

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 195, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO MOTOR VEHICLE DEALERS AND SALESMEN LICENSING; AMENDING SECTION
2 49-104, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 49-107,
3 IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS;
4 AMENDING SECTION 49-1613, IDAHO CODE, TO REVISE PROVISIONS RELATING
5 TO UNLAWFUL ACTS BY CERTAIN MANUFACTURERS OR DISTRIBUTORS AND TO MAKE
6 TECHNICAL CORRECTIONS; AND AMENDING SECTION 49-1626, IDAHO CODE, TO
7 REVISE PROVISIONS RELATING TO DEALERS' SUBMISSION OF WARRANTY CLAIMS,
8 TO PROVIDE FOR CERTAIN LEGAL ACTION, TO PROVIDE PROVISIONS RELATING TO
9 CERTAIN SCHEDULES OF COMPENSATION, TO PROVIDE THAT IT IS UNLAWFUL FOR A
10 MANUFACTURER OR DISTRIBUTOR OR SUBSIDIARY TO OWN, OPERATE OR CONTROL A
11 MOTOR VEHICLE WARRANTY OR SERVICE FACILITY, TO PROVIDE FOR EXCEPTIONS,
12 TO PROVIDE PROVISIONS RELATING TO CERTAIN WARRANTY PARTS AND LABOR AND
13 TO PROVIDE FOR APPLICATION OF LAWS.
14

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

16 SECTION 1. That Section 49-104, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 49-104. DEFINITIONS -- C. (1) "Cancellation of driver's license"
19 means the annulment or termination by formal action of the department of a
20 person's driver's license because of some error or defect in the driver's
21 license or because the licensee is no longer entitled to the driver's li-
22 cense. The cancellation of a driver's license is without prejudice and after
23 compliance with requirements, the individual may apply for a new driver's
24 license at any time after cancellation.

25 (2) "Caravanning" means the transportation of any motor vehicle into,
26 out of, or within the state operating on its own wheels or in tow for the pur-
27 pose of sale or offer of sale by any agent, dealer, manufacturer's represen-
28 tative, purchaser, or prospective purchaser, regardless of residence unless
29 the motor vehicle is licensed by the state of Idaho, or is owned by an auto-
30 mobile dealer, duly licensed as a dealer by this state. It shall also be con-
31 sidered as the transportation of property for hire by a motor vehicle upon
32 the highways of this state.

33 (3) "Certificate of liability insurance" means a certificate of lia-
34 bility insurance issued by an insurance company authorized to do business
35 in this state or a certificate of liability insurance issued by the depart-
36 ment of insurance which demonstrates current insurance against loss result-
37 ing from liability imposed by law for bodily injury or death or damage to
38 property suffered by any person caused by accident and arising out of the op-
39 eration, maintenance or use of a motor vehicle described in the certificate
40 in an amount not less than that required by section 49-117(18), Idaho Code,
41 and also demonstrates the current existence of any other coverage required
42 by title 41, Idaho Code, or a certificate of self-insurance issued pursuant

1 to law for each motor vehicle to be registered. A certificate of liability
 2 insurance shall contain the information required by the department of insur-
 3 ance, including the name and address of the owner of the motor vehicle and a
 4 description of the motor vehicle including identification number if there is
 5 one, or a statement that all vehicles owned by a person or entity are covered
 6 by insurance, the inception date of coverage, and the name of the insurer.
 7 "Certificate of liability insurance" may also include the original contract
 8 of liability insurance or a true copy, demonstrating the current existence
 9 of the liability insurance described ~~above~~ in this subsection.

10 (4) "Certification of safety compliance" means that a motor carrier
 11 certifies as part of its registration process that it has knowledge of the
 12 federal regulations and rules promulgated by the Idaho transportation de-
 13 partment and the Idaho state police applicable to motor carriers.

