

SENATE BILL 687

R4

4lr0927
CF 4lr2633

By: **Senator Raskin**

Introduced and read first time: January 31, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws – Manufacturers, Distributors, Factory Branches, and Affiliates**
3 **– Relationship With Dealers**

4 FOR the purpose of prohibiting, except under certain circumstances, a manufacturer,
5 distributor, factory branch, or one of its affiliates from requiring, attempting to
6 require, coercing, or attempting to coerce a dealer to purchase certain goods or
7 services from certain vendors under certain circumstances; providing for the
8 construction of a certain prohibition under this Act; repealing a requirement
9 that certain factors be considered in determining whether a dealer has been
10 reasonably compensated; requiring a manufacturer, distributor, or factory
11 branch licensed in the State to specify in writing to each of its motor vehicle
12 dealers in the State certain dealer obligations and certain information relating
13 to the compensation of dealers for certain parts and labor; establishing certain
14 requirements for the reasonable compensation of dealers with respect to certain
15 parts and labor; requiring a dealer to make a certain submission to a licensee;
16 providing for the calculation of a dealer's labor rate and parts mark-up
17 percentage for certain purposes; establishing requirements for a certain
18 schedule of compensation; providing that certain repair orders for labor and
19 parts do not constitute qualifying repair orders under this Act; requiring a
20 licensee to compensate a dealer for certain parts given to a dealer at no cost;
21 establishing that a certain schedule of compensation will be presumed to be
22 accurate; requiring a licensee to begin compensation of a dealer under the
23 schedule within certain periods of time under certain circumstances; providing
24 for certain rebuttal of the presumption of accuracy of the schedule of
25 compensation; providing for the resolution of certain matters relating to the
26 schedule of compensation; prohibiting a licensee from making or requiring
27 certain calculations or establishing certain special parts or component numbers;
28 prohibiting a licensee from requiring, influencing, or attempting to influence a
29 dealer to change certain prices; prohibiting a licensee from taking certain
30 adverse action against a dealer under certain circumstances; and generally

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 relating to relationships between motor vehicle dealers and motor vehicle
2 manufacturers, distributors, factory branches, and their affiliates.

3 BY adding to
4 Article – Transportation
5 Section 15–207(k)
6 Annotated Code of Maryland
7 (2012 Replacement Volume and 2013 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – Transportation
10 Section 15–212
11 Annotated Code of Maryland
12 (2012 Replacement Volume and 2013 Supplement)

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

15 **Article – Transportation**

16 15–207.

17 **(K) (1) THIS SUBSECTION DOES NOT APPLY TO THE PURCHASE OR**
18 **PROCUREMENT OF:**

19 **(I) MOVEABLE DISPLAYS;**

20 **(II) BROCHURES OR OTHER PROMOTIONAL MATERIALS;**

21 **(III) SPECIAL TOOLS AND TRAINING AS REQUIRED BY THE**
22 **MANUFACTURER; OR**

23 **(IV) PARTS FOR REPAIRS MADE UNDER WARRANTY**
24 **OBLIGATIONS OF A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH.**

25 **(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,**
26 **A MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH, OR ONE OF ITS**
27 **AFFILIATES MAY NOT, DIRECTLY OR THROUGH AN AGENT, AN EMPLOYEE, AN**
28 **AFFILIATE, OR A REPRESENTATIVE, REQUIRE, ATTEMPT TO REQUIRE, COERCE,**
29 **OR ATTEMPT TO COERCE BY AGREEMENT, PROGRAM, INCENTIVE PROVISION, OR**
30 **OTHERWISE, A DEALER TO PURCHASE GOODS OR SERVICES FOR THE**
31 **MODIFICATION OF A FACILITY FROM A VENDOR THAT IS SELECTED, IDENTIFIED,**
32 **OR DESIGNATED BY THE MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH, OR**
33 **ONE OF ITS AFFILIATES.**

