

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 642

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO DEALERS AND SALESMEN LICENSING; AMENDING CHAPTER 16, TITLE 49,
2 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-1601A, IDAHO CODE, TO
3 PROVIDE LEGISLATIVE FINDINGS AND INTENT; AMENDING SECTION 49-1613,
4 IDAHO CODE, TO REVISE AND ESTABLISH PROVISIONS REGARDING UNLAWFUL ACTS
5 BY A MANUFACTURER OR DISTRIBUTOR; AMENDING SECTION 49-1632, IDAHO CODE,
6 TO PROVIDE FOR AFFILIATE CORPORATIONS AND ENTITIES AND TO REMOVE OBSO-
7 LETE LANGUAGE; AND DECLARING AN EMERGENCY.
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Chapter 16, Title 49, Idaho Code, be, and the same is
11 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
12 ignated as Section 49-1601A, Idaho Code, and to read as follows:

13 49-1601A. LEGISLATIVE FINDINGS AND INTENT. (1) The legislature finds
14 that the distribution and sale of motor vehicles within this state vitally
15 affects the general economy of the state, the public interest, and the public
16 welfare.

17 (2) In order to promote the public interest and the public welfare and
18 in the exercise of the state's police power, it is necessary to regulate mo-
19 tor vehicle manufacturers, distributors, and factory or distributor repre-
20 sentatives and to regulate dealers of motor vehicles doing business in this
21 state in order to prevent frauds, impositions, and other abuses on its citi-
22 zens and to protect and preserve the investments and properties of the citi-
23 zens of this state.

24 (3) The provisions of this chapter shall be construed and applied to ac-
25 complish the purposes provided for in this section.

26 SECTION 2. That Section 49-1613, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 49-1613. UNLAWFUL ACTS BY LICENSEE. (1) It shall be unlawful for the
29 holder of any license issued under the provisions of this chapter to:

30 (a) Intentionally publish or circulate any advertising that is mis-
31 leading or inaccurate in any material particular or that misrepresents
32 any of the products sold or furnished by a licensed dealer;

33 (b) Violate any of the provisions of this chapter or any of the applica-
34 ble rules;

35 (c) Knowingly purchase, sell or otherwise acquire or dispose of a
36 stolen vehicle;

37 (d) Violate any law respecting commerce in vehicles or any lawful rule
38 respecting commerce in vehicles promulgated by any licensing or regu-
39 lating authority now existing or hereafter created by the laws of the
40 state;

1 (e) Engage in the business for which the dealer is licensed without at
2 all times maintaining a principal place of business;

3 (f) Engage in a type of business respecting the selling or exchanging of
4 vehicles for which he is not licensed;

5 (g) Knowingly purchase a vehicle that has an altered or removed vehicle
6 identification number plate or alter or remove a vehicle identification
7 number plate;

8 (h) Violate any provision of this title or any rules promulgated;

9 (i) Violate any provision of the federal motor vehicle safety stan-
10 dards, federal odometer laws or regulations;

11 (j) Display for sale, exchange, or sell any vehicle for which the vehi-
12 cle dealer does not hold title or consignment agreement or other docu-
13 mentary evidence of his right to the possession of every vehicle in his
14 possession; or

15 (k) Issue more than one (1) temporary permit per vehicle sale pursuant
16 to the provisions set forth in section 49-504(6), Idaho Code.

17 (2) It shall be unlawful for any manufacturer or distributor licensed
18 under this chapter to require, attempt to require, coerce, or attempt to co-
19 erce, any new vehicle dealer in this state to:

20 (a) Order or accept delivery of any new vehicle, part or accessory,
21 equipment or any other commodity not required by law that shall not have
22 been voluntarily ordered by the new vehicle dealer. This paragraph is
23 not intended to modify or supersede any terms or provisions of a fran-
24 chise requiring dealers to market a representative line of vehicles
25 that the manufacturer or distributor is publicly advertising.

26 (b) Order or accept delivery of any new vehicle with special features,
27 accessories or equipment not included in the list price of such vehicles
28 as publicly advertised by the manufacturer or distributor.

