

HOUSE BILL 1139

R7

3lr2693
CF SB 886

By: **Delegate Frush**

Introduced and read first time: February 8, 2013

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws – Manufacturers, Distributors, and Factory Branches –**
3 **Compensation of Dealers**

4 FOR the purpose of requiring a manufacturer, distributor, or factory branch licensed
5 in the State to specify in writing to each of its motor vehicle dealers in the State
6 certain information relating to the compensation of dealers for certain parts and
7 labor; establishing certain requirements for the reasonable compensation of
8 dealers with respect to certain parts and labor; requiring a dealer to make a
9 certain submission to a licensee; providing for the calculation of a dealer's labor
10 rate and parts mark-up percentage for certain purposes; establishing
11 requirements for a certain schedule of compensation; requiring a licensee to
12 communicate directly with a certain agent of a dealer in regard to a certain
13 submission under this Act; providing that certain repair orders for labor and
14 parts do not constitute qualifying repair orders under this Act; requiring a
15 licensee to compensate a dealer for certain parts given to a dealer at no cost;
16 establishing that a certain schedule of compensation will be presumed to be
17 accurate; requiring a licensee to begin compensation of a dealer under the
18 schedule within certain periods of time under certain circumstances; providing
19 for a rebuttal of the presumption of accuracy of the schedule of compensation;
20 providing for the resolution of certain matters relating to the schedule of
21 compensation; prohibiting a licensee from making or requiring certain
22 calculations or establishing certain special parts or component numbers;
23 prohibiting a licensee from requiring, influencing, or attempting to influence a
24 dealer to change certain prices; prohibiting a licensee from recovering or
25 attempting to recover certain costs; prohibiting a licensee from taking or
26 threatening to take certain adverse action against a dealer under certain
27 circumstances; prohibiting a licensee from implementing or continuing certain
28 policies, procedures, or programs; repealing a certain provision relating to a
29 licensee's compensation of dealers for certain work; and generally relating to
30 compensation of motor vehicle dealers by manufacturers, distributors, or factory
31 branches.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Transportation
3 Section 15–212
4 Annotated Code of Maryland
5 (2012 Replacement Volume)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article – Transportation**

9 15–212.

10 (a) In this section, “motor home” means a motor vehicle that:

11 (1) Is designed to provide temporary living quarters, built into as an
12 integral part of, or permanently attached to, a self-propelled motor vehicle chassis or
13 van; and

14 (2) Contains permanently installed independent life support systems
15 which provide at least four of the following facilities:

16 (i) Cooking;

17 (ii) Refrigeration or ice box;

18 (iii) Self-contained toilet;

19 (iv) Heating, air-conditioning, or both;

20 (v) A potable water supply system including a faucet and sink;

21 (vi) Separate 110–125 volt electrical power supply; or

22 (vii) An LP gas supply.

23 (b) In addition to the other grounds specified in Subtitle 1 of this title for
24 refusal, suspension, or revocation of a license, the Administration may refuse to grant
25 a license under this subtitle to any person and may suspend, revoke, or refuse to
26 renew the license of any person if it finds that the person has:

27 (1) Made any material misrepresentation in transferring a vehicle or
28 truck component part to a dealer or distributor;

29 (2) Failed to comply with any written warranty agreement; or

1 (3) Failed to reasonably compensate any franchised dealer who does
2 work under:

3 (i) The vehicle preparation and delivery obligations of the
4 dealer; or

5 (ii) Any outstanding express or implied new vehicle or truck
6 component parts warranty.

7 (c) (1) The following factors, as they exist in the city or community in
8 which the dealer is doing business, shall be included among those considered in
9 determining under subsection (b)(3) of this section whether a dealer has been
10 reasonably compensated:

11 (i) The compensation being paid by other licensees to their
12 dealers;

13 (ii) The prevailing wage rate being paid by these dealers; and

14 (iii) The prevailing labor rate being charged by these dealers.

15 [(2) Notwithstanding paragraph (1) of this subsection and except as
16 provided in paragraph (3) of this subsection, a licensee may not compensate its dealers
17 for work performed under any warranty under subsection (b)(3)(ii) of this section in an
18 amount that is less than the average amount charged by the dealer to retail customers
19 for nonwarranty work of like kind during the preceding 12 months as long as this
20 amount is reasonable.]

