

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 689

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO DEALERS AND SALESMEN LICENSING; AMENDING CHAPTER 16, TITLE 49,  
2 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-1601A, IDAHO CODE, TO  
3 PROVIDE LEGISLATIVE FINDINGS AND INTENT; AMENDING SECTION 49-1613,  
4 IDAHO CODE, TO REVISE AND ESTABLISH PROVISIONS REGARDING UNLAWFUL ACTS  
5 BY A MANUFACTURER OR DISTRIBUTOR; AMENDING SECTION 49-1632, IDAHO CODE,  
6 TO PROVIDE FOR AFFILIATE CORPORATIONS AND ENTITIES; AND DECLARING AN  
7 EMERGENCY.  
8

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

10 SECTION 1. That Chapter 16, Title 49, Idaho Code, be, and the same is  
11 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
12 ignated as Section 49-1601A, Idaho Code, and to read as follows:

13 49-1601A. LEGISLATIVE FINDINGS AND INTENT. (1) The legislature finds  
14 that the distribution and sale of motor vehicles within this state vitally  
15 affects the general economy of the state, the public interest, and the public  
16 welfare.

17 (2) In order to promote the public interest and the public welfare and  
18 in the exercise of the state's police power, it is necessary to regulate mo-  
19 tor vehicle manufacturers, distributors, and factory or distributor repre-  
20 sentatives and to regulate dealers of motor vehicles doing business in this  
21 state in order to prevent frauds, impositions, and other abuses on its citi-  
22 zens and to protect and preserve the investments and properties of the citi-  
23 zens of this state.

24 (3) The provisions of this chapter shall be construed and applied to ac-  
25 complish the purposes provided for in this section.

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

28 49-1613. UNLAWFUL ACTS BY LICENSEE. (1) It shall be unlawful for the  
29 holder of any license issued under the provisions of this chapter to:

30 (a) Intentionally publish or circulate any advertising that is mis-  
31 leading or inaccurate in any material particular or that misrepresents  
32 any of the products sold or furnished by a licensed dealer;

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

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

37 (d) Violate any law respecting commerce in vehicles or any lawful rule  
38 respecting commerce in vehicles promulgated by any licensing or regu-  
39 lating authority now existing or hereafter created by the laws of the  
40 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 that has an altered or removed vehicle  
6 identification number plate or alter or remove a vehicle identification  
7 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;

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; or

15 (k) Issue more than one (1) temporary permit per vehicle sale pursuant  
16 to the provisions set forth in section 49-504(6), Idaho Code.

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

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

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

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

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

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

49 (f) Refrain from participation in the management of, investment in, or  
50 the acquisition of any other line of new vehicle or related products.

1 This paragraph does not apply unless the dealer maintains a reasonable  
2 line of credit for each make or line of new vehicle, and the dealer re-  
3 mains in compliance with any reasonable facilities requirements of the  
4 manufacturer or distributor, and no change is made in the principal man-  
5 agement of the dealership.

6 (g) Prospectively assent to a release, assignment, novation, waiver or  
7 estoppel that would relieve any person from liability to be imposed by  
8 this chapter or to require any controversy between a dealer and a man-  
9 ufacturer, distributor, or representatives, to be referred to any per-  
10 son other than the duly constituted courts of the state or the United  
11 States, or to the director, if that referral would be binding upon the  
12 dealer.

13 (h) Either establish or maintain exclusive facilities, personnel, or  
14 display space.

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

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

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

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

36 (b) Refuse to disclose to any dealer handling the same line, the manner  
37 and mode of distribution of that line within ~~the relevant market area~~  
38 this state.

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

44 (d) Increase prices of new vehicles that the dealer had ordered for  
45 consumers prior to the dealer's receipt of the written official price  
46 increase notification. A sales contract signed by a consumer shall  
47 constitute evidence of each such order, provided that the vehicle is in  
48 fact delivered to that customer. In the event of manufacturer or dis-  
49 tributor price reductions or cash rebates paid to the dealer, the amount  
50 of any reduction or rebate received by a dealer shall be passed on to the

1 private retail consumer by the dealer. Price reductions shall apply to  
2 all vehicles in the dealer's inventory that were subject to the price  
3 reduction. Price differences applicable to new model or series shall  
4 not be considered a price increase or price decrease. Price changes  
5 caused by the addition to a vehicle of required or optional equipment,  
6 or revaluation of the United States dollar, in the case of foreign-make  
7 vehicles or components, or an increase in transportation charges due to  
8 increased rates imposed by a carrier, shall not be subject to the provi-  
9 sions of this subsection.

