

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 296

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

1 RELATING TO DEALERS AND SALESMEN LICENSING; AMENDING SECTION 49-1602, IDAHO
2 CODE, TO PROVIDE A PROHIBITION AGAINST LICENSURE BY A VEHICLE MANU-
3 FACTURER AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-1613,
4 IDAHO CODE, TO REVISE PROVISIONS REGARDING UNLAWFUL ACTS BY A LICENSEE
5 AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.
6

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

8 SECTION 1. That Section 49-1602, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 49-1602. ADMINISTRATION -- POWERS AND DUTIES. The department shall:

11 (1) Issue, and for reasonable cause shown, ~~refuse to issue,~~ an appli-
12 cant any license authorized under the provisions of this chapter. The de-
13 partment may refuse to issue all license types to any applicant, other than a
14 partnership or corporation, if the applicant fails to comply with the terms
15 and provisions of this chapter or the rules of the board, or if the appli-
16 cant has been convicted of a violation of any of the provisions of this chap-
17 ter, chapter 5, title 49, Idaho Code, section 49-1418, Idaho Code, chapter
18 6, title 48, Idaho Code, any felony committed in conjunction with a dealer-
19 ship or of any federal odometer law or regulation. Should the applicant be
20 a partnership or a corporation, the department may refuse to issue a license
21 to the applicant where it determines that one (1) or more of the partners of a
22 partnership, or one (1) or more of the stockholders or officers of a corpora-
23 tion, was previously the holder of a license which was revoked or suspended,
24 and the license revoked never reissued or the suspended license never rein-
25 stated, or that one (1) or more of the partners, stockholders, or officers,
26 though not previously the holder of a license, has violated any of the pro-
27 visions of this chapter or of an applicable rule or regulation, or of federal
28 motor vehicle safety standards. After the effective date of this act, the
29 department shall deny a license under this chapter when the issuance of a new
30 license or establishment of a new subagency would cause a manufacturer, dis-
31 tributor, factory branch, or factory representative or an agent, officer,
32 parent company, wholly or partially owned subsidiary, affiliated entity, or
33 other person controlled by or under common control with a manufacturer, dis-
34 tributor, factory branch, or factory representative to be in violation of
35 section 49-1613, Idaho Code. This section does not preclude the department
36 from taking an action against a current licensee.

37 (2) For just cause shown, revoke or suspend, on terms, conditions, and
38 for a period of time as the department shall consider fair and just, any li-
39 cense or licenses issued pursuant to the provisions of this chapter. No li-
40 cense shall be revoked or suspended unless it shall be shown that the li-
41 censee has violated a provision of this chapter or of an applicable rule or
42 regulation, or of federal motor vehicle safety standards. An Idaho licensed

1 motor vehicle dealer or licensed motor vehicle salesman who is convicted of
2 one (1) or more of the offenses set forth in subsection (1) of this section
3 shall not be eligible to reapply for a motor vehicle dealer's or salesman's
4 license until all outstanding customer complaints have been resolved to the
5 department's satisfaction and for the following time periods from the date
6 of conviction: misdemeanor convictions: three (3) years for the first con-
7 viction and seven (7) years for every subsequent conviction; felony convic-
8 tions: ten (10) years for the first conviction and ten (10) years for every
9 subsequent conviction. The holder of a motor vehicle dealer's license shall
10 not be eligible to apply for a motor vehicle salesman's license within the
11 same time periods set forth in this subsection when convicted of one (1) or
12 more of the offenses set forth in subsection (1) of this section.

13 (3) On its own motion, upon the sworn complaint of any person, inves-
14 tigate any suspected or alleged violation by a licensee of any of the provi-
15 sions of this chapter or of an applicable rule or regulation.

16 (4) Prescribe forms for applications for licenses and qualifications
17 for an applicant for licensure. Every application for a license shall con-
18 tain, in addition to other information required by the department, the fol-
19 lowing:

20 (a) The name and residence address of the applicant and the trade name,
21 if any, under which he intends to conduct his business. If the appli-
22 cant is a copartnership, the name and residence address of each member,
23 whether a limited or general partner, and the name under which the part-
24 nership business is to be conducted. If the applicant is a corporation,
25 the name of the corporation and the name and address of each of its prin-
26 cipal officers and directors.