14 (5) "Chains" means metal traction devices required pursuant to section
 15 49-948, Idaho Code, which consist of two (2) circular metal loops, one (1)
 16 on each side of the tire, connected by not less than nine (9) evenly-spaced
 17 chains across the tire tread.

18 (6) "Coerce" means to compel or attempt to compel by threat or use of
 19 force.

20 (7) "Commercial coach." (See section 39-4301, Idaho Code)

21 ~~(78)~~ "Commercial driver's license" means any class A, class B or class C
 22 driver's license as defined in section 49-105, Idaho Code.

23 ~~(89)~~ "Commercial driver license information system (CDLIS)" is the in-
 24 formation system established to serve as a clearinghouse for locating infor-
 25 mation related to the licensing and identification of motor vehicle drivers.

26 ~~(910)~~ "Commercial driver training school" means a business enterprise
 27 conducted by an individual, association, partnership, or corporation, for
 28 the education and training of persons, either practically or theoretically,
 29 or both, to operate or drive motor vehicles, and charging a consideration or
 30 tuition for such services.

31 ~~(101)~~ "Commercial vehicle" or "commercial motor vehicle." (See "Vehi-
 32 cle," section 49-123, Idaho Code)

33 ~~(112)~~ "Compliance review" means an on-site examination of motor car-
 34 rier operations, which may be at the carrier's place of business, including
 35 driver's hours of service, vehicle maintenance and inspection, driver
 36 qualifications, commercial driver's license requirements, financial re-
 37 sponsibility, accidents, hazardous materials, and such other related safety
 38 and transportation records to determine safety fitness.

39 ~~(123)~~ "Controlled substance" means any substance so classified under
 40 section 102 (6) of the controlled substances act, ~~(21 U.S.C. 802 (6))~~, and in-
 41 cludes all substances listed on schedules I through V, of 21, CFR part 1308,
 42 as they may be revised from time to time.

43 ~~(134)~~ "Conviction" means:

44 (a) The person has pled guilty or has been found guilty, notwithstand-
 45 ing the form of the judgment or withheld judgment. A conviction for pur-
 46 poses of this title shall also include an infraction judgment.

47 (b) For purposes of disqualification or withdrawal of commercial vehi-
 48 cle driving privileges only, "conviction" means an unvacated adjudica-
 49 tion of guilt, or determination that a person has violated or failed to
 50 comply with the law in a court of original jurisdiction or by an autho-

1 rized administrative tribunal, an unvacated forfeiture of bail or col-
2 lateral deposited to secure the person's appearance in court, a plea of
3 guilty or nolo contendere accepted by the court, the payment of a fine or
4 court cost, or violation of a condition of release without bail, regard-
5 less of whether or not the penalty is rebated, suspended or probated.

6 (145) "Crosswalk" means:

7 (a) That part of a highway at an intersection included within the con-
8 nections of the lateral lines of the sidewalks on opposite sides of the
9 highway measured from the curbs or in the absence of curbs, from the
10 edges of the traversable highway; and in the absence of a sidewalk on one
11 side of the highway, that part of a highway included within the exten-
12 sion of the lateral lines of the existing sidewalk at right angles to the
13 centerline.

14 (b) Any portion of a highway at an intersection or elsewhere distinctly
15 indicated for pedestrian crossing by lines or other markings on the sur-
16 face.

17 SECTION 2. That Section 49-107, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 49-107. DEFINITIONS -- F. (1) "Factory branch" means a branch office
20 maintained by a person who manufactures or assembles vehicles for sale to
21 distributors or to dealers, or for directing or supervising, in whole or in
22 part, its representatives.

23 (2) "Factory representative" means any person and each officer and em-
24 ployee engaged as a representative of a manufacturer of vehicles or by a fac-
25 tory branch for the purpose of making or promoting a sale of their vehicles,
26 or for supervising or contacting their dealers or prospective dealers.

27 (3) "Farm tractor" means every motor vehicle designed or adapted and
28 used primarily as a farm implement power unit operated with or without other
29 farm implements attached in any manner consistent with the structural design
30 of that power unit.

