

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 ENROLLED ACT No. 1195

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 9-32-11-20, AS ADDED BY P.L.260-2017, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 20. (a) This section does not apply to:

- (1) a manufacturer of a trailer or semitrailer; or
- (2) a manufacturer that produces fewer than one thousand (1,000) units per year.

(b) Except as provided in subsection (c), a manufacturer **or distributor** may not engage in sales directly to the general public in Indiana.

(c) A manufacturer **or distributor** may engage in sales directly to the general public in Indiana only if:

- (1) the manufacturer **or distributor** was granted an initial license to sell new motor vehicles before July 1, 2015; and
- (2) the manufacturer **or distributor** establishes at least one (1) physical location in Indiana that is a warranty repair service center before January 1, 2018.

(d) A manufacturer **or distributor** described in subsection (c) must stop engaging in sales directly to the general public in Indiana if the manufacturer **or distributor** sells, transfers, or conveys a majority interest in the manufacturer **or distributor** to another person that is required to be licensed under this chapter.

(e) **For purposes of this subsection, "vehicle right of use**

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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 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.

SECTION 2. IC 9-32-13-15.5, AS ADDED BY P.L.167-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: 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 or~~ 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 or~~ 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 **only** 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 or~~ 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

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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 parts or** 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 or repairs performed** 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.
- (6) **Accessories.**
- (7) **Repairs of damage caused by a collision, a road hazard, the force of the elements, vandalism, or theft.**
- (8) **Vehicle emission or safety inspections required by law.**
- (9) **Manufacturer or distributor reimbursed goodwill or policy repairs or replacements.**
- (10) **Replacement of tires.**

(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 parts or** 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 parts~~ or labor not more than once in a twelve (12) month period.

(i) ~~A manufacturer~~ **Except as provided in IC 9-32-13-16, a manufacturer** or distributor **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.** ~~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~~ **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 AMENDED BY P.L.167-2016, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: 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:



- (A) false or ~~unsubstantiated~~ **fraudulent claim;**
- (B) claim in which repairs were not properly made;**
- (C) claim involving work that was not necessary to correct a defective condition; or**
- (D) claim that the dealer failed to substantiate in accordance with the manufacturer's written procedures or other reasonable means;**

for up to ~~one (1) year~~ **twelve (12) months** 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;~~ **Except as provided in subsection (d),** 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 **when the dealer has provided reasonably sufficient documentation of the dealer's good faith attempt to perform necessary work in compliance with the written policies and procedures of the manufacturer.**

(d) **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.

(e) 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. [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 vehicle right of use subscription programs.

(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 5. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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