

HOUSE BILL No. 1515

DIGEST OF INTRODUCED BILL

Citations Affected: IC 9-13-2; IC 9-32.

Synopsis: Auto dealer franchises. Provides that a manufacturer or distributor of a motor vehicle may not, as a condition of approval for the acquisition of franchise rights, require: (1) the appointment of general management chosen by the manufacturer or distributor; or (2) prior experience with the manufacturer's or distributor's product line. Allows a franchisee to recover certain costs when responding to a complaint filed by a manufacturer. Prohibits a manufacturer from engaging in certain behaviors when responding to a request for compensation by a franchisee. Prohibits a manufacturer or distributor from assessing a charge back against a franchisee until after 45 days have elapsed. Prohibits a manufacturer or distributor from using: (1) a special part; or (2) component parts; for warranty work if doing so will lower the amount of compensation owed to the franchisee by the manufacturer or distributor. Specifies how a franchisee is to be compensated for the performance of work under a warranty obligation. Allows a manufacturer or distributor to require the use of a certified pre-owned vehicle designation in certain instances. Requires a manufacturer or distributor to compensate a franchisee for used motor vehicle inventory that is subject to a recall or stop-sale directive in certain instances. Specifies that a manufacturer or distributor cannot be obligated to provide total compensation to a franchisee in excess of the total average valuation of a used motor vehicle that the manufacturer or distributor is obligated to compensate a franchisee for. Allows manufacturers and distributors to negotiate reimbursement terms. Prohibits a manufacturer or distributor from making access to vehicles, parts, vehicle sales, or service incentives contingent upon the sale of
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Effective: July 1, 2019.

Morris, Judy, Carbaugh

January 17, 2019, read first time and referred to Committee on Roads and Transportation.



certain contracts, services, or agreements. Prohibits a manufacturer or distributor from making financing contingent upon the sale of certain contracts, services, or agreements. Requires a franchisee to provide a service contract disclosure in certain instances. Provides that a manufacturer or distributor may not be prohibited from: (1) offering an incentive program to a vehicle dealer if the program does not provide vehicle sales or service incentives; (2) requiring a franchisee to sell a used vehicle as a certified pre-owned vehicle or certified used vehicle under a certified pre-owned vehicle or certified used vehicle program established by the manufacturer, manufacturer branch, distributor, or distributor branch; or (3) changing the price of parts during the routine and ordinary course of business. Provides that a manufacturer or distributor may not deny the proposed transfer of any ownership or interest in a new motor vehicle dealership to another person. Provides certain exceptions. Requires a manufacturer or distributor to approve or disapprove a transfer of ownership or interest in a dealership not later than 45 days after the submission of the required documentation to a manufacturer or distributor. Provides that a manufacturer or distributor may not delay a decision concerning a transfer of ownership or interest by engaging in certain behaviors. Provides that a manufacturer or distributor shall be permitted the opportunity to exercise a right of first refusal in the event of a proposed sale or transfer of a dealership. Specifies how a right of first refusal must be exercised. Specifies what a manufacturer or dealer: (1) may; and (2) may not; request from a dealer when determining whether to exercise the right of first refusal. Requires an exercise of the right of first refusal to execute a completed agreement or proposal in its entirety. Prohibits a manufacturer or distributor from requesting or requiring certain things from a dealer during a manufacturer's or distributor's exercise of a right of first refusal. Specifies: (1) manufacturer; (2) distributor; and (3) dealer; responsibilities during the exercise of a right of first refusal. Prohibits a dealer from impairing or eliminating the intellectual property or trademark rights of the manufacturer or distributor. Prohibits a dealer from erecting or maintaining signs that do not conform to the intellectual property usage guidelines of the manufacturer or distributor. Provides that in any proceeding requiring a facility alteration, expansion, or addition, the manufacturer or distributor shall have the burden of proving that the requested facility alteration, expansion, or addition is reasonably necessary. Provides that a manufacturer or distributor may not unfairly discriminate against a franchisee selling a service contract, debt cancellation agreement, maintenance agreement, or similar product not approved, endorsed, sponsored, or offered by the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate. Specifies certain practices that qualify as unfair discrimination. Prohibits a manufacturer or distributor from discriminating against a dealer in favor of other dealers of the same line make. Specifies certain practices that qualify as discrimination in favor of a dealer. Provides that a manufacturer or distributor may not require, coerce, or attempt to coerce a new motor vehicle dealer to not exercise a right under the law or to directly or indirectly take retaliatory action or any other adverse action against a dealer for exercising the dealer's rights under the law. Provides that certain performance and sales based standards are unfair practices. Describes certain adverse actions that may not be taken by a manufacturer or distributor. Allows a franchisee to seek judicial review of certain actions taken by a manufacturer or distributor. Provides that a manufacturer or distributor may not coerce or require a dealer to make an improvement to the dealer's facility at a cost in excess of \$300,000 if the purpose of the improvement is to ensure compliance with a franchise or brand image program. Provides that a manufacturer

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or dealer may not: (1) restrict the ability of a dealer to select a digital service vendor; (2) restrict, limit, or discourage a franchisee from verifying the applicability of a: (A) technical service bulletin; or (B) customer service campaign; to certain motor vehicles; (3) access, modify, or extract information from a confidential dealer record without first obtaining prior approval from the dealer; or (4) use electronic, contractual, or other means to prevent or interfere with a dealer's ability to: (A) comply with federal or state laws concerning privacy; or (B) secure the dealer's computer system. Provides that the dealer services division within the office of the secretary of state (division) shall schedule a hearing upon the receipt of a complaint from a dealer. Requires a hearing conducted by the division to comply with certain statutes. Provides that a decision issued by the division constitutes a final administrative order. Allows a dealer harmed by a violation of certain statutes to file a petition with the division or seek relief in a court of law. Allows a court to award damages, reasonable costs and attorney's fees, injunctive relief, and equitable relief to a prevailing party. Allows a dealer and franchisor to enter into release agreements. Allows an association or corporation that: (1) is primarily comprised of dealers; and (2) primarily represents the interests of dealers; to represent the interests of a dealer, a group of dealers, or the association or corporation itself. Specifies that venue for a cause of action initiated by a dealer is proper in the county where the dealer conducts business. Provides that any provision that restricts or limits access to a proper venue is void. Defines certain terms. Makes conforming amendments.



Introduced

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1515

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 9-13-2-1.8 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2019]: **Sec. 1.8. "Affiliate", for purposes of IC 9-32-13-30, has the**
4 **meaning set forth in IC 9-32-13-30(a)(1).**

5 SECTION 2. IC 9-13-2-43.2 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2019]: **Sec. 43.2. "Digital service", for purposes of IC 9-32-13-30,**
8 **has the meaning set forth in IC 9-32-13-30(a)(2).**

9 SECTION 3. IC 9-32-2-13, AS ADDED BY P.L.92-2013,
10 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2019]: Sec. 13. "Franchise" means ~~an~~ **all** oral or a written
12 ~~agreement~~ **agreements**, for a definite or an indefinite period, in which
13 a manufacturer or distributor grants to a dealer a right to use a trade
14 name, trade or service mark, or ~~a~~ related characteristic, ~~and or~~
15 there is a community of interest in the marketing of motor vehicles or

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1 related services at retail or otherwise.

2 SECTION 4. IC 9-32-13-11, AS ADDED BY P.L.92-2013,
 3 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2019]: Sec. 11. **(a)** It is an unfair practice for a manufacturer
 5 or distributor to prevent or require, or attempt to prevent or require, a
 6 dealer to change the dealer's executive management, other than the
 7 principal dealer operator or operators, if the franchise was granted in
 8 reliance upon the personal qualifications of the principal dealer
 9 operator or operators.

