

1 SB52  
2 215615-3  
3 By Senator Chesteen  
4 RFD: Governmental Affairs  
5 First Read: 11-JAN-22

SYNOPSIS:           This bill would provide for the determination of reasonable compensation by motor vehicle manufacturers or similar entities for pre-delivery and warranty service by motor vehicle dealers. This bill would also authorize a motor vehicle dealer to file a civil action if the dealer and the manufacturer or similar entity cannot agree on the reasonable compensation for the warranty service.

A BILL  
TO BE ENTITLED  
AN ACT

Relating to motor vehicle dealers; to amend Section 8-20-7 of the Code of Alabama 1975, relating to warranty obligations to dealers, to further specify the determination of reasonable compensation by motor vehicle manufacturers or similar entities for pre-delivery and warranty service by motor vehicle dealers; and to authorize a motor vehicle dealer

1 to file a civil action if the dealer and the manufacturer or  
2 similar entity cannot agree on the reasonable compensation for  
3 the warranty service.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Section 8-20-7 of the Code of Alabama  
6 1975, is amended to read as follows:

7 "§8-20-7.

8 "(a) For purposes of this section, the following  
9 words have the following meanings:

10 "(1) PRE-DELIVERY SERVICE. All work and services,  
11 except warranty work, performed on a new motor vehicles by a  
12 motor vehicle dealer at the direction of the warrantor prior  
13 to the delivery of the vehicle to the first retail consumer.

14 "(2) REPAIR ORDER. An invoice, paid by a retail  
15 customer, and closed as of the time of submission,  
16 encompassing one or more repairs to a motor vehicle, and  
17 reflecting, in the case of a parts markup submission, the cost  
18 of each part and the sale price thereof, and in the case of a  
19 labor rate submission, the total charges for labor and the  
20 total number of hours that produced the charges, which invoice  
21 may be submitted in electronic form.

22 "(3) QUALIFIED REPAIR. A repair to a motor vehicle  
23 paid by a retail customer, which would have come within the  
24 warrantor's new motor vehicle warranty, but for the motor  
25 vehicle having exceeded the chronological or mileage limit of  
26 such warranty, and which does not constitute any of the work  
27 encompassed by subsection (f) (5).

1           "(4) QUALIFIED REPAIR ORDER. A repair order which  
2 encompasses, in whole or in part, a qualified repair or  
3 repairs.

4           "(5) WARRANTOR. A manufacturer, distributor, or  
5 wholesaler, factory branch, factory representative,  
6 distributor branch, or distributor representative.

7           "(6) WARRANTY WORK. All labor, including that of a  
8 diagnostic character, performed, and all parts, including  
9 original or replacement parts, and components, including  
10 engine, transmission, and other parts assemblies, installed by  
11 motor vehicle dealers on motor vehicles which are reasonably  
12 incurred by motor vehicle dealers, other than the incidental  
13 expenses incurred in performing labor and installing parts on  
14 motor vehicles, in fulfilling a warrantor's obligations under  
15 a new motor vehicle warranty, a recall, or a certified  
16 pre-owned warranty, to consumers, including, but not limited  
17 to, the expense of shipping or returning defective parts to  
18 the warrantor, when required by the warrantor.

19           ~~"(a) (b) Every manufacturer, distributor, or~~  
20 ~~wholesaler, factory branch, factory representative,~~  
21 ~~distributor branch, or distributor representative~~ warrantor  
22 shall specify in writing to each of its motor vehicle dealers  
23 the dealer's obligation for pre-delivery service and warranty  
24 service on its products, shall compensate the motor vehicle  
25 dealer for ~~warranty~~ the service required of the dealer by the  
26 ~~manufacturer, distributor, or wholesaler, factory branch,~~  
27 ~~factory representative, distributor branch, or distributor~~

1 ~~representative~~ warrantor and shall provide the dealer the  
2 schedule of compensation to be paid such dealer for parts,  
3 work, and service in connection with ~~warranty~~ the services,  
4 and the time allowance for the performance of such work and  
5 service.

