



THE SOURCE



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Ouch.

As dealers, you spend a lot of time selling customers on the cool technology features available in vehicles. Back-up cameras, rearview video mirrors, power liftgates – everyone wants them, but no one wants to get hit with the repair costs when these expensive components go bad. Explaining why they aren't covered is not a conversation anyone wants to have.

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Chief Editor Phyllis Sartin

We hope the summer has been kind to your business and you were able to “get away” for a much needed rest. This industry can be stressful and all-consuming. Please make sure to step away when possible, with family and friends.

Inventory needs, prices, and interest rates are the hot topics right now and this business seems to be in a state of flux constantly. Our Auction Partners are available to help in any way and the TDN Ad Partners can assist with other much needed auto dealer solutions.

As always reach out directly to us if we can help in any way and thank you for the support.

Disclaimer:

The views, thoughts, and opinions expressed in the text of this publication belong solely to the author and do not necessarily reflect the viewpoint and/or position of Tennessee Dealer News, LLC.

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Sink or Swim doesn't work anymore

While training a dealer's struggling sales team recently, I was pulled aside by one of the sales managers who told me not to bother with salespeople X, Y, and Z because, in his words, "I don't think they're going to make it."

Yikes. What year is this? Not going to make it? Why not? Why did you hire them in the first place? Who did you assign to mentor them? What makes you think your next three new hires are going to fare any better than X, Y, and Z?

To make this revelation even more startling, the sales manager who told me this was the same person who hired these three after an extensive interview process. All three had been on the job less than 90 days; and all three were replacing other green peas who also (coincidentally) "didn't make it."

Between low unemployment and the lack of drive infecting many otherwise good candidates, the candidate pool is shallow; and managers shouldn't expect the next batch of three new hires will perform any better.

Of course, regardless of the state of the job market, it's time to come to grips with something in automotive sales. That is, we're way beyond the old school sink or swim.

Sink or Swim

For decades, sales managers were semi-successful hiring a bunch of newbies and throwing them in the river of sales. Those few that didn't drown were deemed to be good salespeople; while those that sank "just weren't cut out for sales."

Companies could operate this way because there was an almost endless supply of fresh meat – and there was no internet where the underemployed, dissatisfied, or overqualified could easily find a better gig.

Times have changed. Young people aren't that interested in sales positions. The hours, the training, the talking to people face-to-face or over the phone scares most millennials and Gen Z's. Throwing wave after wave of new hires into the river to see who swims doesn't create great sales teams; it just creates revenue for staffing agencies and job security for your HR department.

Plus, as has always been the case, new hires with the skill sets to become great salespeople won't reach anywhere near their potential without leadership. They'll drown. Moreover, hiring great veteran sellers isn't the answer because great salespeople won't work for bad leaders.

Let's be clear, selling isn't hard... it just takes work.

Likewise, creating great sellers isn't hard... it just takes work.

Helping Everyone Swim

Because we no longer have the luxury of sink or swim, sales managers who want to escape the endless cycle of recruiting, hiring, firing, recruiting, hiring, firing, etc. can work to create a simple mentoring program within their team. It's not hard to do; and it certainly requires no outside help (hint: your top sellers and managers can and should do this).

The solution is simple and effective: Assign a manager or senior salesperson's job to make sure X or Y or Z is successful. Offer a bonus when X reaches a predetermined sales objective. Also, give them a bonus when their trainee reaches certain employment milestones (like 6 months, 12 months, etc.). Finally, make sure the assigned manager or salesperson knows that if X doesn't make it, they'll be assigned X2... and then X3... and then X4.

Oh crap, that sounds like someone will be accountable for the new hire's success; that they'll be responsible for ensuring the business does everything it can to help their new hire swim.

Oh. The. Humanity.

It's amazing what accountability and responsibility can accomplish.

Ten Burger King Fry Cooks

While it's not true in every industry, I've often said of car dealers that you could hire ten Burger King fry cooks and put them under a great sales manager. Fast forward six months, and that sales manager would have eight or nine high-performing sellers.

Conversely, you could hire ten superstar sellers and put them under a lousy sales manager. Fast forward six months, and that sales manager would have three mediocre salespeople remaining from the original ten superstars. Plus, the lousy sales manager would again be lamenting the need to find some good people.

