

By: Geren

H.B. No. 4078

Substitute the following for H.B. No. 4078:

By: Canales

C.S.H.B. No. 4078

A BILL TO BE ENTITLED

AN ACT

1
2 relating to motor vehicle franchised dealers and the reimbursement
3 of motor vehicle franchised dealers by manufacturers and
4 distributors for warranty, recall, and preparation and delivery
5 work.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 2301.003, Occupations Code, is amended
8 by adding Subsection (c) to read as follows:

9 (c) A manufacturer or distributor may not compel a dealer to
10 comply, take an adverse action, or initiate an action or proceeding
11 in response to a dealer not participating in a manufacturer or
12 distributor program or initiating an action or proceeding,
13 including an action or proceeding to which the manufacturer or
14 distributor is a party, to enforce a right or remedy available to
15 the dealer under law or by agreement.

16 SECTION 2. Subchapter I, Chapter 2301, Occupations Code, is
17 amended to read as follows:

18 SUBCHAPTER I. WARRANTIES AND RECALLS: REIMBURSEMENT OF DEALER

19 Sec. 2301.4001. DEFINITIONS. In this subchapter:

20 (1) "Goodwill repair" means a repair made by a seller
21 for no charge that the seller is not obligated to make.

22 (2) "Part" includes:

23 (A) any component, electric vehicle battery,
24 engine, equipment, fixture, good, part assembly, software, or

1 transmission for a motor vehicle; and

2 (B) a replacement for a part listed in Paragraph
3 (A).

4 (3) "Routine maintenance" includes replacement of a
5 belt, bolt, brake pad, bulb, fastener, filter, fluid, internal
6 combustion engine vehicle battery, nut, or rotor, unless the belt,
7 bolt, brake pad, bulb, fastener, filter, fluid, internal combustion
8 engine vehicle battery, nut, or rotor is provided by the
9 manufacturer or distributor in the course of a repair with an
10 assigned part number.

11 Sec. 2301.401. WARRANTY, RECALL, PREPARATION, AND DELIVERY
12 REQUIREMENTS. (a) On request, a manufacturer or distributor shall
13 provide to the department a copy of the current requirements the
14 manufacturer or distributor imposes on its dealers with respect to
15 the dealer's:

16 (1) duties under the manufacturer's or distributor's
17 warranty and under a manufacturer's or distributor's recall; and

18 (2) vehicle preparation and delivery obligations.

19 (b) Warranty, recall, or preparation and delivery
20 requirements placed on a dealer by a manufacturer or distributor
21 are not enforceable unless the requirements are reasonable.

22 Sec. 2301.402. RATE OF COMPENSATION. (a) A manufacturer or
23 distributor shall fairly and adequately compensate its dealers for
24 warranty, recall, and preparation and delivery work.

25 (b) A manufacturer or distributor may not pay or reimburse a
26 dealer an amount of money for warranty or recall work that is less
27 than the amount the dealer charges a retail customer for similar

1 nonwarranty work.

2 (c) In computing the amount of money a dealer charges a
3 retail customer under Subsection (b) for labor, the manufacturer or
4 distributor shall use the formula, of the following formulas, that
5 produces the fewest number of repair orders [~~the greater of~~]:

6 (1) the average labor rate charged during the
7 preceding six months by the dealer on 100 sequential nonwarranty
8 repair orders paid by retail customers, exclusive of:

9 (A) routine maintenance;

10 (B) tire, wheel, or wheel alignment;

11 (C) discounts to state agencies, insurers, or
12 warranty or service contract providers;

13 (D) state inspections;

14 (E) goodwill repairs;

15 (F) accessory installation;

16 (G) a manufacturer's or distributor's promotion
17 or service campaign; or

18 (H) repairs to a vehicle owned by the dealer, an
19 affiliate of the dealer, or an employee of either the dealer or
20 affiliate; or

21 (2) the average labor rate charged for 90 consecutive
22 days during the preceding six months by the dealer for nonwarranty
23 repairs paid by retail customers, exclusive of:

24 (A) routine maintenance;

25 (B) tire, wheel, or wheel alignment;

26 (C) discounts to state agencies, insurers, or
27 warranty or service contract providers;

1 (D) state inspections;

2 (E) goodwill repairs;

3 (F) accessory installation;

4 (G) a manufacturer's or distributor's promotion
5 or service campaign; or

6 (H) repairs to a vehicle owned by the dealer, an
7 affiliate of the dealer, or an employee of either the dealer or
8 affiliate.

