. Dealerships and other American businesses should promote non-discrimination. Unfortunately, as conceived today, many more people believe that DEI does more harm than good because it may undermine the values of merit and excellence.

#### **8. Buy-Sells**

Sellers continue to hold the advantage in the automotive buy-sell world. If you want to sell your dealership, buyers are plentiful, and values remain high, while dealers looking to sell are relatively scarce.

*Bottom line:* A robust buy-sell marketplace will continue in 2024 and beyond. Expect to see

*record dealership valuations and sales prices, as demand significantly outpaces availability.*

### **9. Workforce Issues**

Hiring and retaining capable employees remains a struggle and will continue to be a primary concern for dealerships. In October 2023, the UAW settled its differences with GM, Stellantis, and Ford. This is good for the industry, but some analysts worry that the high cost of labor will drive up tissue and retail pricing too much across a much broader spectrum. The success of UAW is sure to encourage dealership employees to push for higher pay and more generous benefits.

*Bottom line: The ability of talented employees to seek and obtain good jobs at other dealerships is well established. Thus, dealer owners and managers must go to record lengths in increasing pay and benefits to satisfy and keep their workforces.*

*Some dealers risk serious liability issues when they try to classify some personnel with ambiguous duties as independent contractors. Seek legal advice before doing this. The more you control what a person does on the job, the more likely that person is an employee.*

### **10. Retail Pricing and MSRP**

During the pandemic, the percentage of dealers retailing cars above MSRP went from

2% to over 80%. For 2024, that trend has generally receded.

*Bottom line: As the Covid impact has abated, so has the trend of over-MSRP retailing. Yet, a line has been crossed. Dealers are now open to the idea of exceeding MSRP when the market allows.*

### **11. Succession, Legacy and Estate Planning**

Available anecdotal evidence suggests that way too many dealers inadequately plan for succession, or they have no plan at all.

*Bottom line: Dealers without estate plans and/or succession plans should remedy that void now.*

### **12. Customer Satisfaction**

Customers generally give high marks to dealers for both sales and service experience. This was not always the case, but in today's highly charged competitive environment, most dealerships make sure their sales, service, and administrative employees are well schooled in treating customers well.

*Bottom line: Automakers push dealers more than ever to please retail customers, but the push is unnecessary. Dealers already recognize that today's world requires them to do everything possible to keep their customers coming back for sales and service. They emphasize the importance in regular training of how to please and satisfy every customer.*

### 13. Self-Driving (Autonomous) Vehicles

A few years ago, the autonomous vehicle was supposedly the next industry phenomenon. Not so much now.

***Bottom line:** The day of high numbers of self-driving cars remains elusive. It's still coming, but not so fast. Some observers say, however, that self-driving ICE or hybrid cars will actually grow more than EVs.*

### 14. Recalls

Every franchised new car dealer sees recall notices, and sometimes the scope is so large that they do real injury to the business. Unsellable cars that sit on the lot for weeks or even months can be profit-killers.

***Bottom line:** Dealers must make sure that their franchisors are treating them fairly when recalled vehicles sit idly on the lot. Plus, they must proactively insist that the carmakers expedite the necessary fixes.*

### 15. Product Shortages and Delays

Unfortunately, under-supply of new inventory and delays remain commonplace across most brands. Insufficient chips, rare metals, transport delays and other factors drive inventory shortages, and skyrocketing unit costs intimidate not only retail buyers but also the factories.

***Bottom line:** We will not see the end of new car shortages in 2024, but perhaps a reduction in*

*severity. There is hope for 2025, but the shortage situation remains too high for now, though not as steep as the past three years.*

### 16. Allocations

Too many manufacturers are not transparent or fair in the allocation process which seems to change without advance notice regardless of the brand. Accusations by dealers of favoritism and/or outright dishonesty in allocations have proliferated. The topic could not be more critical for dealership profitability. You cannot retail cars that you don't receive from your supplier.

***Bottom line:** Dealers: Beware of getting shortchanged on allocations, especially if you have reason to believe nearby same-brand dealers are being favored.*

### 17. Continuing Factory Pressure on Facilities and Sales.

At any given time, most auto franchisors are in one phase or another of image changes. For affected dealers, such changes can be enormously expensive and disruptive, often in the millions of dollars and usually without the factory's monetary assistance.

The automakers, in a perverse "Catch-22," frequently demand sales of more new units than they – the factories – can provide.

***Bottom line:** No surprise here. The automakers are always looking for dealers to*

improve "the retail experience," almost all or entirely at the dealers' expense. Thus, "image programs" abound, whereby dealers are pressured to renovate, only occasionally with some franchisor financial assistance.

In addition, factories demand higher retail sales, even when supply cannot support such demands. This won't change, despite the obvious illegality.

### **18. Rights of First Refusal (ROFRs)**

Although reliable statistics are difficult to come by, auto franchisors are apparently using their ROFR clauses in dealer agreements more strategically. See, Jackie Charniga, "Boon or burden? Automakers' use of right of first refusal in dealership buy-sells aids some, hinders others," *Automotive News*, Sept. 29, 2023. ROFRs, when exercised, can be a big thorn in the side of a prospective buyer whose work and negotiation efforts to acquire a dealership can be stifled by a factory who steps into the buyer's shoes. It can also be a problem for a seller who is marketing a dealer group and one of the franchisors tries to "cherry pick" one dealership out of several in the buy-sell. The threat of a ROFR tends to decrease buyers' interest and brings down offering prices.

Today, ROFR clauses are nearly always in dealer agreements, no matter the brand. The factories applaud this right for a number of

reasons: they can replace a buyer with someone who is a minority or female; they can close a point after buying out the exiting dealer; or they can arrange for relocation or modernization of the facilities by a prospective appointee.

A growing number of states bar or limit ROFR exercises. The author advocates a total ROFR ban.