The point of this hypothetical example is simple: It's not who you hire, it's how you lead. Great sales managers will find ways for their teams to succeed, while lousy sales managers will suck the life out of even the best salespeople. Those working for the former will reach their full potential. Those working for the latter will either quit or settle into the mediocrity that's accepted in low-performing sales organizations.

Good selling!



Steve Stauning
Founder
Stauning Solutions Group

Steve is the author of Ridiculously Simple Sales Management and Assumptive Selling; as well as a respected automotive industry veteran and founder of Stauning Solutions Group – a leading training & consulting firm – and the free sales video training website SteveStauning.com. Steve's consulting work puts him in dealerships nearly every week, working side-by-side with managers, salespeople, and internet teams to help them improve their sales, processes, and profits. Prior to this, Steve served in various automotive leadership roles, including as the Asbury Automotive Group's (NYSE: ABG) director of ecommerce, the director of the Web Solutions division of Reynolds & Reynolds, and as the general manager of Dealer Web Services for Dominion's Dealer Specialties.

You may contact Steve directly by calling him at 888-318-6598 or via email at Steve@SteveStauning.com

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Car repair costs are up almost 20% over the past year.

Here are 6 reasons why

Car repair costs are up almost 20% in the past year, according to the consumer price index — more than six times the national inflation rate and among the largest annual price increases of any household good or service.

So, what's driving up prices?

It's a combination of factors, experts said. Some emerged in the pandemic era while others are longer-term trends in the auto market, they said. Here's a look at six reasons why you're paying more for car repairs.

1. More technology in cars

Common car repairs can run consumers \$500 to \$600 a visit and sometimes "much higher," according to AAA.

More advanced — and more expensive — technology in vehicles is a big reason for higher repair costs, said Robert Sinclair Jr., a spokesman for AAA Northeast.

Take advanced driver-assistance systems, for example. Such technologies — including auto emergency braking, lane keeping assist or cross-traffic alert systems — have "proliferated" and are available in just about any vehicle, Sinclair said.

Electronic sensors to facilitate these technologies are found in bumpers, fenders and grilles, which are commonly damaged in wrecks, he said.

Put another way, cars today are like computers that run on gasoline or electricity, said Skyler Chadwick, director of product consulting at Cox Automotive.

Not only are there higher costs associated with fixing broken technology, but the tech also requires more precision and time for auto body work. For example, the thickness of paint on a car bumper must be "just right" so the sensors work properly, Sinclair said.

Consider this: One repair shop proprietor told Sinclair that striking a deer with a vehicle can lead to roughly \$1,500 to \$2,000 more in repairs today than it did 15 years ago due to these technologies.

2. Ongoing supply-chain issues

It's not just technology, though: Many car parts have become pricier in the pandemic era due to supply-chain issues, Sinclair said. Those supply-chain issues create shortages of certain components (such as microchips), making it tougher and pricier to replace parts during a repair.

"Supply chain problems we saw in the pandemic essentially continue," he said.

Major long-term shifts in the auto industry — toward more automation and electric vehicles — also require more chips and put "further strain on an already stretched industry," according to J.P. Morgan.

3. Longer vehicle ownership

Cars on the road have also gotten gradually older, raising the likelihood of "major repairs" being necessary, Chadwick said.

The average age of passenger cars and trucks in operation increased to 12.2 years in 2022, up from about 10.5 years in 2010, according to S&P Global Mobility.

Pandemic-era shortages for auto parts put upward pressure on average vehicle age. Shortages translated to a lower inventory of new and used cars, and consumers held on to their current cars for a longer time, wrote S&P Global Mobility analysts.

Higher interest rates starting in early 2022 also meant it was more expensive to buy a car, Chadwick said.

4. More car crashes

The prevalence of car crashes jumped in the pandemic era, experts said.

There were 6.1 million crashes reported to the police in 2021, up from about 5.3 million in 2020, according to data compiled by the National Highway Traffic Safety Administration.

Fatalities have also increased: There were almost 43,000 deaths from motor-vehicle

accidents in 2021, according to the NHTSA — the highest tally since 2005 and a 10.5% jump from 2020, the largest annual percentage increase on record. The number of auto deaths in 2022 was similar, though slightly less, at 42,795.

More auto wrecks mean greater demand for mechanics, raising prices for car repairs, Sinclair said.

5. Fewer auto repair technicians

Meanwhile, there's been a dearth of available mechanics to meet that greater demand, translating to higher labor costs, auto experts said.