10 **(b) A manufacturer or distributor may not, as a condition of**
 11 **approval for the acquisition of franchise rights, require the**
 12 **appointment of general management unless the manufacturer or**
 13 **distributor can show that failure to execute a proposed change of**
 14 **executive management or the appointment of a specific manager**
 15 **will result in executive management by a person who:**

16 **(1) is not of good moral character; or**

17 **(2) lacks adequate employment experience in new motor**
 18 **vehicle business or dealership management.**

19 **The manufacturer or distributor shall have the burden of proof**
 20 **regarding a person's lack of moral character or adequate**
 21 **employment experience.**

22 **(c) A manufacturer or distributor may not, as a condition of**
 23 **approval for the acquisition of franchise rights, require specific**
 24 **experience in the franchisor's line make.**

25 SECTION 5. IC 9-32-13-15.5, AS AMENDED BY P.L.112-2018,
 26 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2019]: Sec. 15.5. (a) This section does not apply to
 28 manufacturers or distributors of manufactured housing, heavy duty
 29 vocational vehicles (as defined in 49 CFR 523.8), or recreational
 30 vehicles.

31 **(b) ~~Unless otherwise agreed,~~** It is an unfair practice for a
 32 manufacturer or distributor to fail to compensate a dealer anything less
 33 than the dealer's retail rates for parts or labor the dealer uses in
 34 performing the warranty services of the manufacturer or distributor, or
 35 for a manufacturer or distributor of a separate vehicle component or
 36 major vehicle assembly that is warranted independently of the motor
 37 vehicle to fail to compensate a dealer anything less than the dealer's
 38 retail rate for the parts or labor the dealer uses in performing the
 39 warranty services of the manufacturer or distributor. The dealer's retail
 40 rate for parts must be a percentage determined by dividing the total
 41 charges for parts used in warranty like repairs by the dealer's total cost
 42 for those parts minus one (1) in the lesser of one hundred (100)



1 customer paid sequential repair orders or ninety (90) consecutive days
2 of customer paid repair orders. The dealer's retail rate for labor shall be
3 determined by dividing the total labor sales for warranty like repairs by
4 the number of hours that generated those sales in one hundred (100)
5 customer paid sequential repair orders or ninety (90) consecutive days
6 of customer paid repair orders. A retail rate may be calculated based
7 upon only customer paid repair orders charged within one hundred
8 eighty (180) days before the date the dealer submits the declaration.

9 (c) The dealer's submission for retail rates must include a
10 declaration of the dealer's retail rates for parts or labor along with the
11 supporting service repair orders paid by customers. A manufacturer or
12 distributor may challenge the dealer's declaration by submitting a
13 rebuttal not later than sixty (60) days after the date the declaration was
14 received. If the manufacturer or distributor does not send a timely
15 rebuttal to the dealer, the retail rate is established as reasonable and
16 goes into effect automatically.

17 (d) If a rebuttal in subsection (c) is timely sent, the rebuttal must
18 substantiate how the dealer's declaration is unreasonable or materially
19 inaccurate. The rebuttal must propose an adjusted retail rate and
20 provide written support for the proposed adjustments. If the dealer does
21 not agree with the adjusted retail rate, the dealer may file a complaint
22 with the dealer services division within the office of the secretary of
23 state.

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

28 (f) When calculating the retail rate customarily charged by the
29 dealer for parts or labor under this section, the following work may not
30 be included:

- 31 (1) Repairs for manufacturer or distributor special events,
32 specials, or promotional discounts for retail customer repairs.
- 33 (2) Parts sold or repairs performed at wholesale.
- 34 (3) Routine maintenance not covered under a retail customer
35 warranty, such as fluids, filters, and belts not provided in the
36 course of repairs.
- 37 (4) Nuts, bolts, fasteners, and similar items that do not have an
38 individual part number.
- 39 (5) Vehicle reconditioning.
- 40 (6) Accessories.
- 41 (7) Repairs of damage caused by a collision, a road hazard, the
42 force of the elements, vandalism, or theft.



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

2 (9) Manufacturer or distributor reimbursed goodwill or policy
3 repairs or replacements.

4 (10) Replacement of tires.

5 (g) If a manufacturer or distributor furnishes a part or component to
6 a dealer at no cost to use in performing repairs under a recall, campaign
7 service, or warranty repair, the manufacturer or distributor shall
8 compensate the dealer for the part or component in the same manner
9 as warranty parts compensation under this section by compensating the
10 dealer the average markup on the cost for the part or component as
11 listed in the manufacturer's or distributor's initial or original price
12 schedule minus the cost for the part or component.

13 (h) A manufacturer or distributor may not require a dealer to
14 establish the retail rate customarily charged by the dealer for parts or
15 labor by an unduly burdensome or time consuming method or by
16 requiring information that is unduly burdensome or time consuming to
17 provide, including part by part or transaction by transaction
18 calculations. A dealer may not declare an average percentage parts
19 markup or average labor rate more than once in a twelve (12) month
20 period. A manufacturer or distributor may perform annual audits to
21 verify that a dealer's effective rates have not decreased. If a dealer's
22 effective rates have decreased, a manufacturer or distributor may
23 reduce the warranty reimbursement rate prospectively. A dealer may
24 elect to revert to the nonretail rate reimbursement for parts or labor not
25 more than once in a twelve (12) month period.

26 (i) ~~Except as provided in IC 9-32-13-16, a~~ A manufacturer or
27 distributor may not impose a surcharge on a dealer for the purpose of
28 recovering any of its costs related to the reimbursement of a dealer for
29 parts or labor required under this section. This subsection does not
30 prohibit a manufacturer or distributor from increasing the wholesale
31 price of a vehicle or part in the ordinary course of business.

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

36 (1) a final decision has been issued by a court with jurisdiction;
37 and

38 (2) all appeals have been exhausted.

39 **(k) If a franchisee prevails against a complaint described in**
40 **subsection (j), the franchisee shall be entitled to:**

41 **(1) the requested rate (beginning from the date of the**
42 **secretary of state's issued decision); and**



1 **(2) reasonable:**
 2 **(A) attorney's fees;**
 3 **(B) expert fees; and**
 4 **(C) reimbursement for any other expense;**
 5 **incurred by the franchisee as a result the franchisee's defense**
 6 **against a complaint described under subsection (j).**

7 **(l) Fees or reimbursement awarded to a franchisee under**
 8 **subsection (k) are limited to the period between:**

9 **(1) the date of filing for a complaint described in subsection**
 10 **(j); and**

11 **(2) the conclusion of the appeals process.**

12 **(m) A manufacturer or distributor shall not:**

13 **(1) request a change to a price charged by a franchisee for a**
 14 **part, labor, or a retail repair as a result of a franchisee:**

15 **(A) seeking compensation; or**

16 **(B) exercising a right;**

17 **described in this section;**

18 **(2) impose a penalty, surcharge, or punitive cost upon a**
 19 **franchisee;**

20 **(3) transfer liability or shift a cost to a franchisee;**

21 **(4) limit the allocation of vehicles or parts to a franchisee;**

22 **(5) delay or reject a valid payment due to a franchisee under**
 23 **this section;**

24 **(6) establish, implement, enforce, or apply a discriminatory**
 25 **policy, rule, program, or incentive concerning compensation**
 26 **owed to a franchisee under this section;**

27 **(7) conduct, or threaten to conduct, a service or repair related**
 28 **audit in response to a franchisee seeking compensation under**
 29 **this section; or**