29 (c) Participate monetarily in an advertising campaign or contest, or
30 to purchase any promotional materials, training materials, showroom or
31 other display decorations or materials at the expense of the dealer.

32 (d) Enter into any agreement with the manufacturer or distributor or to
33 do any other act prejudicial to the dealer by threatening to terminate
34 or cancel a franchise or any contractual agreement existing between
35 the dealer and the manufacturer or distributor. This paragraph is not
36 intended to preclude the manufacturer or distributor from insisting
37 on compliance with reasonable terms or provisions of the franchise or
38 other contractual agreement, and notice in good faith to any dealer of
39 the dealer's violation of those terms or provisions shall not consti-
40 tute a violation of the provisions of this chapter.

41 (e) Change the capital structure of the dealer or the means by or
42 through which the dealer finances the operation of the dealership,
43 provided that the dealer at all times meets any reasonable capital stan-
44 dards determined by the manufacturer or distributor in accordance with
45 uniformly applied criteria. No change in the capital structure shall
46 cause a change in the principal management or have the effect of a sale
47 of the franchise without the consent of the manufacturer or distribu-
48 tor. Consent shall not be unreasonably withheld.

49 (f) Refrain from participation in the management of, investment in, or
50 the acquisition of any other line of new vehicle or related products.

1 This paragraph does not apply unless the dealer maintains a reasonable
2 line of credit for each make or line of new vehicle, and the dealer re-
3 mains in compliance with any reasonable facilities requirements of the
4 manufacturer or distributor, and no change is made in the principal man-
5 agement of the dealership.

6 (g) Prospectively assent to a release, assignment, novation, waiver or
7 estoppel that would relieve any person from liability to be imposed by
8 this chapter or to require any controversy between a dealer and a man-
9 ufacturer, distributor, or representatives, to be referred to any per-
10 son other than the duly constituted courts of the state or the United
11 States, or to the director, if that referral would be binding upon the
12 dealer.

13 (h) Either establish or maintain exclusive facilities, personnel, or
14 display space.

15 (i) Expand facilities without a written guarantee of a sufficient sup-
16 ply of new vehicles so as to justify an expansion, in light of the market
17 and economic conditions.

18 (j) Make significant modifications to an existing dealership or to
19 construct a new vehicle dealership facility without providing a writ-
20 ten guarantee of a sufficient supply of new vehicles so as to justify
21 modification or construction, in light of the market and economic con-
22 ditions.

23 (3) It shall be unlawful for any manufacturer or distributor licensed
24 under this chapter to:

25 (a) Delay, refuse, or fail to deliver new vehicles or new vehicle parts
26 or accessories in a reasonable time, and in reasonable quantity, rela-
27 tive to the dealer's facilities and sales potential in the dealer's rel-
28 evant market area, after acceptance of an order from a dealer having a
29 franchise for the retail sale of any new vehicle sold or distributed by
30 the manufacturer or distributor, any new vehicle, parts or accessories
31 to new vehicles as are covered by the franchise, if the vehicle, parts,
32 or accessories are publicly advertised as being available for delivery
33 or actually being delivered. These provisions are not violated, how-
34 ever, if failure is caused by acts or causes beyond the control of the
35 manufacturer or distributor.

36 (b) Refuse to disclose to any dealer handling the same line, the manner
37 and mode of distribution of that line within ~~the relevant market area~~
38 this state.

39 (c) Obtain money, goods, service, or any other benefit from any other
40 person with whom the dealer does business, on account of, or in relation
41 to, the transaction between the dealer and other person, other than for
42 compensation for services rendered, unless the benefit is promptly ac-
43 counted for and transmitted to the dealer.

44 (d) Increase prices of new vehicles that the dealer had ordered for
45 consumers prior to the dealer's receipt of the written official price
46 increase notification. A sales contract signed by a consumer shall
47 constitute evidence of each such order, provided that the vehicle is in
48 fact delivered to that customer. In the event of manufacturer or dis-
49 tributor price reductions or cash rebates paid to the dealer, the amount
50 of any reduction or rebate received by a dealer shall be passed on to the

1 private retail consumer by the dealer. Price reductions shall apply to
2 all vehicles in the dealer's inventory that were subject to the price
3 reduction. Price differences applicable to new model or series shall
4 not be considered a price increase or price decrease. Price changes
5 caused by the addition to a vehicle of required or optional equipment,
6 or revaluation of the United States dollar, in the case of foreign-make
7 vehicles or components, or an increase in transportation charges due to
8 increased rates imposed by a carrier, shall not be subject to the provi-
9 sions of this subsection.

