

HOUSE BILL No. 1195

DIGEST OF INTRODUCED BILL

Citations Affected: IC 9-32.

Synopsis: Automobile dealers. Provides that the form of a transaction cannot exempt a manufacturer from the statutory prohibition against direct manufacturer sales to the public. Provides that a dealer or manufacturer may not: (1) increase the wholesale price of a vehicle; or (2) impose a surcharge on a dealer; for the sole purpose of recovering costs related to the reimbursement of a dealer for parts or labor. Provides that a distributor or manufacturer may not deny a claim made by a dealer when the dealer has provided reasonably sufficient documentation of the dealer's good faith attempt to perform necessary work in compliance with the written policies and procedures of the manufacturer. Provides that any association or corporation that: (1) is primarily owned by or comprised of dealers; and (2) primarily represents the interests of dealers; has standing to file a complaint or petition on behalf of a dealer with standing. Makes technical corrections.

Effective: July 1, 2018.

Speedy

January 9, 2018, read first time and referred to Committee on Roads and Transportation.



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1195

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

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

- 1 SECTION 1. IC 9-32-11-20, AS ADDED BY P.L.260-2017,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 20. (a) This section does not apply to:
4 (1) a manufacturer of a trailer or semitrailer; or
5 (2) a manufacturer that produces fewer than one thousand (1,000)
6 units per year.
7 (b) Except as provided in subsection (c), a manufacturer **or**
8 **distributor** may not engage in sales directly to the general public in
9 Indiana. **The prohibition described in this subsection extends to any**
10 **manufacturer or distributor activity where the manufacturer or**
11 **distributor, rather than the dealer, is the retail contact through**
12 **which the right of use for a new or used motor vehicle is obtained.**
13 **The form of a manufacturer's or distributor's transaction does not**
14 **affect the application of the prohibition described in this**
15 **subsection.**
16 (c) A manufacturer **or distributor** may engage in sales directly to
17 the general public in Indiana only if:



1 (1) the manufacturer **or distributor** was granted an initial license
2 to sell new motor vehicles before July 1, 2015; and

3 (2) the manufacturer **or distributor** establishes at least one (1)
4 physical location in Indiana that is a warranty repair service
5 center before January 1, 2018.

6 (d) A manufacturer **or distributor** described in subsection (c) must
7 stop engaging in sales directly to the general public in Indiana if the
8 manufacturer **or distributor** sells, transfers, or conveys a majority
9 interest in the manufacturer **or distributor** to another person that is
10 required to be licensed under this chapter.

11 SECTION 2. IC 9-32-13-15.5, AS ADDED BY P.L.167-2016,
12 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2018]: Sec. 15.5. (a) This section does not apply to
14 manufacturers or distributors of manufactured housing, heavy duty
15 vocational vehicles (as defined in 49 CFR 523.8), or recreational
16 vehicles.

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

38 (c) The dealer's submission for retail rates must include a
39 declaration of the dealer's retail rates for parts **and or** labor along with
40 the supporting service repair orders paid by customers. A manufacturer
41 or distributor may challenge the dealer's declaration by submitting a
42 rebuttal not later than sixty (60) days after the date the declaration was



1 received. If the manufacturer or distributor does not send a timely
2 rebuttal to the dealer, the retail rate is established as reasonable and
3 goes into effect automatically.

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

11 (e) A complaint filed under subsection (d) must be filed not later
12 than thirty (30) days after the dealer receives the manufacturer's or
13 distributor's rebuttal. On or before filing a complaint, a dealer must
14 serve a demand for mediation upon the manufacturer or distributor.

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

18 (1) Repairs for manufacturer or distributor special events,
19 specials, or promotional discounts for retail customer repairs.

20 (2) Parts sold **or repairs performed** at wholesale.

21 (3) Routine maintenance not covered under a retail customer
22 warranty, such as fluids, filters, and belts not provided in the
23 course of repairs.

24 (4) Nuts, bolts, fasteners, and similar items that do not have an
25 individual part number.

26 (5) Vehicle reconditioning.

27 **(6) Accessories.**

28 **(7) Repairs of damage caused by a collision, a road hazard,**
29 **the force of the elements, vandalism, theft, or operator**
30 **negligence.**

31 **(8) Parts sold or repairs performed for insurance carriers.**

32 **(9) Vehicle emission or safety inspections required by law.**

33 **(10) Goodwill or policy repairs or replacements.**

34 **(11) Repairs for which volume discounts have been negotiated**
35 **with government agencies, fleet owners, insurance carriers, or**
36 **other third party payors.**

37 **(12) Repairs performed on vehicles from a different line**
38 **make.**

39 **(13) Replacement of tires or related elements.**

40 (g) If a manufacturer or distributor furnishes a part or component to
41 a dealer at no cost to use in performing repairs under a recall, campaign
42 service, or warranty repair, the manufacturer or distributor shall



1 compensate the dealer for the part or component in the same manner
 2 as warranty parts compensation under this section by compensating the
 3 dealer the average markup on the cost for the part or component as
 4 listed in the manufacturer's or distributor's initial or original price
 5 schedule minus the cost for the part or component.

