

HOUSE BILL 290

R4

4r0882
CF 4r0927

By: **Delegate Frush**

Introduced and read first time: January 20, 2014

Assigned to: Environmental Matters

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 information relating to the compensation of dealers
13 for certain parts and labor; establishing certain requirements for the reasonable
14 compensation of dealers with respect to certain parts and labor; requiring a
15 dealer to make a certain submission to a licensee; providing for the calculation
16 of a dealer's labor rate and parts mark-up percentage for certain purposes;
17 establishing requirements for a certain schedule of compensation; providing
18 that certain repair orders for labor and parts do not constitute qualifying repair
19 orders under this Act; requiring a licensee to compensate a dealer for certain
20 parts given to a dealer at no cost; establishing that a certain schedule of
21 compensation will be presumed to be accurate; requiring a licensee to begin
22 compensation of a dealer under the schedule within certain periods of time
23 under certain circumstances; providing for certain rebuttal of the presumption
24 of accuracy of the schedule of compensation; providing for the resolution of
25 certain matters relating to the schedule of compensation; prohibiting a licensee
26 from making or requiring certain calculations or establishing certain special
27 parts or component numbers; prohibiting a licensee from requiring, influencing,
28 or attempting to influence a dealer to change certain prices; prohibiting a
29 licensee from taking certain adverse action against a dealer under certain
30 circumstances; repealing a certain provision relating to a licensee's
31 compensation of dealers for certain work; altering a certain provision relating to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 denial of a dealer's claim to prohibit a manufacturer from basing a denial on
 2 certain technical or administrative errors under certain circumstances;
 3 repealing the authority of the Motor Vehicle Administrator to require a certain
 4 licensee to pay a certain fine for certain violations relating to the compensation
 5 of dealers; and generally relating to relationships between motor vehicle dealers
 6 and motor vehicle manufacturers, distributors, factory branches, and their
 7 affiliates.

8 BY adding to
 9 Article – Transportation
 10 Section 15–207(k)
 11 Annotated Code of Maryland
 12 (2012 Replacement Volume and 2013 Supplement)

13 BY repealing and reenacting, with amendments,
 14 Article – Transportation
 15 Section 15–212
 16 Annotated Code of Maryland
 17 (2012 Replacement Volume and 2013 Supplement)

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

20 **Article – Transportation**

21 15–207.

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

24 **(I) MOVEABLE DISPLAYS;**

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

26 **(III) SPECIAL TOOLS AND TRAINING AS REQUIRED BY THE**
 27 **MANUFACTURER; OR**

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

30 **(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,**
 31 **A MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH, OR ONE OF ITS**
 32 **AFFILIATES MAY NOT, DIRECTLY OR THROUGH AN AGENT, AN EMPLOYEE, AN**
 33 **AFFILIATE, OR A REPRESENTATIVE, REQUIRE, ATTEMPT TO REQUIRE, COERCE,**
 34 **OR ATTEMPT TO COERCE BY AGREEMENT, PROGRAM, INCENTIVE PROVISION, OR**

1 OTHERWISE, A DEALER TO PURCHASE GOODS OR SERVICES FOR THE
2 MODIFICATION OF A FACILITY FROM A VENDOR THAT IS SELECTED, IDENTIFIED,
3 OR DESIGNATED BY THE MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH, OR
4 ONE OF ITS AFFILIATES.

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

11 (3) A MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH, OR ONE
12 OF ITS AFFILIATES MAY NOT UNREASONABLY WITHHOLD THE APPROVAL
13 REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

14 (4) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED TO
15 ALLOW A DEALER OR VENDOR TO:

16 (I) DIRECTLY OR INDIRECTLY ELIMINATE OR IMPAIR IN
17 ANY WAY A MANUFACTURER'S INTELLECTUAL PROPERTY RIGHTS OR
18 REASONABLE BUSINESS REQUIREMENTS; OR

19 (II) ERECT OR MAINTAIN SIGNS THAT DO NOT CONFORM TO
20 THE INTELLECTUAL PROPERTY USAGE GUIDELINES OF THE MANUFACTURER,
21 DISTRIBUTOR, FACTORY BRANCH, OR ONE OF ITS AFFILIATES.

22 15-212.

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

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

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

29 (i) Cooking;

30 (ii) Refrigeration or ice box;

31 (iii) Self-contained toilet;

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

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

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

3 (vii) An LP gas supply.

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

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

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

11 (3) Failed to reasonably compensate any franchised dealer who does
12 work under:

13 (i) The vehicle preparation and delivery obligations of the
14 dealer; or

15 (ii) Any outstanding express or implied new vehicle or truck
16 component parts warranty.