*Bottom line:* Buyers and sellers alike should try to ascertain whether a factory may consider a ROFR exercise when a buy-sell is submitted for approval. If an exercise is likely, chances are that the prospective buyer will want a meaningful discount to shoulder the risk. A minority of states currently prohibit outright the exercise of a ROFR, but limitations of some kind continue to grow in state franchise laws. Most states require that the factory's exercise of a ROFR will trigger reimbursement of the seller's and buyer's costs incurred in their reaching the nullified buy-sell.

### **19. Coping with Risks of Natural Disaster, Crime, Unrest, Terrorism and Pandemic.**

Except for the Covid crisis, the reality is that only a small number of dealers have actually been directly impacted by a major natural or man-made catastrophe.

*Bottom line:* Most dealers now share basic emergency information with their workforces: call lists, dealership contacts for specific

updating information, and the like. These are simple and prudent policies that cost almost nothing. Every dealership should make sure that it circulates such updated information.

## 20. Franchisor Audits

Most audits, though disruptive, do not amount to much in either chargebacks or worse.

*Bottom line:* Franchisors have basic contractual rights when it comes to auditing such routine matters as warranty claims, or anything else that involves factory monetary or other obligations. As long as an audit takes place within a time period allowed by law or agreement, dealers should cooperate.

## 21. Dealership Leadership: Why It's so Important.

The intangible qualities of leadership are vital for the success of any dealership. There are countless examples of new dealer leadership resulting in dramatic rises in profitability and workforce productivity – or the opposite. Some leadership qualities come naturally, but people can learn and develop into leaders.

*Bottom line:* Every dealer needs to be a proactive leader to run a dealership at or near its peak potential. Some people are born with leadership qualities. Most, however, need to work continuously on what it takes to be an

effective leader in the dealership. The effort is worth it.

## 22. Used Cars and Lower Profits

During the Covid pandemic, several factors caused used cars to be nearly as desirable as new ones. Retail prices soared, as did trade-in values. Not so much now. Inventory shortages were everywhere. Profits on used vehicles are now back at or near pre-pandemic levels, but used cars are still a salient profit center.

*Bottom line:* Although record used car prices have trended down, this profit center will remain healthy through 2024.

## 23. Alternative Dispute Resolution (ADR)

In just a single generation, ADR has become commonplace as a way to resolve potential or actual adversity. A majority of dealers impose some form of ADR on their customers, whether it be trying to resolve potential disputes face-to-face, in mediation, arbitration, or all of these.

Since 2002, federal law has barred automakers from forcing arbitration upon dealers, but dealer agreements usually have some form of pre-litigation ADR, such as mediation or negotiation.

*Bottom line:* ADR is often a good thing for dealers. In many or most instances, dealer disputes with franchisors may be resolved quickly and cost-effectively in mediation or negotiation.

*The same is true with customer disputes. Litigation should be a last resort.*

#### **24. Warranty Reimbursement**

Warranty reimbursement issues are no longer as common or controversial as they once were, but the topic is still in play, at least with a few brands across several states.

*Bottom line: Most dealers today are content with standard warranty reimbursement rates for both labor and parts. Any dealer who believes the factory is being unreasonable in labor and/or parts reimbursement should seek counsel.*

#### **25. Encroachment**

Protests against establishments of new points or relocations happen less often than a few years ago. This lessening of cases is, in part, because dealers and their counsel try to avoid situations that legally permit such challenges. Many buy-sells accomplish this by avoiding relocations further than two miles from existing points, which many states exempt from protest. Or, dealers insist on the factory "clearing the market" with sign-offs from existing dealers who could otherwise protest.

*Bottom line: Eligible protesters under state laws should always consider a challenge or negotiate reasonable compensation in return for signing off. Usually the filing time is soon after receipt of a factory notice, so be sure to file before the statutory cut-off date.*

#### **26. Franchise Modification**

Unilateral "modifications" now abound with automakers changing dealer agreement terms.

*Bottom line: A growing number of state franchise laws allow dealers to protest/challenge unilateral modifications that are deemed "material."*

#### **27. Insurance Coverage**

Basic insurance coverage is not optional, and all dealers known to the author have it. All should have a wide breadth of coverage, and the analysis of what to have should be a recurrent exercise. The amounts of coverage can be tricky, especially in an era (like now) where premiums have risen dramatically.

*Bottom line: Every dealer must prudently review dealership insurance coverage no less than once a year, preferably with a knowledgeable agent.*

#### **28. Over-the-Air ("OTA") Repairs and Updates**

Tesla was the leader in OTA development. OTA is now commonplace among virtually all brands, and virtually all models of all brands carry an ever-growing OTA capability, especially with EVs.

*Bottom line: Dealers need to be watchful for OTA activities that may trigger a dealer's right to some compensation under newly enacted state laws. Sometimes, however, a growing reality is*

that OTA either decreases dealer service work and revenue, or in many instances eliminates it.

### 29. Affirmative Action and SCOTUS Trends

Watch out for this one. It is related to DEI which is a big deal in America, across all businesses, professions, and schools. See Trend #7. This outgrowth of identity politics can involve legal entanglements, and dealers are prudent to understand what they must do to assure legal compliance.

*Bottom line: Stay informed about the use of race or other identity factors in hiring, firing, and advancement. For 2024, in the aftermath of the Supreme Court's decision barring affirmative action in college admissions, there will be a sea of affirmative action litigation in other arenas, such as hiring, firing, and promoting.*

### 30. Inflation

As of this writing, inflation remains a major factor in consumer and business spending power, and it, along with the rise in interest rates, will impact what consumers can afford in buying and leasing automobiles.