1 **(II) A MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH,**
2 **OR ONE OF ITS AFFILIATES MAY OFFER A DEALER THE OPTION TO OBTAIN**
3 **GOODS OR SERVICES UNDER THIS SUBSECTION OF SUBSTANTIALLY SIMILAR**
4 **QUALITY AND DESIGN FROM A VENDOR CHOSEN BY THE DEALER SUBJECT TO**
5 **THE ADVANCED APPROVAL OF THE MANUFACTURER, DISTRIBUTOR, FACTORY**
6 **BRANCH, OR ONE OF ITS AFFILIATES.**

7 **(3) A MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH, OR ONE**
8 **OF ITS AFFILIATES MAY NOT UNREASONABLY WITHHOLD THE APPROVAL**
9 **REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION.**

10 **(4) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED TO**
11 **ALLOW A DEALER OR VENDOR TO:**

12 **(I) DIRECTLY OR INDIRECTLY ELIMINATE OR IMPAIR IN**
13 **ANY WAY A MANUFACTURER'S INTELLECTUAL PROPERTY RIGHTS OR**
14 **REASONABLE BUSINESS REQUIREMENTS; OR**

15 **(II) ERECT OR MAINTAIN SIGNS THAT DO NOT CONFORM TO**
16 **THE INTELLECTUAL PROPERTY USAGE GUIDELINES OF THE MANUFACTURER,**
17 **DISTRIBUTOR, FACTORY BRANCH, OR ONE OF ITS AFFILIATES.**

18 15-212.

19 (a) In this section, "motor home" means a motor vehicle that:

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

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

25 (i) Cooking;

26 (ii) Refrigeration or ice box;

27 (iii) Self-contained toilet;

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

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

30 (vi) Separate 110-125 volt electrical power supply; or

31 (vii) An LP gas supply.

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

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

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

8 (3) Failed to reasonably compensate any franchised dealer who does
9 work under:

10 (i) The vehicle preparation and delivery obligations of the
11 dealer; or

12 (ii) Any outstanding express or implied new vehicle or truck
13 component parts warranty.

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

18 (i) The compensation being paid by other licensees to their
19 dealers;

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

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

22 (2) Notwithstanding paragraph (1) of this subsection and except as
23 provided in paragraph (3) of this subsection, a licensee may not compensate its dealers
24 for work performed under any warranty under subsection (b)(3)(ii) of this section in an
25 amount that is less than the average amount charged by the dealer to retail customers
26 for nonwarranty work of like kind during the preceding 12 months as long as this
27 amount is reasonable.] **A LICENSEE SHALL SPECIFY IN WRITING TO EACH OF ITS
28 MOTOR VEHICLE DEALERS LICENSED IN THE STATE:**

29 **(I) THE DEALER'S OBLIGATION FOR PREPARATION,
30 DELIVERY, WARRANTIES, RECALLS, GOODWILL, CERTIFICATION OF PRE-OWNED
31 STATUS, AND FACTORY-CAMPAIGN SERVICE ON ITS PRODUCTS;**

32 **(II) THE SCHEDULE OF COMPENSATION TO BE PAID TO THE
33 DEALERS FOR PARTS, INCLUDING PARTS ASSEMBLIES, AND LABOR, INCLUDING**

1 DIAGNOSTIC LABOR AND ASSOCIATED ADMINISTRATIVE REQUIREMENTS, IN
2 CONNECTION WITH THE SERVICE OBLIGATIONS ESTABLISHED UNDER ITEM (I)
3 OF THIS PARAGRAPH; AND

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

6 (2) REASONABLE COMPENSATION UNDER THIS SECTION MAY NOT
7 BE LESS THAN:

8 (I) WITH RESPECT TO LABOR, THE DEALER'S CURRENT
9 LABOR RATE CALCULATED UNDER ITEM (3)(II)1 OF THIS SUBSECTION FOR
10 NONWARRANTY REPAIRS OF A LIKE KIND FOR RETAIL CUSTOMERS; AND

11 (II) WITH RESPECT TO ANY PART, THE DEALER'S COST PLUS
12 ITS CURRENT RETAIL MARK-UP PERCENTAGE CHARGED TO RETAIL CUSTOMERS
13 FOR NONWARRANTY REPAIRS OF A LIKE KIND.

