

HOUSE BILL 698

R4

9lr1348

By: **Delegates Stein and Lisanti**

Introduced and read first time: February 7, 2019

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws – Manufacturers and Dealers – Compensation for Dealer Services**

3 FOR the purpose of prohibiting a vehicle manufacturer from recovering by certain means
4 all or a portion of its costs for compensating a vehicle dealer for the provision of
5 certain services by the dealer; providing for the construction of this Act; making
6 certain technical corrections; and generally relating to compensation by vehicle
7 manufacturers for services provided by vehicle dealers.

8 BY repealing and reenacting, without amendments,

9 Article – Transportation

10 Section 15–202

11 Annotated Code of Maryland

12 (2012 Replacement Volume and 2018 Supplement)

13 BY repealing and reenacting, with amendments,

14 Article – Transportation

15 Section 15–212(c)

16 Annotated Code of Maryland

17 (2012 Replacement Volume and 2018 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

19 That the Laws of Maryland read as follows:

20 **Article – Transportation**

21 15–202.

22 (a) A manufacturer may not transfer any new motor vehicle, new two–stage
23 vehicle, or truck component part to any dealer or distributor in this State unless the
24 manufacturer is licensed by the Administration under this subtitle.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) A distributor may not transfer any new motor vehicle, or new two-stage
2 vehicle to any dealer in this State unless the distributor is licensed by the Administration
3 under this subtitle.

4 (c) A person may not conduct the business of a factory branch in new motor
5 vehicles, or new two-stage vehicles unless the person is licensed by the Administration
6 under this subtitle.

7 15-212.

8 (c) (1) A licensee shall specify in writing to each of its motor vehicle dealers
9 licensed in the State:

10 (i) The dealer's obligation for vehicle preparation, delivery,
11 warranties, and recalls on its products;

12 (ii) The schedule of compensation to be paid to the dealers for parts,
13 including parts assemblies, and labor, including diagnostic labor and associated
14 administrative requirements, in connection with the service obligations established under
15 item (i) of this paragraph; and

16 (iii) A time allowance for the performance of labor described in this
17 paragraph that is reasonable and adequate.

18 (2) Reasonable compensation under this section may not be less than:

19 (i) With respect to labor for warranty or recall repairs, the dealer's
20 current labor rate for nonwarranty repairs of a like kind for retail customers; and

21 (ii) With respect to any part, the dealer's cost plus its current retail
22 mark-up percentage charged to retail customers for nonwarranty repairs of a like kind.

23 (3) (i) For purposes of paragraph (2) of this subsection, the dealer's
24 labor rate or parts mark-up percentage shall be established by a submission to the licensee
25 of whichever of the following produces fewer repair orders closed, as of the date of
26 submission, within the preceding 180 days:

27 1. 100 qualifying sequential customer-paid repair orders; or

28 2. 90 days of qualifying customer-paid repair orders.

29 (ii) With respect to parts, a schedule of compensation established
30 under this subsection shall be equal to the parts mark-up percentage as reflected in
31 qualifying repair orders, calculated by dividing the total charges for parts in the repair
32 orders by the total dealer cost for the parts minus one.

33 (iii) 1. A dealer may not make a submission under this subsection

1 more than once in 1 year.

2 2. For purposes of subparagraph 1 of this subparagraph,
3 a revision or supplement to a submission to correct or clarify the submission does not
4 constitute a new submission.

5 (4) Repair orders for labor or parts in connection with any of the following
6 may not constitute a qualifying repair order under paragraph (2) of this subsection:

7 (i) Accessories;

8 (ii) Repairs for manufacturer, distributor, or factory branch special
9 events, promotions, or service campaigns;

10 (iii) Repairs related to collision;

11 (iv) Vehicle emission or safety inspections required by law;

12 (v) Parts sold, or repairs performed, at wholesale or for insurance
13 carriers, or other third-party payors;

14 (vi) Routine maintenance not covered under any warranty, including
15 maintenance involving fluids, filters, and belts not provided in the course of repairs;

16 (vii) Nuts, bolts, fasteners, and similar items that do not have an
17 individual parts number;

18 (viii) Tires;

19 (ix) Vehicle reconditioning;

20 (x) Goodwill or policy repairs or replacements; or

21 (xi) Repairs on vehicles from a different line-make.

22 (5) If a licensee gives a dealer a part at no cost to use in performing a repair
23 under a recall, campaign service action, or warranty repair, the licensee shall compensate
24 the dealer for the part by paying the dealer the parts mark-up percentage established
25 under this subsection on the cost for the part listed on the licensee's price schedule.

26 (i) The schedule of compensation submitted under paragraph (3) of
27 this subsection shall be presumed to be accurate and reasonable.

28 (ii) The licensee shall approve or rebut the dealer's submission
29 within 30 days of receipt.

30 (iii) If the licensee approves a dealer's submission, the licensee shall

1 begin compensating the dealer under the schedule within 30 days after the date of approval.

2 (iv) In the absence of a timely rebuttal by the licensee, the schedule
3 of compensation submitted by the dealer shall go into effect on the 31st day following the
4 licensee's receipt of the schedule.

5 (v) Any rebuttal of the schedule of compensation by the licensee
6 shall:

7 1. Be delivered to the dealer within 30 days of the licensee's
8 receipt of the schedule; and

9 2. Consist of reasonable substantiating evidence that the
10 declared rate is materially inaccurate.

11 (vi) In the event of a timely rebuttal, on resolution of the matter by
12 agreement of the parties or by administrative, judicial, or other action, a licensee's payment
13 obligations under the resulting schedule of compensation shall begin on the 31st day
14 following a final order unless otherwise provided for by the fact finder.