*Bottom line: The good news is that the easing of inflation in late 2023 may be a harbinger for 2024.*

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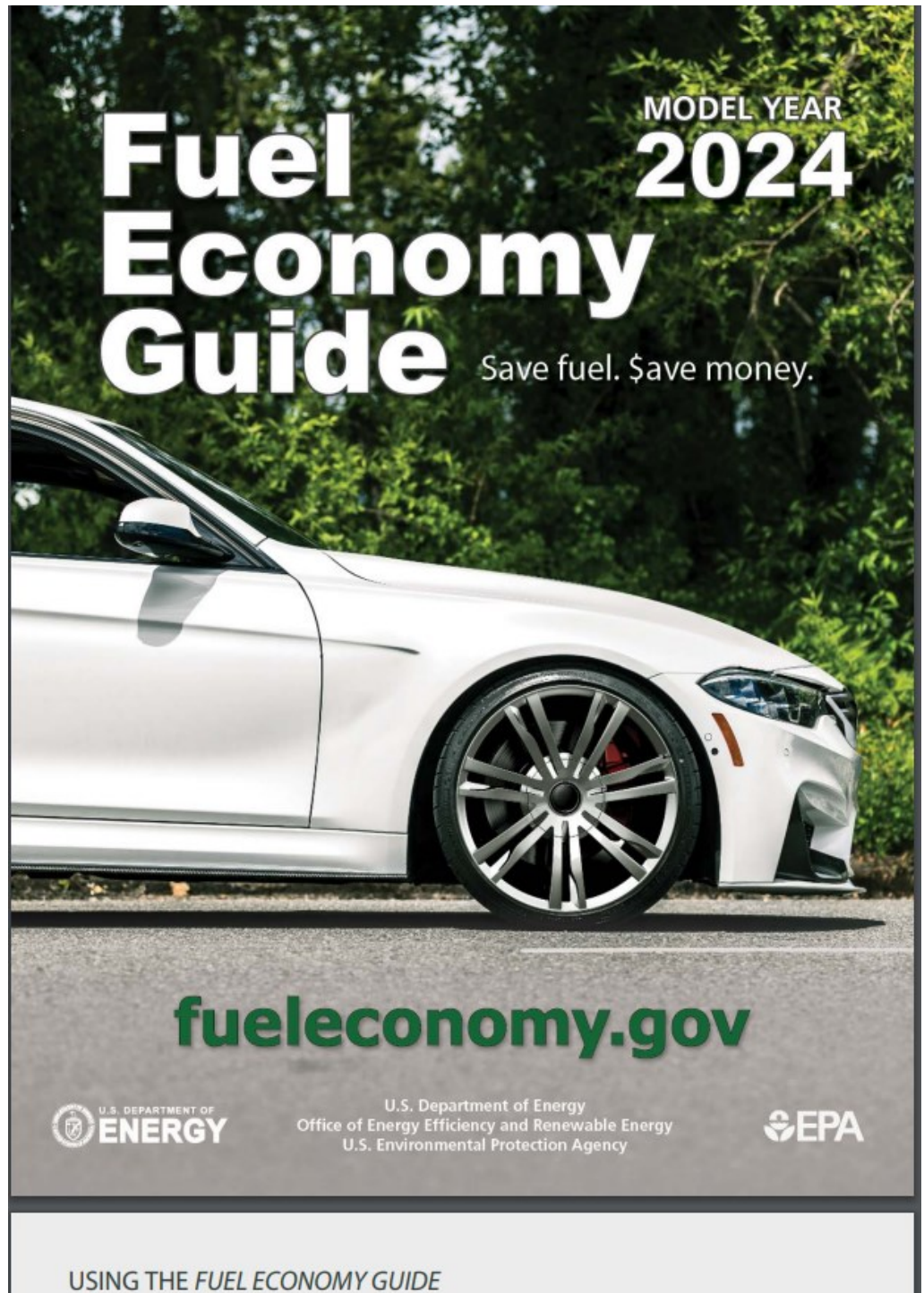


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## Insurance Commission

405-521-2828

[www.oid.ok.gov](http://www.oid.ok.gov)

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## Department Of Consumer Credit

405-521-3653

[www.ok.gov/okdocc](http://www.ok.gov/okdocc)

This agency regulated entities that extend credit to consumers. This includes dealers who do in-house financing.

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## Better Business Bureau

[www.bbb.org](http://www.bbb.org)

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405-239-6081 OKC

918-492-1266 TULSA

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# OKLAHOMA

# Combating Auto Retail Scams

EFFECTIVE JULY 30TH, 2024



## FTC's CARS Rule

The primary purpose of the FTC's [CARS Rule](#) is to add truth and transparency to the car buying and leasing process by making it clear that certain deceptive or unfair practices are illegal – for example, bait-and-switch tactics, hidden charges, and other conduct that harms consumers and honest dealers. Why is it called the CARS Rule? Because the Rule is about **C**ombating **A**uto **R**etail **S**cams that cost consumers billions of dollars each year and cause honest dealers to lose business.

The Rule lays out four basic principles to protect people shopping for cars and trucks – practices that are already business-as-usual for honest dealers. This Dealers Guide introduces industry members to what the [CARS Rule](#) means for their dealerships.

[An introduction to the FTC's CARS Rule](#)

[The CARS Rule prohibits misrepresentations about material information.](#)

[The CARS Rule requires dealers to clearly disclose the offering price – the actual price anyone can pay to get the car.](#)

[The CARS Rule makes it illegal to charge consumers for add-ons that don't provide a benefit.](#)

[The CARS Rule requires dealers to get consumers' express, informed consent before charging them for anything.](#)

[Answers to questions dealers may have about the CARS Rule](#)

[Glossary](#)

# Combating Auto Retail Scams



The FTC's CARS Rule protects consumers and benefits honest dealers.

## Here's how:

1

**Prohibits misrepresentations about material information.**

The CARS Rule makes it illegal for a dealer to make misrepresentations about certain topics that would affect a consumer's buying or leasing choices. Deceptive claims about price, financing, or add-ons are a few examples.