14 (3) (I) FOR PURPOSES OF PARAGRAPH (2) OF THIS
15 SUBSECTION, THE DEALER'S LABOR RATE OR PARTS MARK-UP PERCENTAGE
16 SHALL BE ESTABLISHED BY A SUBMISSION TO THE LICENSEE OF WHICHEVER OF
17 THE FOLLOWING PRODUCES FEWER REPAIR ORDERS CLOSED, AS OF THE DATE
18 OF SUBMISSION, WITHIN THE PRECEDING 180 DAYS:

19 1. 100 QUALIFYING SEQUENTIAL CUSTOMER-PAID
20 REPAIR ORDERS; OR

21 2. 90 DAYS OF QUALIFYING CUSTOMER-PAID REPAIR
22 ORDERS.

23 (II) A SCHEDULE OF COMPENSATION ESTABLISHED UNDER
24 THIS SUBSECTION SHALL BE EQUAL TO:

25 1. WITH RESPECT TO LABOR, THE SUM OF THE
26 TOTAL CUSTOMER LABOR CHARGES AS REFLECTED IN QUALIFYING REPAIR
27 ORDERS DIVIDED BY THE TOTAL NUMBER OF HOURS THAT WOULD BE ALLOWED
28 FOR THE REPAIRS IF THE REPAIRS WERE MADE UNDER THE MANUFACTURER'S
29 TIME ALLOWANCES USED TO COMPENSATE THE DEALER FOR WARRANTY WORK;
30 AND

31 2. WITH RESPECT TO PARTS, THE ARITHMETIC
32 MEAN OF THE PARTS MARK-UP PERCENTAGE AS REFLECTED IN QUALIFYING
33 REPAIR ORDERS.

1 **(III) 1. A DEALER MAY NOT MAKE A SUBMISSION UNDER**
2 **THIS SUBSECTION MORE THAN ONCE IN 1 YEAR.**

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

6 **(4) REPAIR ORDERS FOR LABOR OR PARTS IN CONNECTION WITH**
7 **ANY OF THE FOLLOWING MAY NOT CONSTITUTE A QUALIFYING REPAIR ORDER**
8 **UNDER PARAGRAPH (2) OF THIS SUBSECTION:**

9 **(I) ACCESSORIES;**

10 **(II) REPAIRS FOR MANUFACTURER, DISTRIBUTOR, OR**
11 **FACTORY BRANCH SPECIAL EVENTS, PROMOTIONS, OR SERVICE CAMPAIGNS;**

12 **(III) REPAIRS RELATED TO COLLISION;**

13 **(IV) VEHICLE EMISSION OR SAFETY INSPECTIONS REQUIRED**
14 **BY LAW;**

15 **(V) PARTS SOLD, OR REPAIRS PERFORMED, AT WHOLESALE**
16 **OR FOR INSURANCE CARRIERS, OR OTHER THIRD-PARTY PAYORS;**

17 **(VI) ROUTINE MAINTENANCE NOT COVERED UNDER ANY**
18 **WARRANTY, INCLUDING MAINTENANCE INVOLVING FLUIDS, FILTERS, AND**
19 **BELTS NOT PROVIDED IN THE COURSE OF REPAIRS;**