10 (e) Release to any outside party, except under subpoena or as other-
11 wise required by law or in an administrative, judicial or arbitration
12 proceeding involving the manufacturer or distributor or dealer, any
13 business, financial, or personal information which may be provided from
14 time to time by the dealer to the manufacturer or distributor without
15 the express written consent of the dealer.

16 (f) Deny any dealer the right of free association with any other dealer
17 for any lawful purpose.

18 (g) ~~Unfairly compete with a dealer in the same line make, operating un-
19 der an agreement or franchise from the aforementioned manufacturer or
20 distributor, in the relevant market area. A manufacturer or distribu-
21 tor shall not, however, be deemed to be competing when operating a deal-
22 ership either temporarily for a reasonable period, in any case not to
23 exceed one (1) year, or in a retail operation that Compete with their
24 franchised dealer in the sale, lease, or warranty service of new motor
25 vehicles. However, nothing in this section shall limit a manufacturer
26 or distributor from engaging in fleet sales with a fleet customer that
27 has a designation as such by the manufacturer or distributor. It is not
28 a violation of this paragraph for a manufacturer or distributor, or an
29 affiliate of a manufacturer or distributor, to directly provide an up-
30 date to or repair of motor vehicle software if such update or repair is
31 provided over-the-air at no cost or when creating a new line of motor
32 vehicles and using franchised dealers to sell and service those vehi-
33 cles. A manufacturer or distributor may operate a dealership for a rea-
34 sonable period not to exceed one (1) year without violating this para-
35 graph if such dealership is for sale to any qualified independent person
36 at a fair and reasonable price, or in a relationship in which an inde-
37 pendent person has made a significant investment subject to loss in the
38 dealership and can reasonably expect to acquire full ownership of that
39 dealership on reasonable terms and conditions. Upon a showing of good
40 cause by the manufacturer or distributor to the department, the period
41 of temporary ownership may be extended up to one (1) additional year,
42 resulting in a maximum temporary ownership period of two (2) years.~~

43 (h) Unfairly discriminate among its dealers with respect to warranty
44 reimbursement.

45 (i) Unreasonably withhold consent to the sale, transfer, or exchange of
46 the franchise to a qualified buyer capable of being licensed as a dealer
47 in this state or to condition the sale, transfer, or exchange of a fran-
48 chise agreement upon site control or an agreement to renovate or make
49 improvements to a facility, unless required by the technology of a motor
50 vehicle being sold at the facility. Provided however, that a voluntary

1 acceptance of such conditions by the dealer in writing including but not
2 limited to a written agreement for which the dealer has accepted sepa-
3 rate and valuable consideration, shall not constitute a violation.

4 (j) Fail to respond in writing to a request for consent as specified in
5 paragraph (i) of this subsection within sixty (60) days of receipt of a
6 written request on the forms, if any, generally utilized by the manufac-
7 turer or distributor for those purposes and containing the required in-
8 formation. Failure to respond shall be deemed to be consent to the re-
9 quest.

10 (k) Prevent or attempt to prevent, by contract or otherwise, any dealer
11 from changing the executive management control of the dealership unless
12 the manufacturer or distributor, having the burden of proof, can show
13 that the change of executive management will result in executive man-
14 agement or control by a person or persons who are not of good moral char-
15 acter or who do not meet reasonable, preexisting and, with considera-
16 tion given to the volume of sales and service of the dealership, uni-
17 formly applied minimum business experience standards. Where the manu-
18 facturer or distributor rejects a proposed change in executive manage-
19 ment control, the manufacturer or distributor shall give written notice
20 of his reasons to the dealer within sixty (60) days of notice to the man-
21 ufacturer or distributor by the dealer of the proposed change; other-
22 wise, the change in the executive management of the dealership shall be
23 presumptively considered approved.

