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By:  Geren H.B. No. 4078

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1.  Section 2301.003, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

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

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

(2)  amend a franchise agreement.

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

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

SUBCHAPTER I. WARRANTIES AND RECALLS: REIMBURSEMENT OF DEALER

Sec. 2301.4001.  DEFINITIONS. In this subchapter:

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

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

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

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

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

(2)  vehicle preparation and delivery obligations.

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

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

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

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

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

(A)  routine maintenance;

(B)  tire or wheel alignment;

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

(D)  state inspections;

(E)  goodwill repairs;

(F)  accessory installation; and

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

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

(A)  routine maintenance;

(B)  tire or wheel alignment;

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

(D)  state inspections;

(E)  goodwill repairs;

(F)  accessory installation; and

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

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

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

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

(A)  routine maintenance;

(B)  tire or wheel alignment;

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

(D)  state inspections;

(E)  goodwill repairs;

(F)  accessory installation; and

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

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

(A)  routine maintenance;

(B)  tire or wheel alignment;

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

(D)  state inspections;

(E)  goodwill repairs;

(F)  accessory installation; and

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

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

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

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

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

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

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

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

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

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

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

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

(b)  Not later than the 60th day after the date of receipt of a request under this section, the manufacturer or distributor shall provide written notice to the requesting dealer of the approval, reduction, claimed material inaccuracy, or disapproval of the request. If the manufacturer or distributor fails to respond before the 60th day after the date the request is received, the submitted rate shall take effect on the 60th day after the date the manufacturer or distributor receives the request. If the request is disapproved, reduced, or claimed to be materially inaccurate, the manufacturer or distributor shall state the reasons for the disapproval, reduction, or claimed material inaccuracy. The stated reasons for disapproval, reduction, or claimed material inaccuracy of the requested labor rate or parts markup must contain:

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

(2)  evidence that substantiates each stated reason;

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

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

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

(c)  A requesting dealer may file a protest with the board if the manufacturer or distributor[~~:~~

[~~(1)~~]  disapproves or reduces a dealer's request or claims the request is materially inaccurate[~~; or~~

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

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

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

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

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

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

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

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

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

(1)  the claim was false or fraudulent;

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

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

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

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

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

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

SECTION 3.  The changes in law made by this Act apply only to warranty, recall, or preparation and delivery work under Subchapter I, Chapter 2301, Occupations Code, as amended by this Act, commenced on or after the effective date of this Act. Warranty, recall, or preparation and delivery work commenced before the effective date of this Act is governed by the law in effect on the date the work was commenced, and the former law is continued in effect for that purpose.

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