First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1386

AN ACT to amend the Indiana Code concerning motor vehicles.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 9-32-13-18, AS ADDED BY SEA 537-2013, SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 18. **(a)** It is an unfair practice for a manufacturer or distributor to sell a motor vehicle for resale to a person not licensed under this article.

(b) This subsection applies if a dealer sells or leases a motor vehicle to a customer that resells the motor vehicle or exports the motor vehicle to a foreign country. A manufacturer or distributor may not take or threaten to take adverse action or otherwise discriminate against the dealer unless the dealer knew or reasonably should have known before the dealer sold or leased the motor vehicle to the customer that the customer intended to resell or export the motor vehicle. Titling and registering a motor vehicle in any state in the name of the customer to whom the dealer sold or leased the motor vehicle establishes a rebuttable presumption that the dealer did not know or should not reasonably have known that the customer intended to resell or export the motor vehicle.

(c) For purposes of subsection (b), adverse actions by a manufacturer or distributor include the following conduct by a manufacturer or distributor, whether actual or threatened:

(1) Failing or refusing to allocate, sell, or deliver a motor vehicle to the dealer.

C o p y

(2) Discriminating against the dealer in the allocation of motor vehicles.

(3) Charging back or withholding payments or other consideration for which a dealer is eligible under a warranty reimbursement, sales promotion, incentive program, or contest.

(4) Disqualifying a dealer from participating in a sales promotion, incentive program, or contest.

(5) Terminating a franchise.

SECTION 2. IC 9-32-13-23, AS ADDED BY SEA 537-2013, SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **(a)** It is an unfair practice for a manufacturer, distributor, officer, or agent to do any of the following:

(1) Require, coerce, or attempt to coerce a new motor vehicle dealer in Indiana to:

(A) change the location of the dealership;

(B) make any substantial alterations to the use of franchises; or

(C) make any substantial alterations to the dealership premises or facilities;

if to do so would be unreasonable or would not be justified by current economic conditions or reasonable business considerations. This subdivision does not prevent a manufacturer or distributor from establishing and enforcing reasonable facility requirements. **However, a motor vehicle dealer may elect to use for the facility alteration locally sourced materials or supplies that are substantially similar to those required by the manufacturer or distributor, subject to the approval of the manufacturer or distributor.**

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

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

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

C o p y

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

(C) in a bona fide relationship in which an independent person has made a significant investment subject to loss in the business operation and can reasonably expect to acquire majority ownership or managerial control of the business on reasonable terms and conditions.

(4) Require a dealer, as a condition of granting or continuing a franchise, approving the transfer of ownership or assets of a new motor vehicle dealer, or approving a successor to a new motor vehicle dealer to:

(A) construct a new dealership facility;

(B) modify or change the location of an existing dealership; or

(C) grant the manufacturer or distributor control rights over any real property owned, leased, controlled, or occupied by the dealer.

(5) Prohibit a dealer from representing more than one (1) line make of motor vehicles from the same or a modified facility if:

(A) reasonable facilities exist for the combined operations;

(B) the dealer meets reasonable capitalization requirements for the original line make and complies with the reasonable facilities requirements of the manufacturer or distributor; and

(C) the prohibition is not justified by the reasonable business considerations of the manufacturer or distributor.

~~This subdivision does~~ **Subdivisions (3) through (5) do** not apply to recreational vehicle manufacturer franchisors.

(b) This section does not prohibit the enforcement of a voluntary agreement between the manufacturer or distributor and the franchisee where separate and valuable consideration has been offered and accepted.

SECTION 3. IC 9-32-13-27 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 27. (a) It is an unfair practice for a manufacturer or distributor to do the following:**

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

C o p y

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

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

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

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

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

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

(v) The dealer commits fraud.

(2) Offer a renewal, replacement, or succeeding franchise or selling agreement that substantially changes or modifies the sales and service obligations, facilities standards, capital requirements, or other terms of the original franchise or agreement of a franchisee without notice to the franchisee by certified mail, return receipt requested, at least ninety (90) days before the expiration or termination of the original franchise or agreement.

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

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

(1) A change of ownership or executive management of a dealership.

(2) Requiring the appointment of an individual to an executive management position in a dealership.

(3) Ownership of, investment in, participation in the management of, or holding a license for the sale of any line make of new motor vehicles by a franchisee or an owner of an interest in a franchise.

(c) Good cause exists under subsection (a)(1) with respect to all

C o p y

franchisees of a line make if the manufacturer of the line make permanently discontinues the manufacture or assembly of the line make.

(d) Not more than thirty (30) days after a franchisee receives notice under subsection (a), the franchisee may protest the proposed action.

SECTION 4. IC 9-32-13-28 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 28. (a) This section applies when a dealer requests payment from a manufacturer or distributor following:**

(1) the termination, cancellation, or nonrenewal by the manufacturer or distributor of a franchise between the dealer and the manufacturer or distributor; or

(2) the discontinuance of a line make by the manufacturer or distributor.