24 (l) Terminate, cancel or fail to renew any franchise solely because of
25 the death or incapacity of an owner who is not listed in the franchise
26 as one on whose expertise and abilities the manufacturer or distributor
27 relied in the granting of the franchise.

28 (m) Prevent or attempt to prevent the dealer, by written instrument
29 or otherwise, from either receiving the fair market value of the deal-
30 ership in a sale transaction or from transferring the dealership to a
31 spouse or legal heir, as specified in this chapter.

32 (n) Engage in any predatory practice or discrimination against any
33 dealer.

34 (o) Resort to or to use any false or misleading advertisement in the
35 conducting of his business as a manufacturer or distributor in this
36 state.

37 (p) Make any false or misleading statement, either directly or through
38 any agent or employee, in order to induce any dealer to enter into any
39 agreement or franchise or to take any action that is prejudicial to that
40 dealer or his business.

41 (q) Require or coerce dealers to participate in local or national ad-
42 vertising campaigns or contests or to require or coerce dealers to pur-
43 chase promotional or display materials.

44 (r) Charge back, deny motor vehicle allocation, withhold payments, or
45 take other actions against a dealer, or to condition a franchise agree-
46 ment, or renewal of a franchise agreement, or to condition sales, ser-
47 vice, parts, or finance incentives upon site control or an agreement to
48 renovate or make improvements to a facility unless required by the tech-
49 nology of a motor vehicle being sold at the facility. Provided however,
50 that a voluntary acceptance of such conditions by the dealer in writing

1 including but not limited to a written agreement for which the dealer
2 has accepted separate and valuable consideration, shall not constitute
3 a violation.

4 (s) Charge back, deny motor vehicle allocation, withhold payments, or
5 take other actions against a motor vehicle dealer if a motor vehicle
6 sold by the motor vehicle dealer is exported from Idaho or the dealer's
7 assigned area of responsibility unless the manufacturer, distributor,
8 or manufacturer representative proves that the motor vehicle dealer
9 knew or reasonably should have known a motor vehicle was intended to
10 be exported, which shall operate as a rebuttable presumption that the
11 motor vehicle dealer did not have such knowledge. This paragraph does
12 not apply if exporting of motor vehicles outside of the state of Idaho is
13 provided for by the manufacturer or distributor.

14 (t) (i) Offer to a consumer a subscription service for any motor
15 vehicle feature that utilizes components and hardware already
16 installed on the motor vehicle at the time of purchase or lease
17 that would be activated and function only after payment of a sep-
18 arate charge to the manufacturer or distributor. A manufacturer
19 or distributor may offer such a subscription service if sold to a
20 consumer by its franchised dealers as an ancillary product. This
21 paragraph does not apply to navigation system updates, satellite
22 radio, roadside assistance, software-dependent driver assistance
23 or driver automation features, or vehicle-connected services that
24 rely on cellular or other data networks for continued operation.
25 As used in this paragraph, the following terms have the following
26 meanings:

27 1. "Motor vehicle feature" means any convenience or safety
28 function included on the motor vehicle, such as heated seats
29 or driver assistance, that typically is offered to a con-
30 sumer as an upgrade at the time of purchase or lease of the
31 motor vehicle.

32 2. "Subscription service" means a service provided in ex-
33 change for a recurring payment, including but not limited to
34 a weekly, monthly, or annual payment charged to and made by
35 a consumer. "Subscription service" does not include a con-
36 sumer's recurring payment made pursuant to an installment
37 sales contract or lease contract.

38 (ii) The provisions of this paragraph do not apply to a manufac-
39 turer that does not use franchised dealers in this state.

40 (u) Withhold or threaten to withhold consent or approval of the sale,
41 transfer, exchange, or issuance of a dealer sales and service agreement
42 to an otherwise qualified buyer capable of being licensed as a dealer
43 in this state or to condition approval of such buyer upon the selling
44 dealer executing a release of all claims or similar instrument releas-
45 ing or waiving any and all claims the selling dealer has or may have
46 arising from the franchise relationship with the manufacturer unless
47 separate material consideration is paid contemporaneously by the manu-
48 facturer to the dealer for such release.

