

ILLINOIS

AUTOMOBILE DEALER NEWS



**TRYING TO NAIL
JELL-O TO A TREE**

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**E-COMMERCE FOR
DEALERSHIPS:
ONLINE VEHICLE SALES AND
DIGITAL RETAIL COMPLIANCE
CONSIDERATIONS**

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UPDATE ILLINOIS REOPENING



As of June 26th, all four Illinois regions have moved to Phase 4 of Governor Pritzker's plan to gradually reopen the State of Illinois. Few of the changes from Phase 3 to Phase 4 directly impact the motor vehicle retail industry, but Phase 4 includes changes that open additional sectors of the economy and make child care more readily available for working parents. Advancing to Phase 4 is seen as a sign that the Governor and his advisors see the State making progress against COVID-19.

Some key changes in Phase 4 included: Increasing the size of gatherings from 10 to 50 people; reopening all child care and summer programs, subject to IDPH guidance; permitting all outdoor recreation; reducing limitations on the return to work for "non-essential employees"; and reopening bars and restaurants (with limited capacity).

The Department of Commerce and Economic Opportunity (DCEO) released Phase 4 guidance for retail businesses and a retail business toolkit. This information can be found on the IADA website at: www.illinoisdealers.com.

IADA recommends that dealers continue to follow the IADA Operation Recommendations for Dealerships found on our website at www.illinoisdealers.com.

LEGISLATIVE UPDATE

Our effort to repeal the \$10,000 trade in cap was on track in the Senate, but was stonewalled by the House and ultimately not considered during the special four day legislative session. The abbreviated legislative session was severely limited due to the ongoing pandemic. We will make another attempt in the fall veto session and will update you as we approach the session dates. Now is an excellent time to contact your Representatives and Senators via our website to ask for their support of the repeal effort!

The General Assembly reconvened for a four-day session in late May to pass the FY21 budget appropriations bill, providing for \$42.9 billion in General Revenue Fund (GRF) spending,

including debt service, transfers, and short-term borrowing. The budget assumes \$36.8 billion in GRF revenues and plans to borrow the remaining \$4.5 billion.

The Legislature approved increases in workers' compensation benefits for essential employees who contract COVID-19 and increases unemployment benefits. The workers' compensation protections are more limited than previously overturned emergency rules that had been proposed by the Pritzker Administration. The final package is the result of an agreement between business and labor. The bill creates a rebuttable presumption for all essential frontline workers, meaning that if they contract COVID-19, it is presumed they did so on the job. Employers can rebut this presumption by showing that they were following CDC or IDPH guidance. Simple exposure does not qualify for the presumption, so the employee must actually contract the virus. Employers will also receive a temporary total disability (TTD) offset for employees on paid sick leave or extended FMLA. Additionally, the bill extends unemployment insurance (UI) benefits up to 20 additional weeks.

Federal and local elections will be held this fall and the Graduated Income Tax Amendment will be on the ballot in November. In order to ratify the amendment, 60% of those voting on the question or a majority of those voting in the election would need to vote for the amendment.

The proposed rates are not included in the amendment although the following rates have been approved by the Legislature if the amendment passes. IADA will keep you update on new legislative developments as they arise. ■

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\$100,001-\$250,000, 4.95%	\$100,001-\$250,000, 4.95%
\$250,001-\$500,000, 7.75%	\$250,001-\$350,000, 7.75%
\$500,001-\$1,000,000, 7.85%	\$350,001-\$750,000, 7.85%
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April 15	Seminar – IADA Office
May 13	Webinar
June 17	Seminar – IADA Office
July 15	Webinar
August 12	Seminar – IADA Office
October	Seminar – (CATA Office)
November 10	Webinar

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Trying to Nail Jell-O to a Tree

By Joel Kansanback | Executive Vice President
Brown & Brown Dealer Services/Automotive Development Group



All the talk right now is about digital retail. Some experts are stating that the COVID-19 pandemic has launched digital retail forward two years in just two months. Most experts agree that there is no returning to where we were.

