



January 29, 2018

HOUSE BILL No. 1195

DIGEST OF HB 1195 (Updated January 29, 2018 1:04 pm - DI 123)

Citations Affected: IC 9-32; noncode.

Synopsis: Automobile dealers. 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 manufacturer car subscription services. Makes technical amendments.

Effective: Upon passage; July 1, 2018.

Speedy, GiaQuinta, Forestal

January 9, 2018, read first time and referred to Committee on Roads and Transportation.
January 29, 2018, amended, reported — Do Pass.

HB 1195—LS 6690/DI 123



January 29, 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.

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:

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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 **or dealer cost plus seventy-five**
31 **percent (75%) gross profit, whichever is greater.** The dealer's retail
32 rate for labor shall be determined by dividing the total labor sales for
33 warranty like repairs by the number of hours that generated those sales
34 in one hundred (100) customer paid sequential repair orders or ninety
35 (90) consecutive days of customer paid repair orders. A retail rate may
36 be calculated ~~only~~ based upon **only** customer paid repair orders
37 charged within one hundred eighty (180) days before the date the
38 dealer submits the declaration.

39 (c) The dealer's submission for retail rates must include a
40 declaration of the dealer's retail rates for parts **and or** labor along with
41 the supporting service repair orders paid by customers. A manufacturer
42 or distributor may challenge the dealer's declaration by submitting a



1 rebuttal not later than sixty (60) days after the date the declaration was
 2 received. If the manufacturer or distributor does not send a timely
 3 rebuttal to the dealer, the retail rate is established as reasonable and
 4 goes into effect automatically.

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

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

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

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

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

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

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

27 (5) Vehicle reconditioning.

28 **(6) Accessories.**

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

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

32 **(9) Manufacturer or distributor reimbursed goodwill or
 33 policy repairs or replacements.**

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

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



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

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

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

- 26 (1) a final decision has been issued by a court with jurisdiction;
 27 and
 28 (2) all appeals have been exhausted.

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

- 33 (1) fail to pay a claim made by a dealer for compensation for:
 34 (A) delivery and preparation work;
 35 (B) warranty work; and
 36 (C) incentive payments;
 37 not later than thirty (30) days after the claim is approved;
 38 (2) fail to approve or disapprove a claim not later than thirty (30)
 39 days after receipt of the claim; or
 40 (3) disapprove a claim without notice to the dealer in writing of
 41 the grounds for disapproval.

42 (b) A manufacturer or distributor may:



- 1 (1) audit a claim made by a dealer; or
 2 (2) charge back to a dealer any amounts paid on a:
 3 (A) false or ~~unsubstantiated~~ **fraudulent** claim;
 4 (B) **claim in which repairs were not properly made;**
 5 (C) **claim involving work that was not necessary to correct**
 6 **a defective condition; or**
 7 (D) **claim that the dealer failed to substantiate in**
 8 **accordance with the manufacturer's written procedures or**
 9 **other reasonable means;**

10 for up to ~~one (1) year~~ **twelve (12) months** after the date on which the
 11 claim is paid. However, the limitations of this subsection do not apply
 12 if the manufacturer or distributor can prove fraud on a claim. A
 13 manufacturer or distributor shall not discriminate among dealers with
 14 regard to auditing or charging back claims.

15 (c) ~~If the motor vehicle dealer has properly submitted the claim in~~
 16 ~~accordance with the manufacturer's or distributor's warranty or~~
 17 ~~incentive program guidelines, **Except as provided in subsection (d),**~~
 18 a manufacturer or distributor may not deny a claim based solely on a
 19 motor vehicle dealer's incidental failure to comply with a specific claim
 20 processing requirement, including a clerical error or other
 21 administrative technicality that does not call into question the
 22 legitimacy of a claim **when the dealer has provided reasonably**
 23 **sufficient documentation of the dealer's good faith attempt to**
 24 **perform necessary work in compliance with the written policies**
 25 **and procedures of the manufacturer.**

26 (d) **A manufacturer or distributor shall provide a dealer with**
 27 **written notification of the specific grounds upon which a claim is**
 28 **being charged back as a result of an audit. A manufacturer or**
 29 **distributor shall provide a reasonable appeals process allowing the**
 30 **dealer at least thirty (30) days after receipt of the notice of charge**
 31 **back to provide additional supporting documentation or**
 32 **information rebutting the charge back. If the charge back is based**
 33 **upon noncompliance with documentation requirements, material**
 34 **claim submission requirements, or other material clerical errors,**
 35 **the manufacturer or distributor shall allow the dealer thirty (30)**
 36 **days from the receipt of the notice of charge back to cure any**
 37 **material noncompliance. A manufacturer's or distributor's audit**
 38 **or appeals process shall allow a dealer, the dealer's designated**
 39 **agent, officer, or employee to request, in writing, a meeting with**
 40 **the manufacturer or distributor via in-person meeting, video**
 41 **conference, or telephone call or a written explanation of the basis**
 42 **for a charge back. The manufacturer or distributor shall respond**



1 with all details and specific information supporting the basis for
 2 each charge back. The manufacturer or distributor and the dealer
 3 may agree, during the audit or appeals process, to an extension of
 4 time for the dealer to cure any material noncompliance as
 5 necessitated by the volume of the claim charge backs at issue.

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

- 8 (1) sales incentives;
 9 (2) service incentives;
 10 (3) rebates; or
 11 (4) other forms of incentive compensation;

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

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

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

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

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

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

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

33 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.