2

**Requires dealers to clearly disclose the offering price – the actual price anyone can pay to get the car, excluding only required government charges.**

Before they visit the dealership and throughout the transaction, consumers have the right to know the drive-off-the-lot price. If a dealer mentions optional add-ons, the dealer has to tell the consumers they can say no. And if discussing a monthly payment, the dealer has to tell the consumer the total payment.

3

**Makes it illegal for dealers to charge consumers for add-ons that don't provide a benefit.**

Under the CARS Rule, if the consumer won't benefit from an add-on product or service, the dealer can't charge for it.

4

**Requires dealers to get consumers' express, informed consent before charging them for anything.**

That means no surprise fees or hidden charges. Dealers must get a buyer's clear and informed "yes" to what they're buying and how much they're being charged.

## An introduction to the FTC CARS Rule

Buying or leasing a car is a major financial commitment and it's a transaction that consumers have often approached with apprehension or uncertainty. Indeed, according to the public comments the FTC received as part of rulemaking process for the CARS Rule, many consumers believe they have been subjected to deceptive or unfair practices when buying or leasing a car – especially bait-and-switch tactics and hidden charges. Particularly troubling were reports from servicemembers about deceptive and predatory practices near military installations, and from car dealers about losing business to dishonest dealerships. Those comments underscore what the FTC has observed in decades of law enforcement actions: that unscrupulous dealerships have used illegal tactics to close a deal – conduct that costs consumers time and money and puts honest dealers at an unfair disadvantage.

The Federal Trade Commission's [Combating Auto Retail Scams Trade Regulation Rule – the CARS Rule](#), for short – ushers in a new era of transparency in car buying and leasing. Most importantly, the Rule explains how long-standing principles of truth in advertising and fair dealing apply when people go car shopping.

The [CARS Rule](#) is a big win for consumers, who can expect that established standards of truth and transparency that apply in other consumer transactions will also apply when they're looking to buy or lease a car. What's more, now they can point to specific legal provisions that will help protect them in the process. If consumers see that a dealer is complying with the CARS Rule, it adds a measure of confidence. But if they spot a dealer who flouts those protections, consumers may take their business elsewhere.

The CARS Rule also is a big win for honest industry members who already implement the Rule's principles of truth and transparency at their dealerships. Most salespeople can re-

count a story of losing a sale to a cross-town competitor who used questionable tactics to lure away a prospective customer. That shouldn't happen. Dealers who work hard to treat customers fairly shouldn't have to go head-to-head against competitors who resort to deception to close a deal. The CARS Rule establishes clear rules of the road that apply to all car dealers – meaning that consumers will be able to comparison shop based on truthful claims about price, financing, and service. When all dealers are held to the same clear standards, dealers who meet (or exceed) consumers' expectations have a fair shot at winning the sale, gaining customers' loyalty, and earning a word-of-mouth reputation as the dealer to do business with. Another benefit is that the CARS Rule accomplishes these goals without requiring consumers or dealers to fill out more paperwork.

As explained in more detail in this Dealers Guide – and as decades of work by the FTC and other law enforcement partners makes clear – the four principles of truth and transparency outlined in the CARS Rule aren't new. The Rule simply restates those principles in straightforward language specific to the auto industry and includes new remedies if a car dealer engages in certain deceptive or unfair practices.



Continue...

What are those bottom-line truth-in-car-buying principles? Here's a summary of what the [CARS Rule](#) does:

1. The CARS Rule prohibits misrepresentations about material information.
2. The CARS Rule requires dealers to clearly disclose the offering price – the actual price anyone can pay to get the car, excluding only required government charges. Before they visit the dealership and throughout the transaction, consumers have the right to know the drive-off-the-lot price. If a dealer mentions optional add-ons, the dealer has to tell the consumer they can say no. And if discussing a monthly payment, the dealer has to tell the consumer the total payment.
3. The CARS Rule makes it illegal for dealers to charge consumers for add-ons that don't provide a benefit.
4. The CARS Rule requires dealers to get consumers' express, informed consent before charging them for anything. Read on for specifics about the across-the-board principles that all dealers must abide by.

### **1. The CARS Rule prohibits misrepresentations about material information.**

A key part of the CARS Rule is a prohibition on misrepresentations about certain categories of information that are material to consumers when shopping for a car. What does "[material](#)" mean in this context? The Rule defines it in the same way the FTC has for decades: information "likely to affect a person's choice of, or conduct regarding, goods or services." And stating a long-standing principle that applies to all other businesses, the Rule prohibits both express and implied misrepresentations.

To put some industry specifics on the prohibition on material misrepresentations, the CARS Rule lists a number of practices that

violate both the Rule and Section 5 of the FTC Act's ban on deceptive and unfair practices. More specifically, it's illegal for dealers to make misrepresentations about material information in all of these categories:

- a. The costs or terms of buying, financing, or leasing a vehicle;
- b. Any costs, limitation, benefit, or any other aspect of an add-on product or service;
- c. Whether the terms are, or transaction is, for financing or a lease;
- d. The availability of any rebates or discounts that are factored into the advertised price but not available to all consumers;
- e. The availability of vehicles at an advertised price;
- f. Whether any consumer has been or will be preapproved or guaranteed for any product, service, or term;
- g. Any information on or about a consumer's application for financing;
- h. When the transaction is final or binding on all parties;
- i. Keeping cash down payments or trade-in vehicles, charging fees, or initiating legal process or any action if a transaction isn't finalized or if the consumer doesn't wish to go forward with a transaction;
- j. Whether or when a dealer will pay off some or all of the financing or lease on a consumer's trade-in vehicle;
- k. Whether consumer reviews or ratings are unbiased, independent, or ordinary consumer reviews or ratings of the dealer or the dealer's products or services;
- l. Whether the dealer or any of the dealer's personnel or products or services is or was affiliated with, endorsed or approved by, or otherwise associated with the United States government or any federal, state, or local government agency, unit, or department, including the Department of Defense or any branch of the military;

- m. Whether consumers have won a prize or sweepstakes;
- n. Whether, or under what circumstances, a vehicle may be moved, including across state lines or out of the country;
- o. Whether, or under what circumstances, a vehicle may be repossessed; and
- p. Any of the disclosures required by the Rule.