Every dealer must be committed to being the very best at digital. Most retailers that haven't perfected an online strategy are falling by the wayside. There is a very quick bifurcation happening within auto dealers — although one camp is having extreme success, the other camp has been caught un-equipped and is either playing catch-up or marching toward a going-out-of-business sale.

Choosing to be very good at the other aspects of the business while ignoring digital retail, or putting their toe in the water, isn't going to work. If you look at the different outcomes of Nike and Under Armor, there are similarities to what's happening in the retail car business. While Nike was building out the very best in e-commerce, Under Armor was investing in wearable devices that collect data. Today, Nike is thriving and is less dependent than ever on traditional retail. Under Armor is just fighting to stay afloat.

Things aren't going back to the way they used to be. If your dealerships haven't already committed to being the very best at digital retail, they have to commit now or face certain peril.

To be great, we probably need to know exactly what digital retail is and what the measurements for greatness are. Defining digital retail is surprisingly tricky. Frankly, trying to nail down a definition is like trying to nail Jell-O to a tree. It moves, takes on different shapes and doesn't have a clear definition or an easy way to succeed.

Every customer is already a digital retail customer. On average, they spend 19 hours online before they come to the dealership. Digital retail is all about how you handle that customer after they get to the dealership. Their education level has changed, and their expectations have changed, too. So maybe digital retail is something to do with a software piece that allows your employees to engage with the customer differently when they enter the dealership.

Digital retail is also about advertising. Ideally, you want to reach customers who are in the market by driving your message to them ahead of your competition. You want them to visit your website and keep your dealership top of mind for their next purchase. That means digital retail has to involve your website: the message it carries, its functionality and its ability to convert browsing shoppers into leads.

Digital retail has to include BDC, and that department's ability to manage leads converts leads into showroom appointments or even sales.

We recently had a dealership engage us who wanted to take their digital retail to the next level in response to their customer's needs. When we dug into what they were looking for, what we discovered was that this dealership wanted to streamline the in-dealership process for its customers. For them, that meant responding to their customers' desires to stop being thrown like a football around the dealership in an old-school back and forth process. They wanted to remove the F&I turnover step to speed up the transactions.

Thanks to the pandemic, digital retail may now include pickup and delivery processes for customer cars — sales and service. It also encompasses the ability to do a remote delivery with a digital F&I process and digital signatures.



Commit to accepting and even embracing change. Retail is changing, and you can only win going forward if you meet your customers where they are at in the spectrum of how they want to buy and service their vehicles.

Digital retail now includes all these things. That means the idea of an internet department in a dealership has become a funny remnant of the early 2000s. It's more accurate to think of your entire dealership as an internet department.

The way the customer is shopping and the way they want to engage with your dealership has morphed for sales and service. It's time to stop pushing customers into our traditional funnel and shift your mindset entirely to how to make it easy for them to do business with you.

Get customers the information they want, when they want it, and in the format they want. Allow them to take steps in processes that are comfortable for them. An internet sales process that fosters new customers and draws them to the dealership while they are doing their research will be successful. If that experience is consistent and earns their trust, the dealership can facilitate their "custom" experience. Examining outdated processes is hard work and requires a lot of change. It also doesn't provide the instant gratification of a beautiful, up-to-date showroom — so it requires more strategy and patience.

Once again, in our business, change is constant. The speed of change only accelerates. Most dealerships already have some building blocks in place for digital retail. But the first step in creating a comprehensive, successful strategy for digital retail isn't defining it. It's accepting that it is part of everything we do in

every department, recognizing that needed changes aren't going away, and there is no silver bullet.

Like every other challenge a dealership faces, this one is going to start with a comprehensive game plan of processes executed by a well-trained winning team with clear goals and objectives. That team will be led most effectively by a leader who is passionate about service, including service to employees. You will have to push down the mentality that says, "but that's how we've always done it." You will have to remove some core tenets of our industry, like "get control of your customer," and take a fresh look at every process in the dealership. Technology can augment the well-defined process your well-trained team is following, but recognize that every technology fails without the right implementation plan, and every process fails without accountability.