21 **(2) A LICENSEE SHALL SPECIFY IN WRITING TO EACH OF ITS**
22 **MOTOR VEHICLE DEALERS LICENSED IN THE STATE:**

23 **(I) THE DEALER'S OBLIGATION FOR PREPARATION,**
24 **DELIVERY, AND WARRANTY SERVICE ON ITS PRODUCTS;**

25 **(II) THE SCHEDULE OF COMPENSATION TO BE PAID TO THE**
26 **DEALERS FOR PARTS, INCLUDING PARTS ASSEMBLIES, AND LABOR, INCLUDING**
27 **DIAGNOSTIC LABOR AND ASSOCIATED ADMINISTRATIVE REQUIREMENTS, IN**
28 **CONNECTION WITH WARRANTY SERVICE; AND**

29 **(III) A TIME ALLOWANCE FOR THE PERFORMANCE OF LABOR**
30 **DESCRIBED IN THIS PARAGRAPH THAT IS REASONABLE AND ADEQUATE.**

31 **(3) REASONABLE COMPENSATION UNDER THIS SECTION MAY NOT**
32 **BE LESS THAN:**

1 **(I) WITH RESPECT TO LABOR, THE DEALER'S CURRENT**
2 **LABOR RATE CHARGED TO RETAIL CUSTOMERS FOR SIMILAR NONWARRANTY**
3 **REPAIRS; AND**

4 **(II) WITH RESPECT TO ANY PART, THE DEALER'S COST PLUS**
5 **ITS CURRENT RETAIL MARK-UP PERCENTAGE CHARGED TO RETAIL CUSTOMERS**
6 **FOR SIMILAR NONWARRANTY REPAIRS.**

7 **(4) (I) FOR PURPOSES OF PARAGRAPH (3) OF THIS**
8 **SUBSECTION, THE DEALER'S LABOR RATE OR PARTS MARK-UP PERCENTAGE**
9 **SHALL BE ESTABLISHED BY A SUBMISSION TO THE LICENSEE OF WHICHEVER OF**
10 **THE FOLLOWING PRODUCES FEWER CLOSED REPAIR ORDERS WITHIN THE**
11 **PRECEDING 180 DAYS:**

12 **1. 100 QUALIFYING SEQUENTIAL CUSTOMER-PAID**
13 **REPAIR ORDERS; OR**

14 **2. 60 DAYS OF QUALIFYING CUSTOMER-PAID REPAIR**
15 **ORDERS.**

16 **(II) A SCHEDULE OF COMPENSATION ESTABLISHED UNDER**
17 **THIS SUBSECTION SHALL BE EQUAL TO:**

18 **1. WITH RESPECT TO LABOR, THE AVERAGE LABOR**
19 **RATE; AND**

20 **2. WITH RESPECT TO PARTS, THE AGGREGATE**
21 **PARTS MARK-UP PERCENTAGE AS REFLECTED IN QUALIFYING REPAIR ORDERS.**

22 **(III) A LICENSEE SHALL COMMUNICATE DIRECTLY WITH AN**
23 **AGENT AUTHORIZED BY THE DEALER TO COMMUNICATE IN REGARD TO THE**
24 **DEALER'S SUBMISSION UNDER THIS SUBSECTION.**

25 **(IV) 1. A DEALER MAY NOT MAKE A SUBMISSION UNDER**
26 **THIS SUBSECTION MORE THAN ONCE IN 6 MONTHS.**

27 **2. FOR PURPOSES OF SUBSUBPARAGRAPH 1 OF THIS**
28 **SUBPARAGRAPH, A REVISION OR SUPPLEMENT TO A SUBMISSION TO CORRECT**
29 **OR CLARIFY THE SUBMISSION DOES NOT CONSTITUTE A NEW SUBMISSION.**

30 **(5) REPAIR ORDERS FOR LABOR OR PARTS IN CONNECTION WITH**
31 **ANY OF THE FOLLOWING MAY NOT CONSTITUTE A QUALIFYING REPAIR ORDER**
32 **UNDER PARAGRAPH (3) OF THIS SUBSECTION:**

