



February 28, 2018

ENGROSSED HOUSE BILL No. 1195

DIGEST OF HB 1195 (Updated February 27, 2018 12:21 pm - DI 132)

Citations Affected: IC 9-32; noncode.

Synopsis: Automobile dealers. Defines "vehicle right of use subscription program". Prohibits vehicle right of use subscription programs. Provides that a dealer or manufacturer may not impose a surcharge on a dealer for the sole purpose of recovering costs related to the reimbursement of a dealer for parts or labor. Requires a manufacturer to: (1) provide a dealer with written notification of the grounds upon which a claim is being charged back as a result of an audit; (2) provide dealers with a reasonable appeals process concerning certain fees, payments, and reimbursements; and (3) allow a dealer to cure certain administrative errors within thirty days after certain claims seeking reimbursement are denied. Urges the legislative council to assign to the appropriate interim study committee the topic of vehicle right of use subscription programs. Makes technical amendments.

Effective: Upon passage; July 1, 2018.

Soliday, GiaQuinta, Forestal

(SENATE SPONSORS — BROWN L, CRIDER, NIEZGODSKI)

January 9, 2018, read first time and referred to Committee on Roads and Transportation.
January 29, 2018, amended, reported — Do Pass.
January 31, 2018, read second time, ordered engrossed. Engrossed.
February 1, 2018, read third time, recommitted to Committee of One, amended; passed.
Yeas 83, nays 1.
February 2, 2018, engrossed.

SENATE ACTION

February 6, 2018, read first time and referred to Committee on Homeland Security and Transportation.
February 27, 2018, amended, reported favorably — Do Pass.

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February 28, 2018

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.

ENGROSSED 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.
10 (c) A manufacturer **or distributor** may engage in sales directly to
11 the general public in Indiana only if:
12 (1) the manufacturer **or distributor** was granted an initial license
13 to sell new motor vehicles before July 1, 2015; and
14 (2) the manufacturer **or distributor** establishes at least one (1)
15 physical location in Indiana that is a warranty repair service
16 center before January 1, 2018.
17 (d) A manufacturer **or distributor** described in subsection (c) must

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1 stop engaging in sales directly to the general public in Indiana if the
 2 manufacturer **or distributor** sells, transfers, or conveys a majority
 3 interest in the manufacturer **or distributor** to another person that is
 4 required to be licensed under this chapter.

5 **(e) For purposes of this subsection, "vehicle right of use**
 6 **subscription program" means a subscription service that, for a**
 7 **recurring fee and for a limited period of time, allows a**
 8 **participating person exclusive use of a motor vehicle owned by an**
 9 **entity that controls or contracts with the subscription service. The**
 10 **term does not include leases, short term motor vehicle rentals, or**
 11 **services that allow short term sharing of a motor vehicle. Vehicle**
 12 **right of use subscription programs are prohibited in Indiana. This**
 13 **subsection expires on May 1, 2019.**

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

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

41 (c) The dealer's submission for retail rates must include a
 42 declaration of the dealer's retail rates for parts ~~and~~ **or** labor along with



1 the supporting service repair orders paid by customers. A manufacturer
2 or distributor may challenge the dealer's declaration by submitting a
3 rebuttal not later than sixty (60) days after the date the declaration was
4 received. If the manufacturer or distributor does not send a timely
5 rebuttal to the dealer, the retail rate is established as reasonable and
6 goes into effect automatically.

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

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

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

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

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

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

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

29 (5) Vehicle reconditioning.

30 **(6) Accessories.**

31 **(7) Repairs of damage caused by a collision, a road hazard,**
32 **the force of the elements, vandalism, or theft.**

33 **(8) Vehicle emission or safety inspections required by law.**

34 **(9) Manufacturer or distributor reimbursed goodwill or**
35 **policy repairs or replacements.**

36 **(10) Replacement of tires.**

37 (g) If a manufacturer or distributor furnishes a part or component to
38 a dealer at no cost to use in performing repairs under a recall, campaign
39 service, or warranty repair, the manufacturer or distributor shall
40 compensate the dealer for the part or component in the same manner
41 as warranty parts compensation under this section by compensating the
42 dealer the average markup on the cost for the part or component as



1 listed in the manufacturer's or distributor's initial or original price
2 schedule minus the cost for the part or component.

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

16 (i) ~~A manufacturer~~ **Except as provided in IC 9-32-13-16, a**
17 **manufacturer** or distributor **may not impose a surcharge on a dealer**
18 **for the purpose of recovering any of its costs related to the**
19 **reimbursement of a dealer for parts or labor required under this**
20 **section. is permitted to recover its costs, as defined under this section,**
21 ~~only from a dealer that receives retail reimbursement for parts or labor,~~
22 ~~or both parts and labor.~~ This subsection does not prohibit a
23 manufacturer or distributor from increasing the wholesale price of a
24 vehicle or part in the ordinary course of business.