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

21 (i) The compensation being paid by other licensees to their
22 dealers;

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

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

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

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

3 **(II) THE SCHEDULE OF COMPENSATION TO BE PAID TO THE**
4 **DEALERS FOR PARTS, INCLUDING PARTS ASSEMBLIES, AND LABOR, INCLUDING**
5 **DIAGNOSTIC LABOR AND ASSOCIATED ADMINISTRATIVE REQUIREMENTS, IN**
6 **CONNECTION WITH WARRANTY SERVICE; AND**

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

9 **(2) REASONABLE COMPENSATION UNDER THIS SECTION MAY NOT**
10 **BE LESS THAN:**

11 **(I) WITH RESPECT TO LABOR, THE DEALER'S CURRENT**
12 **LABOR RATE CHARGED TO RETAIL CUSTOMERS FOR NONWARRANTY REPAIRS OF**
13 **A LIKE KIND; AND**

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

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

22 **1. 100 QUALIFYING SEQUENTIAL CUSTOMER-PAID**
23 **REPAIR ORDERS; OR**

24 **2. 90 DAYS OF QUALIFYING CUSTOMER-PAID REPAIR**
25 **ORDERS.**

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

28 **1. WITH RESPECT TO LABOR, THE ARITHMETIC**
29 **MEAN OF LABOR RATES AS REFLECTED IN QUALIFYING REPAIR ORDERS; AND**

30 **2. WITH RESPECT TO PARTS, THE ARITHMETIC**
31 **MEAN OF THE PARTS MARK-UP PERCENTAGE AS REFLECTED IN QUALIFYING**
32 **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; OR**

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

25 **(5) IF A LICENSEE GIVES A DEALER A PART AT NO COST TO USE IN**
26 **PERFORMING A REPAIR UNDER A RECALL, CAMPAIGN SERVICE ACTION, OR**
27 **WARRANTY REPAIR, THE LICENSEE SHALL COMPENSATE THE DEALER FOR THE**
28 **PART BY PAYING THE DEALER THE PARTS MARK-UP PERCENTAGE ESTABLISHED**
29 **UNDER THIS SUBSECTION ON THE COST FOR THE PART LISTED ON THE**
30 **LICENSEE'S PRICE SCHEDULE.**

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

4 **(II) THE LICENSEE SHALL APPROVE OR REBUT THE**
5 **DEALER'S SUBMISSION WITHIN 30 DAYS OF RECEIPT.**

6 **(III) IF THE LICENSEE APPROVES A DEALER'S SUBMISSION,**
7 **THE LICENSEE SHALL BEGIN COMPENSATING THE DEALER UNDER THE**
8 **SCHEDULE WITHIN 30 DAYS FOLLOWING APPROVAL.**

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

13 **(V) ANY REBUTTAL OF THE SCHEDULE OF COMPENSATION**
14 **BY THE LICENSEE SHALL:**

15 **1. BE DELIVERED TO THE DEALER WITHIN 30 DAYS**
16 **OF THE LICENSEE'S RECEIPT OF THE SCHEDULE; AND**

17 **2. CONSIST OF REASONABLY SUBSTANTIATING**
18 **EVIDENCE THAT THE DECLARED RATE IS MATERIALLY INACCURATE OR**
19 **UNREASONABLE IN LIGHT OF THE PRACTICES OF ALL OTHER SAME LINE-MAKE**
20 **DEALERS IN THE CITY OR COMMUNITY OR IN AN ECONOMICALLY SIMILAR AREA**
21 **OF THE STATE IF NO OTHER SAME LINE-MAKE DEALERS EXIST IN THE CITY OR**
22 **COMMUNITY.**

23 **(VI) IN THE EVENT OF A TIMELY REBUTTAL, ON RESOLUTION**
24 **OF THE MATTER BY AGREEMENT OF THE PARTIES OR BY ADMINISTRATIVE,**
25 **JUDICIAL, OR OTHER ACTION, A LICENSEE'S PAYMENT OBLIGATIONS UNDER**
26 **THE RESULTING SCHEDULE OF COMPENSATION SHALL BEGIN WITHIN 30 DAYS**
27 **OF THE MATTER'S RESOLUTION UNLESS OTHERWISE PROVIDED FOR IN THE**
28 **AGREEMENT OR BY THE FINDER OF FACT.**

29 **(VII) 1. TO THE EXTENT THAT ANY ACTION COMMENCED**
30 **UNDER SUBSECTION (D) OF THIS SECTION OR § 15-213 OR § 15-214 OF THIS**
31 **SUBTITLE INVOLVES THE APPLICATION OF PARAGRAPH (3) OF THIS**
32 **SUBSECTION, THE ISSUES SHALL BE LIMITED TO WHETHER:**

33 **A. THE LABOR RATE OR PARTS MARK-UP**
34 **PERCENTAGE STATED IN THE DEALER'S SUBMISSION WAS MATERIALLY**
35 **INACCURATE; AND**

1 **B. THE DECLARED RATE IS UNREASONABLE IN**
2 **LIGHT OF THE PRACTICES OF ALL OTHER SAME LINE-MAKE DEALERS IN THE**
3 **CITY OR COMMUNITY OR IN AN ECONOMICALLY SIMILAR AREA OF THE STATE IF**
4 **NO OTHER SAME LINE-MAKE DEALERS EXIST IN THE CITY OR COMMUNITY.**

5 **2. A LICENSEE SHALL HAVE THE BURDEN OF**
6 **PROVING UNDER THIS SUBPARAGRAPH THAT THE DEALER'S SUBMISSION WAS**
7 **MATERIALLY INACCURATE.**