10 (e) Release to any outside party, except under subpoena or as other-  
11 wise required by law or in an administrative, judicial or arbitration  
12 proceeding involving the manufacturer or distributor or dealer, any  
13 business, financial, or personal information which may be provided from  
14 time to time by the dealer to the manufacturer or distributor without  
15 the express written consent of the dealer.

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

18 ~~(g) Unfairly compete with a dealer in the same line make, operating~~  
19 ~~under an agreement or franchise from the aforementioned manufacturer~~  
20 ~~or distributor, in the relevant market area. A manufacturer or dis-~~  
21 ~~tributor shall not, however, be deemed to be competing when operating~~  
22 ~~a dealership either temporarily for a reasonable period, in any case~~  
23 ~~not to exceed one (1) year, or in a retail operation that Compete with~~  
24 ~~their franchised dealers in this state in the sale, lease, or warranty~~  
25 ~~service of new motor vehicles to retail consumers. However, nothing~~  
26 ~~in this section shall limit or apply to a manufacturer's or a distribu-~~  
27 ~~tor's fleet sales or leases with a fleet customer that has a designation~~  
28 ~~as such by the manufacturer or distributor as long as such sales or~~  
29 ~~leases are conducted with the involvement of a dealer of the same line~~  
30 ~~make. Nothing in this section shall limit or prohibit a manufacturer or~~  
31 ~~distributor from authorizing or assisting a fleet customer that has a~~  
32 ~~designation as such by the manufacturer or distributor to perform war-~~  
33 ~~ranty service on vehicles owned or operated by such fleet customer. It~~  
34 ~~is not a violation of this paragraph for a manufacturer or distributor,~~  
35 ~~or an affiliate of a manufacturer or distributor, to directly provide an~~  
36 ~~update to or repair of motor vehicle software if such update or repair is~~  
37 ~~provided over-the-air at no cost or when creating a new line of motor ve-~~  
38 ~~hicles and using franchised dealers to sell and service those vehicles.~~  
39 ~~A manufacturer or distributor may operate a dealership for a reasonable~~  
40 ~~period not to exceed one (1) year without violating this paragraph if~~  
41 ~~such dealership is for sale to any qualified independent person at a~~  
42 ~~fair and reasonable price, or in a relationship in which an indepen-~~  
43 ~~dent person has made a significant investment subject to loss in the~~  
44 ~~dealership and can reasonably expect to acquire full ownership of that~~  
45 ~~dealership on reasonable terms and conditions. Upon a showing of good~~  
46 ~~cause by the manufacturer or distributor to the department, the period~~  
47 ~~of temporary ownership may be extended up to one (1) additional year,~~  
48 ~~resulting in a maximum temporary ownership period of two (2) years.~~

49 (h) Unfairly discriminate among its dealers with respect to warranty  
50 reimbursement.

1 (i) Unreasonably withhold consent to the sale, transfer, or exchange of  
2 the franchise to a qualified buyer capable of being licensed as a dealer  
3 in this state or to condition the sale, transfer, or exchange of a fran-  
4 chise agreement upon site control or an agreement to renovate or make  
5 improvements to a facility, unless required by the technology of a motor  
6 vehicle being sold at the facility. Provided however, that a voluntary  
7 acceptance of such conditions by the dealer in writing including but not  
8 limited to a written agreement for which the dealer has accepted sepa-  
9 rate and valuable consideration, shall not constitute a violation.

10 (j) Fail to respond in writing to a request for consent as specified in  
11 paragraph (i) of this subsection within sixty (60) days of receipt of a  
12 written request on the forms, if any, generally utilized by the manufac-  
13 turer or distributor for those purposes and containing the required in-  
14 formation. Failure to respond shall be deemed to be consent to the re-  
15 quest.

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

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

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

38 (n) Engage in any predatory practice or discrimination against any  
39 dealer.

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

43 (p) Make any false or misleading statement, either directly or through  
44 any agent or employee, in order to induce any dealer to enter into any  
45 agreement or franchise or to take any action that is prejudicial to that  
46 dealer or his business.

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

1 (r) Charge back, deny motor vehicle allocation, withhold payments, or  
2 take other actions against a dealer, or to condition a franchise agree-  
3 ment, or renewal of a franchise agreement, or to condition sales, ser-  
4 vice, parts, or finance incentives upon site control or an agreement to  
5 renovate or make improvements to a facility unless required by the tech-  
6 nology of a motor vehicle being sold at the facility. Provided however,  
7 that a voluntary acceptance of such conditions by the dealer in writing  
8 including but not limited to a written agreement for which the dealer  
9 has accepted separate and valuable consideration, shall not constitute  
10 a violation.