9 (d) The average labor rate under Subsection (c) is
10 determined by dividing the total charges for labor submitted by the
11 total number of hours charged for the repairs.

12 (e) In computing the amount of money a dealer charges a
13 retail customer under Subsection (b) for parts, the manufacturer or
14 distributor shall use the formula, of the following formulas, that
15 produces the fewest number of repair orders:

16 (1) the average parts markup charged during the
17 preceding six months by the dealer on 100 sequential nonwarranty
18 repair orders paid by retail customers, exclusive of:

19 (A) routine maintenance;

20 (B) tire, wheel, or wheel alignment;

21 (C) discounts to state agencies, insurers, or
22 warranty or service contract providers;

23 (D) state inspections;

24 (E) goodwill repairs;

25 (F) accessory installation;

26 (G) a manufacturer's or distributor's promotion
27 or service campaign; or

1 (H) repairs to a vehicle owned by the dealer, an
2 affiliate of the dealer, or an employee of either the dealer or
3 affiliate; or

4 (2) the average parts markup charged for 90
5 consecutive days during the preceding six months by the dealer for
6 nonwarranty repairs paid by retail customers, exclusive of:

7 (A) routine maintenance;

8 (B) tire, wheel, or wheel alignment;

9 (C) discounts to state agencies, insurers, or
10 warranty or service contract providers;

11 (D) state inspections;

12 (E) goodwill repairs;

13 (F) accessory installation;

14 (G) a manufacturer's or distributor's promotion
15 or service campaign; or

16 (H) repairs to a vehicle owned by the dealer, an
17 affiliate of the dealer, or an employee of either the dealer or
18 affiliate.

19 (f) The average parts markup for Subsection (e) is
20 determined by dividing the total charges for parts submitted by the
21 total cost of the parts for which charges are submitted.

22 (g) If a manufacturer or distributor supplies a part to a
23 dealer at no cost or at a reduced cost for use in a warranty or
24 recall repair, the manufacturer or distributor shall compensate the
25 dealer for the dealer's cost for the part, if any, plus an amount
26 equal to the dealer's prevailing retail parts markup, multiplied by
27 the fair wholesale value of the part.

1 (h) For purposes of Subsection (g), the fair wholesale value
2 of a part is the greater of:

3 (1) the amount the dealer paid for the part or a
4 substantially identical part if presently owned by the dealer;

5 (2) the cost of the part as shown in a current or
6 previously established price schedule of the manufacturer or
7 distributor; or

8 (3) the cost of a substantially identical part shown
9 in a current or previously established price schedule of the
10 manufacturer or distributor.

11 (i) A manufacturer or distributor shall compensate a dealer
12 in accordance with this subchapter if the dealer assists in or
13 performs an over-the-air or remote installation, change, repair,
14 update, or amendment to any part, system, accessory, or function.

15 Sec. 2301.403. ADJUSTMENT OF RATE FOR WARRANTY WORK [~~LABOR~~
16 ~~RATE~~]. (a) A dealer may request an adjustment in the dealer's
17 warranty work [~~labor~~] rate. The request must be sent to the
18 manufacturer or distributor by certified mail, return receipt
19 requested, and must state the requested labor or parts rate and
20 include information reasonably necessary to enable the
21 manufacturer or distributor to adequately evaluate the request as
22 provided by this subchapter.

23 (b) Not later than the 60th day after the date of receipt of
24 a request under this section, the manufacturer or distributor shall
25 provide written notice to the requesting dealer of the approval,
26 reduction, claimed material inaccuracy, or disapproval of the
27 request. If the manufacturer or distributor fails to respond

1 before the 60th day after the date the request is received, the
2 submitted rate shall take effect on the 60th day after the date the
3 manufacturer or distributor receives the request. If the request
4 is disapproved, reduced, or claimed to be materially inaccurate,
5 the manufacturer or distributor shall state the reasons for the
6 disapproval, reduction, or claimed material inaccuracy. The stated
7 reasons for disapproval, reduction, or claimed material inaccuracy
8 of the requested labor rate or parts markup must contain:

9 (1) an explanation of the reasons the request is
10 disapproved, reduced, or claimed to be materially inaccurate;

11 (2) evidence that substantiates each stated reason;

12 (3) if a material inaccuracy is alleged, a copy of the
13 calculations used by the manufacturer or distributor demonstrating
14 a material inaccuracy; and

15 (4) a proposed adjusted labor or parts rate, as
16 applicable.