31 (4) "Farm vehicle." (See "Vehicle," section 49-123, Idaho Code)

32 (5) "Federal motor vehicle safety standards (FMVSS)" means those
33 safety standards established by the national highway traffic safety admin-
34 istration, under title 49 CFR part 500-599, for the safe construction and
35 manufacturing of self-propelled motorized vehicles for operation on public
36 highways. Such vehicles as originally designed and manufactured shall be
37 so certified by the manufacturer to meet the federal motor vehicle safety
38 standards or the standards in force for a given model year or as certified by
39 the national highway traffic safety administration.

40 (6) "Felony" means any offense under state or federal law that is pun-
41 ishable by death or imprisonment for a term exceeding one (1) year.

42 (7) "Fifth wheel trailer." (See "Trailer," section 49-121, Idaho Code)

43 (8) "Financial institution" means any bank that is authorized to do
44 business in the state of Idaho and any other financial institution that is
45 registered with the department of finance.

46 (9) "Flammable liquid" means any liquid which has a flash point of 70
47 degrees Fahrenheit, or less, as determined by a tagliabue or equivalent
48 closed-cup test device.

49 (10) "Fleet" means one (1) or more apportionable vehicles.

1 (11) "Fleet registration" means an optional form of registration
 2 through the department rather than a county assessor for registration of
 3 twenty-five (25) or more commercial or farm vehicles or any combination
 4 thereof. This registration is not an option for fleets of rental vehicles.
 5 Terms and conditions are further specified in section 49-434 (5), Idaho Code.

6 (12) "Fold down camping trailer." (See "Trailer," section 49-121, Idaho
 7 Code)

8 (13) "Foreign vehicle." (See "Vehicle," section 49-123, Idaho Code)

9 (14) "Franchise" means a sales, service and parts agreement or any other
 10 contract or agreement between a dealer and a manufacturer of new vehicles or
 11 its distributor or factory branch by which the dealer is authorized to engage
 12 in the business of selling any specified make or makes of new vehicles.

13 (15) "Full-time salesman" means any person employed as a vehicle sales-
 14 man on behalf of a dealer for thirty (30) or more hours per week, and who
 15 sells, purchases, exchanges or negotiates for the sale, purchase or exchange
 16 of five (5) or more vehicles during each year in which his license is in ef-
 17 fect.

18 SECTION 3. That Section 49-1613, Idaho Code, be, and the same is hereby
 19 amended to read as follows:

20 49-1613. UNLAWFUL ACTS BY LICENSEE. (1) It shall be unlawful for the
 21 holder of any license issued under the provisions of this chapter to:

22 (a) Intentionally publish or circulate any advertising which is mis-
 23 leading or inaccurate in any material particular or which misrepresents
 24 any of the products sold or furnished by a licensed dealer;

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

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

29 (d) Violate any law respecting commerce in vehicles or any lawful rule
 30 respecting commerce in vehicles promulgated by any licensing or regu-
 31 lating authority now existing or hereafter created by the laws of the
 32 state;

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

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

37 (g) Knowingly purchase a vehicle which has an altered or removed vehi-
 38 cle identification number plate or alter or remove a vehicle identifi-
 39 cation number plate;

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

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

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

47 (2) It shall be unlawful for any manufacturer or distributor licensed
 48 under this chapter to require, attempt to require, coerce, or attempt to co-
 49 erce, any new vehicle dealer in this state to:

1 (a) Order or accept delivery of any new vehicle, part or accessory,
2 equipment or any other commodity not required by law which shall not
3 have been voluntarily ordered by the new vehicle dealer. This para-
4 graph is not intended to modify or supersede any terms or provisions of a
5 franchise requiring dealers to market a representative line of vehicles
6 which the manufacturer or distributor is publicly advertising.