30 **(8) directly or indirectly:**

31 **(A) take, or threaten to take, an adverse action against a**
 32 **franchisee in response to the franchisee's exercise of any**
 33 **right reserved for the franchisee under this section; or**

34 **(B) act in bad faith towards a franchisee.**

35 SECTION 6. IC 9-32-13-17, AS AMENDED BY P.L.112-2018,
 36 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2019]: Sec. 17. (a) It is an unfair practice for a manufacturer
 38 or distributor to:

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

40 **(A) delivery and preparation work;**

41 **(B) warranty work; and**

42 **(C) incentive payments;**



- 1 not later than thirty (30) days after the claim is approved;
 2 (2) fail to approve or disapprove a claim not later than thirty (30)
 3 days after receipt of the claim; or
 4 (3) disapprove a claim without notice to the dealer in writing of
 5 the grounds for disapproval.
- 6 (b) A manufacturer or distributor may:
 7 (1) audit a claim made by a dealer; or
 8 (2) charge back to a dealer any amounts paid on a:
 9 (A) false or fraudulent claim;
 10 (B) claim in which repairs were not properly made;
 11 (C) claim involving work that was not necessary to correct a
 12 defective condition; or
 13 (D) claim that the dealer failed to substantiate in accordance
 14 with the manufacturer's written procedures or other reasonable
 15 means;
 16 for up to twelve (12) months after the date on which the claim is paid.
 17 However, the limitations of this subsection do not apply if the
 18 manufacturer or distributor can prove fraud on a claim. A manufacturer
 19 or distributor shall not discriminate among dealers with regard to
 20 auditing or charging back claims.
- 21 (c) Except as provided in subsection (d), a manufacturer or
 22 distributor may not deny a claim based solely on a motor vehicle
 23 dealer's incidental failure to comply with a specific claim processing
 24 requirement, including a clerical error or other administrative
 25 technicality that does not call into question the legitimacy of a claim
 26 when the dealer has provided reasonably sufficient documentation of
 27 the dealer's good faith attempt to perform necessary work in
 28 compliance with the written policies and procedures of the
 29 manufacturer.
- 30 (d) A manufacturer or distributor shall provide a dealer with written
 31 notification of the specific grounds upon which a claim is being
 32 charged back as a result of an audit. A manufacturer or distributor shall
 33 provide a reasonable appeals process allowing the dealer at least thirty
 34 (30) days after receipt of the notice of charge back to provide
 35 additional supporting documentation or information rebutting the
 36 charge back. If the charge back is based upon noncompliance with
 37 documentation requirements, material claim submission requirements,
 38 or other material clerical errors, the manufacturer or distributor shall
 39 allow the dealer thirty (30) days from the receipt of the notice of charge
 40 back to cure any material noncompliance. A manufacturer's or
 41 distributor's audit or appeals process shall allow a dealer, the dealer's
 42 designated agent, officer, or employee to request, in writing, a meeting



1 with the manufacturer or distributor via in-person meeting, video
 2 conference, or telephone call or a written explanation of the basis for
 3 a charge back. The manufacturer or distributor shall respond with all
 4 details and specific information supporting the basis for each charge
 5 back. The manufacturer or distributor and the dealer may agree, during
 6 the audit or appeals process, to an extension of time for the dealer to
 7 cure any material noncompliance as necessitated by the volume of the
 8 claim charge backs at issue.

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

- 11 (1) sales incentives;
- 12 (2) service incentives;
- 13 (3) rebates; or
- 14 (4) other forms of incentive compensation;

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

19 **(f) A manufacturer or distributor may not assess a charge back**
 20 **against a franchisee until not less than forty-five (45) days have**
 21 **elapsed after the receipt of the written notification described in**
 22 **subsection (d).**

23 **(g) A manufacturer or distributor is prohibited from using:**

- 24 **(1) a special part; or**
- 25 **(2) component parts;**

26 **for warranty work if use of the special part or component parts**
 27 **lowers the amount of compensation owed to the franchisee under**
 28 **this section.**

29 **(h) When a manufacturer or distributor compensates a**
 30 **franchisee at the retail parts rate, the following shall apply:**

31 **(1) If the manufacturer or distributor provides a part to a**
 32 **franchisee at no cost for use in the performance of a warranty**
 33 **obligation, the manufacturer or distributor shall compensate**
 34 **the franchisee in an amount determined by multiplying the**
 35 **wholesale value of the part (as determined under subsection**
 36 **(i)) by the franchisee's retail parts rate.**

37 **(2) If the manufacturer or distributor furnishes a part to a**
 38 **franchisee at a reduced cost for use in the performance of a**
 39 **warranty obligation, the manufacturer or distributor shall**
 40 **compensate the franchisee in an amount determined by**
 41 **adding the franchisee's cost of the part to the value obtained**
 42 **when multiplying the wholesale value of the part (as**



- 1 determined under subsection (i) by the franchisee's retail
2 parts rate.
- 3 (i) The wholesale value of a part shall be the greatest of the
4 following:
- 5 (1) The amount the franchisee paid for the part or would pay
6 for a substantially similar part if the part is already owned by
7 the franchisee.
- 8 (2) The cost of the part shown in a current price schedule for
9 the manufacturer or distributor.
- 10 (3) The cost of a substantially similar part shown in a current
11 price schedule for the manufacturer or distributor.
- 12 (j) Nothing in this section shall be construed to prevent a
13 manufacturer or distributor from requiring that a used motor
14 vehicle:
- 15 (1) qualify;
- 16 (2) remain qualified;
- 17 (3) be advertised; or
- 18 (4) be sold;
- 19 as a certified pre-owned vehicle if the motor vehicle is not subject
20 to an open recall or stop-sale directive issued by the manufacturer
21 or distributor. The terms of this subsection shall apply to any
22 designation or classification that is substantially similar to a
23 pre-owned vehicle certification.
- 24 (k) If:
- 25 (1) a motor vehicle manufacturer or distributor issues an
26 unconditional stop-sale directive for a motor vehicle that
27 concerns a safety related defect on a used motor vehicle
28 manufactured by the manufacturer or distributed by the
29 distributor;
- 30 (2) the dealer holds an active sale and service agreement with
31 the manufacturer or distributor for the line make of the used
32 motor vehicle subject to the stop-sale directive;
- 33 (3) the used vehicle covered by the stop-sale directive is being
34 held in the used vehicle inventory of the dealer for resale on
35 the date of issuance of the stop-sale directive; and
- 36 (4) the manufacturer or distributor fails to provide a remedy
37 or make parts available to repair the used motor vehicle
38 subject to the stop-sale directive more than thirty (30) days
39 after the issuance of the stop-sale directive;
- 40 the manufacturer or distributor shall, upon application by the
41 franchisee, pay or credit the franchisee in an amount equal to one
42 and five-tenths percent (1.5%) of the average wholesale value of



1 the affected motor vehicle model per month. The average wholesale
 2 value of a vehicle, for purposes of this subsection, shall be
 3 established by referencing a generally accepted third-party used
 4 vehicle resource.

5 (l) A payment or credit issued to a franchisee under subsection
 6 (k) shall be prorated. The period for a prorated payment issued
 7 under subsection (k) shall:

8 (1) begin on the date that occurs thirty (30) days after the
 9 receipt of the stop-sale directive by the franchisee; and

10 (2) end on the earlier of the following two (2) dates:

11 (A) The date the manufacturer provides the franchisee
 12 with a remedy or part designed to correct the defect
 13 responsible for the issuance of the stop-sale directive.

14 (B) The date the franchisee sells, trades, transfers, or
 15 otherwise disposes of the used motor vehicle described in
 16 subsection (k).

