

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 732** Session of
2013

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MARCH 26, 2013

AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF
REPRESENTATIVES, AS AMENDED, OCTOBER 16, 2013

AN ACT

1 Amending the act of December 22, 1983 (P.L.306, No.84), entitled
2 "An act providing for the State Board of Vehicle
3 Manufacturers, Dealers and Salespersons; and providing
4 penalties," further providing for reimbursement for parts and
5 service and for unlawful acts by manufacturers or
6 distributors.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Section 9(a), (b) and (e)(2) of the act of
10 December 22, 1983 (P.L.306, No.84), known as the Board of
11 Vehicles Act, amended October 18, 2000 (P.L.577, No.75), are
12 amended and the section is amended by adding subsections to
13 read:

14 Section 9. Reimbursement for all parts and service required by
15 the manufacturer or distributor; reimbursement
16 audits.

17 (a) Manufacturers or distributors to notify dealers of their
18 obligations.--

1 (1) Each new vehicle manufacturer or distributor shall
2 specify in writing to each of its new vehicle dealers
3 licensed in this Commonwealth the dealer's obligations for
4 predelivery preparation and warranty service on its products,
5 shall compensate the new vehicle dealer for service required
6 of the dealer by the manufacturer or distributor and shall
7 provide the dealer with a schedule of compensation to be paid
8 the dealer for parts, work and service, and the time
9 allowance for the performance of such work and service.

10 (2) Compensation for parts, including major assemblies
11 used in warranty service, shall be at the dealer's retail
12 rate. The following shall apply:

13 (i) The dealer's retail rate for parts shall be
14 established by the dealer's submitting to the
15 manufacturer or distributor a declaration of the average
16 percentage markup which shall be the lesser of the
17 following orders which cover repairs made no more than
18 180 days before the submission:

19 (A) One hundred sequential nonwarranty customer-
20 paid service repair orders which contain parts that
21 are used in warranty-like service or repair.

22 (B) Ninety consecutive days of nonwarranty
23 customer-paid service repair orders which contain
24 parts that are used in warranty-like service or
25 repair.

26 (ii) The declaration under subparagraph (i) shall be
27 presumed to be reasonable, except that a manufacturer or
28 distributor may, not later than 60 days after submission,
29 rebut the presumption by substantiating that the
30 declaration is unreasonable OR MATERIALLY INACCURATE. <--

1 (iii) The retail rate shall go into effect 60 days
2 following the declaration under subparagraph (i), unless
3 the franchisor audits the submitted repair orders and a
4 rebuttal under subparagraph (ii) occurs.

5 (iv) If the declared retail rate is rebutted, the
6 manufacturer or distributor shall propose an adjustment
7 of the markup based on the rebuttal no later than 60 days
8 after submission.

9 (v) A manufacturer shall provide written support to
10 the dealer for the rebuttal retail rate that is proposed.
11 If the dealer does not agree with the proposed markup,
12 the dealer may file a protest after receipt of the
13 proposal by the manufacturer or distributor. If a protest
14 is filed, the board shall inform the manufacturer or
15 distributor that a protest has been filed and that a
16 hearing will be held on the protest. In a hearing held
17 under this subparagraph, the manufacturer or distributor
18 shall have the burden of proving that:

19 (A) the retail rate declared by the dealer was
20 UNREASONABLE OR materially inaccurate; and <--

21 (B) the manufacturer's or distributor's proposed
22 adjustment of the markup is reasonable.

23 (3) Compensation for labor used in warranty service
24 shall be at the dealer's retail rate. The following shall
25 apply:

26 (i) The dealer's hourly retail rate for labor shall
27 be established by submitting the following to the
28 manufacturer or distributor:

29 (A) A declaration of the average labor rate
30 calculated by dividing the amount of the dealer's

1 total labor sales by the number of total labor hours
2 that generated the sales.

3 (B) The lesser of the following orders which
4 cover repairs made no more than 180 days before the
5 submission:

6 (I) One hundred sequential nonwarranty
7 customer-paid service repair orders.

8 (II) Ninety consecutive days of nonwarranty
9 customer-paid service repair orders.

10 (ii) The declaration under subparagraph (i) (A) shall
11 be presumed to be reasonable, except that a manufacturer
12 or distributor may, no later than 60 days after
13 submission, rebut the presumption by substantiating that
14 the rate is unreasonable OR MATERIALLY INACCURATE. <--

15 (iii) The average labor rate shall go into effect 60
16 days following the declaration under subparagraph (i) (A),
17 unless the franchisor audits the submitted repair orders
18 and a rebuttal under subparagraph (ii) occurs.

19 (iv) If the declared rate is rebutted, the
20 manufacturer or distributor shall propose an adjustment
21 of the labor rate based on the rebuttal not later than 60
22 days after submission.

23 (v) A manufacturer shall provide written support to
24 the dealer for the rebuttal rate that is proposed. If the
25 dealer does not agree with the proposed labor rate, the
26 dealer may file a protest after receipt of the proposal
27 by the manufacturer or distributor. If a protest is
28 filed, the board shall inform the manufacturer or
29 distributor that a protest has been filed and that a
30 hearing will be held on the protest. In a hearing held

1 under this subparagraph, the manufacturer or distributor
2 shall have the burden of proving that:

3 (A) the retail rate declared by the dealer was
4 UNREASONABLE OR materially inaccurate; and <--

5 (B) the manufacturer's or distributor's proposed
6 adjustment of the retail rate is reasonable.

7 (4) This subsection shall not apply to manufacturers
8 or distributors of manufactured housing or recreational
9 vehicles.

