

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1139 (Delegate Frush)
Environmental Matters

**Vehicle Laws - Manufacturers, Distributors, and Factory Branches - Relationship
with Dealers**

This bill requires a motor vehicle manufacturer, distributor, or factory branch licensee to specify in writing to each of its dealers its obligation regarding warranty service, the schedule of compensation to be paid to dealers for warranty service parts and labor, and a time allowance for the performance of labor. The bill repeals the current dealer compensation requirement for specified services, and it instead specifies that reasonable compensation may not be less than the dealer's current labor rate for nonwarranty repairs of a like kind and the dealer's cost for parts plus a retail mark-up percentage. The bill requires a dealer's labor rate or parts mark-up to be established through a submission to the licensee. The schedule of compensation required to be submitted under the bill is presumed to be accurate and reasonable, and the bill establishes procedures for rebuttal of this presumption. The bill establishes numerous prohibitions pertaining to compensation of dealers and repeals the existing maximum \$50,000 administrative fine that may be assessed against licensees. Finally, the bill prohibits a licensee from requiring or coercing a dealer to purchase goods or services for the construction or modification of a facility from a vendor, except that a licensee may offer the option to obtain such goods or services from a vendor chosen by the dealer and approved by the licensee.

Fiscal Summary

State Effect: Transportation Trust Fund revenues may decrease, likely minimally, due to the repeal of administrative authority. General fund revenues may increase minimally due to the application of existing misdemeanor penalties to any future violations of the bill's restrictions and requirements. Expenditures are not affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The dealer's labor rate or parts mark-up must be established by a submission to the licensee of whichever of the following produces fewer closed repair orders within the preceding 180 days: (1) 100 qualifying sequential customer-paid repair orders; or (2) 90 days of qualifying customer-paid repair orders. A schedule of compensation must be equal to the arithmetic mean labor rate and parts mark-up reflected in qualifying repair orders. A dealer may not make a submission more than once every year.

The bill specifies that repair orders for labor or parts do not constitute a qualifying repair order if connected with any of several specified parts or repairs. If a licensee gives a dealer a part at no cost to use in performing a repair under a recall, a campaign service action, or a warranty repair, the bill requires the licensee to compensate the dealer for the part by paying the dealer the parts mark-up listed on the licensee's price schedule.

The bill requires the licensee to begin compensating the dealer within 30 days of approval of the schedule by the licensee, or in the absence of a timely rebuttal by the licensee, on the thirty-first day following the licensee's receipt of the schedule. Any rebuttal of the schedule of compensation by the licensee must be delivered to the dealer within 30 days of the licensee's receipt of the schedule and consist of specified evidence that the rate is materially inaccurate or unreasonable. In the event of a timely rebuttal, on resolution of the matter by agreement of the parties or by administrative, judicial, or other action, a licensee's payment obligations under the resulting schedule of compensation must begin within 30 days of resolution, unless otherwise provided for in the agreement or by the finder of fact.

Under a specified action taken against a licensee, the issue in the action must be limited to whether the labor rate or parts mark-up in the dealer's submission was materially inaccurate or the declared rate is unreasonable under a specified measure. A licensee has the burden of proving that the dealer's submission was materially inaccurate. A licensee may verify once a year that a dealer's effective rates have not decreased, and if they have, the licensee may reduce the warranty reimbursement rate prospectively.

The bill also establishes numerous prohibitions on licensed manufacturers, distributors, and factory branches. Under the bill a licensee may not (1) calculate its own labor rate or parts mark-up, or require a dealer to calculate a labor rate or parts mark-up, by any method not required by the bill or in current law; (2) establish or implement a special part or component number for parts used in warranty fulfillment if the special part or

component number results in reduced compensation for the dealer; (3) require, influence, or attempt to influence a dealer to change the prices for which it sells parts or labor for retail customer repairs; (4) take action against a dealer that seeks compensation by any means; (5) conduct specified audits solely because a dealer makes a warranty reimbursement request; or (6) establish or enforce a policy or program regarding specified compensation that is not uniform throughout the State.

The bill also repeals a provision regarding a dealer's failure to comply with a manufacturer's or distributor's claim processing requirements and instead specifies that a manufacturer may not base a claim denial on a clerical error or incidental failure as long as the dealer corrects the claim.

Current Law: The Motor Vehicle Administration (MVA) may refuse to grant a license, and may suspend, revoke, or refuse to renew a license, upon finding that a person has failed to reasonably compensate a dealer that does work under vehicle preparation and delivery obligations, or under any outstanding new vehicle or truck component parts warranty. A licensee generally may not compensate its dealers for work performed under any outstanding component parts warranty in an amount that is less than the average amount charged by the dealer to retail customers for similar nonwarranty work during the preceding 12 months, as long as the amount is reasonable.

The following factors, as they exist in the city or community in which a dealer is doing business, must be considered in determining whether a dealer has been reasonably compensated: (1) the compensation being paid by other licensees; (2) the prevailing wage rate being paid by dealers; and (3) the prevailing labor rate being charged by dealers.

Instead of, or in addition to revocation, suspension, or nonrenewal of a license, MVA may order a licensee to pay a maximum fine of \$50,000 for each violation, and it may order the licensee to compensate any person for financial injury or other damage suffered as a result of the violation.

Small Business Effect: It is unknown how many licensed manufacturers, distributors, or factory branches fail to comply with the bill's restrictions and requirements. However, a small business dealer realizes a meaningful benefit to the extent that compensation increases under the bill. To the extent that any manufacturer, distributor, or factory branch is a small business entity, the bill creates additional restrictions and requirements. According to the U.S. Census Bureau, there were 588 automobile dealers in Maryland, including 429 with 50 or fewer employees.

Additional Information

Prior Introductions: None.

Cross File: SB 886 (Senator Stone) – Judicial Proceedings.

Information Source(s): Maryland Department of Transportation, U.S. Census Bureau,
Department of Legislative Services

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