Most important of all, commit to accepting and even embracing change. Retail is changing, and you can only win going forward if you meet your customers where they are at in the spectrum of how they want to buy and service their vehicles. ■

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E-COMMERCE FOR DEALERSHIPS: ONLINE VEHICLE SALES AND DIGITAL RETAIL COMPLIANCE CONSIDERATIONS

By Julie A. Cardosi, Esq., Law Office of Julie A. Cardosi, P.C.



The auto industry recently experienced unprecedented change in the span of a few months due to the coronavirus pandemic. The impact has been felt by OEMs, dealers, and their customers. Although online sales are commonplace for purchasing certain consumer goods, even groceries, vehicle transactions have historically not kept pace with other digitally retailed goods. Visits to dealership showrooms to consummate deals remains the norm. This is partially due to the need for original, or “wet,” signatures being required for certain documents that comprise the entire vehicle sales transaction (e.g., title, odometer, secure POA, tax forms).

With the onset of COVID-19, however, and the related shut-down orders issued by state and local governments, dealers became more inventive using the internet, their websites and social media to drive online vehicle sales. Online sales have continued to pick up traction even in the wake of stay-at-home requirements being lifted. Customers favor seamless transactions, including pricing transparency and the efficient use of their time. The area of online vehicle sales is nonetheless fraught with challenges. Additionally, companies like Tesla, Carvana and Vroom, have made a significant foray into the realm of online digital vehicle sales while competing with traditional dealers and manufacturers for customers. To address some of these

Dealers became more inventive using the internet, their websites and social media to drive online vehicle sales



that rises to the level of solicitation, negotiation and sale of the vehicle at a customer's residence, rather than at the dealership, gives rise to these laws and requires certain written and oral disclosures by the dealer and affords the buyer a three day right to rescind the transaction. Additionally, these laws limit the dealer's ability to assign the contract. Depending on the circumstances, delivering the vehicle to the customer at his/her residence can trigger the customer's three day rescission right and other requirements. Moreover, consummation of the transaction off-premises can also create problems for dealers under the Illinois Vehicle Code, the state's dealer licensing law, and perhaps under the dealer's sales and service agreement with the OEM, as well as under agreements the dealer may have with the financing entities. Finally, if the point of sale is deemed to be other than the dealership premises, sales tax questions may arise. Ensure the online sales transaction was conducted at the dealership by following certain guidelines.

First, make certain all terms of the sale are mutually agreed upon prior to vehicle delivery. There should not be any negotiating of terms away from the dealership premises. If the customer insists on delivery of the vehicle to his/her residence, consider having dealership personnel, other than sales employees, deliver the vehicle that is sold online to the customer to avoid any "last minute" contract negotiations or the appearance of same. If the customer has a trade-in, be sure to value or appraise the trade at the time of the mutual agreement of all sale terms prior to vehicle delivery.

Second, if the vehicle is to be delivered to the customer's residence, ensure all sales transaction instruments (that do not require an original customer signature) are completed and signed online in advance of delivery provided compliant with e-signature legal requirements. As mentioned, in Illinois, there are some documents that require an original or "wet" signature. Try to have these signed and delivered to the dealership in advance of vehicle delivery.

Other examples of best practices when conducting online vehicle sales include: (i) considering requiring the customer to sign an acknowledgment that the sale was not solicited at the customer's residence and that the vehicle was delivered to the customer as a courtesy or at his/her request; (ii) ensuring test drives be taken at the dealership premises; (iii) delivering the finance contract to the customer in advance to satisfy Truth-in-Lending requirements; (iv) ensuring compliance with state and federal privacy laws such as Gramm Leach Bliley and Illinois data transparency and privacy laws. Also, ensure the dealership has an identity theft program in place under the Red Flags Rule to confirm a customer's identity, this applies to online sales as well. The dealership information technology vendor should be consulted to ensure e-contracting compliance and appropriate security and encryption for storage and transmission of customer personal information.