6 ~~"(b)~~ (c) In no event shall such schedule of  
7 compensation fail to include reasonable compensation for  
8 diagnostic work, service, labor, and parts. Time allowances  
9 for the diagnosis and performance of warranty work and service  
10 shall be reasonable and adequate for the work to be performed.  
11 ~~In the determination of what constitutes reasonable~~  
12 ~~compensation under this section, the principal factors to be~~  
13 ~~given consideration shall be the prevailing wage rates being~~  
14 ~~paid by the dealer, in the community in which the dealer is~~  
15 ~~doing business, and in~~ In no event shall such compensation of  
16 a dealer for warranty services including labor and parts, be  
17 less than the rates or prices charged by such dealer for like  
18 service to retail customers for nonwarranty service, repairs,  
19 and parts, provided that such prices and rates are not  
20 unreasonable. This subsection does not apply to compensation  
21 for parts, systems, fixtures, appliances, furnishings,  
22 accessories, and features of a motor home that are designed,  
23 used, and maintained primarily for non-vehicular residential  
24 purposes, or parts related to motorcycle repairs.

25 ~~"(c)~~ (d) It is a violation of this section for any  
26 ~~manufacturer, distributor, or wholesaler, factory branch,~~  
27 ~~factory representative, distributor branch, or distributor~~

1 ~~representative~~ warrantor to fail to perform any warranty  
2 obligations under the motor vehicle manufacturer's warranty,  
3 or to fail to include in written notices of factory recalls to  
4 dealers the expected date by which necessary parts and  
5 equipment will be available to dealers for the correction of  
6 such defects, or to fail to compensate any of the motor  
7 vehicle dealers for repairs effected by such recall.

8           "~~(d)~~ (e) All claims made by new motor vehicle  
9 dealers pursuant to this section for such labor and parts  
10 shall be paid within 30 days following their approval;  
11 provided, however, that the ~~manufacturer~~ warrantor retains the  
12 right to audit such claims and to charge back the dealer for  
13 any fraudulent claims for a period not to exceed 12 months  
14 from the date the claim was paid. All such claims shall be  
15 either approved or disapproved within 30 days after their  
16 receipt on forms and in the manner specified by the  
17 ~~manufacturer~~ warrantor, and any claim not specifically  
18 disapproved in writing within 30 days after the receipt shall  
19 be construed to be approved and payment must follow within 30  
20 days. A ~~manufacturer~~ warrantor shall not disapprove claims for  
21 which the dealer has received preauthorization from the  
22 ~~manufacturer~~ warrantor or its representative nor shall the  
23 ~~manufacturer~~ warrantor unreasonably disapprove a claim solely  
24 based on the dealer's incidental failure to comply with a  
25 specific claim processing requirement that results only in a  
26 clerical error or administrative error; rather a claim denial  
27 must be based upon a material defect and deviation from the

1 reasonable written claim submission requirements of the  
2 manufacturer. In the event of neglect, oversight, or mistake  
3 by the dealer, a dealer may submit an amended claim, or may  
4 submit a claim not submitted within the time required by the  
5 ~~manufacturer~~ warrantor, for labor and parts up to 120 days  
6 from the date on which such claim was first submitted or could  
7 have been submitted.

8 "(f) (1) For the purposes of this section, reasonable  
9 compensation shall be determined as provided in this  
10 subsection.

11 "(2) The markup customarily charged by the dealer  
12 for parts or its labor rate may be established at the election  
13 of the dealer by the dealer submitting to the warrantor,  
14 either by electronic transmission or tangible delivery, all  
15 consecutive repair orders that include 100 sequential repair  
16 orders reflecting qualified repairs, or all repair orders  
17 closed during any period of 90 consecutive days, whichever  
18 produces the fewer number of repair orders, covering repairs  
19 made no more than 180 days before the submission and declaring  
20 the parts markup or labor rate.

21 "(3) The dealer shall calculate its labor rate by  
22 determining the total charges for labor from the qualified  
23 repairs submitted and dividing that amount by the total number  
24 of hours that produced the charges. The dealer shall calculate  
25 its parts markup by determining the total charges for parts  
26 from the qualified repairs submitted, dividing that amount by  
27 its total cost of the purchase of the parts, subtracting one

1 from that amount, and multiplying by 100 to produce a  
2 percentage.

3 "(4) A motor vehicle dealer seeking to establish or  
4 modify its warranty reimbursement labor rate, parts markup, or  
5 both, not more frequently than once per 12-month period, shall  
6 submit to the warrantor one of the following:

7 "a. A single set of repair orders for purposes of  
8 calculating both its labor rate and parts markup.

9 "b. A set of repair orders for purposes of  
10 calculating only its labor rate or for purposes of calculating  
11 only its parts markup.