**2. The CARS Rule requires dealers to clearly disclose the offering price – the actual price any consumer can pay to get the car, excluding only required government charges.**

Two particular concerns consumers have expressed about the car shopping process are the use of bait-and-switch tactics and hidden charges – practices that make it tough for consumers to figure out the actual price they’ll have to pay and what they’re actually paying for. The CARS Rule seeks to remedy that problem by requiring dealers to disclose certain important facts about the deal, including the offering price, [clearly and conspicuously](#). (This Dealers Guide includes more information about making clear and conspicuous disclosures.)

Here are disclosures the CARS Rule requires dealers to make clearly and conspicuously: **The offering price.** In connection with the sale or financing of vehicles, dealers must clearly disclose the [offering price](#), defined in the CARS Rule as the full cash price for which the dealer will sell or finance the vehicle to any consumer. The only costs that can be excluded from the offering price are required [government charges](#) – for example, taxes, license and registration costs, or inspection or certification fees. The Rule specifies three circumstances where the dealer must clearly disclose the offering price

- 1. In any ad that references, expressly or by implication, a specific vehicle;
- 2. In any ad that represents, expressly or by implication, any monetary amount or financing term for any vehicle; and

- 3. In any communication with a consumer that refers, expressly or by implication, to a specific vehicle or to any monetary amount or financing term. In its first response to a consumer, the dealer must clearly disclose the offering price. If the communication or response is in writing, the offering price must be disclosed in writing.

**The fact that add-ons aren’t required.** When making any representation, expressly or by implication, about an [add-on product or service](#), the dealer must clearly disclose that the add-on isn’t required and that the consumer can buy or lease the vehicle without the add-on, if that’s the case. If the dealer makes the representation in writing, the disclosure must be in writing, too. As explained further in this Dealers Guide, the Rule includes other important provisions prohibiting dealers from charging consumer for [add-ons that don’t offer consumers a benefit](#).

As explained further in this Dealers Guide, the Rule includes other important provisions prohibiting dealers from charging consumer for [add-ons that don’t offer consumers a benefit](#).

- **The total of payments for a financed or lease transaction.** When making any representation, expressly or by implication, about a monthly payment for a vehicle, the dealer must clearly disclose the total amount the consumer will pay after making all payments as scheduled. If the dealer makes the representation in writing, the disclosure must be in writing, too. If the total amount assumes the consumer will provide consideration – for example, a cash down payment or a trade-in – the dealer must clearly disclose the amount of consideration the consumer must provide. If the dealer makes the representation in writing, the disclosure must be in writing, too.

**Monthly payments comparison.** If a dealer makes any express or implied comparison between payment options that includes a discussion of a lower monthly payment, the dealer must clearly disclose that the lower monthly payment will increase the total amount the consumer will pay to buy or lease the vehicle, if that’s the case. If the dealer makes the representation in writing, the disclosure must be in writing, too.

### **3. The CARS Rule makes it illegal to charge consumers for add-ons that don't provide a benefit.**

In commenting about the CARS Rule, consumers and some dealers expressed concern that unscrupulous dealers deceptively include [add-on products or services](#) in the transaction, or charge consumers for surprise items. The Rule defines an add-on as any product or service not provided to the consumer or installed by the manufacturer that the dealer, directly or indirectly, charges the consumer for. A particularly harmful practice is when those add-ons don't offer consumers a benefit.

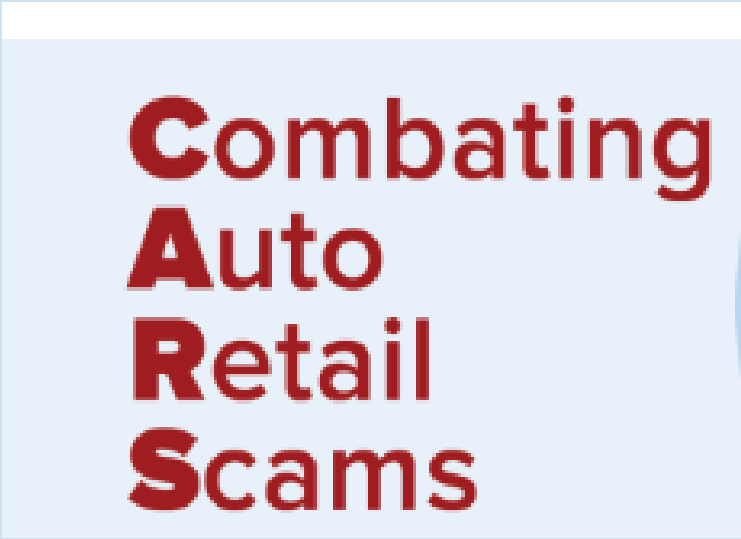
Under the CARS Rule, a dealer may not charge for an add-on product or service if the consumer wouldn't benefit from it. Examples include charges for "nitrogen-filled tires" that contain no more nitrogen than naturally exists in the air. Other examples are add-ons that don't provide coverage for the vehicle, the consumer, or the transaction, or are duplicative of the car's warranty coverage. It would be illegal for a dealer to charge consumers for a [GAP Agreement](#) – a term the CARS Rule defines – if the consumer's vehicle or neighborhood is excluded from coverage or the loan-to-value ratio means the consumer won't benefit financially from the product or service.