27 (b) A complete description, including the city with the street number,
28 of the principal place of business and any other and additional places
29 of business operated and maintained by the applicant in conjunction
30 with the principal place of business.

31 (c) Copies of any letters of franchise for new vehicles that the appli-
32 cant has been enfranchised to sell or exchange, and the name or names and
33 addresses of the manufacturer or distributor who has enfranchised the
34 applicant.

35 (d) Names and addresses of the persons who shall act as salesmen under
36 the authority of the license, if issued.

37 (e) A copy of the certificate of assumed business name, if required,
38 shall be filed with the secretary of state.

39 (f) For a manufacturer's license, the name or names and addresses of
40 each and every distributor, factory branch, and factory representa-
41 tive.

42 (g) For a salesman's license, certification by the dealer by whom the
43 salesman will be employed, that he has examined the background of the
44 applicant, and, to the best of the dealer's knowledge, is qualified to
45 be licensed under the sponsorship of the licensed dealer.

46 (h) Before a dealer who is not exempted from the continuing education
47 requirements as provided in section 49-1637(2), Idaho Code, may ap-
48 ply for a renewal of a vehicle dealer's license, he shall provide to
49 the department a certification from an accredited educational system,
50 private vocational school, correspondence school or trade association

1 approved by the department stating that the vehicle dealer has satis-
 2 fied the four (4) hour continuing education requirements as specified
 3 in section 49-1637(1), Idaho Code.

4 (i) Before any vehicle dealer's license is issued by the department
 5 to an applicant who is not licensed with the department as a dealer
 6 within the previous twelve (12) calendar months and who is not exempted
 7 from the continuing education requirements as provided in section
 8 49-1637(2), Idaho Code, the applicant shall provide to the department
 9 a certification from an accredited educational institution, private
 10 vocational school, correspondence school or trade association ap-
 11 proved by the department stating that the applicant has satisfactorily
 12 completed the prelicensing class or program requirements, including
 13 a written examination of material presented, specified in section
 14 49-1637(1), Idaho Code.

15 (5) Refuse to issue any license under the provisions of this chapter if,
 16 upon investigation, the department finds that any information contained in
 17 the application is incomplete, incorrect or fictitious.

18 (6) Require that a dealer's principal place of business, and other
 19 locations operated and maintained by him in conjunction with his principal
 20 place of business, have erected or posted signs or devices providing infor-
 21 mation relating to the dealer's name, location and address of the principal
 22 place of business, and the number of the license held by the dealer.

23 (7) Provide for regular meetings of the dealer advisory board, to be
 24 held not less frequently than semiannually. Notices of meetings of the advi-
 25 sory board shall be mailed to all members not less than five (5) days prior to
 26 the date on which the meeting is to be held.

27 (8) Inspect, prior to licensing, the principal place of business and
 28 other sites or locations as may be operated and maintained by the applicant.

29 (9) Seek and consider the advisory board's recommendations and com-
 30 ments regarding proposed rules promulgated for the administration of the
 31 provisions of this chapter.

32 (10) Require the attendance of not less than one (1) or more than three
 33 (3) advisory board members at all hearings held relating to this chapter.

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

36 49-1613. UNLAWFUL ACTS -- BY LICENSEES, MANUFACTURERS, AND DISTRIBU-
 37 TORS. (1) It shall be unlawful for the holder of any license issued under the
 38 provisions of this chapter to:

39 (a) Intentionally publish or circulate any advertising ~~which~~ that is
 40 misleading or inaccurate in any material particular or ~~which~~ that mis-
 41 represents any of the products sold or furnished by a licensed dealer;

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

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

46 (d) Violate any law respecting commerce in vehicles or any lawful rule
 47 respecting commerce in vehicles promulgated by any licensing or regu-
 48 lating authority now existing or hereafter created by the laws of the
 49 state;