Online transactions and e-commerce open new opportunities for dealerships in the ever-changing digital retail landscape. Adhering to best practices helps to ensure compliance with numerous applicable state and federal legal requirements and facilitates satisfied customers. ■

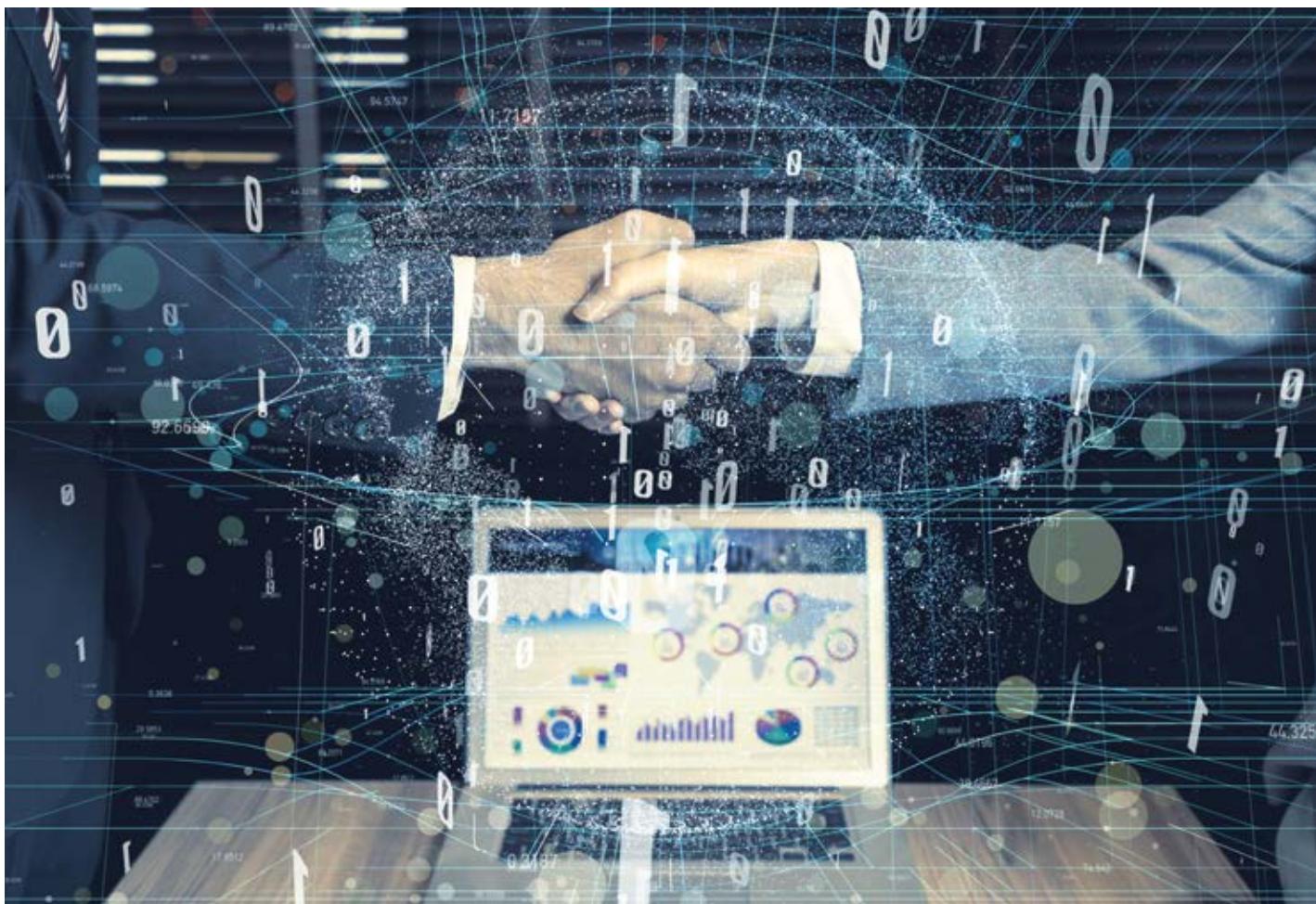


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challenges and meet customer expectations, it is important at a minimum for dealerships that engage in online vehicle sales to develop and implement a set of best practices.

