

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 687

(Senator Raskin, *et al.*)

Judicial Proceedings

Environmental Matters

Vehicle Laws - Manufacturers, Distributors, Factory Branches, and Affiliates -
Relationship With Dealers

This bill requires a motor vehicle manufacturer, distributor, or factory branch licensee to specify in writing to each of its dealers (1) the dealer's obligation regarding vehicle preparation, delivery, warranties, and recalls on its products; (2) the schedule of compensation to be paid to dealers for specified parts and labor; and (3) 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 percentage 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 several prohibitions pertaining to compensation of dealers. Finally, the bill prohibits a licensee, or one of its affiliates, from requiring or coercing a dealer to purchase specified goods or services from a specified 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 and general fund revenues may increase minimally due to the application of existing administrative and 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: With respect to labor for warranty or recall repairs, the dealer's labor rate or parts mark-up percentage must be established by a submission to the licensee of whichever of the following produces fewer repair orders closed, as of the date of submission, within the preceding 180 days: (1) 100 qualifying sequential customer-paid repair orders or (2) 90 days of qualifying customer-paid repair orders. With respect to parts, a schedule of compensation must be equal to the parts mark-up percentage as reflected in qualifying repair orders, calculated by dividing the total charges for parts in the repair orders by the total dealer cost for the parts minus one. 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 percentage listed on the licensee's price schedule.

The bill requires the licensee to begin compensating the dealer within 30 days after the date 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. 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 on the thirty-first day following a final order, unless otherwise provided for by the finder of fact.

Under a specified action taken against a licensee, the issues in the action must be limited to whether the labor rate or parts mark-up percentage in the dealer's submission was materially inaccurate. A licensee has the burden of proving that the dealer's submission was materially inaccurate. A licensee may verify a dealer's effective rates once per year, and if it finds a dealer's rates have changed, the licensee may also change the rates.

The bill also establishes several prohibitions on licensed manufacturers, distributors, and factory branches. Under the bill, a licensee may not directly or indirectly (1) calculate its own labor rate or parts mark-up percentage, or require a dealer to calculate a labor rate or parts mark-up percentage, by any method not required by the bill; (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,

except under limited circumstances; (3) require or coerce 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 specified 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 specifies that the form and manner prescribed by a manufacturer or distributor for the filing of a claim by a dealer must be reasonable.

Finally, the bill specifies that a dealer's failure to comply with any specific requirement of a manufacturer or distributor (rather than just a requirement for processing a claim) may not constitute grounds for the denial of a claim or the reduction of compensation if reasonable evidence is presented that the repair and claim were done according to manufacturer warranty guidelines.

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 currently do not comply with the bill's restrictions and requirements. However, a small business dealer realizes a meaningful benefit to the extent that compensation increases or other protections are provided 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 MVA, there were

2,126 used car, new car, and wholesale dealers licensed in fiscal 2013, as well as 19 manufacturers or distributors, and 2 factory branches.

Additional Information

Prior Introductions: SB 886 of 2013, a similar bill, passed second reading with amendments in the Senate, but no further action was taken. Its cross file, HB 1139, passed the House with amendments and was referred to the Senate Rules Committee, but no further action was taken.

Cross File: HB 1275 (Delegate Frush, *et al.*) - Environmental Matters.

Information Source(s): Maryland Department of Transportation, Department of Legislative Services

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