17 (m) Nothing in this section shall be construed to require a
 18 manufacturer or distributor to provide total compensation to a
 19 franchisee in an amount that would exceed the total average
 20 valuation of the affected used motor vehicle.

21 (n) Nothing in this section shall preclude a dealer or
 22 manufacturer from agreeing to reimbursement terms that differ
 23 from those specified in this section.

24 (o) A manufacturer or distributor may not make access to
 25 vehicles, parts, vehicle sales, or service incentives contingent upon
 26 the following:

27 (1) The sale of service contracts.

28 (2) The sale or acceptance of debt cancellation services.

29 (3) The sale or acceptance of maintenance agreements.

30 (4) Any other product or service that is:

31 (A) similar to a product or service described in
 32 subdivisions (1) through (3); and

33 (B) approved, endorsed, sponsored, or offered by a
 34 manufacturer, a manufacturer branch, a distributor, a
 35 distributor branch, or an affiliate of a manufacturer or
 36 distributor.

37 (p) A manufacturer or distributor may not make access to
 38 financing contingent upon the following:

39 (1) The sale of service contracts.

40 (2) The sale or acceptance of debt cancellation services.

41 (3) The sale or acceptance of maintenance agreements.

42 (4) Any other product or service that is:



- 1 (A) similar to a product or service described in
- 2 subdivisions (1) through (3); and
- 3 (B) approved, endorsed, sponsored, or offered by a
- 4 manufacturer, a manufacturer branch, a distributor, a
- 5 distributor branch, or an affiliate of a manufacturer or
- 6 distributor.

7 Nothing in this subsection shall be construed to limit the ability of
 8 a manufacturer, a manufacturer branch, a distributor, a
 9 distributor branch, or an affiliate of a manufacturer or distributor
 10 to deny access to financing for service contracts, debt cancellation
 11 agreements, maintenance agreements, or any other similar product
 12 or service if the product or service does not comply with applicable
 13 federal and state laws or minimum uniformly applied industry
 14 standards.

15 (q) A service contract disclosure shall consist of the following
 16 language:

17 SERVICE CONTRACT DISCLOSURE

18 The service contract that you are purchasing is not
 19 provided or backed by the manufacturer of the vehicle that
 20 you are purchasing. The manufacturer of the vehicle is not
 21 responsible for claims or repairs made under this service
 22 contract.

23
 24 Signature of Purchaser

25 (r) Requiring a franchisee to provide a service contract
 26 disclosure that differs from the disclosure set forth in subsection
 27 (q) shall constitute an unfair practice.

28 (s) Nothing in this section shall be construed to prohibit a
 29 manufacturer, a manufacturer branch, a distributor, a distributor
 30 branch, or an affiliate of the manufacturer or distributor, as
 31 applicable, from doing the following:

32 (1) Offering an incentive program to a vehicle dealer that
 33 voluntarily sells or offers to sell:

- 34 (A) service contracts;
- 35 (B) debt cancellation agreements; or
- 36 (C) similar products that are approved, endorsed,
 37 sponsored, or offered by the manufacturer, manufacturer
 38 branch, distributor, distributor branch, or affiliate of the
 39 manufacturer or distributor;

40 if the program does not provide vehicle sales or service
 41 incentives.

42 (2) Requiring a franchisee to sell a used vehicle as a certified



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pre-owned vehicle or certified used vehicle under a certified pre-owned vehicle or certified used vehicle program established by the manufacturer, manufacturer branch, distributor, or distributor branch.

(3) Requiring a franchisee to provide the service contract disclosure set forth in subsection (q) to a purchaser before the sale of a service contract if the service contract is not backed by the manufacturer and the vehicle to be sold belongs to the manufacturer's product line.

(t) Nothing in this section shall be construed to prevent a manufacturer or distributor from changing the price of parts during the routine and ordinary course of business.

SECTION 7. IC 9-32-13-22, AS AMENDED BY P.L.174-2016, SECTION 102, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 22. (a) It is an unfair practice for a manufacturer to terminate a franchise in violation of IC 23-2-2.7-3. A dealer may not transfer, assign, or sell the business and assets of a dealership or an interest in the dealership to another person under an agreement that contemplates or is conditioned on a continuation of the franchise relationship with the manufacturer or distributor unless the dealer first:

- (1) notifies the manufacturer or distributor of the dealer's decision to make the transfer, assignment, or sale by written notice; and
- (2) obtains the approval of the manufacturer or distributor.

The dealer must provide the manufacturer or distributor with completed application forms and related information generally used by the manufacturer or distributor to conduct a review of such a proposal and a copy of all agreements regarding the proposed transfer, assignment, or sale:

(b) The manufacturer or distributor shall send a letter by certified mail to the dealer not later than sixty (60) days after the manufacturer or distributor receives the information specified in subsection (a). The letter must indicate any disapproval of the transfer, assignment, or sale and must set forth the material reasons for the disapproval. If the manufacturer or distributor does not respond by letter within sixty (60) days after the manufacturer or distributor receives the information under subsection (a), the manufacturer's or distributor's consent to the proposed transfer, assignment, or sale is considered to have been granted. A manufacturer or distributor may not unreasonably withhold approval of a transfer, assignment, or sale under this section:

(b) A manufacturer or distributor may not deny the proposed transfer of any ownership or interest in a new motor vehicle



1 dealership to another person unless the transfer of the interest
2 would be to a person who:

3 (1) is unable to qualify for a new motor vehicle dealer's
4 license;

5 (2) is not of good moral character; or

6 (3) does not meet the manufacturer's or distributor's existing
7 reasonable capital standards (as determined by the minimum
8 general business experience standards in the applicable
9 market area and the volume of service and sales for the
10 dealership at issue).

11 A manufacturer or distributor shall have the burden of proof when
12 alleging a disqualification described under subdivision (2) or (3).

13 (c) Nothing in this section shall be construed to obstruct the
14 implementation or use of an affirmative action program designed
15 to encourage or provide business opportunities for minorities.

16 (d) A manufacturer or distributor shall approve or disapprove
17 a proposed transfer of ownership or interest not later than
18 forty-five (45) days after the submission of the standardized
19 documentation used by the manufacturer or distributor to evaluate
20 a proposed transfer of ownership or interest under subsection (b).
21 A manufacturer or distributor may not delay a decision concerning
22 a transfer of ownership or interest described under subsection (b)
23 by:

24 (1) requesting information that was not originally requested
25 by the manufacturer's or distributor's standardized
26 documentation; or

27 (2) performing an additional investigation or due diligence
28 study with respect to the proposed transfer of ownership or
29 interest unless provisions concerning the performance of an
30 additional investigation or due diligence study were provided
31 for in the original transfer of ownership or interest proposal.

32 (e) Notwithstanding the terms of any franchise agreement, a
33 manufacturer or distributor shall be permitted the opportunity to
34 exercise a right of first refusal in the event of a proposed sale or
35 transfer of a dealership. A manufacturer or distributor shall be
36 given the opportunity to match or improve upon a proposed new
37 owner's or transferee's proposal to acquire the new vehicle dealer's
38 assets or ownership if the sale or transfer of the ownership or
39 interest is conditioned upon the manufacturer and dealer entering
40 into a dealer agreement with the proposed new owner or
41 transferee. To exercise the right of first refusal, a manufacturer or
42 distributor must provide a dealer with written notice of its intent



1 to exercise the right of first refusal not later than forty-five (45)
 2 days after receiving a completed proposal concerning a proposed
 3 sale or transfer.