Dealerships that engage in online vehicle sales should ensure their understanding about certain aspects of the transaction, such as off-premises delivery, to avoid violating the FTC and Illinois "cooling-off" laws. Specifically, conduct

Remote Sales: Best Practices



The COVID-19 Stay at Home Executive Order, especially the early stages when customers needed appointments to enter dealership showrooms, prompted many dealers to try to accommodate their customers by pivoting to a remote sales process where possible. Although remote sales are a good way to practice social distancing while selling vehicles, remote sales involve some important differences from typical in-showroom sales to keep in mind.

If you sell a vehicle on-line and deliver it to the customer, it is vital to make it clear that your dealership is the point of sale, not the customer's driveway, so that you don't inadvertently change the applicable sales tax jurisdiction and also so you avoid accidentally triggering 3-day cooling off rights for the customer. If the customer lives in another sales tax jurisdiction, even one with the same tax rate as your dealership, changing the taxable point of sale means that the local portion of the sales tax will get allocated to the wrong taxing body. If the customer lives in a jurisdiction with a higher sales tax rate, under-collection of sales tax will compound the problem. (By the way, similar consideration of sales tax jurisdiction should be applied to off-site "tent

sales"). The Federal Trade Commission's (FTC) 3-day cooling off period to return merchandise applies to sales made at a person's residence, such as door-to-door sales. Three-day cooling off rights do not arise when customers come into your dealership to purchase vehicles. However, if significant selling activity moves from the dealership to a customer's residence during the course of an online sale, the 3-day cooling off rule could come into play, potentially creating a right for the customer to cancel the sale.

There are several steps that you can take to show that an on-line sale with delivery to the customer's residence was conducted at your dealership.

- Agree to all terms of the sale prior to delivery. If you negotiate the transaction online, but then the delivery person sells an extended warranty in the customer's driveway, you have changed the material terms of the sale, which pushes you toward the danger zone. In fact, it is a good practice to have somebody other than your sales staff deliver vehicles that are sold online or over the telephone to make a clean break between sales and delivery activities.
- If the transaction involves a trade-in appraisal, try to

inspect the vehicle remotely or send an employee out to appraise the trade-in before you finalize the terms of the deal, if possible. If you cannot appraise the trade-in before delivering the new vehicle to the customer and the trade-in does not live up to the customer's description, requiring you to adjust the trade allowance, pause the deal and renegotiate remotely, not on the spot.

- Sign as many of the sales documents as possible online. If time permits, arrange to have signed copies of documents that require a "wet ink" signature mailed or shipped to your dealership before you deliver the customer's vehicle. Documents that require a "wet ink" signature include the motor vehicle title application, the certificate of title assignment area, the power of attorney, odometer statement, and sales tax return.
- Deliver RISC in advance (or be prepared to give the customer time to read it before signing) to ensure compliance with Truth in Lending Act disclosures.

- Consider having the customer sign an acknowledgement that the dealership did not solicit or negotiate the sale at the customer's home and that delivery was made as an accommodation to the customer.

- Consider requiring customers to come to the dealership for test drives. Bringing a vehicle to the customer's home for a test drive could be seen as initiating the negotiation process and raise three-day cooling off concerns.

- When you deliver the customer's new vehicle, make sure to follow IADA's Operation Recommendations for Dealerships (available at www.illinoisdealers.com) or other best practices for sanitizing the vehicle (and the keys) before you hand it over to the customer, and practice safe social distancing, including the use of masks, when interacting with the customer.

other than the home address listed on the customer's proof of identity. Consider asking some out of wallet questions to verify identity. Also, if you are transmitting a customer's private, personal information electronically (credit application, copy of driver's license, any document with the customer's social security number or other personal information, etc.), make sure that you are using a secure and encrypted method of transmitting that information. What is and isn't a secure method of electronic transmission is beyond the scope of this article, but your DMS or other vendor should be able to provide secure, encrypted means of transmission, whereas texting images to your salesperson's personal cell phone is risky at best. Conferring with your IT provider is highly recommended.

A word about security is in order. You will want to be thorough with your identity theft Red Flags compliance to be certain that your customer is who he or she claims to be, especially if the customer requests delivery at a location

Even though technology and state regulators are not fully immersed in the digital age, by using a bit of caution, remote sales are a way to fill the needs of your customers. ■

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