10 [(b) Schedule of compensation to include reasonable
11 compensation.--In no event shall the schedule of compensation
12 fail to include reasonable compensation for diagnostic work,
13 repair service, original equipment manufacturer parts and labor.
14 Time allowances for the diagnosis and performance of warranty
15 work and service shall be reasonable and adequate for the work
16 to be performed. In the determination of what constitutes
17 reasonable compensation, the principal factors to be given
18 consideration shall be the prevailing wage rates being paid by
19 the dealers in the community in which the dealer is doing
20 business. The hourly labor rate paid to a dealer for warranty
21 services shall not be less than the rate charged by the dealer
22 for like service to nonwarranty customers for nonwarranty
23 service and repairs at a reasonable rate. This subsection shall
24 not apply to manufacturers or distributors of manufactured
25 housing or recreational vehicles.]

26 (b.1) Exceptions.--When calculating the retail rate
27 customarily charged by the dealer for parts and labor under this
28 section, the following work shall not be included:

29 (1) Repairs for manufacturer or distributor special
30 events, specials or promotional discounts for retail customer

1 repairs.

2 (2) Parts sold at wholesale.

3 (3) Routine maintenance not covered under a retail
4 customer warranty, such as fluids, filters and belts not
5 provided in the course of repairs.

6 (4) Nuts, bolts, fasteners and similar items that do not
7 have an individual part number.

8 (5) Tires.

9 (6) Vehicle reconditioning.

10 (b.2) Compensation.--If a manufacturer or distributor
11 furnishes a part or component to a dealer, at no cost, to use in
12 performing repairs under a recall, campaign service or warranty
13 repair, the manufacturer or distributor shall compensate the
14 dealer for the part or component in the same manner as warranty
15 parts compensation under this section by compensating the dealer
16 the average markup on the cost for the part or component as
17 listed in the manufacturer's or distributor's price schedule,
18 minus the cost for the part or component.

19 (b.3) Prohibitions and audit.--

20 (1) A manufacturer or distributor may not require a
21 dealer to establish the retail rate customarily charged by
22 the dealer for parts and labor by:

23 (i) An unduly burdensome or time consuming method.

24 (ii) Requiring information that is unduly burdensome
25 or time consuming to provide, including part-by-part or
26 transaction-by-transaction calculations.

27 (2) A dealer may not declare an average percentage
28 markup or average labor rate more than once in one calendar
29 year.

30 (3) A manufacturer or distributor may perform annual

1 audits to verify that a dealer's effective rates have not
2 decreased. If a dealer's effective rates have decreased, a
3 manufacturer or distributor may reduce the warranty
4 reimbursement rate prospectively.

5 (b.4) Recovery.--

6 (1) (i) A manufacturer or distributor may not recover
7 its costs from a dealer within this Commonwealth that
8 does not apply to the manufacturer or distributor for
9 retail rate reimbursement for parts and labor, including
10 an increase in the wholesale price of a vehicle or
11 surcharge imposed on a dealer intended to recover the
12 cost of reimbursing a dealer for parts and labor under
13 this section.

14 (ii) A manufacturer or distributor may increase the
15 price for a vehicle or part in the normal course of
16 business.

17 (2) A dealer may elect to revert to the nonretail rate
18 reimbursement for parts and labor once in a calendar year to
19 avoid a manufacturer or distributor surcharge.

20 * * *

21 (e) Warranty reimbursement and incentive or reimbursement
22 program approval and audits.--

23 * * *

24 (2) The manufacturer or distributor shall be permitted
25 to audit claims within a [two-year] nine-month period from
26 the date the claim was paid or credit issued by the
27 manufacturer or distributor and to charge back any false or
28 unsubstantiated claims. If there is evidence of fraud, this
29 subsection does not limit the right of the manufacturer or
30 distributor to audit for longer periods and charge back for

1 any fraudulent claim, subject to the limitations period under
2 42 Pa.C.S. (relating to judiciary and judicial procedure).

3 * * *

4 Section 2. Section 12(a) of the act is amended by adding a
5 paragraph to read:

6 Section 12. Unlawful acts by manufacturers or distributors.

7 (a) Unlawful coercive acts.--It shall be a violation for any
8 manufacturer, factory branch, distributor, field representative,
9 officer, agent or any representative whatsoever of such
10 manufacturer, factory branch or distributor licensed under this
11 act to require, attempt to require, coerce or attempt to coerce
12 any new vehicle dealer in this Commonwealth to:

13 * * *

14 (8.2) (i) Purchase a good or service from a vendor
15 selected, identified or designated by a manufacturer,
16 factory branch, distributor, distributor branch or an
17 affiliate of a manufacturer, factory branch, distributor,
18 distributor branch by agreement, program, incentive
19 provision or other method if expanding, constructing or
20 significantly modifying a facility without allowing the
21 dealer the option to obtain a good or service of
22 substantially similar quality from a vendor chosen by the
23 dealer AND APPROVED BY THE MANUFACTURER, WHICH APPROVAL <--
24 MAY NOT BE UNREASONABLY WITHHELD.

25 (ii) Nothing under this paragraph shall be construed
26 to:

27 (A) Allow a dealer or vendor to eliminate or
28 impair a manufacturer's intellectual property rights,
29 including a manufacturer's intellectual property
30 rights in a trademark.

1 (B) Permit a dealer to erect or maintain signs
2 that do not conform to the intellectual property
3 usage guidelines of the manufacturer.

4 * * *

5 Section 3. This act shall take effect in 60 days.