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

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

13 (d) Enter into any agreement with the manufacturer or distributor or to
14 do any other act prejudicial to the dealer by threatening to terminate
15 or cancel a franchise or any contractual agreement existing between
16 the dealer and the manufacturer or distributor. This paragraph is not
17 intended to preclude the manufacturer or distributor from insisting
18 on compliance with reasonable terms or provisions of the franchise or
19 other contractual agreement, and notice in good faith to any dealer of
20 the dealer's violation of those terms or provisions shall not consti-
21 tute a violation of the provisions of this chapter.

22 (e) Change the capital structure of the dealer or the means by or
23 through which the dealer finances the operation of the dealership,
24 provided that the dealer at all times meets any reasonable capital stan-
25 dards determined by the manufacturer or distributor in accordance with
26 uniformly applied criteria. No change in the capital structure shall
27 cause a change in the principal management or have the effect of a sale
28 of the franchise without the consent of the manufacturer or distribu-
29 tor. Consent shall not be unreasonably withheld.

30 (f) Refrain from participation in the management of, investment in, or
31 the acquisition of any other line of new vehicle or related products.
32 This paragraph does not apply unless the dealer maintains a reasonable
33 line of credit for each make or line of new vehicle, and the dealer re-
34 mains in compliance with any reasonable facilities requirements of the
35 manufacturer or distributor, and no change is made in the principal man-
36 agement of the dealership.

37 (g) Prospectively assent to a release, assignment, novation, waiver or
38 estoppel which would relieve any person from liability to be imposed by
39 this chapter or to require any controversy between a dealer and a man-
40 ufacturer, distributor, or representatives, to be referred to any per-
41 son other than the duly constituted courts of the state or the United
42 States, or to the director, if that referral would be binding upon the
43 dealer.

44 (h) Either establish or maintain exclusive facilities, personnel, or
45 display space.

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

49 (j) Make significant modifications to an existing dealership or to
50 construct a new vehicle dealership facility without providing a writ-

1 ten guarantee of a sufficient supply of new vehicles so as to justify
2 modification or construction, in light of the market and economic con-
3 ditions.

4 (3) It shall be unlawful for any manufacturer or distributor licensed
5 under this chapter to:

6 (a) Delay, refuse, or fail to deliver new vehicles or new vehicle parts
7 or accessories in a reasonable time, and in reasonable quantity, rela-
8 tive to the dealer's facilities and sales potential in the dealer's rel-
9 evant market area, after acceptance of an order from a dealer having a
10 franchise for the retail sale of any new vehicle sold or distributed by
11 the manufacturer or distributor, any new vehicle, parts or accessories
12 to new vehicles as are covered by the franchise, if the vehicle, parts,
13 or accessories are publicly advertised as being available for delivery
14 or actually being delivered. These provisions are not violated, how-
15 ever, if failure is caused by acts or causes beyond the control of the
16 manufacturer or distributor.

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

19 (c) Obtain money, goods, service, or any other benefit from any other
20 person with whom the dealer does business, on account of, or in relation
21 to, the transaction between the dealer and other person, other than for
22 compensation for services rendered, unless the benefit is promptly ac-
23 counted for, and transmitted to the dealer.

24 (d) Increase prices of new vehicles which the dealer had ordered for
25 consumers prior to the dealer's receipt of the written official price
26 increase notification. A sales contract signed by a consumer shall
27 constitute evidence of each such order, provided that the vehicle is in
28 fact delivered to that customer. In the event of manufacturer or dis-
29 tributor price reductions or cash rebates paid to the dealer, the amount
30 of any reduction or rebate received by a dealer shall be passed on to the
31 private retail consumer by the dealer. Price reductions shall apply to
32 all vehicles in the dealer's inventory which were subject to the price
33 reduction. Price differences applicable to new model or series shall
34 not be considered a price increase or price decrease. Price changes
35 caused by the addition to a vehicle of required or optional equipment,
36 or revaluation of the United States dollar, in the case of foreign-make
37 vehicles or components, or an increase in transportation charges due to
38 increased rates imposed by a carrier, shall not be subject to the provi-
39 sions of this subsection.