20 **(VII) NUTS, BOLTS, FASTENERS, AND SIMILAR ITEMS THAT**
21 **DO NOT HAVE AN INDIVIDUAL PARTS NUMBER;**

22 **(VIII) TIRES;**

23 **(IX) VEHICLE RECONDITIONING;**

24 **(X) GOODWILL OR POLICY REPAIRS OR REPLACEMENTS; OR**

25 **(XI) REPAIRS ON VEHICLE MAKES NOT SOLD AS NEW BY THE**
26 **DEALER.**

27 **(5) IF A LICENSEE GIVES A DEALER A PART AT NO COST TO USE IN**
28 **PERFORMING A REPAIR UNDER A RECALL, CAMPAIGN SERVICE ACTION, OR**
29 **WARRANTY REPAIR, THE LICENSEE SHALL COMPENSATE THE DEALER FOR THE**
30 **PART BY PAYING THE DEALER THE PARTS MARK-UP PERCENTAGE ESTABLISHED**

1 UNDER THIS SUBSECTION ON THE COST FOR THE PART LISTED ON THE
2 LICENSEE'S PRICE SCHEDULE.

3 (6) (I) THE SCHEDULE OF COMPENSATION SUBMITTED UNDER
4 PARAGRAPH (3) OF THIS SUBSECTION SHALL BE PRESUMED TO BE ACCURATE
5 AND REASONABLE.

6 (II) THE LICENSEE SHALL APPROVE OR REBUT THE
7 DEALER'S SUBMISSION WITHIN 30 DAYS OF RECEIPT.

8 (III) IF THE LICENSEE APPROVES A DEALER'S SUBMISSION,
9 THE LICENSEE SHALL BEGIN COMPENSATING THE DEALER UNDER THE
10 SCHEDULE ON THE DATE OF APPROVAL.

11 (IV) IN THE ABSENCE OF A TIMELY REBUTTAL BY THE
12 LICENSEE, THE SCHEDULE OF COMPENSATION SUBMITTED BY THE DEALER
13 SHALL GO INTO EFFECT ON THE 31ST DAY FOLLOWING THE LICENSEE'S
14 RECEIPT OF THE SCHEDULE.

15 (V) ANY REBUTTAL OF THE SCHEDULE OF COMPENSATION
16 BY THE LICENSEE SHALL:

17 1. BE DELIVERED TO THE DEALER WITHIN 30 DAYS
18 OF THE LICENSEE'S RECEIPT OF THE SCHEDULE; AND

19 2. CONSIST OF CLEAR AND CONVINCING
20 SUBSTANTIATING EVIDENCE THAT THE DECLARED RATE IS MATERIALLY
21 INACCURATE.

22 (VI) IN THE EVENT OF A TIMELY REBUTTAL, ON RESOLUTION
23 OF THE MATTER BY AGREEMENT OF THE PARTIES OR BY ADMINISTRATIVE,
24 JUDICIAL, OR OTHER ACTION, A LICENSEE'S PAYMENT OBLIGATIONS UNDER
25 THE RESULTING SCHEDULE OF COMPENSATION SHALL BEGIN ON THE 31ST DAY
26 FOLLOWING THE MANUFACTURER'S RECEIPT OF THE SCHEDULE.

27 (VII) 1. TO THE EXTENT THAT ANY ACTION COMMENCED
28 UNDER SUBSECTION (D) OF THIS SECTION OR § 15-213 OR § 15-214 OF THIS
29 SUBTITLE INVOLVES THE APPLICATION OF PARAGRAPH (3) OF THIS
30 SUBSECTION, THE ISSUES SHALL BE LIMITED TO WHETHER THE LABOR RATE OR
31 PARTS MARK-UP PERCENTAGE STATED IN THE DEALER'S SUBMISSION WAS
32 MATERIALLY INACCURATE.