49 (4) It is unlawful for any manufacturer or distributor or any offi-
50 cer, agent or representative to coerce, or attempt to coerce, any dealer

1 in this state to offer to sell or sell any extended service contract or ex-
2 tended maintenance plan that is offered, sold, backed by or sponsored by
3 the manufacturer or distributor or to sell, assign or transfer any retail
4 installment sales contract, obtained by the dealer in connection with the
5 sale by him in this state of new vehicles, manufactured or sold by the man-
6 ufacturer or distributor, to a specified finance company or class of such
7 companies, or to any other specified person, by any of the acts or means set
8 forth, namely by:

9 (a) Any statement, suggestion, promise or threat that the manufac-
10 turer or distributor will, in any manner, benefit or injure the dealer,
11 whether the statement, suggestion, threat or promise is express or im-
12 plied or made directly or indirectly;

13 (b) Any act that will benefit or injure the dealer;

14 (c) Any contract, or any express or implied offer of contract, made
15 directly or indirectly to a dealer for handling new vehicles, on the
16 condition that the dealer shall offer to sell or sell any extended
17 service contract or extended maintenance plan that is offered, sold,
18 backed by, or sponsored by the manufacturer or distributor or sell, as-
19 sign or transfer his retail installment sales contract in this state to
20 a specified finance company or class of such companies, or to any other
21 specified person; or

22 (d) Any express or implied statement or representation made directly or
23 indirectly that the dealer is under any obligation whatsoever to offer
24 to sell or sell any extended service contract or extended maintenance
25 plan that is offered, sold, backed by, or sponsored by the manufacturer
26 or distributor or to sell, assign or transfer any of his retail sales
27 contracts, in this state, on new vehicles manufactured or sold by that
28 manufacturer or distributor to a finance company or class of companies,
29 or other specified person, because of any relationship or affiliation
30 between the manufacturer or distributor and a finance company or compa-
31 nies, or a specified person or persons.

32 (e) Nothing contained in this subsection shall prohibit a manufacturer
33 or distributor from offering or providing incentive benefits or bonus
34 programs to a retail motor vehicle dealer or prospective retail motor
35 vehicle dealer in this state who makes the voluntary decision to offer
36 to sell or sell any extended service contract or extended maintenance
37 plan offered, sold, backed by or sponsored by the manufacturer or dis-
38 tributor to sell, assign or transfer any retail installment sale or
39 lease by him in this state of motor vehicles manufactured or sold by the
40 manufacturer or distributor to a specified finance company or leasing
41 company controlled by or affiliated with the manufacturer or distribu-
42 tor.

43 Any statement, threats, promises, acts, contracts or offers of con-
44 tracts, when the effect may be to lessen or eliminate competition or tend to
45 create a monopoly, are declared unfair trade practices and unfair methods of
46 competition, against the policy of this state, and are unlawful.

47 (5) It is unlawful for any manufacturer or distributor or agent or em-
48 ployee of a manufacturer or distributor to use a written instrument, agree-
49 ment, or waiver to attempt to nullify any of the provisions of this section,
50 and such agreement, written instrument or waiver shall be null and void.

1 (6) It shall be unlawful, directly or indirectly, to impose unrea-
2 sonable restrictions on the dealer relative to the sale, transfer, right
3 to renew, termination discipline, noncompetition covenants, site control
4 (whether by sublease, collateral pledge of lease, or otherwise), right of
5 first refusal to purchase, option to purchase, compliance with subjective
6 standards and assertion of legal or equitable rights.

7 (7) The provisions of this chapter shall apply to all written franchise
8 agreements between a manufacturer or distributor and a dealer, including
9 the franchise offering, the franchise agreement, sales of goods, services
10 or advertising, leases or mortgages of real or personal property, promises
11 to pay, security interests, pledges, insurance contract, advertising con-
12 tract, construction or installation contract, servicing contracts and all
13 other agreements where the manufacturer or distributor has any direct or
14 indirect interest.