4 (f) A manufacturer or distributor, when determining whether
 5 to exercise the right of first refusal:

6 (1) may request:

7 (A) the complete and executed agreement that constitutes
 8 the proposed sale or transfer;

9 (B) all schedules and exhibits that accompany the
 10 agreement described in clause (A); and

11 (C) the completed manufacturer or distributor application
 12 completed by the proposed new owner or transferee; or

13 (2) may perform an additional investigation or due diligence
 14 study with respect to the proposed transfer of ownership or
 15 interest, dealership assets, or applicable real estate unless
 16 provisions concerning the performance of an additional
 17 investigation or due diligence study are provided for in the
 18 proposal.

19 (g) A manufacturer or distributor described in subsection (f)
 20 may not require that a dealer pay:

21 (1) either:

22 (A) the consideration or a value; or

23 (B) the assets;

24 of the franchised business included in the completed proposal;
 25 or

26 (2) for any constituent business, assets, or real estate;
 27 other than the consideration for the performance of the entire
 28 agreement constituting the proposal that the dealer and the
 29 proposed new owner or transferee have identified in the completed
 30 proposal.

31 (h) An exercise of the right of first refusal shall:

32 (1) execute a completed agreement in its entirety; and

33 (2) result in the dealer and dealer's owner receiving
 34 consideration in an amount equal to or greater than the
 35 amount of consideration that the dealer and dealer's owner
 36 were originally contracted to receive.

37 (i) When exercising the right of first refusal, a manufacturer or
 38 distributor shall:

39 (1) assign the proposal and any accompanying agreement
 40 concerning a transfer of ownership or interest to a person or
 41 dealer who:

42 (A) is independent of the manufacturer or distributor; and



- 1 **(B) is eligible under subsection (b);**
 2 **(2) require the assignee to complete the performance of the**
 3 **proposal and any accompanying agreement as agreed to by**
 4 **the original contracting parties; and**
 5 **(3) forbid its assignee to renegotiate or restructure the agreed**
 6 **upon proposal or accompanying agreement in any manner**
 7 **except to amend the name of the buyer to that of the assignee**
 8 **or an entity under the control of the assignee.**
 9 **(j) To exercise the right of first refusal, the manufacturer or**
 10 **distributor shall send to the dealer, at an electronic mail address**
 11 **provided by the dealer, a digital undertaking that:**
 12 **(1) identifies the assignee; and**
 13 **(2) agrees to comply with the obligations described in**
 14 **subsection (h).**
 15 **(k) If the agreement constituting a proposed transfer of**
 16 **ownership or interest involves more than one (1) manufacturer or**
 17 **distributor as a franchisor, the party or parties specified below**
 18 **shall do as follows:**
 19 **(1) The dealer shall:**
 20 **(A) provide an electronic mail address to the manufacturer**
 21 **or distributor that may be used to reliably reach the**
 22 **dealer; and**
 23 **(B) on the same day:**
 24 **(i) electronically transmit to a digital location identified**
 25 **by the manufacturer or distributor; and**
 26 **(ii) deliver to a carrier for shipment by overnight**
 27 **delivery to a physical address of the manufacturer or**
 28 **distributor;**
 29 **a complete copy of the transfer of ownership or interest**
 30 **proposal.**
 31 **(2) The manufacturer or distributor first in time to exercise**
 32 **the right of first refusal shall control the right to match or**
 33 **improve the entire agreement containing the proposal, and no**
 34 **other manufacturer or distributor may exercise the right of**
 35 **first refusal unless the first exercising manufacturer or**
 36 **distributor determines that it cannot complete the full**
 37 **proposal through its assignee, thereby resulting in a waiver of**
 38 **the right of first refusal by the affected manufacturer or**
 39 **distributor.**
 40 **(3) In the event that a manufacturer or distributor that has**
 41 **chosen to exercise the right of first refusal cannot perform**
 42 **under the proposal governing a proposed transfer of**



1 ownership or interest, the dealer shall notify other
 2 manufacturers or distributors eligible to exercise the right of
 3 first refusal by the methods described in subdivision (1). A
 4 manufacturer or distributor wishing to exercise the right of
 5 first refusal following the inability of a preceding
 6 manufacturer or distributor to perform under a proposal
 7 governing a proposed transfer of ownership or interest may
 8 exercise the right of first refusal not more than ten (10) days
 9 after receiving notification of the opportunity to exercise the
 10 right of first refusal by a dealer. The manufacturer or
 11 distributor controlling the right of first refusal shall have the
 12 rights described in subsection (2).

13 (c) A manufacturer or distributor has a right of first refusal as
 14 specified in the franchise agreement to acquire the new motor vehicle
 15 dealer's assets or ownership if there is a proposed change of more than
 16 fifty percent (50%) of the dealer's ownership or proposed transfer of
 17 more than fifty percent (50%) of the new motor vehicle dealer's assets;
 18 and all the following are met:

19 (1) The manufacturer or distributor notifies the dealer in writing
 20 of the intent of the manufacturer or distributor to exercise the
 21 right of first refusal within the sixty (60) day notice period under
 22 subsection (b):

23 (2) The exercise of the right of first refusal will result in the dealer
 24 and the dealer's owners receiving consideration, terms, and
 25 conditions that are either the same as or better than those they
 26 have contracted to receive under the proposed change of more
 27 than fifty percent (50%) of the dealer's ownership or transfer of
 28 more than fifty percent (50%) of the new motor vehicle dealer's
 29 assets:

30 (3) (I) The proposed change of the dealership's ownership or transfer
 31 of the new motor vehicle dealer's assets does not involve the transfer
 32 of assets or the transfer or issuance of stock by the dealer or one (1) or
 33 more of the dealer's owners to any of the following:

34 (A) (1) A designated family member or members, including any
 35 of the following members of one (1) or more dealer owners:

36 (i) (A) The spouse.

37 (ii) (B) A child.

38 (iii) (C) A grandchild.

39 (iv) (D) The spouse of a child or a grandchild.

40 (v) (E) A sibling.

41 (vi) (F) A parent.

42 (B) (2) A manager:



- 1 (i) **(A)** employed by the dealer in the dealership during the
 2 previous four (4) years; and
 3 (ii) **(B)** who is otherwise qualified as a dealer operator.
- 4 ~~(C)~~ **(3)** A partnership or corporation controlled by any of the
 5 family members described in ~~clause (A)~~: **subdivision (1)**.
- 6 ~~(D)~~ **(4)** A trust arrangement established or to be established:
 7 (i) **(A)** for the purpose of allowing the new motor vehicle
 8 dealer to continue to qualify as such under the manufacturer's
 9 or distributor's standards; or
 10 (ii) **(B)** to provide for the succession of the franchise
 11 agreement to designated family members or qualified
 12 management in the event of the death or incapacity of the
 13 dealer or the principal owner or owners.
- 14 ~~(4)~~ **(m)** Except as otherwise provided in this subsection, the
 15 manufacturer or distributor agrees to pay the reasonable expenses,
 16 including reasonable attorney's fees, that do not exceed the usual,
 17 customary, and reasonable fees charged for similar work done for other
 18 clients, and that are incurred by the proposed owner or transferee
 19 before the manufacturer's or distributor's exercise of the right of first
 20 refusal in negotiating and implementing the contract for the proposed
 21 change of the dealer ownership or the transfer of the new motor vehicle
 22 dealer's assets. Payment of expenses and attorney's fees is not required
 23 if the dealer has failed to submit an accounting of those expenses not
 24 later than twenty (20) days after the dealer receives the manufacturer's
 25 or distributor's written request for such an accounting. An expense
 26 accounting may be requested by a manufacturer or distributor before
 27 exercising the right of first refusal.
- 28 ~~(4)~~ **(n)** Violation of this section by a manufacturer or distributor is
 29 an unfair practice by the manufacturer or distributor.
- 30 SECTION 8. IC 9-32-13-23, AS AMENDED BY P.L.174-2016,
 31 SECTION 103, IS AMENDED TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2019]: Sec. 23. (a) It is an unfair practice for a
 33 manufacturer, distributor, officer, or agent to do any of the following:
 34 (1) Require, coerce, or attempt to coerce a new motor vehicle
 35 dealer in Indiana to:
 36 (A) change the location of the dealership;
 37 (B) make any substantial alterations to the use of franchises;
 38 or
 39 (C) make any substantial alterations to the dealership premises
 40 or facilities;
 41 if to do so would be unreasonable or would not be justified by
 42 current economic conditions or reasonable business