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

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

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

- 36 (1) fail to pay a claim made by a dealer for compensation for:
37 (A) delivery and preparation work;
38 (B) warranty work; and
39 (C) incentive payments;
40 not later than thirty (30) days after the claim is approved;
41 (2) fail to approve or disapprove a claim not later than thirty (30)
42 days after receipt of the claim; or



- 1 (3) disapprove a claim without notice to the dealer in writing of
 2 the grounds for disapproval.
- 3 (b) A manufacturer or distributor may:
- 4 (1) audit a claim made by a dealer; or
- 5 (2) charge back to a dealer any amounts paid on a:
- 6 (A) false or unsubstantiated fraudulent claim;
- 7 (B) claim in which repairs were not properly made;
- 8 (C) claim involving work that was not necessary to correct
 9 a defective condition; or
- 10 (D) claim that the dealer failed to substantiate in
 11 accordance with the manufacturer's written procedures or
 12 other reasonable means;
- 13 for up to ~~one (1) year~~ **twelve (12) months** after the date on which the
 14 claim is paid. However, the limitations of this subsection do not apply
 15 if the manufacturer or distributor can prove fraud on a claim. A
 16 manufacturer or distributor shall not discriminate among dealers with
 17 regard to auditing or charging back claims.
- 18 (c) ~~If the motor vehicle dealer has properly submitted the claim in~~
 19 ~~accordance with the manufacturer's or distributor's warranty or~~
 20 ~~incentive program guidelines; **Except as provided in subsection (d),**~~
 21 a manufacturer or distributor may not deny a claim based solely on a
 22 motor vehicle dealer's incidental failure to comply with a specific claim
 23 processing requirement, including a clerical error or other
 24 administrative technicality that does not call into question the
 25 legitimacy of a claim **when the dealer has provided reasonably**
 26 **sufficient documentation of the dealer's good faith attempt**
 27 **to perform necessary work in compliance with the written policies**
 28 **and procedures of the manufacturer.**
- 29 (d) **A manufacturer or distributor shall provide a dealer with**
 30 **written notification of the specific grounds upon which a claim is**
 31 **being charged back as a result of an audit. A manufacturer or**
 32 **distributor shall provide a reasonable appeals process allowing the**
 33 **dealer at least thirty (30) days after receipt of the notice of charge**
 34 **back to provide additional supporting documentation or**
 35 **information rebutting the charge back. If the charge back is based**
 36 **upon noncompliance with documentation requirements, material**
 37 **claim submission requirements, or other material clerical errors,**
 38 **the manufacturer or distributor shall allow the dealer thirty (30)**
 39 **days from the receipt of the notice of charge back to cure any**
 40 **material noncompliance. A manufacturer's or distributor's audit**
 41 **or appeals process shall allow a dealer, the dealer's designated**
 42 **agent, officer, or employee to request, in writing, a meeting with**



1 the manufacturer or distributor via in-person meeting, video
 2 conference, or telephone call or a written explanation of the basis
 3 for a charge back. The manufacturer or distributor shall respond
 4 with all details and specific information supporting the basis for
 5 each charge back. The manufacturer or distributor and the dealer
 6 may agree, during the audit or appeals process, to an extension of
 7 time for the dealer to cure any material noncompliance as
 8 necessitated by the volume of the claim charge backs at issue.

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

- 11 (1) sales incentives;
- 12 (2) service incentives;
- 13 (3) rebates; or
- 14 (4) other forms of incentive compensation;

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

19 SECTION 4. [EFFECTIVE UPON PASSAGE] (a) As used in this
 20 SECTION, "legislative council" refers to the legislative council
 21 created by IC 2-5-1.1-1.

22 (b) As used in this SECTION, "study committee" means either
 23 of the following:

- 24 (1) A statutory committee established under IC 2-5.
- 25 (2) An interim study committee.

26 (c) The legislative council is urged to assign to the appropriate
 27 study committee, during the 2018 interim, the task of studying
 28 vehicle right of use subscription programs.

29 (d) If an appropriate study committee is assigned the topic
 30 described in subsection (c), the study committee shall issue to the
 31 legislative council a final report containing the study committee's
 32 findings and recommendations, including any recommended
 33 legislation concerning the topic, in an electronic format under
 34 IC 5-14-6, not later than November 1, 2018.

35 (e) This SECTION expires December 31, 2018.

36 SECTION 5. An emergency is declared for this act.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Roads and Transportation, to which was referred House Bill 1195, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 30, delete "orders." and insert **"orders or dealer cost plus seventy-five percent (75%) gross profit, whichever is greater."**

Page 3, line 29, delete "theft, or operator" and insert **"or theft."**

Page 3, delete lines 30 through 31.