- 1 **(I) ACCESSORIES;**
- 2 **(II) REPAIRS FOR MANUFACTURER, DISTRIBUTOR, OR**
3 **FACTORY BRANCH SPECIAL EVENTS;**
- 4 **(III) REPAIRS RELATED TO COLLISION;**
- 5 **(IV) VEHICLE EMISSION OR SAFETY INSPECTIONS REQUIRED**
6 **BY LAW;**
- 7 **(V) PARTS SOLD, OR REPAIRS PERFORMED, AT WHOLESALE**
8 **OR AT DISCOUNT FOR GROUP FLEETS, GOVERNMENTAL AGENCIES, INSURANCE**
9 **CARRIERS, OR OTHER THIRD-PARTY PAYORS;**
- 10 **(VI) ROUTINE MAINTENANCE NOT COVERED UNDER ANY**
11 **WARRANTY, INCLUDING MAINTENANCE INVOLVING FLUIDS, FILTERS, AND**
12 **BELTS NOT PROVIDED IN THE COURSE OF REPAIRS;**
- 13 **(VII) NUTS, BOLTS, FASTENERS, AND SIMILAR ITEMS THAT**
14 **DO NOT HAVE AN INDIVIDUAL PARTS NUMBER;**
- 15 **(VIII) TIRES;**
- 16 **(IX) VEHICLE RECONDITIONING;**
- 17 **(X) GOODWILL OR POLICY REPAIRS OR REPLACEMENTS;**
- 18 **(XI) REPAIRS ON VEHICLE MAKES NOT SOLD AS NEW BY A**
19 **DEALER; OR**
- 20 **(XII) REPAIRS TO A DEALER'S, AN AFFILIATE'S, OR AN**
21 **EMPLOYEE'S VEHICLE.**
- 22 **(6) IF A LICENSEE GIVES A DEALER A PART AT NO COST TO USE IN**
23 **PERFORMING A REPAIR UNDER A RECALL, CAMPAIGN SERVICE ACTION, OR**
24 **WARRANTY REPAIR, THE LICENSEE SHALL COMPENSATE THE DEALER FOR THE**
25 **PART BY PAYING THE DEALER THE PARTS MARK-UP PERCENTAGE ESTABLISHED**
26 **UNDER THIS SUBSECTION ON THE COST FOR THE PART LISTED ON THE**
27 **LICENSEE'S PRICE SCHEDULE.**
- 28 **(7) (I) THE SCHEDULE OF COMPENSATION SUBMITTED UNDER**
29 **PARAGRAPH (4) OF THIS SUBSECTION SHALL BE PRESUMED TO BE ACCURATE,**

1 FAIR, AND REASONABLE, AND THE LICENSEE SHALL BEGIN COMPENSATING THE
2 DEALER UNDER THE SCHEDULE ON THE EARLIER TO OCCUR OF THE
3 FOLLOWING:

4 1. APPROVAL OF THE SCHEDULE BY THE LICENSEE;
5 OR

6 2. IN THE ABSENCE OF A TIMELY REBUTTAL BY THE
7 LICENSEE, ON THE 31ST DAY FOLLOWING THE LICENSEE'S RECEIPT OF THE
8 SCHEDULE.

9 (II) ANY REBUTTAL OF THE SCHEDULE OF COMPENSATION
10 BY THE LICENSEE SHALL BE DELIVERED TO THE DEALER WITHIN 30 DAYS OF
11 THE LICENSEE'S RECEIPT OF THE SCHEDULE.

12 (III) IN THE EVENT OF A TIMELY REBUTTAL, ON RESOLUTION
13 OF THE MATTER BY AGREEMENT OF THE PARTIES OR BY ADMINISTRATIVE,
14 JUDICIAL, OR OTHER ACTION, A LICENSEE'S PAYMENT OBLIGATIONS UNDER
15 THE RESULTING SCHEDULE OF COMPENSATION SHALL BEGIN WITHIN 30 DAYS
16 OF THE MATTER'S RESOLUTION.

17 (IV) 1. TO THE EXTENT THAT ANY ACTION COMMENCED
18 UNDER SUBSECTION (D) OF THIS SECTION OR § 15-213 OR § 15-214 OF THIS
19 SUBTITLE INVOLVES THE APPLICATION OF PARAGRAPH (4) OF THIS
20 SUBSECTION, THE ISSUE SHALL BE LIMITED TO WHETHER THE LABOR RATE OR
21 PARTS MARK-UP PERCENTAGE STATED IN THE DEALER'S SUBMISSION WAS
22 MATERIALLY INACCURATE.

23 2. A LICENSEE SHALL HAVE THE BURDEN OF
24 PROVING UNDER THIS SUBPARAGRAPH THAT THE DEALER'S SUBMISSION WAS
25 MATERIALLY INACCURATE.

26 (8) A LICENSEE MAY NOT:

27 (I) CALCULATE ITS OWN LABOR RATE OR PARTS MARK-UP
28 PERCENTAGE, OR REQUIRE A DEALER TO CALCULATE A LABOR RATE OR PARTS
29 MARK-UP PERCENTAGE, BY ANY METHOD NOT REQUIRED UNDER THIS SECTION,
30 INCLUDING A METHOD THAT IS UNDULY BURDENSOME OR TIME-CONSUMING OR
31 THAT REQUIRES INFORMATION THAT IS UNDULY BURDENSOME OR
32 TIME-CONSUMING TO PROVIDE SUCH AS:

33 1. A PART-BY-PART OR TRANSACTION BY
34 TRANSACTION CALCULATION; OR

1 **2. PRESENTATION OF INFORMATION AS TO, OR**
2 **CALCULATIONS BASED ON, OTHER DEALERS' COMPENSATION OR FINANCIAL**
3 **STATEMENTS;**