1 considerations. This subdivision does not prevent a manufacturer
 2 or distributor from establishing and enforcing reasonable facility
 3 requirements. However, a new motor vehicle dealer may elect to
 4 use for the facility alteration locally sourced materials, **design or**
 5 **architectural service**, or supplies that are substantially similar to
 6 those required by the manufacturer or distributor, subject to the
 7 approval of the manufacturer or distributor, which may not be
 8 unreasonably withheld. **The request of the new motor vehicle**
 9 **dealer shall be deemed approved if the request is not explicitly**
 10 **denied in writing and provided to the new motor vehicle**
 11 **dealer within twenty (20) business days after receipt of the**
 12 **request by the new motor vehicle dealer. Nothing in this**
 13 **subdivision shall be construed to authorize a dealer to impair**
 14 **or eliminate the intellectual property or trademark rights of**
 15 **the manufacturer or distributor or to permit the dealer to**
 16 **erect or maintain signs that do not conform to the intellectual**
 17 **property usage guidelines of the manufacturer or distributor.**
 18 **The provisions of this subdivision do not apply to a specific**
 19 **good or service provided to the dealer by the manufacturer or**
 20 **distributor in exchange for a lump sum payment or series of**
 21 **payments if the sole purpose of the payment is to reimburse**
 22 **the dealer for the purchase of a specified good or service. In**
 23 **any proceeding requiring a facility alteration, expansion, or**
 24 **addition, the manufacturer or distributor shall have the**
 25 **burden of proving that the requested facility alteration,**
 26 **expansion, or addition is reasonably necessary.**

27 (2) Require, coerce, or attempt to coerce a new motor vehicle
 28 dealer in Indiana to divest ownership of or management in
 29 another line or make of motor vehicles that the dealer has
 30 established in its dealership facilities with the prior written
 31 approval of the manufacturer or distributor.

32 (3) Establish or acquire wholly or partially a franchisor owned
 33 outlet engaged wholly or partially in a substantially identical
 34 business to that of the franchisee within the exclusive territory
 35 granted the franchisee by the franchise agreement or, if no
 36 exclusive territory is designated, competing unfairly with the
 37 franchisee within a reasonable market area. A franchisor is not
 38 considered to be competing unfairly if operating:

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

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

42 (C) in a bona fide relationship in which an independent person



- 1 has made a significant investment subject to loss in the
 2 business operation and can reasonably expect to acquire
 3 majority ownership or managerial control of the business on
 4 reasonable terms and conditions.
- 5 (4) Require a dealer, as a condition of granting or continuing a
 6 franchise, approving the transfer of ownership or assets of a new
 7 motor vehicle dealer, or approving a successor to a new motor
 8 vehicle dealer to:
- 9 (A) construct a new dealership facility;
 10 (B) modify or change the location of an existing dealership; or
 11 (C) grant the manufacturer or distributor control rights over
 12 any real property owned, leased, controlled, or occupied by the
 13 dealer.
- 14 (5) Prohibit a dealer from representing more than one (1) line
 15 make of motor vehicles from the same or a modified facility if:
- 16 (A) reasonable facilities exist for the combined operations;
 17 (B) the dealer meets reasonable capitalization requirements for
 18 the original line make and complies with the reasonable
 19 facilities requirements of the manufacturer or distributor; and
 20 (C) the prohibition is not justified by the reasonable business
 21 considerations of the manufacturer or distributor.
- 22 **(6) To unfairly discriminate against a franchisee selling a
 23 service contract, debt cancellation agreement, maintenance
 24 agreement, or similar product not approved, endorsed,
 25 sponsored, or offered by the manufacturer, manufacturer
 26 branch, distributor, distributor branch, or affiliate of the
 27 manufacturer or distributor. For purposes of this subdivision,
 28 unfair discrimination includes any of the following:**
- 29 **(A) Express or implied statements that the dealer is under
 30 an obligation to exclusively sell or offer to sell service
 31 contracts, debt cancellation agreements, maintenance
 32 agreements, or similar products approved, endorsed,
 33 sponsored, or offered by the manufacturer, manufacturer
 34 branch, distributor, distributor branch, or affiliate of the
 35 manufacturer or distributor.**
- 36 **(B) Express or implied statements that selling or offering
 37 to sell service contracts, debt cancellation agreements,
 38 maintenance agreements, or similar products not
 39 approved, endorsed, sponsored, or offered by the
 40 manufacturer, manufacturer branch, distributor,
 41 distributor branch, or affiliate of the manufacturer or
 42 distributor, or the failure to sell or offer to sell service**



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contracts, debt cancellation agreements, maintenance agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate of the manufacturer or distributor will have any negative consequences for the dealer.

(C) Measuring a dealer's performance under a franchise agreement based upon the sale of service contracts, debt cancellation agreements, maintenance agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate of the manufacturer or distributor.

Subdivisions (3) through ~~(5)~~ (6) 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.

(c) A manufacturer or distributor may not discriminate against a dealer holding a franchise for a line make of the manufacturer or distributor in favor of other dealers of the same line make by doing the following:

(1) Selling, or offering to sell, a new motor vehicle to a dealer at a lower actual price, inclusive of the price for vehicle transportation, than the actual price at which the same, similarly equipped model is offered to or made available for sale to another dealer during a similar period.

(2) Using a promotional program, device, incentive, payment, or other benefit, whether paid to a dealer at the time of sale for a new motor vehicle or later, that results in the sale or an offer to sell a new motor vehicle to a dealer at a lower price, inclusive of the price of transportation, than the price at which the same, similarly equipped model is offered to or made available for sale to another dealer during a similar period. Nothing in this subdivision shall be construed to prohibit the availability of a promotion or incentive program concerning facility improvements if the promotion or incentive program is made available to competing dealers of the same line make on substantially similar or comparable terms.

(3) Failing to make available to any motor vehicle dealer any



1 **preferential pricing, incentive, rebate, finance rate, or low**
 2 **interest loan program offered to competing motor vehicle**
 3 **dealers in contiguous states. This subdivision shall not apply**
 4 **to the sales of motor vehicles sold for resale to qualified**
 5 **manufacturing employees, a unit of the United States**
 6 **government, the state, or any political subdivision of the state.**

7 **(d) A manufacturer or distributor may not require, coerce, or**
 8 **attempt to coerce a new motor vehicle dealer to decline to exercise**
 9 **its rights under the law or to directly or indirectly take retaliatory**
 10 **action or any other adverse action against a dealer for exercising**
 11 **the dealer's rights under this chapter.**

12 SECTION 9. IC 9-32-13-27, AS AMENDED BY P.L.174-2016,
 13 SECTION 106, IS AMENDED TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2019]: Sec. 27. (a) It is an unfair practice for a
 15 manufacturer or distributor to do the following:

16 (1) Cancel or terminate a franchise of a franchisee, or fail or
 17 refuse to extend or renew a franchise upon the franchise's
 18 expiration, without good cause and notice to the franchisee by
 19 certified mail, return receipt requested:

20 (A) at least ninety (90) days before the cancellation or
 21 termination; or

22 (B) at least ten (10) days before the cancellation or termination
 23 if any of the following apply:

24 (i) The franchisee has abandoned business operations or
 25 otherwise failed to conduct sales and service operations
 26 during regular business hours for at least seven (7)
 27 consecutive business days, unless the abandonment or
 28 closure is due to an act of God or another act over which the
 29 franchisee has no control.