In 2021, for example, about 733,000 automotive technicians were employed — a nearly 5% decline from about 770,000 in 2018, the recent high point, according to the latest data from the TechForce Foundation, a nonprofit group advocating for technical careers.

There were about 56,000 unfilled auto-technician positions from 2021 heading into 2022, its data shows.

Auto dealers ranked "service" as the business area suffering most from staffing issues, according to Cox Automotive's Q2 Dealer Sentiment Index.

6. High-tech service appointments

Many repair shops — particularly at dealerships — have started sharing photos and videos of potential problems with customers, kind of like a telehealth appointment for their car, Chadwick said. That service increases the average repair cost by \$260, he said.

"If I can actually take a video and show you your oil pan is leaking really bad ... it makes more sense to me as a consumer to get that work done," he explained.

Overall, revenue generated by each repair order was up 31.8% in June relative to January 2019, according to Cox Automotive data.



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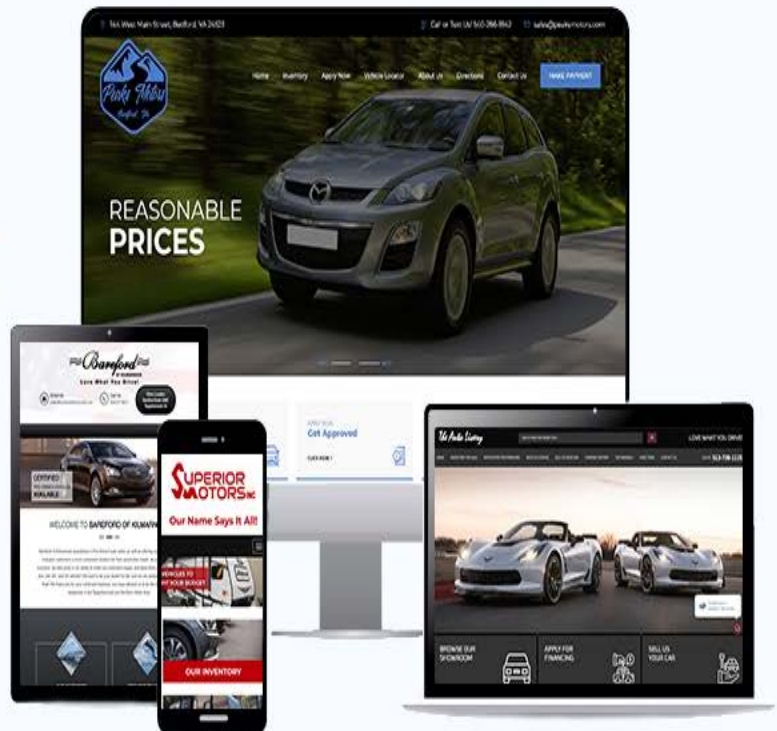
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No One Is Safe: Lessons from the CFPB Data Security Incident

I tell clients all the time that data security breach events aren't a matter of "if" but "when." One of our favorite federal regulators experienced the truth of that statement this year. In February, the Consumer Financial Protection Bureau discovered that an employee sent 14 emails containing confidential supervisory information to his or her personal email address. These emails included spreadsheets containing personal information, such as names, account numbers, loan numbers, and demographic information, of customers of at least eight different financial institutions. One spreadsheet included personal information belonging to over 250,000 consumers alone.

We can all appreciate the irony of the situation—a federal regulatory authority that just last August released a circular emphasizing the importance of effective data security practices among financial services providers has itself experienced a data security incident. Despite any personal feelings we may have about the CFPB, we can admit that there are some positive takeaways from its response to the security incident.

1. Have Policies, Procedures, and Training for Employee Use of and Access to Sensitive Data

The CFPB stated that "all CFPB employees are trained in their obligations under bureau regulations and Federal law to safeguard confidential or personal information." While we don't know the specifics of any training provided by the CFPB, it remains a good idea to develop, implement, and maintain policies, procedures, and training regarding data security practices, including access controls, transmission of sensitive information, and use of personal email. In fact, the Safeguards Rule expressly requires financial institutions to have such policies, procedures, and training in place. You can't prevent situations like this from occurring completely—rogue employees are out there—but providing employees with appropriate guidance regarding their data security obligations can go a long way in avoiding future data security incidents.