Page 3, line 32, delete "(9)" and insert **"(8)"**.

Page 3, line 33, delete "(10) Goodwill" and insert **"(9) Manufacturer or distributor reimbursed goodwill"**.

Page 3, delete lines 34 through 38.

Page 3, line 39, delete "(13)" and insert **"(10)"**.

Page 3, line 39, delete "tires" and insert **"tires."**

Page 3, line 39, delete "or related elements."

Page 4, line 19, delete "may not:" and insert **"may not impose a surcharge on a dealer for the purpose of recovering any of its costs related to the reimbursement of a dealer for parts or labor required under this section."**

Page 4, delete lines 20 through 23.

Page 4, line 24, delete "section."

Page 5, line 17, delete "six (6) months" and insert **"twelve (12) months"**.

Page 5, line 33, delete "Subsection (c) does not apply to a manufacturer or" and insert **"A manufacturer or distributor shall provide a dealer with written notification of the specific grounds upon which a claim is being charged back as a result of an audit. A manufacturer or distributor shall provide a reasonable appeals process allowing the dealer at least thirty (30) days after receipt of the notice of charge back to provide additional supporting documentation or information rebutting the charge back. If the charge back is based upon noncompliance with documentation requirements, material claim submission requirements, or other material clerical errors, the manufacturer or distributor shall allow the dealer thirty (30) days from the receipt of the notice of charge back to cure any material noncompliance. A manufacturer's or distributor's audit or appeals process shall allow a dealer, the dealer's designated agent, officer, or employee to request, in writing, a meeting with the manufacturer or distributor via in-person meeting, video conference, or telephone call or a**



written explanation of the basis for a charge back. The manufacturer or distributor shall respond with all details and specific information supporting the basis for each charge back. The manufacturer or distributor and the dealer may agree, during the audit or appeals process, to an extension of time for the dealer to cure any material noncompliance as necessitated by the volume of the claim charge backs at issue."

Page 5, delete lines 34 through 42.

Page 6, between lines 10 and 11, begin a new paragraph and insert:

"SECTION 5. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "legislative council" refers to the legislative council created by IC 2-5-1.1-1.

(b) As used in this SECTION, "study committee" means either of the following:

- (1) A statutory committee established under IC 2-5.
- (2) An interim study committee.

(c) The legislative council is urged to assign to the appropriate study committee, during the 2018 interim, the task of studying manufacturer car subscription services.

(d) If an appropriate study committee is assigned the topic described in subsection (c), the study committee shall issue to the legislative council a final report containing the study committee's findings and recommendations, including any recommended legislation concerning the topic, in an electronic format under IC 5-14-6, not later than November 1, 2018.

(e) This SECTION expires December 31, 2018.

SECTION 6. An emergency is declared for this act."

Page 6, delete lines 11 through 42.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1195 as introduced.)

SOLIDAY

Committee Vote: yeas 11, nays 0.



HOUSE MOTION

Mr. Speaker: I move that House Bill 1195 be recommitted to a Committee of One, its sponsor, with specific instructions to amend as follows:

Page 2, line 30, delete "orders" and insert "orders."

Page 2, line 30, delete "or dealer cost plus seventy-five".

Page 2, line 31, delete "percent (75%) gross profit, whichever is greater."

Renumber all SECTIONS consecutively.

(Reference is to HB 1195 as printed January 29, 2018.)

SOLIDAY

 COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred House Bill 1195, begs leave to report that said bill has been amended as directed.

SOLIDAY

 COMMITTEE REPORT

Madam President: The Senate Committee on Homeland Security and Transportation, to which was referred House Bill No. 1195, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 9, delete "The prohibition described in this subsection extends to any".

Page 1, delete lines 10 through 15.

Page 2, between lines 10 and 11, begin a new paragraph and insert:

"(e) For purposes of this subsection, "vehicle right of use subscription program" means a subscription service that, for a recurring fee and for a limited period of time, allows a participating person exclusive use of a motor vehicle owned by an entity that controls or contracts with the subscription service. The

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term does not include leases, short term motor vehicle rentals, or services that allow short term sharing of a motor vehicle. Vehicle right of use subscription programs are prohibited in Indiana. This subsection expires on May 1, 2019."

Page 3, line 16, strike "parts and" and insert "**parts or**".

Page 4, line 1, strike "parts and" and insert "**parts or**".

Page 4, line 11, strike "parts and" and insert "**parts or**".

Page 4, line 13, strike "A manufacturer" and insert "**Except as provided in IC 9-32-13-16, a manufacturer**".

Page 6, line 24, delete "manufacturer car subscription services." and insert "**vehicle right of use subscription programs.**".

and when so amended that said bill do pass.

(Reference is to HB 1195 as reprinted February 2, 2018.)

CRIDER, Chairperson

Committee Vote: Yeas 9, Nays 0.