30 (ii) The franchisee or another operator of the franchise has
 31 been convicted of or pled guilty to an offense punishable by
 32 at least one (1) year of imprisonment.

33 (iii) The dealer files for bankruptcy or enters into
 34 receivership.

35 (iv) The license of the dealer is revoked under IC 9-32-11 or
 36 IC 9-32-16.

37 (v) The dealer commits fraud.

38 (2) Offer a renewal, replacement, or succeeding franchise that
 39 substantially changes or modifies the sales and service
 40 obligations, facilities standards, capital requirements, or other
 41 terms of the original franchise or agreement of a franchisee.
 42 ~~without notice to the franchisee by certified mail, return receipt~~



1 requested; at least ninety (90) days before the expiration or
2 termination of the original franchise or agreement.

3 (3) Terminate, **cancel, or fail to renew a dealer franchise**
4 **agreement with** a dealer for the dealer's failure to meet a
5 performance standard that is not statistically valid, reliable, and
6 reasonable.

7 (4) **Establish or maintain a performance standard, sales**
8 **objective, or program for measuring a dealer's sales, service,**
9 **or customer service performance that may materially affect**
10 **the dealer. An unfair practice under this subdivision must**
11 **include actions that adversely affect the dealer's right to**
12 **payment under any incentive or reimbursement program or**
13 **the establishment of working capital requirements unless the**
14 **following conditions are present:**

15 (A) **The performance standard, sales objective, or program**
16 **measuring dealer sales, service, or customer service**
17 **performance is reasonable in light of all existing**
18 **circumstances that include, but are not limited to, the**
19 **following:**

20 (i) **Demographics in the dealer's area of responsibility.**

21 (ii) **Geographic and market characteristics in the**
22 **dealer's area of responsibility.**

23 (iii) **The availability and allocation of vehicles and parts**
24 **inventory.**

25 (iv) **Historical sales, service, and customer service**
26 **performance of the line make within the dealer's area of**
27 **responsibility (including the vehicle brand preferences of**
28 **consumers in the dealer's area of responsibility).**

29 (B) **The manufacturer, manufacturer branch, distributor,**
30 **distributor branch, or affiliate of the manufacturer or**
31 **distributor provides a written summary of the**
32 **methodology and data used to establish a performance**
33 **standard, sales objective, or program for measuring dealer**
34 **sales, service, or customer or service performance to a**
35 **dealer not later than thirty (30) days after the dealer's**
36 **request. A summary described under this clause must**
37 **provide enough detail to permit the dealer to determine**
38 **how the standard was established and applied to the**
39 **dealer.**

40 (b) **A manufacturer or distributor may not take any adverse**
41 **action against a new motor vehicle dealer. Adverse actions include:**

42 (1) **charge backs;**



- 1 **(2) sales and service based vehicle allocation reductions within**
 2 **a designated area of primary responsibility for a dealer**
 3 **(unless the allocation reduction is reasonable in light of**
 4 **proximity to relevant census data tracts, competing**
 5 **dealerships, highway and road networks, natural or manmade**
 6 **barriers, and buyer demographics and is limited to**
 7 **consideration of areas inside the boundaries of Indiana unless**
 8 **specifically agreed to or approved of by the new motor vehicle**
 9 **dealer);**
- 10 **(3) any behavior that requires, coerces, or attempts to coerce**
 11 **any new motor vehicle dealer by means or a program, policy,**
 12 **facility guide, or standard to:**
- 13 **(A) accept delivery of; or**
 14 **(B) perform any service or repair on;**
 15 **an appliance, piece of equipment, part, accessory, or other**
 16 **commodity that is not required by law and was not**
 17 **voluntarily ordered by the dealer and that the dealer does not**
 18 **have the right to return, unused, for a full refund within**
 19 **ninety (90) days or another period of time that is mutually**
 20 **agreed upon by the dealer or manufacturer; and**
- 21 **(4) any modification of the franchise agreement for any new**
 22 **motor vehicle dealer unless the manufacturer notifies the**
 23 **dealer of its intention to modify the franchise agreement not**
 24 **less than ninety (90) days before the effective date of the**
 25 **desired modification and provides a specific, good faith reason**
 26 **for the modification that is supported by reasonable cause and**
 27 **undertaken in a manner that does not adversely and**
 28 **substantially alter the rights, obligations, investment, or**
 29 **return of investment for the franchised, new motor vehicle**
 30 **dealer.**

31 Notice provided under this subsection must include a detailed
 32 statement setting forth the specific grounds for the proposed action.

33 **(b) (c)** For purposes of subsection (a)(1), the following do not
 34 constitute good cause, provided that no unfair practice is committed
 35 under IC 9-32-13-12 and no transfer, sale, or assignment is made in
 36 violation of IC 9-32-13-22:

- 37 (1) A change of ownership or executive management of a
 38 dealership.
 39 (2) Requiring the appointment of an individual to an executive
 40 management position in a dealership.
 41 (3) Ownership of, investment in, participation in the management
 42 of, or holding a license for the sale of any line make of new motor



1 vehicles by a franchisee or an owner of an interest in a franchise.
 2 ~~(e)~~ **(d)** Good cause exists under subsection (a)(1) with respect to all
 3 franchisees of a line make if the manufacturer of the line make
 4 permanently discontinues the manufacture or assembly of the line
 5 make.

6 ~~(d)~~ **(e)** Not more than thirty (30) days after a franchisee receives
 7 notice under subsection (a), the franchisee may protest the proposed
 8 action by bringing a declaratory judgment action before the division.

9 ~~(e)~~ **(f)** If a franchisee makes a timely and proper request under
 10 subsection ~~(d)~~ **(e)** for declaratory judgment to protest a proposed action
 11 under subsection (a)(1), the division shall schedule an administrative
 12 hearing. The administrative hearing must comply with IC 4-21.5. The
 13 declaratory judgment action must include a determination of whether
 14 good cause exists for the proposed action.

15 **(g) Notwithstanding subsection (e), a franchisee may seek**
 16 **judicial review under IC 9-32-17-10.**

17 SECTION 10. IC 9-32-13-30, AS ADDED BY P.L.152-2013,
 18 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2019]: Sec. 30. **(a) The following terms are defined for this**
 20 **section:**

21 **(1) "Affiliate" means a person who is directly, or through one**
 22 **(1) or more intermediaries, controlled by or under the**
 23 **common direction of, another person.**

24 **(2) "Digital service" means Internet web site and data**
 25 **management services. The term does not include warranty**
 26 **repair processes for a vehicle.**

27 ~~(a)~~ **(b)** A manufacturer or distributor may not coerce or require a
 28 dealer to:

29 (1) make an improvement to the dealer's facilities **at a cost of**
 30 **more than three hundred thousand dollars (\$300,000) if the**
 31 **modification is required or being requested for the purpose of**
 32 **complying with a franchise or brand image program**
 33 **approved of by the manufacturer or distributor; or**

34 (2) install signs or other franchisor image elements;
 35 that would result in replacing or substantially altering improvements or
 36 image elements that the dealer made or installed during the
 37 immediately preceding ~~seven (7)~~ **ten (10)** years as required by the
 38 manufacturer or distributor, unless the improvement or installation of
 39 signs or visual elements is necessary to comply with the health or
 40 safety laws of the state or to sell, service, or display a new motor
 41 vehicle due to the unique technology of the new motor vehicle.