### **4. The CARS Rule requires dealers to get consumers' express, informed consent before charging them for anything.**

Under the CARS Rule, dealers must get consumers' [express, informed consent](#) before charging them for anything. Period. The Rule explains that express, informed consent means an affirmative act communicating unambiguous assent to be charged, made after receiving clear and conspicuous disclosures of: (1) what the charge is for; and (2) the amount of the charge, including, if the charge is for a product or service, all fees and costs the consumer will be charged over the period of repayment with and without the product or service. Under the CARS Rule, the consumer's consent must be in close proximity to

when and where the dealer makes the clear disclosures. This information must be conveyed in writing, and also orally for in-person transactions.

Comments from consumers and the FTC's law enforcement experience in challenging illegal conduct by certain dealers point to some practices that subvert express, informed consent – for example, a signed or initialed document, by itself; a prechecked box; or an agreement obtained through any practice that has the effect of impairing consumers' autonomy, decision-making, or choice. The CARS Rule simply states that a basic tenet of consumer protection law – that consumers have a right to know in advance what they'll be charged and must give an unambiguous and fully informed "yes" before the business can charge them – applies with full force in the car buying or leasing process. Dealers who do these things – and [keep records showing they did](#) – are complying with that part of the CARS Rule.



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## Answers to questions dealers may have about the CARS Rule

### What is the FTC's legal authority for enacting the CARS Rule?

The Dodd-Frank Act gives the FTC authority to make rules about unfair or deceptive dealer practices. The FTC announced a Notice of Proposed Rulemaking in 2022 to address unfair or deceptive practices in motor vehicle sales or leasing and received thousands of public comments from dealers, industry associations, consumer and community groups, federal and state agencies, and other people interested in the car buying process. The CARS Rule's Statement of Basis and Purpose discusses what many of those commenters had to say.

### Who's covered by the CARS Rule?

The CARS Rule applies to [Covered Motor Vehicle Dealers](#), defined as any person or business in the United States or a U.S. territory: 1) licensed by a state, the District of Columbia, or a territory to engage in the sale of [Covered Motor Vehicles](#); 2) that takes title to, holds an ownership interest in, or takes physical custody of covered motor vehicles; and 3) is predominantly engaged in the sale and servicing of covered motor vehicles, their leasing and servicing, or both.

### What kind of vehicles are covered by the CARS Rule?

The Rule applies to any [Covered Motor Vehicle](#), which the Rule defines as any self-propelled vehicle designed for transporting people or property on public streets. In other words, the Rule applies to the advertising, sale, or leasing of automobiles, including cars, trucks, and SUVs. The CARS Rule's definition of "motor vehicle" doesn't include recreational boats and marine equipment; motorcycles, scooters, and electric bicycles; motor homes, recreational vehicle trailers, and slide-in campers; or golf carts.

### What kinds of communications does the CARS Rule apply to?

The provisions of the CARS Rule apply to all means that dealers use to communicate with

prospective car buyers and lessees. To name just some examples, that includes television and radio ads, print ads, direct mail, websites, social media, ads streamed online, and oral statements conveyed to consumers.

### What does the CARS Rule mean by "clearly and conspicuously"?

Under FTC law – and as defined in the CARS Rule – "[clearly and conspicuously](#)" refers to a disclosure made in a way that's easy for consumers to understand and difficult for them to miss. Rather than mandating specific fonts or type sizes, the CARS Rule is results-oriented. It gives dealers the flexibility to determine the best way to meet the Rule's requirements for their consumers under the circumstances, and includes some basic standards to apply:

- **Ads in one modality.** If an ad or other communication is solely visual or solely audible – what advertising professionals sometimes call "one modality" – the disclosure must be made in that same way. In other words, if an ad is solely visual, the disclosure must be made visually, too.
- **Ads that are both visual and audible.** If an ad or other communication is both visual and audible – for example, a TV ad – the disclosure must be presented at the same time in both the visual and audible portions of the ad. That standard applies even if the claim requiring the disclosure is made just visually or just audibly.
- **Visual disclosures.** Fine print, dense blocks of text, or language hidden where consumers aren't likely to see it won't meet the FTC's "clear and conspicuous" standard. A visual disclosure must stand out from any accompanying text or other visual elements so that it's easy for consumers to notice, read, and understand. In considering a visual disclosure, keep in mind – among other things – how big it is, how well it contrasts with the background, whether the disclosure is located where consumers will easily see it, and how long it appears the screen.

- **Audible disclosures.** We've all heard fast-talking disclosures often at the end of ads that are hard to follow. Those won't do under the CARS Rule. An audible disclosure – for example, on radio, by telephone, or in streaming video – must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear it and understand what it means.
- **Interactive electronic media.** For ads or other communications conveyed through an interactive electronic media – say, the internet or software – the disclosure must be unavoidable.

**Wording of disclosures.** Disclosures must use words and grammar understandable to ordinary consumers. The Rule puts a premium on plain language. Legalese, jargon, or fancy double-talk won't meet that standard. What's more, disclosures must appear in each language in which the representation that requires the disclosure appears. (This Guide has more information about [transactions in languages other than English](#).) Furthermore, other statements in the ad or communication can't contradict or be inconsistent with the disclosure.

### **How do I know if I'm making disclosures clearly and conspicuously?**

The CARS Rule's definition of ["clearly and conspicuously"](#) and the advice in this Dealers Guide are good places to start. But a rule of thumb applied by honest advertisers – including car dealers – is to apply the same principles to disclosures that you use when crafting your own marketing materials. When you want consumers to sit up and take notice, you use big print, a clear font, eye-catching color, a contrasting background, and other design tools. You convey the information in a place consumers are sure to notice and in a way that's impossible for them to miss. You use plain language that's easy for consumers to understand. Think of it this way: How would you convey the information if you really

wanted to reach your customers, rather than because you're complying with a regulation? Dealers who think of disclosures with that frame of mind are more likely to earn consumers' trust and avoid law enforcement consequences.

