

HOUSE BILL 698

R4

9lr1348

By: **Delegates Stein and Lisanti**

Introduced and read first time: February 7, 2019

Assigned to: Economic Matters

Committee Report: Favorable

House action: Adopted

Read second time: March 12, 2019

CHAPTER _____

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**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 15-202.

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

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

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

11 15-212.

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

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

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

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

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

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

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

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

- 31 1. 100 qualifying sequential customer-paid repair orders; or
- 32 2. 90 days of qualifying customer-paid repair orders.

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

5 (iii) 1. A dealer may not make a submission under this subsection
6 more than once in 1 year.

7 2. For purposes of subsubparagraph 1 of this subparagraph,
8 a revision or supplement to a submission to correct or clarify the submission does not
9 constitute a new submission.

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

12 (i) Accessories;

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

15 (iii) Repairs related to collision;

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

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

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

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

23 (viii) Tires;

24 (ix) Vehicle reconditioning;

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

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

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

31 (6) (i) The schedule of compensation submitted under paragraph (3) of

1 this subsection shall be presumed to be accurate and reasonable.

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

4 (iii) If the licensee approves a dealer's submission, the licensee shall
5 begin compensating the dealer under the schedule within 30 days after the date of approval.

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

9 (v) Any rebuttal of the schedule of compensation by the licensee
10 shall:

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

13 2. Consist of reasonable substantiating evidence that the
14 declared rate is materially inaccurate.

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

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

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

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

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

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

31 (i) Calculate its own labor rate or parts mark-up percentage on a
32 warranty reimbursement rate submission by the licensee's dealer under this section, or
33 require a dealer to calculate a labor rate or parts mark-up percentage, by any method not
34 required under this section, including a method that is unduly burdensome or

1 time-consuming or that requires information that is unduly burdensome or
2 time-consuming to provide such as:

3 1. A part-by-part or transaction-by-transaction
4 calculation; or

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

7 (ii) Establish or implement a special part or component number for
8 parts used in warranty fulfillment, if the special part or component number results in
9 reduced compensation for the dealer unless the part is used for specific, limited repair
10 situations;

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

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

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

17 2. Failing to act in good faith;

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

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

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

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

30 2. **IMPOSING A SEPARATE CHARGE, SURCHARGE, OR**
31 **OTHER BURDEN.**

32 (8) **(I)** The provisions of paragraphs (1) through (7) of this subsection do
33 not apply to travel trailers or parts of systems, fixtures, appliances, furnishings,

1 accessories, and features of motor homes that are not manufactured by the manufacturer
2 of the motor home as a part of the unit.

3 **(II) THE PROVISIONS OF PARAGRAPH (7)(VII) OF THIS**
4 **SUBSECTION MAY NOT BE CONSTRUED TO PROHIBIT A LICENSEE FROM INCREASING**
5 **THE PRICE OF A MOTOR VEHICLE IN THE NORMAL COURSE OF BUSINESS.**

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

8 1. In the manner and form reasonably prescribed by the
9 manufacturer or distributor; and

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

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

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

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

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

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

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

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

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

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

33 (13) A dealer may provide the information specified in paragraph (12) of this

1 subsection only to a customer that has:

2 (i) Purchased the vehicle for which the information pertains from
3 the dealer; or

4 (ii) Had the vehicle for which the information pertains serviced by
5 the dealer.

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

9 [1.] (I) For resolving a condition covered by the licensee’s
10 original warranty;

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

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

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

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

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.