42 **(c) A manufacturer or dealer may not do the following:**



1 (1) Restrict the ability of a dealer to select a digital service
 2 offered by a vendor if the service offered by the vendor is
 3 approved of by the manufacturer, manufacturer branch,
 4 distributor, distributor branch, or affiliate of the
 5 manufacturer or distributor.

6 (2) Restrict, limit, or discourage a franchisee from verifying
 7 the applicability of a technical service bulletin or customer
 8 service campaign for any vehicle.

9 (3) Access, modify, or extract information from a confidential
 10 dealer computer record that contains:

11 (A) proprietary dealership or dealership trade
 12 information; or

13 (B) nonpublic personal customer information;
 14 without first obtaining the prior, written consent of the dealer
 15 and while maintaining administrative, technical, and physical
 16 safeguards designed to protect the security, confidentiality,
 17 and integrity of the information. Nothing in this subdivision
 18 may be construed to limit any duty that a dealer may have to
 19 safeguard the security and privacy of any record maintained
 20 by the dealer.

21 (4) Use electronic, contractual, or other means to prevent or
 22 interfere with any of the following:

23 (A) The lawful efforts of a dealer to comply with applicable
 24 federal and state laws concerning data security and
 25 privacy.

26 (B) The ability of a dealer to do either of the following:

27 (i) Ensure that specific data accessed from the dealer's
 28 computer system is within an agreed upon scope of
 29 consent.

30 (ii) Monitor specific data accessed from or written to a
 31 dealer's computer system.

32 Nothing in this subdivision may be construed to limit any duty
 33 that a dealer may have to safeguard the security and privacy
 34 of any record maintained by the dealer.

35 (d) The approval of a digital service vendor selected by a dealer
 36 as described under subsection (c) shall be granted not later than
 37 thirty (30) days after the manufacturer's or distributor's receipt of
 38 the dealer's request for approval. A manufacturer or distributor
 39 may reject a dealer's preferred digital service vendor only for good
 40 cause.

41 ~~(b)~~ (e) It is an unfair practice for a manufacturer or distributor to
 42 violate this section.



1 (e) **(f)** This section does not apply to a recreational vehicle
2 manufacturer franchisor.

3 SECTION 11. IC 9-32-13-31, AS AMENDED BY P.L.174-2016,
4 SECTION 107, IS AMENDED TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2019]: Sec. 31. (a) A dealer that alleges the
6 commission of an unfair practice by a manufacturer or distributor in
7 violation of section 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22,
8 23, 28, 29, or 30 of this chapter may file a complaint with the division
9 under IC 9-32-16-15.

10 (b) Upon receipt of a complaint under subsection (a), the division
11 may conduct an investigation under IC 9-32-16-14.

12 (c) If the division determines that a manufacturer or distributor has
13 committed a violation, including an unfair practice described in
14 subsection (a), the division may take action against the manufacturer
15 or distributor under IC 9-32-16 and IC 9-32-17.

16 (d) A person that performs an act that is an unfair practice under this
17 chapter commits a Class A infraction.

18 (e) This section does not limit the ability of a dealer, manufacturer,
19 or distributor to request a hearing under IC 9-32-16-2.

20 **(f) Upon receipt of a complaint under subsection (a) and a**
21 **request for a hearing under IC 9-32-16-2, the division shall fix a**
22 **time to hear and decide a complaint filed with the division. A**
23 **hearing described under this subsection must comply with**
24 **IC 4-21.5. Any decision issued by the division in response to a**
25 **complaint filed under subsection (a) shall constitute a final**
26 **administrative order.**

27 SECTION 12. IC 9-32-15-1, AS ADDED BY P.L.92-2013,
28 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
29 JULY 1, 2019]: Sec. 1. **(a) A manufacturer or distributor may not**
30 **refuse to prequalify a successor nominee under the terms of a**
31 **franchise agreement due to any alleged sales or customer**
32 **satisfaction deficiency.**

33 **(b)** This chapter does not apply to a franchise if:

34 (1) the franchise is granted to a dealer other than a new motor
35 vehicle dealer; and

36 (2) the franchise or other written document filed with the
37 franchisor includes the franchisee's designation of a successor to
38 the franchise who is not the:

39 (A) spouse of the franchisee;

40 (B) child of the franchisee;

41 (C) grandchild of the franchisee;

42 (D) spouse of a:



- 1 (i) child; or
 2 (ii) grandchild;
 3 of the franchisee;
 4 (E) parent of the franchisee; or
 5 (F) sibling of the franchisee.

6 SECTION 13. IC 9-32-17-10 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2019]: **Sec. 10. (a) Notwithstanding the**
 9 **terms, provisions, or conditions of any:**

- 10 (1) agreement;
 11 (2) franchise;
 12 (3) novation;
 13 (4) waiver; or
 14 (5) other written instrument;

15 any person or party who is harmed by the violation of a provision
 16 found in this article may file a complaint or petition with the
 17 division as provided in IC 9-32-16-15 or may bring an action in any
 18 court of competent jurisdiction for damages and equitable relief,
 19 including injunctive relief. A person may recover damages in any
 20 amount equal to the greater of the actual pecuniary loss or three
 21 (3) times the actual pecuniary loss, not to exceed seven hundred
 22 fifty thousand dollars (\$750,000). In addition to a damage award,
 23 a person who is harmed by the violation of a provision found in this
 24 article may recover costs and reasonable attorney's fees. Upon a
 25 prima facie showing by the claimant, the burden of proof shall be
 26 upon the opposing party to show that an alleged violation of this
 27 article did not occur.

28 (b) If a franchisor intentionally and repeatedly violates a
 29 provision found in this article, the court may award punitive
 30 damages in addition to any other damages authorized under this
 31 section.

32 (c) A dealer, owner, or other party that has not suffered any loss
 33 of money, property, employment rights, or business opportunity
 34 may obtain equitable relief if the dealer, owner, or other party can
 35 show that the violation of a provision found in this article may have
 36 the effect of causing a loss of money, property, employment rights,
 37 or business opportunity.

38 (d) Nothing in this section shall prevent a dealer from
 39 voluntarily entering into a valid release agreement to resolve a
 40 specific claim, dispute, or action between the franchisor and the
 41 dealer when separate and adequate consideration is offered and
 42 accepted. The renewal of a franchise shall not constitute separate



1 and adequate consideration for purposes of this subsection.

2 (e) Any corporation or association that is primarily owned or
3 comprised of dealers and that primarily represents the interests of
4 dealers shall have the standing necessary to file a complaint or
5 petition with the division or cause of action with a court of
6 competent jurisdiction on behalf of any dealer, group of dealers, or
7 the corporation or association itself.

8 (f) In any cause of action brought against a manufacturer,
9 distributor, or franchisor by a dealer for an alleged breach of a
10 franchise agreement, an alleged violation of a provision found in
11 this article, or a determination of rights under a franchise
12 agreement, venue shall be proper in the county where the dealer is
13 engaged in the business of selling the products and services of the
14 manufacturer, distributor, or franchisor or in any other county
15 where venue is proper. Any provision or agreement that controls,
16 restricts, limits, specifies, or directs where a cause of action under
17 this article may be filed is void.