8 **(VIII) 1. A LICENSEE MAY VERIFY ONCE A YEAR THAT A**
9 **DEALER'S EFFECTIVE RATES HAVE NOT DECREASED.**

10 **2. IF A LICENSEE FINDS THAT A DEALER'S**
11 **EFFECTIVE RATES HAVE DECREASED, THE LICENSEE MAY REDUCE THE**
12 **WARRANTY REIMBURSEMENT RATE PROSPECTIVELY.**

13 **(7) A LICENSEE MAY NOT:**

14 **(I) DIRECTLY OR INDIRECTLY CALCULATE ITS OWN LABOR**
15 **RATE OR PARTS MARK-UP PERCENTAGE ON A WARRANTY REIMBURSEMENT**
16 **RATE SUBMISSION BY THE LICENSEE'S DEALER UNDER THIS SECTION, OR**
17 **REQUIRE A DEALER TO CALCULATE A LABOR RATE OR PARTS MARK-UP**
18 **PERCENTAGE, BY ANY METHOD NOT REQUIRED UNDER THIS SECTION,**
19 **INCLUDING A METHOD THAT IS UNDULY BURDENSOME OR TIME-CONSUMING OR**
20 **THAT REQUIRES INFORMATION THAT IS UNDULY BURDENSOME OR**
21 **TIME-CONSUMING TO PROVIDE SUCH AS:**

22 **1. A PART-BY-PART OR TRANSACTION BY**
23 **TRANSACTION CALCULATION; OR**

24 **2. PRESENTATION OF INFORMATION AS TO, OR**
25 **CALCULATIONS BASED ON, THE DEALER'S OR OTHER DEALERS' WARRANTY**
26 **COMPENSATION;**

27 **(II) ESTABLISH OR IMPLEMENT A SPECIAL PART OR**
28 **COMPONENT NUMBER FOR PARTS USED IN WARRANTY FULFILLMENT, IF THE**
29 **SPECIAL PART OR COMPONENT NUMBER RESULTS IN REDUCED COMPENSATION**
30 **FOR THE DEALER UNLESS THE PART IS USED FOR SPECIFIC, LIMITED REPAIR**
31 **SITUATIONS;**

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

1 **(IV) TAKE ADVERSE ACTION AGAINST A DEALER THAT SEEKS**
2 **COMPENSATION UNDER THIS SECTION, BY ANY MEANS INCLUDING:**

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

6 **2. ACTING OR FAILING TO ACT, EXCEPT IN GOOD**
7 **FAITH;**

8 **(V) CONDUCT ANY WARRANTY OR RETAIL CUSTOMER**
9 **REPAIR AUDIT, OR OTHER SERVICE-RELATED AUDIT, SOLELY BECAUSE THE**
10 **DEALER MAKES A REQUEST FOR WARRANTY REIMBURSEMENT AT RETAIL RATES**
11 **IN THE ORDINARY COURSE OF BUSINESS; OR**

12 **(VI) ESTABLISH, IMPLEMENT, ENFORCE, OR APPLY ANY**
13 **POLICY, STANDARD, RULE, PROGRAM, OR INCENTIVE REGARDING THE**
14 **COMPENSATION DUE UNDER THIS SECTION OTHER THAN IN A UNIFORM**
15 **MANNER AMONG THE LICENSEE'S DEALERS IN THE STATE.**

16 **[(3)] (8) The provisions of [paragraph (2)] PARAGRAPHS (1)**
17 **THROUGH (7) of this subsection do not apply to travel trailers or parts of systems,**
18 **fixtures, appliances, furnishings, accessories, and features of motor homes that are not**
19 **manufactured by the manufacturer of the motor home as a part of the unit.**

20 **[(4)] (9) (i) A claim filed under this section by a dealer with a**
21 **manufacturer or distributor shall be:**

22 **1. In the manner and form prescribed by the**
23 **manufacturer or distributor; and**

24 **2. Approved or disapproved within 30 days of receipt.**

25 **(ii) A claim not approved or disapproved within 30 days of**
26 **receipt shall be deemed approved.**

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

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

1 **(10) A MANUFACTURER MAY NOT BASE A DENIAL OF A DEALER'S**
2 **CLAIM SOLELY ON THE DEALER'S CLERICAL ERROR, INCIDENTAL FAILURE TO**
3 **COMPLY WITH A SPECIFIC CLAIM PROCESSING REQUIREMENT, OR OTHER**
4 **TECHNICAL OR ADMINISTRATIVE ERROR, PROVIDED THAT THE DEALER**
5 **CORRECTS THE CLAIM IN ACCORDANCE WITH THE LICENSEE GUIDELINES.**

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

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

- 12 1. Conduct an audit of any claim filed under this section;
13 or
14 2. Charge back for any claim that is proven to be
15 fraudulent.

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

18 (d) As to any person licensed under this subtitle, instead of or in addition to
19 revocation, suspension, or nonrenewal of a license under this section, the
20 Administrator[:

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

23 (2) May] **MAY** order the licensee to compensate any person for
24 financial injury or other damage suffered as a result of the violation.

25 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
26 **October 1, 2014.**