40 (e) Release to any outside party, except under subpoena or as other-
41 wise required by law or in an administrative, judicial or arbitration
42 proceeding involving the manufacturer or distributor or dealer, any
43 business, financial, or personal information which may be provided from
44 time to time by the dealer to the manufacturer or distributor without
45 the express written consent of the dealer.

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

48 (g) Unfairly compete with a dealer in the same line make, operating
49 under an agreement or franchise from the aforementioned manufacturer
50 or distributor, in the relevant market area. A manufacturer or dis-

1 tributor shall not, however, be deemed to be competing when operating
2 a dealership either temporarily for a reasonable period, in any case
3 not to exceed one (1) year, or in a retail operation which is for sale
4 to any qualified independent person at a fair and reasonable price, or
5 in a relationship in which an independent person has made a significant
6 investment subject to loss in the dealership and can reasonably expect
7 to acquire full ownership of that dealership on reasonable terms and
8 conditions. Upon a showing of good cause by the manufacturer or dis-
9 tributor to the department, the period of temporary ownership may be
10 extended up to one (1) additional year, resulting in a maximum temporary
11 ownership period of two (2) years.

12 (h) Unfairly discriminate among its dealers with respect to warranty
13 reimbursement.

14 (i) Unreasonably withhold consent to the sale, transfer, or exchange of
15 the franchise to a qualified buyer capable of being licensed as a dealer
16 in this state or to condition the sale, transfer, or exchange of a fran-
17 chise agreement upon site control or an agreement to renovate or make
18 improvements to a facility, unless required by the technology of a motor
19 vehicle being sold at the facility. Provided however, that a voluntary
20 acceptance of such conditions by the dealer in writing including, but
21 not limited to, a written agreement for which the dealer has accepted
22 separate and valuable consideration, shall not constitute a violation.

23 (j) Fail to respond in writing to a request for consent as specified in
24 subsection paragraph (i) of this section within sixty (60) days of re-
25 ceipt of a written request on the forms, if any, generally utilized by
26 the manufacturer or distributor for those purposes and containing the
27 required information. Failure to respond shall be deemed to be consent
28 to the request.

29 (k) Prevent or attempt to prevent, by contract or otherwise, any dealer
30 from changing the executive management control of the dealership unless
31 the manufacturer or distributor, having the burden of proof, can show
32 that the change of executive management will result in executive man-
33 agement or control by a person or persons who are not of good moral char-
34 acter or who do not meet reasonable, preexisting and, with considera-
35 tion given to the volume of sales and service of the dealership, uni-
36 formly applied minimum business experience standards. Where the manu-
37 facturer or distributor rejects a proposed change in executive manage-
38 ment control, the manufacturer or distributor shall give written notice
39 of his reasons to the dealer within sixty (60) days of notice to the man-
40 ufacturer or distributor by the dealer of the proposed change; other-
41 wise, the change in the executive management of the dealership shall be
42 presumptively considered approved.

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

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

1 (n) Engage in any predatory practice or discrimination against any
2 dealer.

3 (o) Resort to or to use any false or misleading advertisement in the
4 conducting of his business as a manufacturer or distributor in this
5 state.

6 (p) Make any false or misleading statement, either directly or through
7 any agent or employee, in order to induce any dealer to enter into any
8 agreement or franchise, or to take any action which is prejudicial to
9 that dealer or his business.

10 (q) Require or coerce dealers to participate in local or national ad-
11 vertising campaigns or contests or to require or coerce dealers to pur-
12 chase promotional or display materials.