2. Quickly Investigate the Incident

The facts indicate that the CFPB became aware of the security incident on February 14, 2023. The CFPB notified Congress of the incident on March 21, 2023. Within those 36 days, the CFPB had completed a thorough enough investigation to apprise Congress of the nature of the incident, how many consumers were affected, and what points of data had been compromised. However, as of April 25, 2023, the CFPB had not yet notified affected consumers of the data breach.

Ideally, a private company should complete the investigation more quickly than that, and notifications to affected persons should be made as soon as possible. In fact, most state laws require your investigation of a security incident to be completed "expeditiously and without unreasonable delay." Once you have discovered a data security incident, you must investigate as quickly

as possible to determine the cause of the breach, the consumers affected, and the specific data points breached. Having in place a written incident response plan (another express requirement of the Safeguards Rule, by the way) will expedite the process, giving you a roadmap for quickly and thoroughly responding to a data security event. Remember, a failure to plan is a plan to fail.

3. Remediate ASAP

Once you have completed your investigation, you can move on to the remediation phase. The CFPB terminated the employee, revoked his or her access to the CFPB's network, and demanded that he or she delete any emails containing confidential supervisory information sent to his or her personal account and confirm that such emails had been deleted. In the case of an employee violating specific policies and procedures regarding sensitive consumer data, taking punitive action, including termination, is a good step. Of course, not all data security incidents will involve rogue employees. Instead, they can be the result of external threats to your information systems. In that case, it is important to review the cause of the security incident and evaluate how the security incident could have been avoided. Do you need to implement updated security software? Do you need to impose more stringent access controls? Do you need to provide additional employee training?

The CFPB's security incident shows that no one is safe from potential data security threats, whether internal or external. But having policies, procedures, and training regarding data security and use can help prevent security events. Additionally, having a detailed written incident response plan in place in advance of a security event will help you efficiently and thoroughly respond to any security events that do happen. Finally, make sure you learn from any security event you experience and take steps to prevent a similar event in the future.



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Federal Developments

CFPB Reports on Chatbot Technologies in Consumer Financial Services Industry. On June 6, the CFPB released a report on how chatbot technologies are being used by the consumer financial services industry and the effect of their usage on consumers. The report cites several risks associated with the use of chatbots, including providing inaccurate information about a financial product or service, providing inaccurate payment information, failing to recognize that a consumer is invoking his or her federal rights, failing to protect consumers' privacy and data, inability to access a human customer service representative, and diminished customer service and trust. The CFPB's news release states that "[f]inancial institutions should avoid using chatbots as their primary customer service delivery channel when it is reasonably clear that the chatbot is unable to meet customer needs."

Agencies Issue Guidance on Third-Party Relationship Risks. On June 6, the FRB, FDIC, and OCC issued final interagency guidance to help banking organizations manage risks associated with third-party relationships, including relationships with financial technology companies. The final guidance describes the agencies' views on sound risk management principles for banking organizations when developing and implementing risk management practices for all stages in the life cycle of third-party relationships: planning, due diligence and third-party selection, contract negotiation, ongoing monitoring, and termination. The final guidance states that sound third-party risk management takes into account the level of risk, complexity, and size of the banking organization and the nature of the third-party relationship. The final guidance replaces each agency's existing general guidance on this topic.

FTC Seeks Public Comment on Collaboration with State AGs. On June 7, the FTC requested public comment on ways the agency can more effectively collaborate with state attorneys general to advance consumer protection. The FTC Collaboration Act of 2021, which President Biden signed into law last October, directs the FTC to "conduct a study on facilitating and refining existing efforts with State Attorneys General to prevent, publicize, and penalize frauds and scams being perpetrated on individuals in the United States" and also requires the agency to provide an opportunity for public comment on certain topics that the study will address. Comments are due by August 14, 2023.

CFPB Extends Comment Deadline on Data Broker Industry. The CFPB extended its deadline for comments on the data broker industry until July 15. On March 15, the CFPB issued a request for information seeking public comment, including data, analysis, research, and other information, on data brokers. The

CFPB also requested input from individuals who have interacted with or been affected by data broker business practices. To assist commenters in developing responses, the RFI includes multiple questions that commenters may answer but stresses that the CFPB is interested in receiving any comments relating to data brokers.

CFPB Releases Semi-Annual Report. On June 8, the CFPB released its Fall 2022 Semi-Annual Report. The Report includes a list of significant rules and orders adopted by the CFPB; significant initiatives conducted by the CFPB; the CFPB's plan for rules, orders, or other initiatives conducted by the CFPB; an analysis of consumer complaints received by the CFPB; a list of public supervisory and enforcement actions; an assessment of significant actions by attorneys general and state regulators relating to federal consumer financial law; and an analysis of the CFPB's efforts to fulfill its Fair Lending mission.