17 (c) A requesting dealer may file a protest with the board if
18 the manufacturer or distributor~~+~~

19 ~~[(1)]~~ disapproves or reduces a dealer's request or
20 claims the request is materially inaccurate~~+, or~~

21 ~~[(2)] fails to respond within the time required by this~~
22 ~~section].~~

23 (d) After a protest is filed, the board may uphold the
24 manufacturer's or distributor's decision only if the manufacturer
25 or distributor proves by a preponderance of the evidence that the
26 disapproval, reduction, or claimed material inaccuracy of the
27 request ~~[or failure to respond]~~ was reasonable.

1 (e) If the board does not determine that the disapproval,
2 reduction, or claimed material inaccuracy of the request [~~or~~
3 ~~failure to respond~~] was reasonable, the board shall order the
4 requested rate into effect as of the 60th day after the receipt of
5 the request by the manufacturer or distributor.

6 (f) Except by agreement of the parties, a warranty labor
7 rate or warranty parts rate established under this subchapter may
8 not be adjusted more often than once a year.

9 Sec. 2301.404. TIME FOR PAYMENT. (a) A manufacturer or
10 distributor shall pay a dealer's claim for reimbursement for
11 warranty work, recall work, or dealer preparation and delivery work
12 not later than the 30th day after the date of approval of the claim.

13 (b) A claim that is not disapproved before the 31st day
14 after the date of receipt is considered approved.

15 (c) If a claim is disapproved, the manufacturer or
16 distributor shall provide the dealer written notice explaining [~~of~~]
17 the reasons for the disapproval.

18 (d) A controversy regarding the payment of a claim under
19 this subchapter or compliance with the provisions of this
20 subchapter shall be resolved in accordance with Subchapter Q.

21 Sec. 2301.405. CHARGE BACK TO DEALER. (a) A manufacturer
22 or distributor may not charge back to a dealer money paid by the
23 manufacturer or distributor to satisfy a claim approved and paid
24 under this chapter [~~subchapter~~] unless the manufacturer or
25 distributor shows that:

- 26 (1) the claim was false or fraudulent;
27 (2) repair work was not properly performed or was

1 unnecessary to correct a defective condition; or

2 (3) the dealer who made the claim failed to
3 substantiate the claim as provided by the manufacturer's or
4 distributor's requirements that were enforceable under Section
5 2301.401 at the time the claim was filed.

6 (b) A manufacturer or distributor may not audit a claim
7 filed under this chapter [~~subchapter~~] after the first anniversary
8 of the date the claim is submitted unless the manufacturer or
9 distributor has reasonable grounds to suspect that the claim was
10 fraudulent.

11 Sec. 2301.406. PROHIBITED REQUIREMENTS FOR PAYMENT. (a) A
12 manufacturer or distributor may not require, as a prerequisite to
13 the payment of a claim for reimbursement, that a dealer file a
14 statement of actual time spent in performance of labor, unless
15 actual time is the basis for reimbursement.

16 (b) A manufacturer or distributor may not recover or attempt
17 to recover any portion of the compensation due to a dealer for
18 warranty, recall, or preparation and delivery work by reducing the
19 amount due by a separate charge, surcharge, like charge, other
20 charge, supplemental charge, or reduction in return reserve
21 allowance to the wholesale price paid by the dealer to the
22 manufacturer or distributor for any product, including motor
23 vehicles and parts. This subsection does not prohibit a
24 manufacturer or distributor from increasing prices for a vehicle or
25 part in the normal course of business.

26 (c) A manufacturer or distributor may not establish or
27 implement a special part number for a part used in warranty, recall,

1 or preparation and delivery work if the result is lower
2 compensation to the dealer than as calculated under Section
3 [2301.402](#).

4 SECTION 3. The changes in law made by this Act apply only to
5 warranty, recall, or preparation and delivery work under Subchapter
6 I, Chapter [2301](#), Occupations Code, as amended by this Act,
7 commenced on or after the effective date of this Act. Warranty,
8 recall, or preparation and delivery work commenced before the
9 effective date of this Act is governed by the law in effect on the
10 date the work was commenced, and the former law is continued in
11 effect for that purpose.

12 SECTION 4. This Act takes effect September 1, 2023.