### **Does the CARS Rule apply to advertising and transactions in languages other than English?**

Yes. Many dealers advertise, talk to car shoppers, and negotiate transactions in languages other than English. The CARS Rule's standards for truth and transparency apply across the board, regardless of the language the car shopper and the dealer may use. For example, the CARS Rule requires that for disclosures to meet the definition of ["clear and conspicuous,"](#) the disclosure must be "easily understandable." If a dealer makes a disclosure in a language the consumer doesn't understand – and the content of the disclosure isn't otherwise clearly understood by the consumer – the disclosure wouldn't meet that requirement.

That standard also applies under the CARS Rule's definition of [express, informed consent](#), which requires consumers to "unambiguously assent" to charges. Consumers can't unambiguously assent to something they don't understand. Furthermore, the "clear and conspicuous" definition specifies that a disclosure "must appear in each language in which the representation that requires the disclosure appears." (In this context, "appear" doesn't just refer to visual disclosures. It applies to oral disclosures, too.) That means that if the practice that makes the disclosure necessary is made in a language other than English, the dealer must make the corresponding disclosure in that language. For example, if a dealer refers to an optional add-on in Spanish, the corresponding disclosure that the consumer can buy or lease the vehicle without the add-on

in Spanish, the corresponding disclosure that the consumer can buy or lease the vehicle without the add-on must also be in Spanish. Dealers should be aware of the FTC's long-standing [Requirements concerning clear and conspicuous disclosures in foreign language advertising and sales materials](#), an Enforcement Policy Statement in place since 1973 and updated in 1998. To the extent that dealers engage in practices inconsistent with that Enforcement Policy Statement, they risk law enforcement action.

### **What if a car buyer agrees to waive their protections under the CARS Rule?**

The Rule expressly prohibits that. In fact, it's a violation of the CARS Rule for anyone to obtain – or even attempt to obtain – a waiver from a consumer of any protection or right the Rule extends to them.

### **Does the CARS Rule include provisions about retaining records?**

Yes. The CARS Rule includes recordkeeping requirements, which follow what many dealers are already doing. The recordkeeping procedures have the added benefit of protecting dealers if concerns are raised after the fact about their practices.

Under the CARS Rule, dealers must create and retain for at least 24 months all records necessary to demonstrate their compliance with the Rule. The 24 months is calculated from the date the record was created. That includes the following documents:

- **Ads.** Dealers must retain copies of all materially different ads, sales scripts, training materials, and marketing materials about the price, financing, or lease of a vehicle, that the dealer disseminated during the relevant time period. (If a dealer uses a credit or lease ad that includes different vehicles or different amounts for the same credit or lease terms, it's OK to retain an example, assuming that ads aren't otherwise materially different.)
- **Purchase orders and financing and leasing documents.** Dealers must retain copies of all purchase orders and financing and leasing documents signed by the con-

sumer, whether or not final approval was received for financing or leasing. This provision also covers all written communications about sales, financing, or leasing between the dealer and any consumers who signs a purchase order or financing or lease contract.

- **Documents about add-ons.** Dealers must retain records demonstrating that add-ons in consumer contracts meet the requirements of the CARS Rule. That includes copies of all service contracts, GAP Agreements, and calculations of loan-to-value ratios in contracts including GAP Agreements.

- **Consumer complaints.** Dealers must retain copies of all written consumer complaints about sales, financing, or leasing; consumer inquiries related to add-ons; and inquiries and responses about disclosures required by the Rule.

Dealers may keep required records in any legible form, and in the same manner, format, or place as they may already keep those records in the ordinary course of business. Failure to keep all required records is a violation of the CARS Rule.

### **What's the penalty for violating the CARS Rule?**

The violation of any FTC Trade Regulation Rule – including the CARS Rule – could result in provisions that will require a company to change how it does business going forward, to give money back to injured consumers, and to pay civil penalties of as much as \$50,120 per violation.

### **How does the FTC's CARS Rule interact with state laws?**

The CARS Rule doesn't change or supersede any state law or regulation unless the state standard is inconsistent with the FTC Rule. In that case, the CARS Rule will apply. But here's an important caveat: If a state law or regulation gives consumer greater protections, the FTC doesn't consider that to be inconsistent and residents of that state will get the greater protections their state law gives them.

## When does the CARS Rule take effect?

The effective date of the [CARS Rule](#) has been paused pending judicial review.

## Where can dealers go to get more information about complying with federal consumer protection laws?

The FTC's [Automobiles page](#) features additional resources about complying with the law. Savvy business people also follow FTC law enforcement actions that could impact their industry. The FTC Business Blog publishes to-the-point recaps of FTC cases and initiatives, including ones relevant to car dealers. [Subscribe](#) to get Business Alerts delivered directly to your email box.

## Glossary

Here is how the CARS Rule defines certain key terms.

### **Add-on or Add-on Product(s) or Service**

**(s)** means any product(s) or service(s) not provided to the consumer or installed on the Vehicle by the Vehicle manufacturer and for which the Dealer, directly or indirectly, charges a consumer in connection with a Vehicle sale, lease, or financing transaction.

**Clear(ly) and Conspicuously** means in a manner that is difficult to miss (i.e., easily noticeable) and easily understandable, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one

means.

2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
6. The disclosure must comply with these requirements in each medium through which it is received.
7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

**Covered Motor Vehicle** or **Vehicle** means any self-propelled vehicle designed for transporting persons or property on a public street, highway, or road. For purposes of this part, the term Covered Motor Vehicle does not include the following: (1) Recreational boats and marine equipment; (2) Motorcycles, scooters, and electric bicycles; (3) Motor homes, recreational vehicle trailers, and slide-in campers; or (4) Golf carts.