15 (8) (a) It shall be unlawful for any manufacturer or distributor,
16 whether by agreement, program, incentive provision, or provision for
17 loss of incentive payments or other benefits, to amend or attempt to
18 amend its franchise agreement or similar agreement governing the sales
19 and leasing of new motor vehicles or to establish or implement a fran-
20 chise agreement for the sales and leasing of new motor vehicles under
21 which the manufacturer or distributor reserves the right to:

22 (i) Maintain a website or other electronic or digital means of
23 communication for the manufacturer or distributor to negotiate
24 binding terms of sale or leasing of new motor vehicles directly
25 with the retail buyer or lessee on prices or other substantive
26 terms of sale or leasing of new vehicles;

27 (ii) Retain ownership of new motor vehicles until they are sold or
28 leased to the retail buyer or lessee;

29 (iii) Except for the sale or lease of a vehicle to a bona fide em-
30 ployee or relative of such manufacturer or distributor or in con-
31 nection with a replacement or buyback, or to a bona fide employee
32 or relative of a dealer under an employee pricing or similar pro-
33 gram, consign new motor vehicles to dealers for dealer inventory
34 or for sale or lease to a retail buyer or lessee;

35 (iv) Negotiate binding terms of sale directly with retail buyers
36 or lessees of new motor vehicles, provided that displaying on a
37 website or other electronic or digital means of communication ag-
38 gregate or average prices, lists of available financing sources,
39 or a conditional aggregate or average trade-in value shall not be
40 considered negotiating;

41 (v) Enforce or seek to enforce a right in any franchise agreement
42 for the manufacturer or distributor to unilaterally amend or mod-
43 ify the franchise agreement; or

44 (vi) Amend or modify or attempt to amend or modify any dealer sales
45 and service agreement, including but not limited to the dealer's
46 relevant market area if the amendment or modification substan-
47 tially and adversely affects the dealer's rights, obligations,
48 investment or return on investment, without giving sixty (60) days
49 advance written notice of the proposed amendment or modification
50 to the dealer.

1 (b) Nothing in this subsection shall prevent a manufacturer or distrib-
 2 utor from:

3 (i) Engaging in fleet sales with a fleet customer that has a des-
 4 ignation as such by the manufacturer or distributor;

5 (ii) Negotiating binding terms of sale relating to the sale or
 6 lease of a vehicle to a bona fide employee or relative of such manu-
 7 facturer or distributor;

8 (iii) Negotiating binding terms of sale relating to the sale or
 9 lease of a vehicle to a bona fide employee or relative of a fran-
 10 chised dealer under an employee pricing program or similar pro-
 11 gram;

12 (iv) Negotiating binding terms of sale relating to the sale or
 13 lease of a vehicle in connection with a vehicle replacement or buy-
 14 back;

15 (v) Purchasing from a consumer a vehicle in connection with a ve-
 16 hicle replacement or buyback; or

17 (vi) Setting or advertising a manufacturer's suggested retail
 18 price.

19 (9) (a) Within the sixty (60) day notice period provided for in subsec-
 20 tion (8) (a) (vii) of this section, the dealer may pursue remedies under
 21 section 49-1617, Idaho Code, and file with the department and serve upon
 22 the respondent a petition to determine whether good cause exists for
 23 permitting the proposed modification. Multiple complaints pertaining
 24 to the same proposed modification may be consolidated for hearing. The
 25 proposed modification may not take effect pending the determination
 26 of any protest filed by a dealer. In making a determination of whether
 27 there is good cause for permitting a proposed modification of a dealer
 28 sales and service agreement, including but not limited to a dealer's
 29 relevant market area, the burden of proof shall be on the manufacturer
 30 or distributor, except that the burden of proof with regard to the fac-
 31 tor set forth in subparagraph (iii) of this paragraph shall be on the
 32 dealer. The department shall consider any relevant factor, including:

33 (i) The reasons for the proposed modification;

34 (ii) Whether the proposed modification is applied to or affects
 35 all motor vehicle dealers in a nondiscriminatory manner;

36 (iii) The degree to which the proposed modification will have
 37 a substantial and adverse effect on the motor vehicle dealer's
 38 rights, investment, or return on investment; and

39 (iv) Whether the proposed modification is in the public interest.