12 "(5) In calculating the rate customarily charged by  
13 the dealer for parts and labor for purposes of this  
14 subsection, the following shall not be included in the  
15 calculation of the rate:

16 "a. Repairs which are the subject of manufacturer or  
17 distributor discounts, such as special events, specials,  
18 promotions, coupons, or service campaigns.

19 "b. Repairs of motor vehicles owned by the dealer.

20 "c. Routine maintenance, including, but not limited  
21 to, replacements of fluids, filters, batteries, bulbs, belts,  
22 nuts, bolts, or fasteners, unless provided in the course of,  
23 and related to, an otherwise qualified repair.

24 "d. Installations of accessories.

25 "e. Replacements of or work on tires, wheels,  
26 including alignments, wheel or tire rotations, or replacements  
27 of brake drums, rotors, shoes, or pads.



1           "f. Vehicle reconditioning.

2           "g. Safety or emission inspections required by law.

3           "h. Repairs for which volume discounts have been  
4 negotiated with government agencies.

5           "i. Body shop repairs, including repairs covered by  
6 insurance, for conditions caused by collision, road hazard,  
7 the force of the elements, vandalism, theft, or the negligence  
8 or deliberate act of the owner, operator, or a third party.

9           "j. Parts that do not have individual part numbers.

10          "k. Warrantor approved and reimbursed goodwill  
11 repairs or reimbursements.

12          "l. Window replacement, window etching, window tint,  
13 protective film, or other masking products.

14          "(6) a. The submitted parts markup or labor rate  
15 shall go into effect 45 days after the warrantor's receipt of  
16 its submission, unless, within that period, the warrantor  
17 reasonably substantiates that the submission is materially  
18 incomplete, materially inaccurate, or is materially  
19 unreasonable and provides a full explanation of any reasons  
20 that the submitted markup or rate is materially incomplete,  
21 materially inaccurate, or materially unreasonable, evidence  
22 validating each reason, a copy of all calculations used by it  
23 demonstrating any material inaccuracy, and a proposed adjusted  
24 markup or rate provided that the dealer's submission is  
25 materially accurate based upon the qualified repair orders  
26 submitted by the dealer. In that event, the warrantor may  
27 submit only one rebuttal to the dealer, and may not thereafter

1 add to, expand, supplement, or otherwise modify any element  
2 thereof, including, but not limited to, its grounds for  
3 contesting the parts markup or labor rate, unless the  
4 warrantor did not possess the information at the time of its  
5 rebuttal, or if the information is used for the purpose of  
6 rebutting the dealer's response to the warrantor's rebuttal.

7 "b. If a warrantor determines from any set of repair  
8 orders submitted under this subsection that the labor rate or  
9 parts markup calculated under this subsection is substantially  
10 higher or lower than the rate currently on record with the  
11 warrantor for labor or parts, or both, the warrantor, in  
12 accordance with this subsection, may request additional repair  
13 orders for a period of 60 days prior to or 60 days subsequent  
14 to the time period for which the repair orders were submitted  
15 for purposes of an alteration, and shall have 45 days from  
16 receiving the additional repair orders to rebut the  
17 presumption that the dealer's proposed markup and labor rates  
18 are reasonable.

19 "(7) If the dealer and the warrantor do not agree on  
20 the parts markup or labor rate, then the dealer may file an  
21 action in a court having jurisdiction in this state within 120  
22 days of receiving the warrantor's written rejection of the  
23 dealer's proposed parts markup or labor rate. In that action,  
24 the warrantor shall have the burden of proving by a  
25 preponderance of the evidence that the dealer's submitted  
26 parts markup or labor rate, or both, was materially  
27 incomplete, materially inaccurate, or was materially

1 unreasonable. Upon a court decision in favor of the dealer  
2 finding that the labor or parts rate shall be more than  
3 proposed by the warrantor, any increase in the dealer's parts  
4 markup or labor rate arising from the proceeding shall be  
5 effective retroactively to the date 45 days following the  
6 warrantor's receipt of the original submission to the dealer  
7 or to the warrantor.

8 "(8) In the determination of what constitutes  
9 materially unreasonable compensation under this section,  
10 relevant factors include, but are not limited to, the  
11 prevailing wage rates paid by similarly situated dealers in  
12 the state."

13 Section 2. This act shall become effective on the  
14 first day of the third month following its passage and  
15 approval by the Governor, or its otherwise becoming law.