15 (vii) 1. To the extent that any action commenced under subsection
16 (d) of this section or § 15-213 or § 15-214 of this subtitle involves the application of
17 paragraph (3) of this subsection, the issues shall be limited to whether the labor rate or
18 parts mark-up percentage stated in the dealer's submission was materially inaccurate.

19 2. A licensee shall have the burden of proving under this
20 subparagraph that the dealer's submission was materially inaccurate.

21 (viii) 1. A licensee may verify a dealer's effective rates once
22 annually.

23 2. If a licensee finds that a dealer's effective rates have
24 increased or decreased, the licensee may increase or decrease, respectively, the warranty
25 reimbursement rate prospectively.

26 (7) A licensee may not directly or indirectly:

27 (i) Calculate its own labor rate or parts mark-up percentage on a
28 warranty reimbursement rate submission by the licensee's dealer under this section, or
29 require a dealer to calculate a labor rate or parts mark-up percentage, by any method not
30 required under this section, including a method that is unduly burdensome or
31 time-consuming or that requires information that is unduly burdensome or
32 time-consuming to provide such as:

33 1. A part-by-part or transaction-by-transaction
34 calculation; or

1 2. Presentation of information as to, or calculations based on,
2 the dealer's or other dealers' warranty compensation;

3 (ii) Establish or implement a special part or component number for
4 parts used in warranty fulfillment, if the special part or component number results in
5 reduced compensation for the dealer unless the part is used for specific, limited repair
6 situations;

7 (iii) Require or coerce a dealer to change the prices for which it sells
8 parts or labor for retail customer repairs;

9 (iv) Take adverse action against a dealer because the dealer seeks
10 compensation under this section, by:

11 1. Implementing a process that is inconsistent with the
12 licensee's obligations to the dealer under this subtitle; or

13 2. Failing to act in good faith;

14 (v) Conduct any warranty or retail customer repair audit, or other
15 service-related audit, solely because the dealer makes a request for warranty
16 reimbursement at retail rates in the ordinary course of business; [or]

17 (vi) Establish, implement, enforce, or apply any policy, standard,
18 rule, program, or incentive regarding the compensation due under this section other than
19 in a uniform manner among the licensee's dealers in the State; OR

20 **(VII) RECOVER OR ATTEMPT TO RECOVER ALL OR ANY PORTION**
21 **OF ITS COSTS FOR COMPENSATING THE LICENSEE'S DEALERS FOR VEHICLE**
22 **PREPARATION AND DELIVERY OR WARRANTY OR RECALL REPAIRS UNDER THIS**
23 **SECTION BY:**

24 1. **ARBITRARILY REDUCING THE AMOUNT OF THIS**
25 **COMPENSATION THAT IS DUE TO THE DEALER; OR**

26 2. **IMPOSING A SEPARATE CHARGE, SURCHARGE, OR**
27 **OTHER BURDEN.**

28 (8) **(I)** The provisions of paragraphs (1) through (7) of this subsection do
29 not apply to travel trailers or parts of systems, fixtures, appliances, furnishings,
30 accessories, and features of motor homes that are not manufactured by the manufacturer
31 of the motor home as a part of the unit.

32 **(II) THE PROVISIONS OF PARAGRAPH (7)(VII) OF THIS**
33 **SUBSECTION MAY NOT BE CONSTRUED TO PROHIBIT A LICENSEE FROM INCREASING**

1 **THE PRICE OF A MOTOR VEHICLE IN THE NORMAL COURSE OF BUSINESS.**

2 (9) (i) A claim filed under this section by a dealer with a manufacturer
3 or distributor shall be:

4 1. In the manner and form reasonably prescribed by the
5 manufacturer or distributor; and

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

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

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

11 (10) A dealer's failure to comply with a specific requirement of the
12 manufacturer or distributor may not constitute grounds for denial of the claim or reduction
13 of the amount of compensation paid to the dealer if the dealer presents documentation or
14 other reasonable evidence to substantiate that the repair and the claim were done according
15 to manufacturer warranty guidelines.

16 (11) (i) If a claim filed under this section is shown by the manufacturer
17 or distributor to be false or unsubstantiated, the manufacturer or distributor may charge
18 back the claim within 9 months from the date the claim was paid or credit issued.

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

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

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

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

25 (12) A licensee may not prohibit a dealer from, or take any adverse action
26 against a dealer for, providing to a customer information given to the dealer by a
27 manufacturer related to any condition that may substantially affect motor vehicle safety,
28 durability, reliability, or performance.

29 (13) A dealer may provide the information specified in paragraph (12) of this
30 subsection only to a customer that has:

31 (i) Purchased the vehicle for which the information pertains from
32 the dealer; or

1 (ii) Had the vehicle for which the information pertains serviced by
2 the dealer.

3 (14) [(i)] A licensee may not deny a claim, reduce the amount of
4 compensation to a dealer, or process a charge back to a dealer for performing covered
5 warranty or required recall repairs on a vehicle:

6 [1.] (I) For resolving a condition covered by the licensee's
7 original warranty;

8 [2.] (II) For remedying a safety-related defect that is
9 subject to an outstanding recall under federal law;

10 [3.] (III) If the dealer properly performed the repairs and
11 submitted the claims; or

12 [4.] (IV) If the dealer discovered the need for repairs:

13 [A.] 1. During the course of a separate repair requested by
14 the customer; or

15 [B.] 2. Through notice of an outstanding recall under
16 federal law for a safety-related defect.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2019.