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

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

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

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

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

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

15 (2) It shall be unlawful for any manufacturer or distributor licensed
16 under this chapter, or any factory branch, factory representative, agent,
17 officer, parent company, wholly or partially owned subsidiary, affiliated
18 entity or other person controlled by or under common control with a manufac-
19 turer, distributor, factory branch, or factory representative, or any af-
20 filiated entity to require, attempt to require, coerce, or attempt to co-
21 erce, any new vehicle dealer in this state, to:

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

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

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

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

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

1 (f) Refrain from participation in the management of, investment in, or
2 the acquisition of any other line of new vehicle or related products.
3 This paragraph does not apply unless the dealer maintains a reasonable
4 line of credit for each make or line of new vehicle, and the dealer re-
5 mains in compliance with any reasonable facilities requirements of the
6 manufacturer or distributor, and no change is made in the principal man-
7 agement of the dealership.

8 (g) Prospectively assent to a release, assignment, novation, waiver or
9 estoppel ~~which~~ that would relieve any person from liability to be im-
10 posed by this chapter or to require any controversy between a dealer and
11 a manufacturer, distributor, or representatives, to be referred to any
12 person other than the duly constituted courts of the state or the United
13 States, or to the director, if that referral would be binding upon the
14 dealer.

15 (h) Either establish or maintain exclusive facilities, personnel, or
16 display space.

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

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

25 (3) It shall be unlawful for any manufacturer or distributor licensed
26 under this chapter, or for any factory branch, factory representative,
27 agent, officer, parent company, wholly or partially owned subsidiary, af-
28 filiated entity or other person controlled by or under common control with
29 a manufacturer, distributor, factory branch, or factory representative, or
30 any affiliated entity, to:

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

42 (b) Refuse to disclose to any dealer handling the same line, ~~the manner~~
43 and mode of distribution of that line within the relevant market area.

44 (c) Obtain money, goods, service, or any other benefit from any other
45 person with whom the dealer does business, on account of, or in relation
46 to, the transaction between the dealer and other person, other than for
47 compensation for services rendered, unless the benefit is promptly ac-
48 counted for, ~~and~~ transmitted to the dealer.

49 (d) Increase prices of new vehicles ~~which~~ that the dealer had ordered
50 for consumers prior to the dealer's receipt of the written official

1 price increase notification. A sales contract signed by a consumer
2 shall constitute evidence of each such order, provided that the vehicle
3 is in fact delivered to that customer. In the event of manufacturer or
4 distributor price reductions or cash rebates paid to the dealer, the
5 amount of any reduction or rebate received by a dealer shall be passed
6 on to the private retail consumer by the dealer. Price reductions shall
7 apply to all vehicles in the dealer's inventory ~~which~~ that were sub-
8 ject to the price reduction. Price differences applicable to new model
9 or series shall not be considered a price increase or price decrease.
10 Price changes caused by the addition to a vehicle of required or op-
11 tional equipment, or revaluation of the United States dollar, in the
12 case of foreign-make vehicles or components, or an increase in trans-
13 portation charges due to increased rates imposed by a carrier, shall not
14 be subject to the provisions of this subsection.

15 (e) Release to any outside party, except under subpoena or as other-
16 wise required by law or in an administrative, judicial or arbitration
17 proceeding involving the manufacturer ~~or~~ distributor, or dealer, any
18 business, financial, or personal information ~~which~~ that may be provided
19 from time to time by the dealer to the manufacturer or distributor with-
20 out the express written consent of the dealer.

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

23 ~~(g) Unfairly compete with a dealer in the same line make, operating un-~~
24 ~~der an agreement or franchise from the aforementioned manufacturer or~~
25 ~~distributor, in the relevant market area. A manufacturer or distribu-~~
26 ~~tor shall not, however, be deemed to be competing when operating a deal-~~
27 ~~ership either temporarily for a reasonable period, in any case not to~~
28 ~~exceed one (1) year, or in a retail operation which~~ After the effective
29 date of this act, to engage in the distribution, sale, offer for sale,
30 or lease of a new motor vehicle to purchasers who acquire the vehicle
31 in this state except through a franchisee with whom the franchisor has
32 established a written franchise agreement. A manufacturer or distribu-
33 tor may operate a dealership for a period not to exceed one (1) year,
34 if such dealership is for sale to any qualified independent person at a
35 fair and reasonable price, or in a relationship in which an independent
36 person has made a significant investment subject to loss in the dealer-
37 ship and can reasonably expect to acquire full ownership of that dealer-
38 ship on reasonable terms and conditions. Upon a showing of good cause by
39 the manufacturer or distributor to the department, the period of tempo-
40 rary ownership may be extended up to one (1) additional year, resulting
41 in a maximum temporary ownership period of two (2) years.