**Express, Informed Consent** means an affirmative act communicating unambiguous assent to be charged, made after receiving and in close proximity to a Clear and Conspicuous disclosure, in writing, and also orally for in-person transactions, of the following: (1) What the charge is for; and (2) The amount of the charge, including, if the charge is for a product or service, all fees and costs to be charged to the consumer over the period of repayment with and without the product or service. The following are examples of what does not constitute Express, Informed Consent: (i) A signed or initialed document, by itself; (ii) Prechecked boxes; or (iii) An agreement obtained through any practice designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making, or choice.

**GAP Agreement** means an agreement to indemnify a Vehicle purchaser or lessee for any of the difference between the actual cash value of the Vehicle in the event of an unrecovered theft or total loss and the amount owed on the Vehicle pursuant to the terms of a loan, lease agreement, or installment sales contract used to purchase or lease the Vehicle, or to waive the unpaid difference between money received from the purchaser's or les-

see's Vehicle insurer and some or all of the amount owed on the Vehicle at the time of the unrecovered theft or total loss, including products or services otherwise titled "Guaranteed Automobile Protection Agreement," "Guaranteed Asset Protection Agreement," "GAP insurance," or "GAP Waiver."

**Government Charges** means all fees or charges imposed by a Federal, State, or local government agency, unit, or department, including taxes, license and registration costs, inspection or certification costs, and any other such fees or charges.

**Material** or **Materially** means likely to affect a person's choice of, or conduct regarding, goods or services.

**Offering Price** means the full cash price for which a Dealer will sell or finance the Vehicle to any consumer, provided that the Dealer may exclude only required Government Charges.

*[Note: Updated on January 24, 2024, to remove the Rule's effective date, pending judicial review.]*



[ftc.gov/carsruleddealersguide](https://ftc.gov/carsruleddealersguide)



[OKIADA.com](http://OKIADA.com)



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**Oklahoma Independent  
Automobile Dealers  
Association**

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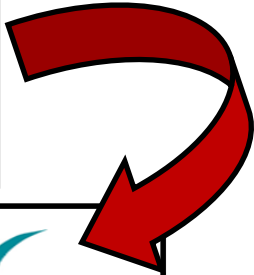
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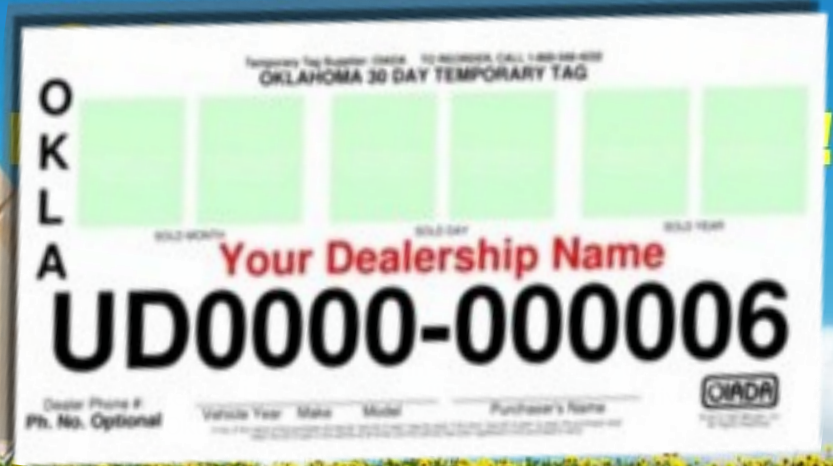
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# Dealer Benefits



When dealers ask us about membership in the Oklahoma Independent Auto Dealers association (OIADA), they want to know two things—"What does it cost?" and "What is it worth?" As for cost, it is just \$295 per year. As for what it's worth, we often respond by first listing the tangible benefits. The two most obvious benefits put dollars immediately back into the dealer's pocket—10% discount on forms and supplies purchased through Automotive Dealer Resource of Oklahoma and the VIP Member discount Cards good at auctions across Oklahoma and in neighboring states. The VIP cards alone are valued at more than 7 times the membership fee.

The benefit that is often difficult to translate into "dollars in the pocket" is the dealer protection provided by OIADA's representation of the industry. The achievements listed on the following page are just a few of the notable instances where OIADA has impacted your profit and loss statement in a positive way. OIADA is blessed to have Jami Longacre, one of the most respected and effectual voices at the capitol, serving as our legislative liaison.

OIADA staff

**For further information about OIADA**

**(Oklahoma Independent Automobile Dealers Association ) or an application please visit [www.okiada.com](http://www.okiada.com) and apply online , download application , email [ambersnook@okiada.com](mailto:ambersnook@okiada.com) or call us in the office 405-232-2947**

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There was proposed legislation to do away with ALL "as is" sales.

Do you want to be obligated to provide EVERY buyer with 7-14 days to change their mind and return your vehicle, NO STRINGS ATTACHED?

Again, there was proposed legislation to do so.

Do you want the Federal Government to subsidize New Vehicle sales by providing a guaranteed trade in value on ALL units 2001 and older AND to require these vehicles to be crushed once they have been traded in?

Ask about the "Cash for Clunkers" bill that was circulated.

Whether you realize it or not, your livelihood has been greatly affected by the actions of your state independent dealer association. Today's

legislative climate is far scarier than ever before. **The above legislation could put up to 80% of All used motor vehicle dealers out of business.**

It's your choice. Please call your state association for a membership application today. Visit us online at [www.okiada.com](http://www.okiada.com) to learn more about the OIADA, or stop by the office at your convenience.

**If you were given incentives every year that exceeded your yearly dues, WHY WOULDN'T YOU JOIN TODAY?**

**Based on only 4 questions above, can you afford NOT to spend \$295 yearly dues for being an OIADA member?**

**Our Mission is Your Success. We Need Your Support!**