CFPB Settles FDCPA and FCRA Claims Against Medical Debt Collector. On June 8, the CFPB announced a settlement with Phoenix Financial Services, a third-party collector of primarily medical debts, for allegedly violating the Fair Debt Collection Practices Act by continuing to collect on debts that were not substantiated after consumers disputed the validity of the debts. Phoenix Financial also allegedly violated the Fair Credit Reporting Act and its implementing regulation by not conducting reasonable investigations of consumer disputes or having reasonable written policies and procedures regarding the accuracy and integrity of the information it furnished to consumer reporting agencies. Among other requirements, the settlement compels Phoenix Financial to provide redress to affected consumers and pay an approximately \$1.7 million penalty to the CFPB.

CFPB Released Two Reports That Explore Finance Trends for Consumers Living in Southern U.S. On June 21, the CFPB released two reports that explore trends in the finances of consumers living in the southern region of the U.S. The first report—"Consumer Finances in Rural Areas of the Southern Region"—compares consumer financial experiences in rural communities in the southern states with other regions in the country with respect to credit card lending, auto financing, mortgage lending, and student lending and also examines consumer credit scores, consumer delinquencies, and medical collections. The second report—"Banking and Credit Access in the Southern Region of the U.S."—explores access to banking and credit, particularly branch presence, bank account access, and access to mortgage and small business loans, in both rural and non-rural communities in the southern states.

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Case(s) of the Month

Court Allowed Car Buyer to Proceed with Breach of Contract Claim Against Finance Agreement Assignee for Knowingly Collecting and Unlawfully Retaining Unearned GAP Fees: An individual bought a new car. As part of the financing for the purchase, the buyer elected to buy GAP coverage, which was memorialized in a GAP Waiver Addendum Election Form that was appended to his finance agreement. The buyer later traded in the car to a dealership. The assignee of his finance agreement submitted a payoff amount to the dealership that included the remaining amount of GAP fees for the full original term of the finance agreement and received the full payoff amount from the dealership. The buyer filed a class action against the assignee for knowingly collecting and unlawfully retaining unearned GAP fees. The assignee moved to dismiss the complaint, and the **U.S. District Court for the Northern District of Indiana** granted the motion in part and denied it in part, allowing the buyer to proceed with his breach of contract claim but striking the class allegations.

After finding that the buyer had Article III standing to sue even though he had relinquished title to the car to the dealership before it made the payoff to the assignee, the court turned to the buyer's breach of contract claim. The court determined that the assignee did not breach an implied term in the GAP Addendum imposed by Indiana's automatic refund law because that law was amended after the buyer executed his finance agreement to address refunds upon termination of a GAP agreement or early prepayment of a finance agreement. The court also found that informal guidance pertaining to GAP agreements published by the Indiana Department of Financial Institutions does not "carry 'the effect of law,' such that [it] would create an implied term in the parties' GAP Addendum." However, the court found that the buyer stated a claim that the assignee breached an express term of their agreements. The court found the finance agreement and the GAP Addendum sufficiently ambiguous with regard to whether a pro-rata refund of unearned GAP charges was required in this case and determined that the buyer should be able to proceed with his breach of contract claim. Because the court allowed the buyer to proceed with his breach of contract claim, it dismissed his money had and received claim, which is an equitable remedy available when there is no express contract between the parties. The court also dismissed the claim for a declaratory judgment that the assignee is obligated to refund the GAP fees, plus interest, finding this claim duplicative of the breach of contract claim. Finally, the court addressed the buyer's class allegations on behalf of a multi-state class and an Indiana subclass. Both the class and the subclass are defined to include only those individuals who entered into finance agreements with GAP Addenda in one of six automatic refund states and who paid off their finance agreements early during the time period that the applicable automatic refund law was in effect and to exclude any individual whose finance agreement with GAP Addendum was entered into before the applicable automatic refund law went into effect. Because the buyer entered into his finance agreement before Indiana's automatic refund law went into effect, the court concluded that "he cannot seek to represent a class based on the theory that [the assignee] violated Automatic Refund Laws that were never incorporated as implied terms of his agreements." The court, therefore, struck the class allegations but granted the buyer an opportunity to amend his complaint to address the deficiencies in his class allegations. The court also recognized that the buyer may not have standing to assert claims on behalf of customers aggrieved by violations of automatic refund laws in states in which he does not reside and has never purchased a GAP product. **See Ratulowski v. PNC Bank, N.A.**, 2023 U.S. Dist. LEXIS 82272 (N.D. Ind. May 10, 2023).