4 **(II) ESTABLISH OR IMPLEMENT A SPECIAL PART OR**
5 **COMPONENT NUMBER FOR PARTS USED IN PRE-DELIVERY, DEALER**
6 **PREPARATION, WARRANTY, EXTENDED WARRANTY, CERTIFIED PRE-OWNED**
7 **WARRANTY, RECALL, CAMPAIGN SERVICE, AUTHORIZED GOODWILL, OR**
8 **MAINTENANCE-ONLY APPLICATIONS, IF THE SPECIAL PART OR COMPONENT**
9 **NUMBER RESULTS IN REDUCED COMPENSATION FOR THE DEALER;**

10 **(III) REQUIRE, INFLUENCE, OR ATTEMPT TO INFLUENCE A**
11 **DEALER TO CHANGE THE PRICES FOR WHICH IT SELLS PARTS OR LABOR FOR**
12 **RETAIL CUSTOMER REPAIRS;**

13 **(IV) RECOVER OR ATTEMPT TO RECOVER ALL OR A PORTION**
14 **OF ITS COSTS FOR COMPENSATING ITS DEALERS FOR WARRANTY PARTS AND**
15 **LABOR BY A REDUCTION IN THE AMOUNT DUE OR A SEPARATE CHARGE;**

16 **(V) TAKE OR THREATEN TO TAKE ADVERSE ACTION**
17 **AGAINST A DEALER THAT SEEKS COMPENSATION UNDER THIS SECTION, OR**
18 **DISCOURAGE A DEALER FROM SEEKING COMPENSATION UNDER THIS SECTION,**
19 **BY ANY MEANS INCLUDING:**

20 **1. CREATING AN OBSTACLE OR IMPLEMENTING A**
21 **PROCESS THAT IS INCONSISTENT WITH THE LICENSEE'S OBLIGATIONS TO THE**
22 **DEALER UNDER THIS SUBTITLE;**

23 **2. ACTING OR FAILING TO ACT, EXCEPT IN GOOD**
24 **FAITH;**

25 **3. HINDERING, DELAYING, OR REJECTING THE**
26 **PROPER AND TIMELY PAYMENT OF COMPENSATION DUE TO A DEALER UNDER**
27 **THIS SECTION EXCEPT IN A UNIFORM MANNER AMONG ALL THE LICENSEE'S**
28 **DEALERS IN THE STATE; OR**

29 **4. CONDUCTING OR THREATENING TO CONDUCT**
30 **ANY WARRANTY, RETAIL CUSTOMER REPAIR, OR OTHER SERVICE-RELATED**
31 **AUDIT; OR**

1 **(VI) IMPLEMENT OR CONTINUE A POLICY, PROCEDURE, OR**
2 **PROGRAM FOR ANY OF ITS DEALERS FOR COMPENSATION THAT IS**
3 **INCONSISTENT WITH THIS SUBTITLE.**

4 **[(3)] (9)** The provisions of **[paragraph (2)] PARAGRAPHS (2)**
5 **THROUGH (8)** of this subsection do not apply to travel trailers or parts of systems,
6 fixtures, appliances, furnishings, accessories, and features of motor homes that are not
7 manufactured by the manufacturer of the motor home as a part of the unit.

8 **[(4)] (10)** (i) A claim filed under this section by a dealer with a
9 manufacturer or distributor shall be:

10 1. In the manner and form prescribed by the
11 manufacturer or distributor; and

12 2. Approved or disapproved within 30 days of receipt.

13 (ii) A claim not approved or disapproved within 30 days of
14 receipt shall be deemed approved.

15 (iii) Payment of or credit issued on a claim filed under this
16 section shall be made within 30 days of approval.

17 **[(5)] (11)** A dealer's failure to comply with the specific requirements of
18 the manufacturer or distributor for processing a claim may not constitute grounds for
19 denial of the claim or reduction of the amount of compensation paid to the dealer if the
20 dealer presents reasonable documentation or other evidence to substantiate the claim.

21 **[(6)] (12)** (i) If a claim filed under this section is shown by the
22 manufacturer or distributor to be false or unsubstantiated, the manufacturer or
23 distributor may charge back the claim within 9 months from the date the claim was
24 paid or credit issued.

25 (ii) This paragraph does not limit the right of a manufacturer or
26 distributor to:

27 1. Conduct an audit of any claim filed under this section;
28 or

29 2. Charge back for any claim that is proven to be
30 fraudulent.

31 (iii) An audit under this paragraph shall be conducted according
32 to generally accepted accounting principles.

1 (d) As to any person licensed under this subtitle, instead of or in addition to
2 revocation, suspension, or nonrenewal of a license under this section, the
3 Administrator:

4 (1) May order the licensee to pay a fine not exceeding \$50,000 for each
5 violation of this subtitle; and

6 (2) May order the licensee to compensate any person for financial
7 injury or other damage suffered as a result of the violation.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2013.