

Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1259

AN ACT to amend the Indiana Code concerning motor vehicles.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 9-32-13-15, AS ADDED BY P.L.92-2013, SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 15. (a) It is an unfair practice for a manufacturer or distributor to fail to compensate a dealer ~~at the posted labor dealer's retail~~ **retail** rate for the work and services the dealer is required to perform in connection with the dealer's delivery and preparation obligations under any franchise, or fail to compensate a dealer **anything less than** the ~~posted hourly labor dealer's retail~~ **retail** rate for labor and ~~other expenses incurred by the dealer parts~~ **parts** under the manufacturer's warranty agreements as long as the ~~posted dealer's retail~~ **retail** rate is reasonable. Judgment of the reasonableness includes consideration of charges for similar repairs by ~~comparable~~ **similarly situated** repair facilities in ~~the local area as well as mechanic's wages and fringe benefits.~~ **Indiana.**

(b) This section does not authorize a manufacturer or distributor and its franchisees in Indiana to establish a uniform hourly labor reimbursement rate effective for the entire state.

(c) **This section does not apply to manufacturers or distributors of manufactured housing, heavy duty vocational vehicles (as defined in 49 CFR 523.8), or recreational vehicles.**

SECTION 2. IC 9-32-13-15.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 15.5. (a) This section does not**

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apply to manufacturers or distributors of manufactured housing, heavy duty vocational vehicles (as defined in 49 CFR 523.8), or recreational vehicles.

(b) Unless otherwise agreed, it is an unfair practice for a manufacturer or distributor to fail to compensate a dealer anything less than the dealer's retail rates for parts and labor the dealer uses in performing the warranty services of the manufacturer or distributor, or for a manufacturer or distributor of a separate vehicle component or major vehicle assembly that is warranted independently of the motor vehicle to fail to compensate a dealer anything less than the dealer's retail rate for the parts and labor the dealer uses in performing the warranty services of the manufacturer or distributor. The dealer's retail rate for parts must be a percentage determined by dividing the total charges for parts used in warranty like repairs by the dealer's total cost for those parts minus one (1) in the lesser of one hundred (100) customer paid sequential repair orders or ninety (90) consecutive days of customer paid repair orders. The dealer's retail rate for labor shall be determined by dividing the total labor sales for warranty like repairs by the number of hours that generated those sales in one hundred (100) customer paid sequential repair orders or ninety (90) consecutive days of customer paid repair orders. A retail rate may be calculated only based upon customer paid repair orders charged within one hundred eighty (180) days before the date the dealer submits the declaration.

(c) The dealer's submission for retail rates must include a declaration of the dealer's retail rates for parts and labor along with the supporting service repair orders paid by customers. A manufacturer or distributor may challenge the dealer's declaration by submitting a rebuttal not later than sixty (60) days after the date the declaration was received. If the manufacturer or distributor does not send a timely rebuttal to the dealer, the retail rate is established as reasonable and goes into effect automatically.

(d) If a rebuttal in subsection (c) is timely sent, the rebuttal must substantiate how the dealer's declaration is unreasonable or materially inaccurate. The rebuttal must propose an adjusted retail rate and provide written support for the proposed adjustments. If the dealer does not agree with the adjusted retail rate, the dealer may file a complaint with the dealer services division within the office of the secretary of state.

(e) A complaint filed under subsection (d) must be filed not later than thirty (30) days after the dealer receives the manufacturer's



or distributor's rebuttal. On or before filing a complaint, a dealer must serve a demand for mediation upon the manufacturer or distributor.

(f) When calculating the retail rate customarily charged by the dealer for parts and labor under this section, the following work may not be included:

- (1) Repairs for manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs.
- (2) Parts sold at wholesale.
- (3) Routine maintenance not covered under a retail customer warranty, such as fluids, filters, and belts not provided in the course of repairs.
- (4) Nuts, bolts, fasteners, and similar items that do not have an individual part number.
- (5) Vehicle reconditioning.

(g) If a manufacturer or distributor furnishes a part or component to a dealer at no cost to use in performing repairs under a recall, campaign service, or warranty repair, the manufacturer or distributor shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section by compensating the dealer the average markup on the cost for the part or component as listed in the manufacturer's or distributor's initial or original price schedule minus the cost for the part or component.

(h) A manufacturer or distributor may not require a dealer to establish the retail rate customarily charged by the dealer for parts and labor by an unduly burdensome or time consuming method or by requiring information that is unduly burdensome or time consuming to provide, including part by part or transaction by transaction calculations. A dealer may not declare an average percentage parts markup or average labor rate more than once in a twelve (12) month period. A manufacturer or distributor may perform annual audits to verify that a dealer's effective rates have not decreased. If a dealer's effective rates have decreased, a manufacturer or distributor may reduce the warranty reimbursement rate prospectively. A dealer may elect to revert to the nonretail rate reimbursement for parts and labor not more than once in a twelve (12) month period.