This Month's CARLAWYER® Compliance Tip

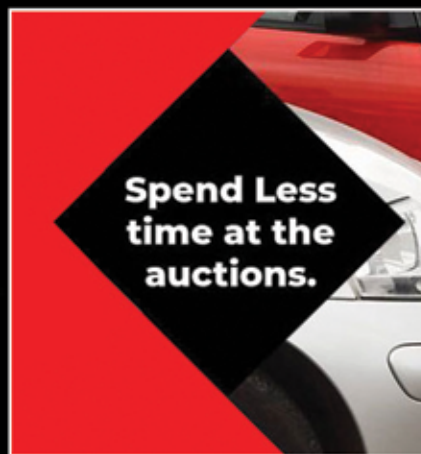
The case above illustrates how easy it is to run afoul of GAP refund requirements if you're not careful. How tightly buttoned up is your GAP refund process? As part of your process, you should know whether state law imposes any refund requirements on you with respect to unearned GAP waiver charges, in the event of full prepayment of the financing contract; in the event of cancellation by the buyer during or after any free look period; or in the event of default or default-related activities (e.g., demand for payment repossession, chargeoff). The refund requirements may lie with the holder of the financing contract, but what may be required of the holder could certainly impact the dealership. Time to investigate further!

So, there's this month's roundup! Stay legal, and we'll see you next month.



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Be Careful with Sales Made at a Customer's Home

Let's say you want to drive the vehicle a customer is interested in buying to that person's home, let the customer see and test-drive the car, negotiate the price of the car, present and offer F&I products, and then have the customer sign the purchase and financing documents.

Does it matter that the negotiation and sale is being done at the customer's home rather than at your dealership? Yes! Besides possibly violating state dealer licensing statutes that may restrict your sales to your dealership location and possibly violating your agreement with your financing source, you might be violating a federal law permitting a "cooling-off period" for sales made at a customer's home. In addition, you may be violating a comparable state law on home solicitation sales.

The Federal Trade Commission's Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations regulates a person's ability to engage in sales in places other than the person's permanent place of business. The rule requires written and oral disclosures, gives a buyer a 3-day right to cancel, prohibits misrepresentations regarding that right, and restricts a seller's ability to assign the note or contract for a period of time.

The rule applies to a "door-to-door sale," defined as follows:

A sale, lease, or rental of consumer goods [such as a car] or services in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller (e.g., sales at the buyer's residence or at facilities rented on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants, or sales at the buyer's workplace or in dormitory lounges), and which has a purchase price of \$25 or more if the sale is made at the buyer's residence or a purchase price of \$130 or more if the sale is made at locations other than the buyer's residence, whether under single or multiple contracts.

The term "personally solicits" is not defined. The term "place of business" is defined as the "main or permanent branch office or local address of a seller," such as at your dealership.

The term "door-to-door sale" does not include certain transactions, including a transaction:

- made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis;
- in which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days; or
- conducted and consummated entirely by mail or telephone and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services.

The rule requires sellers to provide buyers with a copy of any contract pertaining to a door-to-door sale at the time of its execution. The contract must be in the same language as that principally used in the oral sales presentation, show the date of the transaction, and contain the name and address of the seller. In addition, the contract must contain, in immediate proximity to the space reserved for the buyer's signature, a statement in bold 10-point font informing the buyer that he or she has the right, prior to midnight of the third business day after the date of the transaction, to cancel it. The rule also requires sellers to furnish each buyer with a completed form in duplicate, captioned either "NOTICE OF RIGHT TO CANCEL" or "NOTICE OF CANCELLATION."

The rule also requires sellers to inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the buyer's right to cancel.

The rule prohibits sellers from negotiating, transferring, selling, or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

The FTC Act gives the FTC authority to seek civil penalties of up to \$43,280 per violation. The FTC may also seek a cease-and-desist order in response to an alleged violation.

Also note that various states impose their own laws that do not necessarily mirror the federal law, so you'll need to check your state's law, too. When conducting sales at a place other than your dealership, proceed with caution!


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