40 (b) With respect to a proposed modification of a dealer's relevant mar-
 41 ket area the department shall also consider:

42 (i) The traffic patterns between consumers and the same line-
 43 make franchised dealers of the affected manufacturer or distribu-
 44 tor who are located within the market;

45 (ii) The pattern of new vehicle sales and registrations of the af-
 46 ected manufacturer or distributor within various portions of the
 47 relevant market area and within the market as a whole;

48 (iii) The growth or decline in population, density of population,
 49 and new car registrations in the market;

1 (iv) The presence or absence of natural geographical obstacles or
2 boundaries;

3 (v) The proximity of census tracts or other geographic units used
4 by the affected manufacturer or distributor in determining the
5 same line-make dealers' respective relevant market area; and

6 (vi) The reasonableness of the change or proposed change to the
7 dealer's relevant market area, considering the benefits and harm
8 to the petitioning dealer, other same line-make dealers, and the
9 manufacturer or distributor.

10 (10) It shall be unlawful for any manufacturer or distributor to imple-
11 ment a program or policy that coerces or requires the franchisee to install
12 direct current fast charging stations for public access or use or any similar
13 public-facing infrastructure relating to charging, fueling, or powering a
14 vehicle. For purposes of this section, the term "coerce" means the use of
15 force or threats to persuade, constrain, or compel a dealer to take a spe-
16 cific action. "Coerce" includes but is not limited to threatening to with-
17 hold vehicles or parts from a franchisee or charging a franchisee a higher
18 price for vehicles or parts on the basis of the franchisee refusing, declin-
19 ing, or failing to perform a specific behavior. Provided, however, that
20 nothing contained in this subsection shall be deemed to prohibit or prevent a
21 manufacturer or distributor from requiring a franchisee to purchase special
22 tools or equipment, install reasonable charging infrastructure, stock rea-
23 sonable quantities of certain parts, or participate in training, reasonable
24 sales and service programs, or policies that are reasonably necessary for
25 such franchisees to sell or service any model or series of vehicles.

26 SECTION 3. That Section 49-1632, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 49-1632. APPLICABILITY OF CHAPTER. (1) Any person who engages di-
29 rectly or indirectly in purposeful contacts within this state in connection
30 with the offering or advertising for sale, or has business dealings with
31 respect to a new vehicle sale within this state, shall be subject to the
32 provisions of this chapter and shall be subject to the jurisdiction of the
33 courts of this state.

34 (2) The applicability of this chapter shall not be affected by a choice
35 of law clause in any franchise, agreement, waiver, novation, or any other
36 written instrument.

37 (3) Any provision of any agreement, franchise, waiver, novation or any
38 other written instrument which is in violation of any section of this chapter
39 shall be considered null and void and without force and effect.

40 (4) It shall be unlawful for a manufacturer to use any subsidiary corpo-
41 ration, affiliated corporation, or any other controlled corporation, part-
42 nership, entity, association, or person to accomplish what would otherwise
43 be unlawful conduct under this chapter on the part of the manufacturer.

44 ~~(5) Nothing in this chapter shall be construed to impair the obliga-~~
45 ~~tions of a contract entered into prior to January 1, 1989, or to prevent a~~
46 ~~manufacturer, distributor, representative or any other person, whether~~
47 ~~or not licensed under this chapter, from requiring performance of a prior~~
48 ~~written contract entered into with any dealer, nor shall the requirement of~~
49 ~~performance constitute a violation of any of the provisions of this chap-~~

1 ~~ter. Any contract, or the terms of it, requiring performance, shall have~~
2 ~~been freely entered into and executed between the contracting parties. This~~
3 ~~chapter shall apply to any amendments, novations, records or modifications~~
4 ~~of prior contracts and to any contracts entered into subsequent to March 31,~~
5 ~~1989.~~

6 SECTION 4. An emergency existing therefor, which emergency is hereby
7 declared to exist, this act shall be in full force and effect on and after its
8 passage and approval.