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.
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:

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 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 rate for labor and other expenses incurred by the dealer parts under the manufacturer's warranty agreements as long as the posted dealer's 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

EH 1259—LS 6935/DI 96
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 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;
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 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.
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.

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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