13 (r) Charge back, deny motor vehicle allocation, withhold payments, or
14 take other actions against a dealer, or to condition a franchise agree-
15 ment, or renewal of a franchise agreement, or to condition sales, ser-
16 vice, parts, or finance incentives upon site control or an agreement to
17 renovate or make improvements to a facility unless required by the tech-
18 nology of a motor vehicle being sold at the facility. Provided however,
19 that a voluntary acceptance of such conditions by the dealer in writing
20 including, but not limited to, a written agreement for which the dealer
21 has accepted separate and valuable consideration, shall not constitute
22 a violation.

23 (s) Charge back, deny motor vehicle allocation, withhold payments, or
24 take other actions against a motor vehicle dealer if a motor vehicle
25 sold by the motor vehicle dealer is exported from Idaho or the dealer's
26 assigned area of responsibility unless the manufacturer, distributor,
27 or manufacturer representative proves that the motor vehicle dealer
28 knew or reasonably should have known a motor vehicle was intended to
29 be exported, which shall operate as a rebuttable presumption that the
30 motor vehicle dealer did not have such knowledge. This paragraph does
31 not apply if exporting of motor vehicles outside of the state of Idaho is
32 provided for by the manufacturer or distributor.

33 (4) It is unlawful for any manufacturer or distributor or any offi-
34 cer, agent or representative to coerce, or attempt to coerce, any dealer
35 in this state to offer to sell or sell any extended service contract or ex-
36 tended maintenance plan that is offered, sold, backed by or sponsored by
37 the manufacturer or distributor or to sell, assign or transfer any retail
38 installment sales contract, obtained by the dealer in connection with the
39 sale by him in this state of new vehicles, manufactured or sold by the man-
40 ufacturer or distributor, to a specified finance company or class of such
41 companies, or to any other specified person, by any of the acts or means set
42 forth, namely by:

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

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

48 (c) Any contract, or any express or implied offer of contract, made
49 directly or indirectly to a dealer for handling new vehicles, on the
50 condition that the dealer shall offer to sell or sell any extended

1 service contract or extended maintenance plan that is offered, sold,
2 backed by, or sponsored by the manufacturer or distributor or sell, as-
3 sign or transfer his retail installment sales contract in this state to
4 a specified finance company or class of such companies, or to any other
5 specified person; or

6 (d) Any express or implied statement or representation made directly or
7 indirectly that the dealer is under any obligation whatsoever to offer
8 to sell or sell any extended service contract or extended maintenance
9 plan that is offered, sold, backed by, or sponsored by the manufacturer
10 or distributor or to sell, assign or transfer any of his retail sales
11 contracts, in this state, on new vehicles manufactured or sold by that
12 manufacturer or distributor to a finance company or class of companies,
13 or other specified person, because of any relationship or affiliation
14 between the manufacturer or distributor and a finance company or compa-
15 nies, or a specified person or persons.

16 (e) Nothing contained in this subsection shall prohibit a manufacturer
17 or distributor from offering or providing incentive benefits or bonus
18 programs to a retail motor vehicle dealer or prospective retail motor
19 vehicle dealer in this state who makes the voluntary decision to offer
20 to sell or sell any extended service contract or extended maintenance
21 plan offered, sold, backed or sponsored by the manufacturer or distrib-
22 utor to sell, assign or transfer any retail installment sale or lease by
23 him in this state of motor vehicles manufactured or sold by the manufac-
24 turer or distributor to a specified finance company or leasing company
25 controlled by or affiliated with the manufacturer or distributor.

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

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

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

40 (7) The provisions of this chapter shall apply to all written franchise
41 agreements between a manufacturer or distributor and a dealer, including
42 the franchise offering, the franchise agreement, sales of goods, services
43 or advertising, leases or mortgages of real or personal property, promises
44 to pay, security interests, pledges, insurance contract, advertising con-
45 tract, construction or installation contract, servicing contracts and all
46 other agreements where the manufacturer or distributor has any direct or
47 indirect interest.

