



February 23, 2016

ENGROSSED HOUSE BILL No. 1259

DIGEST OF HB 1259 (Updated February 22, 2016 12:23 pm - DI 106)

Citations Affected: IC 9-32.

Synopsis: Unfair practices concerning motor vehicle dealers. Amends current law concerning unfair practices of a motor vehicle manufacturer or distributor, and provides that certain actions relating to parts and labor for motor vehicles are unfair practices.

Effective: July 1, 2016.

Speedy, Austin

(SENATE SPONSORS — FORD, RANDOLPH LONNIE M)

January 11, 2016, read first time and referred to Committee on Roads and Transportation.
January 28, 2016, amended, reported — Do Pass.
February 1, 2016, read second time, ordered engrossed. Engrossed.
February 2, 2016, read third time, passed. Yeas 95, nays 0.

SENATE ACTION

February 8, 2016, read first time and referred to Committee on Civil Law.
February 22, 2016, reported favorably — Do Pass.

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February 23, 2016

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.

ENGROSSED HOUSE BILL No. 1259

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 9-32-13-15, AS ADDED BY P.L.92-2013,
2 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 15. (a) It is an unfair practice for a manufacturer
4 or distributor to fail to compensate a dealer ~~at the posted labor dealer's~~
5 **retail** rate for the work and services the dealer is required to perform
6 in connection with the dealer's delivery and preparation obligations
7 under any franchise, or fail to compensate a dealer **anything less than**
8 ~~the posted hourly labor dealer's retail~~ rate for labor and **other expenses**
9 ~~incurred by the dealer parts~~ under the manufacturer's warranty
10 agreements as long as the ~~posted dealer's retail~~ rate is reasonable.
11 Judgment of the reasonableness includes consideration of charges for
12 similar repairs by ~~comparable~~ **similarly situated** repair facilities in ~~the~~
13 ~~local area as well as mechanic's wages and fringe benefits.~~ **Indiana.**
14 (b) This section does not authorize a manufacturer or distributor and
15 its franchisees in Indiana to establish a uniform hourly labor
16 reimbursement rate effective for the entire state.
17 (c) **This section does not apply to manufacturers or distributors**

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1 of manufactured housing, heavy duty vocational vehicles (as
2 defined in 49 CFR 523.8), or recreational vehicles.

3 SECTION 2. IC 9-32-13-15.5 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2016]: Sec. 15.5. (a) This section does not
6 apply to manufacturers or distributors of manufactured housing,
7 heavy duty vocational vehicles (as defined in 49 CFR 523.8), or
8 recreational vehicles.

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

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

39 (d) If a rebuttal in subsection (c) is timely sent, the rebuttal must
40 substantiate how the dealer's declaration is unreasonable or
41 materially inaccurate. The rebuttal must propose an adjusted retail
42 rate and provide written support for the proposed adjustments. If



1 the dealer does not agree with the adjusted retail rate, the dealer
2 may file a complaint with the dealer services division within the
3 office of the secretary of state.

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

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

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

14 (2) Parts sold at wholesale.

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

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

20 (5) Vehicle reconditioning.

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

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



1 **than once in a twelve (12) month period.**

2 **(i) A manufacturer or distributor is permitted to recover its**
 3 **costs, as defined under this section, only from a dealer that receives**
 4 **retail reimbursement for parts or labor, or both parts and labor.**
 5 **This subsection does not prohibit a manufacturer or distributor**
 6 **from increasing the wholesale price of a vehicle or part in the**
 7 **ordinary course of business.**

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

12 **(1) a final decision has been issued by a court with**
 13 **jurisdiction; and**

14 **(2) all appeals have been exhausted.**

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

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

20 (A) delivery and preparation work;

21 (B) warranty work; and

22 (C) incentive payments;

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

24 (2) fail to approve or disapprove a claim not later than thirty (30)
 25 days after receipt of the claim; or

26 (3) disapprove a claim without notice to the dealer in writing of
 27 the grounds for disapproval.

28 (b) A manufacturer or distributor may:

29 (1) audit a claim made by a dealer; or

30 (2) charge back to a dealer any amounts paid on a false or
 31 unsubstantiated claim;

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

37 **(c) If the motor vehicle dealer has properly submitted the claim**
 38 **in accordance with the manufacturer's or distributor's warranty**
 39 **or incentive program guidelines, a manufacturer or distributor**
 40 **may not deny a claim based solely on a motor vehicle dealer's**
 41 **incidental failure to comply with a specific claim processing**
 42 **requirement, including a clerical error or other administrative**



1 technicality that does not call into question the legitimacy of a
 2 claim. A motor vehicle dealer may submit an amended or
 3 supplemental claim within the time and manner required by the
 4 manufacturer for:

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

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

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

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

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

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

39 (3) Establish or acquire wholly or partially a franchisor owned
 40 outlet engaged wholly or partially in a substantially identical
 41 business to that of the franchisee within the exclusive territory
 42 granted the franchisee by the franchise agreement or, if no



1 exclusive territory is designated, competing unfairly with the
 2 franchisee within a reasonable market area. A franchisor is not
 3 considered to be competing unfairly if operating:

4 (A) a business for less than two (2) years;

5 (B) in a bona fide retail operation that is for sale to any
 6 qualified independent person at a fair and reasonable price; or

7 (C) in a bona fide relationship in which an independent person
 8 has made a significant investment subject to loss in the
 9 business operation and can reasonably expect to acquire
 10 majority ownership or managerial control of the business on
 11 reasonable terms and conditions.

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

16 (A) construct a new dealership facility;

17 (B) modify or change the location of an existing dealership; or

18 (C) grant the manufacturer or distributor control rights over
 19 any real property owned, leased, controlled, or occupied by the
 20 dealer.

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

23 (A) reasonable facilities exist for the combined operations;

24 (B) the dealer meets reasonable capitalization requirements for
 25 the original line make and complies with the reasonable
 26 facilities requirements of the manufacturer or distributor; and

27 (C) the prohibition is not justified by the reasonable business
 28 considerations of the manufacturer or distributor.

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

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



COMMITTEE REPORT

Mr. Speaker: Your Committee on Roads and Transportation, to which was referred House Bill 1259, 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 1, after "housing" insert ", **heavy duty vocational vehicles (as defined in 49 CFR 523.8)**".

Page 2, line 5, after "housing" insert ", **heavy duty vocational vehicles (as defined in 49 CFR 523.8)**".

Page 2, line 7, delete "It" and insert "**Unless otherwise agreed, it**".

Page 2, line 19, after "(100)" insert "**customer paid**".

Page 2, line 20, after "of" insert "**customer paid**".

Page 2, line 23, after "(100)" insert "**customer paid**".

Page 2, line 24, after "of" insert "**customer paid**".

Page 2, line 25, after "upon" insert "**customer paid**".

Page 4, line 1, after "." insert "**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.**".

and when so amended that said bill do pass.

(Reference is to HB 1259 as introduced.)

SOLIDAY

Committee Vote: yeas 10, nays 0.

 COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred House Bill No. 1259, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to HB1259 as printed January 29, 2016.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0

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