

## Chapter 326

(Senate Bill 687)

AN ACT concerning

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

FOR the purpose of prohibiting, except under certain circumstances, a manufacturer, distributor, factory branch, or one of its affiliates from requiring, ~~attempting to require, coercing, or attempting to coerce~~ or coercing a dealer to purchase certain goods or services from certain vendors under certain circumstances; providing for the construction of a certain prohibition under this Act; repealing a requirement that certain factors be considered in determining whether a dealer has been reasonably compensated; requiring a manufacturer, distributor, or factory branch licensed in the State to specify in writing to each of its motor vehicle dealers in the State certain dealer obligations and certain information relating to the compensation of dealers for certain parts and labor; establishing certain requirements for the reasonable compensation of dealers with respect to certain parts and labor; requiring a dealer to make a certain submission to a licensee; providing for the calculation of a dealer's labor rate and parts mark-up percentage for certain purposes; establishing requirements for a certain schedule of compensation; providing that certain repair orders for labor and parts do not constitute qualifying repair orders under this Act; requiring a licensee to compensate a dealer for certain parts given to a dealer at no cost; establishing that a certain schedule of compensation will be presumed to be accurate; requiring a licensee to begin compensation of a dealer under the schedule within certain periods of time under certain circumstances; providing for certain rebuttal of the presumption of accuracy of the schedule of compensation; providing for the resolution of certain matters relating to the schedule of compensation; prohibiting a licensee from making or requiring certain calculations or establishing certain special parts or component numbers; prohibiting a licensee from requiring, ~~influencing, or attempting to influence~~ or coercing a dealer to change certain prices; prohibiting a licensee from taking certain adverse action against a dealer under certain circumstances; and generally relating to relationships between motor vehicle dealers and motor vehicle manufacturers, distributors, factory branches, and their affiliates.

BY adding to

Article – Transportation

Section 15–207(k)

Annotated Code of Maryland

(2012 Replacement Volume and 2013 Supplement)

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

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

**Article – Transportation**

15–207.

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

**(I) THE PURCHASE OR PROCUREMENT OF:**

~~(I)~~ **1. MOVEABLE DISPLAYS;**

~~(II)~~ **2. BROCHURES OR OTHER PROMOTIONAL MATERIALS;**

~~(III)~~ **3. SPECIAL TOOLS AND TRAINING AS REQUIRED BY THE MANUFACTURER; OR**

~~(IV)~~ **4. PARTS FOR REPAIRS MADE UNDER WARRANTY OBLIGATIONS OF A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH; OR**

**5. ANY GOODS OR SERVICES FOR WHICH A MANUFACTURER, A DISTRIBUTOR, A FACTORY BRANCH, OR AN AFFILIATE PROVIDES A CREDIT, STIPEND, PAYMENT, OR REIMBURSEMENT TO THE DEALER THAT COVERS ALL OR A SUBSTANTIAL PORTION OF THE DEALER'S PROGRAM COSTS;**

**(II) OPTIONAL PROGRAMS;**

**(III) A PROGRAM, OR THE RENEWAL OR MODIFICATION OF A PROGRAM, IN EXISTENCE ON OCTOBER 1, 2014; OR**

**(IV) AN AGREEMENT BETWEEN THE MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH, OR AFFILIATE AND THE DEALER THAT IS DIRECTLY RELATED TO THE DEALER'S COMPLETION OF A PROGRAM IF**

SEPARATE AND VALUABLE CONSIDERATION HAS BEEN OFFERED TO THE DEALER AND ACCEPTED.

(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, A MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH, OR ONE OF ITS AFFILIATES MAY NOT, DIRECTLY OR THROUGH AN AGENT, AN EMPLOYEE, AN AFFILIATE, OR A REPRESENTATIVE, REQUIRE, ~~ATTEMPT TO REQUIRE, COERCE, OR ATTEMPT TO~~ OR COERCE BY AGREEMENT, PROGRAM, OR INCENTIVE PROVISION, ~~OR OTHERWISE,~~ A DEALER TO PURCHASE GOODS OR SERVICES ~~FOR THE MODIFICATION OF A FACILITY~~ FROM A VENDOR THAT IS SELECTED, IDENTIFIED, OR DESIGNATED BY THE MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH, OR ONE OF ITS AFFILIATES.

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

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

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

(I) DIRECTLY OR INDIRECTLY ELIMINATE OR IMPAIR IN ANY WAY A MANUFACTURER'S INTELLECTUAL PROPERTY ~~RIGHTS OR REASONABLE BUSINESS REQUIREMENTS,~~ TRADEMARK, OR TRADE DRESS RIGHTS; OR

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

(5) (I) A MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH, OR ONE OF ITS AFFILIATES MAY NOT PENALIZE A DEALER FOR FAILURE TO PARTICIPATE IN AN OPTIONAL PROGRAM.

