

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 698

(Delegates Stein and Lisanti)

Economic Matters

Vehicle Laws - Manufacturers and Dealers - Compensation for Dealer Services

This bill prohibits a manufacturer, distributor, or factory branch (collectively known as licensees) from recovering (or attempting to recover) all or any portion of its costs for compensating the licensee's dealers for vehicle preparation and delivery or warranty or recall repairs by (1) arbitrarily reducing the amount of compensation due to the dealer or (2) imposing a separate charge, surcharge, or other burden. However, the bill may not be construed to prohibit a licensee from increasing the price of a motor vehicle in the normal course of business.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Licensing Requirements and Refusal to Grant, Suspend, Revoke, or Renew a License

A motor vehicle manufacturer, distributor, or factory branch must be licensed by the Motor Vehicle Administration (MVA) in order to, among other things, transfer new vehicles and conduct business in new vehicles in Maryland. Likewise, a person may not conduct the business of a dealer unless licensed by MVA. MVA may refuse to grant, suspend, revoke,

or refuse to renew a license under specified circumstances. For a manufacturer, distributor, or factory branch, those circumstances include a finding that the person (1) made any material misrepresentation in transferring a vehicle or truck component to a dealer or distributor; (2) failed to comply with any written warranty agreement; or (3) failed to reasonably compensate any franchised dealer for specified work.

Factors in Determining Reasonable Compensation

A manufacturer, distributor, or factory branch must specify in writing to each of its licensed vehicle dealers the dealer's obligation for vehicle warranties and recalls on its products as well as the compensation to be paid to the dealer for work related to the dealer's service obligations. "Reasonable compensation" may not be less than what the dealer would charge for equivalent labor or parts for the same nonwarranty repairs.

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. (A revision or supplement to a submission to correct or clarify the submission does not constitute a new submission.)

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 licensee must compensate the dealer for the part by paying the dealer the parts mark-up percentage listed on the licensee's price schedule.

Compensation Timing Requirements

A licensee must 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.

Prohibitions on Licensed Manufacturers, Distributors, and Factory Branches

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 § 15-212 of the Transportation Article; (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 adverse 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.

Method of Claims, Denials, and False or Unsubstantiated Claims

A claim filed by a dealer with a manufacturer or distributor must be (1) in the manner and form reasonably prescribed by the manufacturer or distributor and (2) approved or disapproved within 30 days of receipt. A claim not acted upon within 30 days is deemed approved.

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.

If a dealer's claim for performing covered warranty or required recall repairs on a vehicle is shown by the manufacturer or distributor to be false or unsubstantiated, the manufacturer or distributor may charge back the claim within 90 days from the date the claim was paid or credit issued.

Other Prohibited Licensee Actions

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

(1) purchased the vehicle for which the information pertains from the dealer or (2) had the vehicle for which the information pertains serviced by the dealer.

A licensee may not deny a claim, reduce compensation, or process a charge back to a dealer for performing covered warranty or required recall repairs on a vehicle (1) to resolve a condition covered by the licensee's original warranty; (2) for remedying a safety-related defect that is subject to an outstanding recall under federal law; (3) if the dealer properly performed the repairs and submitted the claims; or (4) if the dealer discovered the need for the repairs during the course of a separate repair requested by the customer or through notice of an outstanding recall under federal law for a safety-related defect.

Small Business Effect: Vehicle dealerships that are small businesses may benefit from the bill's prohibition against motor vehicle manufacturers, distributors, or factory branches recovering costs by taking specified actions. While the extent of such cost recovery actions by licensees is not known, the bill's prohibitions provide an additional avenue for small business dealerships to challenge such actions.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 27, 2019
mag/ljm

Analysis by: Eric F. Pierce

Direct Inquiries to:
(410) 946-5510
(301) 970-5510