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

19 (i) A manufacturer or distributor **may not:**

20 **(1) increase the wholesale price of a vehicle; or**

21 **(2) impose a surcharge on a dealer;**

22 **for the purpose of recovering any of its costs related to the**
 23 **reimbursement of a dealer for parts or labor required under this**
 24 **section. is permitted to recover its costs, as defined under this section;**
 25 ~~only from a dealer that receives retail reimbursement for parts or labor;~~
 26 ~~or both parts and labor.~~ This subsection does not prohibit a
 27 manufacturer or distributor from increasing the wholesale price of a
 28 vehicle or part in the ordinary course of business.

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

33 (1) a final decision has been issued by a court with jurisdiction;
 34 and

35 (2) all appeals have been exhausted.

36 SECTION 3. IC 9-32-13-17, AS AMENDED BY P.L.167-2016,
 37 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2018]: Sec. 17. (a) It is an unfair practice for a manufacturer
 39 or distributor to:

40 (1) fail to pay a claim made by a dealer for compensation for:

41 (A) delivery and preparation work;

42 (B) warranty work; and



- 1 (C) incentive payments;
 2 not later than thirty (30) days after the claim is approved;
 3 (2) fail to approve or disapprove a claim not later than thirty (30)
 4 days after receipt of the claim; or
 5 (3) disapprove a claim without notice to the dealer in writing of
 6 the grounds for disapproval.
- 7 (b) A manufacturer or distributor may:
 8 (1) audit a claim made by a dealer; or
 9 (2) charge back to a dealer any amounts paid on a:
 10 (A) false or ~~unsubstantiated~~ **fraudulent claim;**
 11 **(B) claim in which repairs were not properly made;**
 12 **(C) claim involving work that was not necessary to correct**
 13 **a defective condition; or**
 14 **(D) claim that the dealer failed to substantiate in**
 15 **accordance with the manufacturer's written procedures or**
 16 **other reasonable means;**
- 17 for up to ~~one (1) year~~ **six (6) months** after the date on which the claim
 18 is paid. However, the limitations of this subsection do not apply if the
 19 manufacturer or distributor can prove fraud on a claim. A manufacturer
 20 or distributor shall not discriminate among dealers with regard to
 21 auditing or charging back claims.
- 22 (c) ~~If the motor vehicle dealer has properly submitted the claim in~~
 23 ~~accordance with the manufacturer's or distributor's warranty or~~
 24 ~~incentive program guidelines; **Except as provided in subsection (d),**~~
 25 a manufacturer or distributor may not deny a claim based solely on a
 26 motor vehicle dealer's incidental failure to comply with a specific claim
 27 processing requirement, including a clerical error or other
 28 administrative technicality that does not call into question the
 29 legitimacy of a claim **when the dealer has provided reasonably**
 30 **sufficient documentation of the dealer's good faith attempt to**
 31 **perform necessary work in compliance with the written policies**
 32 **and procedures of the manufacturer.**
- 33 (d) Subsection (c) does not apply to a manufacturer or
 34 distributor if both of the following conditions are met:
 35 (1) **The dealer has, within the previous six (6) months, failed**
 36 **to comply with the same specific claim, documentation**
 37 **procedure, or documentation procedures.**
 38 (2) **The manufacturer has, within the previous six (6) months,**
 39 **provided a written warning to the dealer by certified United**
 40 **States mail, return receipt requested, identifying the specific**
 41 **claim documentation procedure or procedures violated by the**
 42 **dealer, manufacturer, or distributor.**



1 (e) A motor vehicle dealer may submit an amended or supplemental
2 claim within the time and manner required by the manufacturer for:

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

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

11 SECTION 4. IC 9-32-16-15, AS ADDED BY P.L.92-2013,
12 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2018]: Sec. 15. (a) A dealer who is injured by an unfair
14 practice set forth in IC 9-32-13 or IC 9-32-15 may file a complaint or
15 petition with the division.

16 (b) A dealer may not file a complaint or petition with the division
17 under subsection (a) based on an alleged violation of IC 9-32-13 or
18 IC 9-32-15 by a manufacturer or distributor unless the dealer serves a
19 demand for mediation upon the manufacturer or distributor:

- 20 (1) before; or
21 (2) at the same time as;

22 filing the complaint or petition. A demand for mediation must be in
23 writing and served upon the manufacturer or distributor by certified
24 mail at an address designated for the manufacturer or distributor in the
25 licensor's records. The demand for mediation must contain a brief
26 statement of the dispute and the relief sought by the dealer serving the
27 demand.

28 (c) Not later than twenty (20) days after the date the demand for
29 mediation is served under subsection (b), the parties shall mutually
30 select an independent mediator and meet with the mediator for the
31 purpose of attempting to resolve the dispute. The meeting place must
32 be within Indiana at a location selected by the mediator. The mediator
33 may extend the period in which the meeting must occur for good cause
34 shown by either party or upon stipulation of the parties.

35 **(d) Any association or corporation that:**

- 36 **(1) is primarily owned by or comprised of dealers; and**
37 **(2) primarily represents the interests of dealers;**

38 **has standing to file a complaint or petition with the division on**
39 **behalf of a dealer with standing under subsection (a). Upon the**
40 **filing of a complaint or petition on behalf of a dealer, the**
41 **association or corporation shall follow all other requirements of**
42 **this section.**