(II) WITHHOLDING THE BENEFITS OF AN OPTIONAL PROGRAM IN WHICH THE DEALER FAILED TO PARTICIPATE MAY NOT BE

**CONSTRUED TO BE A PENALTY IMPOSED BY THE MANUFACTURER,  
DISTRIBUTOR, FACTORY BRANCH, OR AFFILIATE.**

15-212.

(a) In this section, “motor home” means a motor vehicle that:

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

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

(i) Cooking;

(ii) Refrigeration or ice box;

(iii) Self-contained toilet;

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

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

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

(vii) An LP gas supply.

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

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

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

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

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

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

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

- (i) The compensation being paid by other licensees to their dealers;
- (ii) The prevailing wage rate being paid by these dealers; and
- (iii) The prevailing labor rate being charged by these dealers.

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

**(I) THE DEALER'S OBLIGATION FOR VEHICLE PREPARATION, DELIVERY, WARRANTIES, AND RECALLS, ~~GOODWILL, CERTIFICATION OF PRE-OWNED STATUS, AND FACTORY CAMPAIGN SERVICE~~ ON ITS PRODUCTS;**

**(II) THE SCHEDULE OF COMPENSATION TO BE PAID TO THE DEALERS FOR PARTS, INCLUDING PARTS ASSEMBLIES, AND LABOR, INCLUDING DIAGNOSTIC LABOR AND ASSOCIATED ADMINISTRATIVE REQUIREMENTS, IN CONNECTION WITH THE SERVICE OBLIGATIONS ESTABLISHED UNDER ITEM (I) OF THIS PARAGRAPH; AND**

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

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

**(I) WITH RESPECT TO LABOR FOR WARRANTY OR RECALL REPAIRS, THE DEALER'S CURRENT LABOR RATE ~~CALCULATED UNDER ITEM (3)(II)1 OF THIS SUBSECTION~~ FOR NONWARRANTY REPAIRS OF A LIKE KIND FOR RETAIL CUSTOMERS; AND**

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

(3) (I) FOR PURPOSES OF PARAGRAPH (2) OF THIS SUBSECTION, THE DEALER'S LABOR RATE OR PARTS MARK-UP PERCENTAGE SHALL 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.

(II) ~~A~~ WITH RESPECT TO PARTS, A SCHEDULE OF COMPENSATION ESTABLISHED UNDER THIS SUBSECTION SHALL BE EQUAL TO:

~~1. WITH RESPECT TO LABOR, THE SUM OF THE TOTAL CUSTOMER LABOR CHARGES AS REFLECTED IN QUALIFYING REPAIR ORDERS DIVIDED BY THE TOTAL NUMBER OF HOURS THAT WOULD BE ALLOWED FOR THE REPAIRS IF THE REPAIRS WERE MADE UNDER THE MANUFACTURER'S TIME ALLOWANCES USED TO COMPENSATE THE DEALER FOR WARRANTY WORK; AND~~

~~2. WITH RESPECT TO PARTS, THE ARITHMETIC MEAN OF 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.~~

(III) 1. A DEALER MAY NOT MAKE A SUBMISSION UNDER THIS SUBSECTION MORE THAN ONCE IN 1 YEAR.

2. FOR PURPOSES OF SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH, A REVISION OR SUPPLEMENT TO A SUBMISSION TO CORRECT OR CLARIFY THE SUBMISSION DOES NOT CONSTITUTE A NEW SUBMISSION.

(4) REPAIR ORDERS FOR LABOR OR PARTS IN CONNECTION WITH ANY OF THE FOLLOWING MAY NOT CONSTITUTE A QUALIFYING REPAIR ORDER UNDER PARAGRAPH (2) OF THIS SUBSECTION:

- (I) ACCESSORIES;

(II) REPAIRS FOR MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH SPECIAL EVENTS, PROMOTIONS, OR SERVICE CAMPAIGNS;

(III) REPAIRS RELATED TO COLLISION;

(IV) VEHICLE EMISSION OR SAFETY INSPECTIONS REQUIRED BY LAW;

(V) PARTS SOLD, OR REPAIRS PERFORMED, AT WHOLESALE OR FOR INSURANCE CARRIERS, OR OTHER THIRD-PARTY PAYORS;

(VI) ROUTINE MAINTENANCE NOT COVERED UNDER ANY WARRANTY, INCLUDING MAINTENANCE INVOLVING FLUIDS, FILTERS, AND BELTS NOT PROVIDED IN THE COURSE OF REPAIRS;

(VII) NUTS, BOLTS, FASTENERS, AND SIMILAR ITEMS THAT DO NOT HAVE AN INDIVIDUAL PARTS NUMBER;

(VIII) TIRES;

(IX) VEHICLE RECONDITIONING;

(X) GOODWILL OR POLICY REPAIRS OR REPLACEMENTS; OR

(XI) REPAIRS ON ~~VEHICLE MAKES NOT SOLD AS NEW BY THE DEALER~~ VEHICLES FROM A DIFFERENT LINE-MAKE.