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

4 (7) A LICENSEE MAY NOT:

5 (i) DIRECTLY OR INDIRECTLY CALCULATE ITS OWN LABOR
6 RATE OR PARTS MARK-UP PERCENTAGE ON A WARRANTY REIMBURSEMENT
7 RATE SUBMISSION BY THE LICENSEE'S DEALER UNDER THIS SECTION, OR
8 REQUIRE A DEALER TO CALCULATE A LABOR RATE OR PARTS MARK-UP
9 PERCENTAGE, BY ANY METHOD NOT REQUIRED UNDER THIS SECTION,
10 INCLUDING A METHOD THAT IS UNDULY BURDENSOME OR TIME-CONSUMING OR
11 THAT REQUIRES INFORMATION THAT IS UNDULY BURDENSOME OR
12 TIME-CONSUMING TO PROVIDE SUCH AS:

13 1. A PART-BY-PART OR TRANSACTION BY
14 TRANSACTION CALCULATION; OR

15 2. PRESENTATION OF INFORMATION AS TO, OR
16 CALCULATIONS BASED ON, THE DEALER'S OR OTHER DEALERS' WARRANTY
17 COMPENSATION OR FINANCIAL STATEMENTS;

18 (ii) ESTABLISH OR IMPLEMENT A SPECIAL PART OR
19 COMPONENT NUMBER FOR PARTS USED IN WARRANTY FULFILLMENT, IF THE
20 SPECIAL PART OR COMPONENT NUMBER RESULTS IN REDUCED COMPENSATION
21 FOR THE DEALER UNLESS THE PART IS USED FOR SPECIFIC, LIMITED REPAIR
22 SITUATIONS;

23 (iii) REQUIRE, INFLUENCE, OR ATTEMPT TO INFLUENCE A
24 DEALER TO CHANGE THE PRICES FOR WHICH IT SELLS PARTS OR LABOR FOR
25 RETAIL CUSTOMER REPAIRS;

26 (iv) TAKE ADVERSE ACTION AGAINST A DEALER THAT SEEKS
27 COMPENSATION UNDER THIS SECTION, BY ANY MEANS INCLUDING:

28 1. CREATING AN OBSTACLE OR IMPLEMENTING A
29 PROCESS THAT IS INCONSISTENT WITH THE LICENSEE'S OBLIGATIONS TO THE
30 DEALER UNDER THIS SUBTITLE; OR

31 2. ACTING OR FAILING TO ACT, EXCEPT IN GOOD
32 FAITH;

33 (v) CONDUCT ANY WARRANTY OR RETAIL CUSTOMER
34 REPAIR AUDIT, OR OTHER SERVICE-RELATED AUDIT, SOLELY BECAUSE THE

1 DEALER MAKES A REQUEST FOR WARRANTY REIMBURSEMENT AT RETAIL RATES
2 IN THE ORDINARY COURSE OF BUSINESS; OR

3 (VI) ESTABLISH, IMPLEMENT, ENFORCE, OR APPLY ANY
4 POLICY, STANDARD, RULE, PROGRAM, OR INCENTIVE REGARDING THE
5 COMPENSATION DUE UNDER THIS SECTION OTHER THAN IN A UNIFORM
6 MANNER AMONG THE LICENSEE'S DEALERS IN THE STATE.

7 [(3)] (8) The provisions of [paragraph (2)] PARAGRAPHS (1)
8 THROUGH (7) of this subsection do not apply to travel trailers or parts of systems,
9 fixtures, appliances, furnishings, accessories, and features of motor homes that are not
10 manufactured by the manufacturer of the motor home as a part of the unit.

11 [(4)] (9) (i) A claim filed under this section by a dealer with a
12 manufacturer or distributor shall be:

13 1. In the manner and form REASONABLY prescribed by
14 the manufacturer or distributor; and

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

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

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

20 [(5)] (10) A dealer's failure to comply with the specific requirements of
21 the manufacturer or distributor for processing a claim may not constitute grounds for
22 denial of the claim or reduction of the amount of compensation paid to the dealer if the
23 dealer presents reasonable documentation or other evidence to substantiate the claim.

24 [(6)] (11) (i) If a claim filed under this section is shown by the
25 manufacturer or distributor to be false or unsubstantiated, the manufacturer or
26 distributor may charge back the claim within 9 months from the date the claim was
27 paid or credit issued.

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

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

31 or

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

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

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

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

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

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2014.