(b) Not more than ninety (90) days after a manufacturer or distributor receives a request for payment from a dealer described in subsection (a), the manufacturer or distributor shall pay to the dealer the following amounts for items that are in the dealer's inventory or possession at the time of termination, cancellation, nonrenewal, or discontinuance, that the dealer delivers to the manufacturer or distributor, and as to which the dealer conveys clear title to the manufacturer or distributor under subsection (c):

(1) For:

(A) current model year motor vehicles; or

(B) immediately preceding model year motor vehicles with less than three hundred (300) miles;

acquired from the manufacturer or distributor in the usual course of business, the cost at acquisition less any discounts or allowances received from the manufacturer or distributor.

(2) For all new, unused, and undamaged parts in original packaging that were purchased from the manufacturer or distributor:

(A) the cost listed in the manufacturer's or distributor's parts catalog in effect at the time of termination, cancellation, nonrenewal, or discontinuance; minus

(B) any allowances authorized by the manufacturer or distributor.

(3) For required special tools, equipment, or computer equipment that was used for reporting financial data to the manufacturer or distributor, used solely for the franchise being terminated, and purchased by the dealer during the two

C o p y

(2) years immediately preceding the termination, cancellation, nonrenewal, or discontinuance, fair market value.

(4) For signs that bear a trademark or trade name, that the dealer was required by the manufacturer or distributor to purchase, and that the dealer purchased within three (3) years of the termination, cancellation, nonrenewal, or discontinuance, fair market value.

For purposes of this subsection, fair market value is determined on the date of termination, cancellation, nonrenewal, or discontinuance.

(c) Title to items described in subsection (b) transfers from a dealer to a manufacturer or distributor on the date of termination, cancellation, nonrenewal, or discontinuance. The dealer has an enforceable security interest in the transferred items.

(d) It is an unfair practice for a manufacturer or distributor to violate this section.

SECTION 5. IC 9-32-13-29 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 29. (a) This section applies when a manufacturer or distributor terminates, cancels, or fails to renew a franchise between the manufacturer or distributor and a dealer, unless the termination, cancellation, or failure to renew is due to any of the following:**

(1) The dealer files for bankruptcy or enters into receivership.

(2) The dealer's license is revoked under IC 9-32-11 or IC 9-32-16.

(3) The dealer has been convicted of or pled guilty to a felony.

(4) The dealer commits fraud.

(5) The dealer has abandoned business operations or otherwise failed to conduct sales and service operations during regular business hours for at least seven (7) consecutive days, unless the abandonment or closure is due to an act of God or another act over which the franchise has no control.

(b) Except as provided in subsection (c), upon termination, cancellation, or nonrenewal, a manufacturer or distributor shall pay to a dealer the following amounts:

(1) If the dealer is leasing the dealership facilities from a person other than the manufacturer or distributor, the lesser of:

(A) the total lease payments remaining unpaid on the date of termination, cancellation, or nonrenewal; or

C o p y

(B) the total annual lease payments for one (1) year;

subject to damages mitigated by the dealer under the terms of the lease.

(2) If the dealer owns the dealership facilities, an amount equal to the reasonable rental value of the facilities for the one (1) year period beginning on the date of termination, cancellation, or nonrenewal, subject to damages mitigated by the dealer.

(c) A manufacturer or distributor may discharge the manufacturer's or distributor's obligations under a lease with a dealer by negotiating with the dealer a lease termination payment, a sublease, or a new lease.

(d) The manufacturer or distributor is entitled to possession of the dealership facilities during the time period for which the manufacturer or distributor makes any lease payments.

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

SECTION 6. IC 9-32-13-30 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 30. (a) A manufacturer or distributor may not coerce or require a dealer to:**

(1) make an improvement to the dealer's facilities; or

(2) install signs or other franchisor image elements;

that would result in replacing or substantially altering improvements or image elements that the dealer made or installed during the immediately preceding seven (7) years as required by the manufacturer or distributor, unless the improvement or installation of signs or visual elements is necessary to comply with the health or safety laws of the state or to sell, service, or display a new motor vehicle due to the unique technology of the new motor vehicle.

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

(c) This section does not apply to a recreational vehicle manufacturer franchisor.

SECTION 7. IC 9-32-14-4, AS ADDED TO THE INDIANA CODE BY SEA 537-2013, SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4.

(a) This section does not apply to damage to:

(1) glass;

(2) radios;

(3) tires; ~~and~~

C o p y

(4) **air bags;**
(5) navigation systems;
(6) DVD players;
(7) voice command devices;
(8) hands free technology; and
(9) bumpers;

when replaced by identical manufacturer's original equipment.

(b) Any uncorrected **damage** or **any** corrected damage to a new motor vehicle that exceeds four percent (4%) of the manufacturer's suggested retail price (as defined in 26 U.S.C. 4216), as measured by retail repair costs, must be disclosed **by the dealer** in writing before delivery of the motor vehicle to ~~an~~ **the** ultimate purchaser.

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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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