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

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

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

**(III) IF THE LICENSEE APPROVES A DEALER'S SUBMISSION, THE LICENSEE SHALL BEGIN COMPENSATING THE DEALER UNDER THE SCHEDULE ~~ON~~ WITHIN 30 DAYS AFTER THE DATE OF APPROVAL.**

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

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

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

**2. CONSIST OF ~~CLEAR AND CONVINCING~~ REASONABLE SUBSTANTIATING EVIDENCE THAT THE DECLARED RATE IS MATERIALLY INACCURATE.**

**(VI) 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 SHALL BEGIN ON THE 31ST DAY FOLLOWING ~~THE MANUFACTURER'S RECEIPT OF THE SCHEDULE~~ A FINAL ORDER UNLESS OTHERWISE PROVIDED FOR BY THE FACT FINDER.**

**(VII) 1. TO THE EXTENT THAT ANY ACTION COMMENCED UNDER SUBSECTION (D) OF THIS SECTION OR § 15-213 OR § 15-214 OF THIS SUBTITLE INVOLVES THE APPLICATION OF PARAGRAPH (3) OF THIS SUBSECTION, THE ISSUES SHALL BE LIMITED TO WHETHER THE LABOR RATE OR PARTS MARK-UP PERCENTAGE STATED IN THE DEALER'S SUBMISSION WAS MATERIALLY INACCURATE.**

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

**(VIII) 1. A LICENSEE MAY VERIFY A DEALER'S EFFECTIVE RATES ONCE ANNUALLY.**

**2. IF A LICENSEE FINDS THAT A DEALER'S EFFECTIVE RATES HAVE INCREASED OR DECREASED, THE LICENSEE MAY**



INCREASE OR DECREASE, RESPECTIVELY, THE WARRANTY REIMBURSEMENT RATE PROSPECTIVELY.

(7) A LICENSEE MAY NOT DIRECTLY OR INDIRECTLY:

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

1. A PART-BY-PART OR TRANSACTION BY TRANSACTION CALCULATION; OR

2. PRESENTATION OF INFORMATION AS TO, OR CALCULATIONS BASED ON, THE DEALER'S OR OTHER DEALERS' WARRANTY COMPENSATION ~~OR FINANCIAL STATEMENTS~~;

(II) 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 UNLESS THE PART IS USED FOR SPECIFIC, LIMITED REPAIR SITUATIONS;

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

(IV) TAKE ADVERSE ACTION AGAINST A DEALER ~~THAT BECAUSE THE DEALER~~ SEEKS COMPENSATION UNDER THIS SECTION, BY ~~ANY MEANS INCLUDING~~:

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

2. ~~ACTING OR FAILING TO ACT, EXCEPT~~ FAILING TO ACT IN GOOD FAITH;

(V) CONDUCT ANY WARRANTY OR RETAIL CUSTOMER REPAIR AUDIT, OR OTHER SERVICE-RELATED AUDIT, SOLELY BECAUSE THE

**DEALER MAKES A REQUEST FOR WARRANTY REIMBURSEMENT AT RETAIL RATES IN THE ORDINARY COURSE OF BUSINESS; OR**

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

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

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

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

2. Approved or disapproved within 30 days of receipt.

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

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

**[(5)] (10)** A dealer's failure to comply with ~~the specific requirements~~ **A SPECIFIC REQUIREMENT** of the manufacturer or distributor ~~for processing a claim~~ may not constitute grounds for denial of the claim or reduction of the amount of compensation paid to the dealer if the dealer presents ~~reasonable~~ documentation or other **REASONABLE** evidence to substantiate ~~the claim~~ **THAT THE REPAIR AND THE CLAIM WERE DONE ACCORDING TO MANUFACTURER WARRANTY GUIDELINES.**

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

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

1. Conduct an audit of any claim filed under this section;

or

2. Charge back for any claim that is proven to be fraudulent.

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

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

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

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

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

**Approved by the Governor, May 5, 2014.**