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

21 (t) Withhold or threaten to withhold consent or approval of the sale,  
22 transfer, exchange, or issuance of a dealer sales and service agreement  
23 to an otherwise qualified buyer capable of being licensed as a dealer  
24 in this state or to condition approval of such buyer upon the selling  
25 dealer executing a release of all claims or similar instrument releas-  
26 ing or waiving any and all claims the selling dealer has or may have  
27 arising from the franchise relationship with the manufacturer unless  
28 separate material consideration is paid contemporaneously by the manu-  
29 facturer to the dealer for such release. Nothing in this section shall  
30 preclude the application of a manufacturer's reasonable and uniform  
31 standards and policies.

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

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

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

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

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

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

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

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 (8) (a) It shall be unlawful for any manufacturer or distributor,  
49 whether by agreement, program, incentive provision, or provision for  
50 loss of incentive payments or other benefits, to establish or implement

1 a franchise agreement for the sales and leasing of new motor vehicles  
2 under which the manufacturer or distributor reserves the right to:

3 (i) Maintain a website or other electronic or digital means of  
4 communication for the manufacturer or distributor to negotiate  
5 binding terms of sale or leasing of new motor vehicles directly  
6 with the retail buyer or lessee without the involvement of a dealer  
7 on prices or other substantive terms of sale or leasing of new ve-  
8 hicles;

9 (ii) Retain ownership of new motor vehicles until they are sold or  
10 leased to the retail buyer or lessee;

11 (iii) Except for the sale or lease of a vehicle to a bona fide em-  
12 ployee or relative of such manufacturer or distributor or in con-  
13 nection with a replacement or buyback, or to a bona fide employee  
14 or relative of a dealer under an employee pricing or similar pro-  
15 gram, consign new motor vehicles to dealers for dealer inventory  
16 or for sale or lease to a retail buyer or lessee;

17 (iv) Negotiate binding terms of sale directly with retail buy-  
18 ers or lessees of new motor vehicles without the involvement of a  
19 dealer, provided that displaying on a website or other electronic  
20 or digital means of communication conditional prices, available  
21 financing sources, or conditional trade-in values that are not  
22 binding on a dealer shall not be considered negotiating;

23 (v) Enforce or seek to enforce a right in any franchise agreement  
24 for the manufacturer or distributor to unilaterally amend or mod-  
25 ify the franchise agreement; or

26 (vi) Amend or modify or attempt to amend or modify any dealer sales  
27 and service agreement, including but not limited to the dealer's  
28 relevant market area if the amendment or modification substan-  
29 tially and adversely affects the dealer's rights, obligations,  
30 investment or return on investment, without giving sixty (60) days  
31 advance written notice of the proposed amendment or modification  
32 to the dealer.

33 (b) Nothing in this subsection shall prevent a manufacturer or distrib-  
34 utor from:

35 (i) Participating in fleet sales or leasing with a fleet customer  
36 that has a designation as such by the manufacturer or distributor  
37 as long as such sales or leases are conducted with the involvement  
38 of a dealer of the same line make;

39 (ii) Authorizing or assisting a fleet customer that has a des-  
40 ignation as such by the manufacturer or distributor to perform  
41 warranty service on vehicles owned or operated by such fleet cus-  
42 tomers;

43 (iii) Offering, providing, and applying the terms of an employee  
44 pricing or similar program with participating dealers;

45 (iv) Negotiating binding terms of sale relating to the sale or  
46 lease of a vehicle to a bona fide employee or relative of such manu-  
47 facturer or distributor;

48 (v) Negotiating binding terms of sale relating to the sale or lease  
49 of a vehicle to a bona fide employee or relative of a franchised  
50 dealer under an employee pricing program or similar program;



1 (vi) Negotiating binding terms of sale relating to the sale or  
2 lease of a vehicle in connection with a vehicle replacement or buy-  
3 back;

4 (vii) Purchasing from a consumer a vehicle in connection with a  
5 vehicle replacement or buyback;

6 (viii) Maintaining a website or other electronic or digital means  
7 of communication if the final selling or leasing price of the new  
8 vehicle is determined by eligible dealers; or

9 (ix) Setting or advertising a manufacturer's suggested retail  
10 price or lease example pricing based on a manufacturer's suggested  
11 retail price, special financing, or lease offers.

