

By: Geren

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 Subsections (c) and (d) to read as follows:

9 (c) A manufacturer or distributor may not, if the result
10 would be injurious to a dealer or to the public:

11 (1) coerce or compel or attempt to coerce or compel by
12 threat or by other adverse consequence the dealer to agree to a
13 program or incentive provision, including a loss of an incentive or
14 benefit; or

15 (2) amend a franchise agreement.

16 (d) A manufacturer or distributor may not take an adverse
17 action or initiate an action or proceeding, in response to a dealer
18 initiating an action or proceeding, including an action or
19 proceeding to which the manufacturer or distributor is a party, to
20 enforce a right or remedy available to the dealer under law or by
21 agreement.

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

1 SUBCHAPTER I. WARRANTIES AND RECALLS: REIMBURSEMENT OF DEALER

2 Sec. 2301.4001. DEFINITIONS. In this subchapter:

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

5 (2) "Part" includes any equipment, fixture, good, or
6 software that is provided by a manufacturer or distributor for a
7 motor home or towable recreational vehicle.

8 (3) "Routine maintenance" includes replacement of a
9 fluid, filter, battery, bulb, belt, nut, bolt, or fastener, unless
10 the fluid, filter, battery, bulb, belt, nut, bolt, or fastener is
11 provided by the manufacturer or distributor in the course of a
12 repair with an assigned part number.

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

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

20 (2) vehicle preparation and delivery obligations.

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

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

27 (b) A manufacturer or distributor may not pay or reimburse a

1 dealer an amount of money for warranty or recall work that is less
2 than the amount the dealer charges a retail customer for similar
3 nonwarranty work.

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

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

- 11 (A) routine maintenance;
- 12 (B) tire or wheel alignment;
- 13 (C) discounts to state agencies, insurers, or
14 warranty or service contract providers;
- 15 (D) state inspections;
- 16 (E) goodwill repairs;
- 17 (F) accessory installation; and
- 18 (G) a manufacturer's or distributor's promotion
19 or service campaign; or

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

- 23 (A) routine maintenance;
- 24 (B) tire or wheel alignment;
- 25 (C) discounts to state agencies, insurers, or
26 warranty or service contract providers;
- 27 (D) state inspections;

1 (E) goodwill repairs;
2 (F) accessory installation; and
3 (G) a manufacturer's or distributor's promotion
4 or service campaign.

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

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

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

15 (A) routine maintenance;
16 (B) tire or wheel alignment;
17 (C) discounts to state agencies, insurers, or
18 warranty or service contract providers;

19 (D) state inspections;
20 (E) goodwill repairs;
21 (F) accessory installation; and

22 (G) a manufacturer's or distributor's promotion
23 or service campaign; or

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

27 (A) routine maintenance;

1 (B) tire or wheel alignment;

2 (C) discounts to state agencies, insurers, or
3 warranty or service contract providers;

4 (D) state inspections;

5 (E) goodwill repairs;

6 (F) accessory installation; and

7 (G) a manufacturer's or distributor's promotion
8 or service campaign.

9 (f) The average parts markup for Subsection (e) is
10 determined by dividing the total charges for parts submitted by the
11 total cost of the parts for which charges are submitted.

12 (g) The submissions under Subsections (c) and (e) may
13 consist of:

14 (1) a single set of repair orders for calculating the
15 dealer's retail customer labor rate and the dealer's retail
16 customer parts rate; or

17 (2) one set of repair orders for calculating the
18 dealer's retail customer labor rate and a separate set for
19 calculating the dealer's retail customer parts rate.

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

26 (i) For purposes of Subsection (h), the fair wholesale value
27 of a part is the greater of:

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

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

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

9 (j) If a dealer assists in an over-the-air or remote
10 installation, change, repair, update, or amendment to any part,
11 system, accessory, or function, the assistance is compensated in
12 accordance with this subchapter.

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

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

1 manufacturer or distributor receives the request. If the request
2 is disapproved, reduced, or claimed to be materially inaccurate,
3 the manufacturer or distributor shall state the reasons for the
4 disapproval, reduction, or claimed material inaccuracy. The stated
5 reasons for disapproval, reduction, or claimed material inaccuracy
6 of the requested labor rate or parts markup must contain:

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

9 (2) evidence that substantiates each stated reason;

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

13 (4) a proposed adjusted labor or parts rate, as
14 applicable.

15 (b-1) If the manufacturer or distributor disapproves or
16 reduces a dealer's request or claims a dealer's request is
17 materially inaccurate, the manufacturer or distributor may not add
18 to, expand, supplement, or otherwise modify the objection except on
19 the discovery of relevant information that could not have been
20 known at the time of issuing the rebuttal.

21 (c) A requesting dealer may file a protest with the board if
22 the manufacturer or distributor[+]

23 [~~1~~] disapproves or reduces a dealer's request or
24 claims the request is materially inaccurate[~~+~~]

25 [~~2~~] ~~fails to respond within the time required by this~~
26 ~~section~~].

27 (d) After a protest is filed, the board may uphold the

1 manufacturer's or distributor's decision only if the manufacturer
2 or distributor proves by a preponderance of the evidence that the
3 disapproval, reduction, or claimed material inaccuracy of the
4 request [~~or failure to respond~~] was reasonable.

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

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

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

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

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

22 (d) A controversy regarding the payment of a claim under
23 this subchapter or compliance with the provisions of this
24 subchapter shall be resolved in accordance with Subchapter O.

25 Sec. 2301.405. CHARGE BACK TO DEALER. (a) A manufacturer
26 or distributor may not charge back to a dealer money paid by the
27 manufacturer or distributor to satisfy a claim approved and paid

1 under this chapter [~~subchapter~~] unless the manufacturer or
2 distributor shows that:

3 (1) the claim was false or fraudulent;

4 (2) repair work was not properly performed or was
5 unnecessary to correct a defective condition; or

6 (3) the dealer who made the claim failed to
7 substantiate the claim as provided by the manufacturer's or
8 distributor's requirements that were enforceable under Section
9 [2301.401](#) at the time the claim was filed.

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

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

20 (b) A manufacturer or distributor may not recover or attempt
21 to recover any portion of the compensation due to a dealer for
22 warranty, recall, or preparation and delivery work by reducing the
23 amount due by a separate charge, surcharge, like charge, other
24 charge, supplemental charge, or reduction in return reserve
25 allowance to the wholesale price paid by the dealer to the
26 manufacturer or distributor for any product, including motor
27 vehicles and parts.

1 (c) A manufacturer or distributor may not establish or
2 implement a special part number for a part used in warranty, recall,
3 or preparation and delivery work if the result is lower
4 compensation to the dealer than as calculated under Section
5 [2301.402](#).

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

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