48 SECTION 4. That Section 49-1626, Idaho Code, be, and the same is hereby
49 amended to read as follows:

1 49-1626. PAYMENT FOR DELIVERY PREPARATION AND WARRANTY SERVICE. (1)
2 Each manufacturer or distributor shall specify in writing to each of its
3 dealers licensed in this state, the dealer's obligations for pre-delivery
4 preparation and warranty service on its products, compensate the dealer for
5 service required of the dealer by the manufacturer or distributor, provide
6 the dealer a schedule of compensation to be paid the dealer for parts, work
7 and service in connection with its products, and the time allowance for the
8 performance of that work and service.

9 (2) In no event shall a schedule of compensation fail to include reason-
10 able compensation for diagnostic work, as well as repair service and labor.
11 Time allowances for the diagnosis and performance of warranty work and ser-
12 vice shall be reasonable and adequate for the work to be performed.

13 (3) It is unlawful for a new vehicle manufacturer or distributor to fail
14 to perform any warranty obligations or to fail to include in written notices
15 of factory recalls to new vehicle owners and dealers, the expected date by
16 which necessary parts and equipment will be available to dealers for the cor-
17 rection of those defects, or to fail to compensate any of the dealers in this
18 state for repairs affected by recall.

19 (4) A vehicle dealer may submit a warranty claim to a manufacturer or
20 distributor if a warranty defect is identified and documented prior to the
21 expiration of a manufacturer's or distributor's warranty:

22 (a) While a franchise agreement is in effect; or

23 (b) After the termination of a franchise agreement if the claim is for
24 work performed while the franchise agreement was in effect.

25 (5) All claims made by dealers pursuant to this section for labor and
26 parts shall be paid within thirty (30) days following their approval. The
27 manufacturer retains the right to audit claims and to charge the dealer for
28 unsubstantiated, incorrect, or false claims for a period of one (1) year
29 following payment. Provided however, that the manufacturer may audit and
30 charge the dealer for fraudulent claims during any period for which an action
31 for fraud may be commenced. All claims shall be either approved or disap-
32 proved within thirty (30) days after their receipt, on forms and in the man-
33 ner specified by the manufacturer or distributor, and any claim not specifi-
34 cally disapproved in writing within thirty (30) days after receipt shall be
35 construed to be approved and payment must follow within thirty (30) days.

36 (6) A dealer whose claim has been denied due to failure to comply with
37 a specific claim processing requirement, such as a clerical error or other
38 administrative technicality that does not put into question the legitimacy
39 of the claim, may resubmit the corrected claim as provided for in subsection
40 (7) of this section.

41 (7) A dealer shall have thirty (30) days from the date of notification
42 by a manufacturer or distributor of a denial of a claim or a charge-back to
43 the dealer to resubmit a claim for payment or compensation if the claim was
44 denied for any of the reasons described in subsection (6) of this section,
45 whether the charge-back was a direct or an indirect transaction, unless a
46 longer period of time is provided for by the manufacturer or distributor.

47 (8) Notwithstanding the terms of a franchise agreement or other con-
48 tract with a dealer and except as provided in subsection (9) of this section,
49 after the expiration of one (1) year after the date of payment of the warranty
50 claim, a manufacturer or distributor shall not audit the records of a motor

1 vehicle dealer to determine compliance with the terms of a warranty claim.
2 Provided however, that the manufacturer or distributor may audit the dealer
3 for fraudulent claims during any period for which an action for fraud may be
4 commenced.

5 (9) A manufacturer or distributor may make charge backs to a motor vehi-
6 cle dealer if, after completion of an audit of the dealer's records, the man-
7 ufacturer or distributor can show, by a preponderance of the evidence, that:

8 (a) With respect to a warranty claim, the repair work was improperly
9 performed in a substandard manner or was unnecessary; or

10 (b) The claim is unsubstantiated in accordance with the manufacturer or
11 distributor's requirements.

12 (10) Nothing in subsection (8) or (9) of this section shall prevent a
13 manufacturer or distributor from instituting a legal action for fraud as
14 provided for in section 5-218, Idaho Code.