12 (9) (a) Within the sixty (60) day notice period provided for in subsec-  
13 tion (8) (a) (vii) of this section, the dealer may pursue remedies under  
14 section 49-1617, Idaho Code, and file with the department and serve upon  
15 the respondent a petition to determine whether good cause exists for  
16 permitting the proposed modification. Multiple complaints pertaining  
17 to the same proposed modification may be consolidated for hearing. The  
18 proposed modification may not take effect pending the determination  
19 of any protest filed by a dealer. In making a determination of whether  
20 there is good cause for permitting a proposed modification of a dealer  
21 sales and service agreement, including but not limited to a dealer's  
22 relevant market area, the burden of proof shall be on the manufacturer  
23 or distributor, except that the burden of proof with regard to the fac-  
24 tor set forth in subparagraph (iii) of this paragraph shall be on the  
25 dealer. The department shall consider any relevant factor, including:

26 (i) The reasons for the proposed modification;

27 (ii) Whether the proposed modification is applied to or affects  
28 all motor vehicle dealers in a nondiscriminatory manner;

29 (iii) The degree to which the proposed modification will have  
30 a substantial and adverse effect on the motor vehicle dealer's  
31 rights, investment, or return on investment; and

32 (iv) Whether the proposed modification is in the public interest.

33 (b) With respect to a proposed modification of a dealer's relevant mar-  
34 ket area the department shall also consider:

35 (i) The traffic patterns between consumers and the same line-  
36 make franchised dealers of the affected manufacturer or distribu-  
37 tor who are located within the market;

38 (ii) The pattern of new vehicle sales and registrations of the af-  
39 ected manufacturer or distributor within various portions of the  
40 relevant market area and within the market as a whole;

41 (iii) The growth or decline in population, density of population,  
42 and new car registrations in the market;

43 (iv) The presence or absence of natural geographical obstacles or  
44 boundaries;

45 (v) The proximity of census tracts or other geographic units used  
46 by the affected manufacturer or distributor in determining the  
47 same line-make dealers' respective relevant market area; and

48 (vi) The reasonableness of the change or proposed change to the  
49 dealer's relevant market area, considering the benefits and harm

1           to the petitioning dealer, other same line-make dealers, and the  
2           manufacturer or distributor.

3           (10) It shall be unlawful for any manufacturer or distributor to imple-  
4           ment a program or policy that coerces or requires the franchisee to install  
5           direct current fast charging stations for public access or use or any simi-  
6           lar public-facing infrastructure relating to charging, fueling, or powering  
7           a vehicle. For purposes of this section, the term "coerce" means the use of  
8           force or threats to compel a dealer to take a specific action. "Coerce" in-  
9           cludes threatening to withhold vehicles or parts from a franchisee or charg-  
10           ing a franchisee a higher price for vehicles or parts on the basis of the  
11           franchisee refusing, declining, or failing to perform a specific behavior.  
12           Provided, however, that nothing contained in this subsection shall be deemed  
13           to prohibit or prevent a manufacturer or distributor from requiring a fran-  
14           chisee to purchase special tools or equipment, install reasonable charging  
15           infrastructure, stock reasonable quantities of certain parts, or partici-  
16           pate in training, reasonable sales and service programs, or policies that  
17           are reasonably necessary for such franchisee to sell or service any model or  
18           series of vehicles.

19           SECTION 3. That Section 49-1632, Idaho Code, be, and the same is hereby  
20           amended to read as follows:

21           49-1632. APPLICABILITY OF CHAPTER. (1) Any person who engages di-  
22           rectly or indirectly in purposeful contacts within this state in connection  
23           with the offering or advertising for sale, or has business dealings with  
24           respect to a new vehicle sale within this state, shall be subject to the  
25           provisions of this chapter and shall be subject to the jurisdiction of the  
26           courts of this state.

27           (2) The applicability of this chapter shall not be affected by a choice  
28           of law clause in any franchise, agreement, waiver, novation, or any other  
29           written instrument.

30           (3) Any provision of any agreement, franchise, waiver, novation or any  
31           other written instrument which is in violation of any section of this chapter  
32           shall be considered null and void and without force and effect.

33           (4) It shall be unlawful for a manufacturer to use any subsidiary corpo-  
34           ration, affiliated corporation, or any other controlled corporation, part-  
35           nership, entity, association, or person to accomplish what would otherwise  
36           be unlawful conduct under this chapter on the part of the manufacturer.

37           (5) Nothing in this chapter shall be construed to impair the obliga-  
38           tions of a contract entered into prior to January 1, 1989, or to prevent a  
39           manufacturer, distributor, representative or any other person, whether  
40           or not licensed under this chapter, from requiring performance of a prior  
41           written contract entered into with any dealer, nor shall the requirement of  
42           performance constitute a violation of any of the provisions of this chap-  
43           ter. Any contract, or the terms of it, requiring performance, shall have  
44           been freely entered into and executed between the contracting parties. This  
45           chapter shall apply to any amendments, novations, records or modifications  
46           of prior contracts and to any contracts entered into subsequent to March 31,  
47           1989.

1           SECTION 4. An emergency existing therefor, which emergency is hereby  
2 declared to exist, this act shall be in full force and effect on and after its  
3 passage and approval.