(i) A manufacturer or distributor is permitted to recover its costs, as defined under this section, only from a dealer that receives retail reimbursement for parts or labor, or both parts and labor. This subsection does not prohibit a manufacturer or distributor



from increasing the wholesale price of a vehicle or part in the ordinary course of business.

(j) If a dealer files a complaint with the dealer services division within the office of the secretary of state, the warranty reimbursement rate in effect before any mediation or complaint remains in effect until thirty (30) days after:

- (1) a final decision has been issued by a court with jurisdiction; and**
- (2) all appeals have been exhausted.**

SECTION 3. IC 9-32-13-17, AS ADDED BY P.L.92-2013, SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 17. (a) It is an unfair practice for a manufacturer or distributor to:

- (1) fail to pay a claim made by a dealer for compensation for:
 - (A) delivery and preparation work;
 - (B) warranty work; and
 - (C) incentive payments;

not later than thirty (30) days after the claim is approved;

- (2) fail to approve or disapprove a claim not later than thirty (30) days after receipt of the claim; or
- (3) disapprove a claim without notice to the dealer in writing of the grounds for disapproval.

(b) A manufacturer or distributor may:

- (1) audit a claim made by a dealer; or
- (2) charge back to a dealer any amounts paid on a false or unsubstantiated claim;

for up to one (1) year after the date on which the claim is paid. However, the limitations of this subsection do not apply if the manufacturer or distributor can prove fraud on a claim. A manufacturer or distributor shall not discriminate among dealers with regard to auditing or charging back claims.

(c) If the motor vehicle dealer has properly submitted the claim in accordance with the manufacturer's or distributor's warranty or incentive program guidelines, a manufacturer or distributor may not deny a claim based solely on a motor vehicle dealer's incidental failure to comply with a specific claim processing requirement, including a clerical error or other administrative technicality that does not call into question the legitimacy of a claim. A motor vehicle dealer may submit an amended or supplemental claim within the time and manner required by the manufacturer for:

- (1) sales incentives;**

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- (2) service incentives;
- (3) rebates; or
- (4) other forms of incentive compensation;

for up to sixty (60) days from the date on which such a claim was submitted, could have been submitted, or was charged back. For purposes of this section, a failure to obtain a required signature may not be considered to be a clerical error or administrative technicality.

SECTION 4. IC 9-32-13-23, AS AMENDED BY P.L.2-2014, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 23. (a) It is an unfair practice for a manufacturer, distributor, officer, or agent to do any of the following:

- (1) Require, coerce, or attempt to coerce a new motor vehicle dealer in Indiana to:
 - (A) change the location of the dealership;
 - (B) make any substantial alterations to the use of franchises; or
 - (C) make any substantial alterations to the dealership premises or facilities;

if to do so would be unreasonable or would not be justified by current economic conditions or reasonable business considerations. This subdivision does not prevent a manufacturer or distributor from establishing and enforcing reasonable facility requirements. However, a motor vehicle dealer may elect to use for the facility alteration locally sourced materials or supplies that are substantially similar to those required by the manufacturer or distributor, subject to the approval of the manufacturer or distributor, **which may not be unreasonably withheld.**

(2) Require, coerce, or attempt to coerce a new motor vehicle dealer in Indiana to divest ownership of or management in another line or make of motor vehicles that the dealer has established in its dealership facilities with the prior written approval of the manufacturer or distributor.

(3) Establish or acquire wholly or partially a franchisor owned outlet engaged wholly or partially in a substantially identical business to that of the franchisee within the exclusive territory granted the franchisee by the franchise agreement or, if no exclusive territory is designated, competing unfairly with the franchisee within a reasonable market area. A franchisor is not considered to be competing unfairly if operating:

- (A) a business for less than two (2) years;
- (B) in a bona fide retail operation that is for sale to any

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qualified independent person at a fair and reasonable price; or
(C) in a bona fide relationship in which an independent person has made a significant investment subject to loss in the business operation and can reasonably expect to acquire majority ownership or managerial control of the business on reasonable terms and conditions.

(4) Require a dealer, as a condition of granting or continuing a franchise, approving the transfer of ownership or assets of a new motor vehicle dealer, or approving a successor to a new motor vehicle dealer to:

- (A) construct a new dealership facility;
- (B) modify or change the location of an existing dealership; or
- (C) grant the manufacturer or distributor control rights over any real property owned, leased, controlled, or occupied by the dealer.

(5) Prohibit a dealer from representing more than one (1) line make of motor vehicles from the same or a modified facility if:

- (A) reasonable facilities exist for the combined operations;
- (B) the dealer meets reasonable capitalization requirements for the original line make and complies with the reasonable facilities requirements of the manufacturer or distributor; and
- (C) the prohibition is not justified by the reasonable business considerations of the manufacturer or distributor.

Subdivisions (3) through (5) do not apply to recreational vehicle manufacturer franchisors.

(b) This section does not prohibit the enforcement of a voluntary agreement between the manufacturer or distributor and the franchisee where separate and valuable consideration has been offered and accepted.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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