15 (11) The schedule of compensation for warranty parts and labor shall
16 not be less than the rates charged by the dealer for similar service to re-
17 tail customers for nonwarranty parts and labor; provided that such dealer's
18 retail rate is not unreasonable when compared with other motor vehicle fran-
19 chises from the same or competitive lines for similar merchandise or ser-
20 vices in the geographic area in which the dealer is engaged in business.

21 (a) For purposes of determining the schedule of compensation paid to a
22 dealer by the manufacturer or distributor, the following shall not be
23 considered in determining amounts charged by the dealer to retail cus-
24 tomers:

25 (i) Menu-priced parts or services;

26 (ii) Repairs for manufacturer or distributor special events;

27 (iii) Repairs covered by any insurance or service contract;

28 (iv) Vehicle emission or safety inspections required by federal,
29 state or local governments;

30 (v) Parts sold at wholesale or repairs performed at wholesale,
31 which shall include any sale or service to a fleet of vehicles;

32 (vi) Engine assemblies and transmission assemblies;

33 (vii) Routine maintenance not covered under any retail customer
34 warranty including, but not necessarily limited to, maintenance
35 involving fluids, filters and belts not provided in the course of
36 repairs;

37 (viii) Nuts, bolts, fasteners and similar items that do not have an
38 individual part number;

39 (ix) Tires; or

40 (x) Vehicle reconditioning.

41 (b) The dealer shall establish their schedule of compensation under
42 the provisions of this section by submitting to the manufacturer or
43 distributor one hundred (100) sequential customer paid service repair
44 orders or ninety (90) days of customer paid service repair orders,
45 whichever is less, covering repairs made no more than one hundred eighty
46 (180) days before the submission of such customer paid service repair
47 orders and declaring the schedule of compensation. The new schedule
48 of compensation shall take effect within ninety (90) days after the
49 initial submission to the manufacturer or distributor and shall be
50 presumed to be fair and reasonable. However, within thirty (30) days

1 following receipt of the declared schedule of compensation from the
2 dealer, the manufacturer or distributor may make reasonable requests
3 for additional information supporting the declared schedule of com-
4 pensation. The ninety (90) day time frame in which the manufacturer or
5 distributor shall make the schedule of compensation effective shall
6 commence following receipt from the dealer of any reasonably requested
7 supporting information. No manufacturer or distributor shall require
8 a motor vehicle dealer to establish a schedule of compensation by any
9 other methodology or require supportive information that is unduly bur-
10 densome or time consuming to provide including, but not limited to, part
11 by part or transaction by transaction calculations. The dealer shall
12 not request a change in the schedule of compensation more than once ev-
13 ery twelve (12) months.

14 (12) It is unlawful for a manufacturer or distributor or subsidiary
15 to own, operate or control, either directly or indirectly, a motor vehicle
16 warranty or service facility located in this state except on an emergency
17 or interim basis or if no qualified applicant has applied for appointment
18 as a dealer in a market previously served by a motor vehicle dealer of that
19 manufacturer or distributor's line make except as provided for in section
20 49-1613(3) (g), Idaho Code.

21 (13) A manufacturer may not otherwise recover all or any portion of its
22 costs for compensating its dealers licensed in this state for warranty parts
23 and labor either by reduction in the amount due to the dealer or by separate
24 charge, surcharge or other imposition; provided however, a manufacturer or
25 distributor shall not be prohibited from increasing prices for vehicles or
26 parts in the normal course of business.

27 (14) All procedures and protections afforded to a motor vehicle dealer
28 under the provisions of this section shall be available to a recreational
29 vehicle dealer. However, the schedule of compensation afforded under sub-
30 section (11) of this section shall not apply to compensation for parts,
31 systems, fixtures, appliances, furnishings, accessories and features of a
32 recreational vehicle that are designed, used and maintained primarily for
33 nonvehicular residential purposes.