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

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

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

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

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

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

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

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

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

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

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

43 (r) Charge back, deny motor vehicle allocation, withhold payments, or
44 take other actions against a dealer, or ~~to~~ condition a franchise agree-
45 ment, or renewal of a franchise agreement, or ~~to~~ condition sales, ser-
46 vice, parts, or finance incentives upon site control or an agreement to
47 renovate or make improvements to a facility unless required by the tech-
48 nology of a motor vehicle being sold at the facility. Provided however,
49 that a voluntary acceptance of such conditions by the dealer in writing,
50 including, but not limited to, a written agreement for which the dealer

1 has accepted separate and valuable consideration, shall not constitute
2 a violation.

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

13 (4) It is unlawful for any manufacturer or distributor or any offi-
14 cer, agent or representative to coerce, or attempt to coerce, any dealer
15 in this state to offer to sell or sell any extended service contract or ex-
16 tended maintenance plan that is offered, sold, backed by or sponsored by
17 the manufacturer or distributor or to sell, assign or transfer any retail
18 installment sales contract, obtained by the dealer in connection with the
19 sale by him in this state of new vehicles, manufactured or sold by the man-
20 ufacturer or distributor, to a specified finance company or class of such
21 companies, or to any other specified person, by any of the acts or means set
22 forth, namely by:

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

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

28 (c) Any contract, or any express or implied offer of contract, made di-
29 rectly or indirectly to a dealer for handling new vehicles, on the con-
30 dition that the dealer shall offer to sell or sell any extended service
31 contract or extended maintenance plan that is offered, sold, backed by,
32 or sponsored by the manufacturer or distributor or to sell, assign or
33 transfer his retail installment sales contract in this state to a spec-
34 ified finance company or class of such companies, or to any other speci-
35 fied person; or

36 (d) Any express or implied statement or representation made directly or
37 indirectly that the dealer is under any obligation whatsoever to offer
38 to sell or sell any extended service contract or extended maintenance
39 plan that is offered, sold, backed by, or sponsored by the manufacturer
40 or distributor or to sell, assign or transfer any of his retail sales
41 contracts, in this state, on new vehicles manufactured or sold by that
42 manufacturer or distributor to a finance company or class of companies,
43 or other specified person, because of any relationship or affiliation
44 between the manufacturer or distributor and a finance company or compa-
45 nies, or a specified person or persons.

46 (e) Nothing contained in this subsection shall prohibit a manufacturer
47 or distributor from offering or providing incentive benefits or bonus
48 programs to a retail motor vehicle dealer or prospective retail motor
49 vehicle dealer in this state who makes the voluntary decision to offer
50 to sell or sell any extended service contract or extended maintenance

1 plan offered, sold, backed, or sponsored by the manufacturer or dis-
2 tributor to sell, assign or transfer any retail installment sale or
3 lease by him in this state of motor vehicles manufactured or sold by the
4 manufacturer or distributor to a specified finance company or leasing
5 company controlled by or affiliated with the manufacturer or distribu-
6 tor.

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

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

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

21 (7) The provisions of this chapter shall apply to all written franchise
22 agreements between a manufacturer or distributor and a dealer, including
23 the franchise offering, the franchise agreement, sales of goods, services
24 or advertising, leases or mortgages of real or personal property, promises
25 to pay, security interests, pledges, insurance contract, advertising con-
26 tract, construction or installation contract, servicing contracts and all
27 other agreements where the manufacturer or distributor has any direct or
28 indirect interest.

29 SECTION 3. An emergency existing therefor, which emergency is hereby
30 declared to exist, this act shall be in full force and effect on and after its
31 passage and approval.