

No. 2013-84

AN ACT

SB 732

Amending the act of December 22, 1983 (P.L.306, No.84), entitled "An act providing for the State Board of Vehicle Manufacturers, Dealers and Salespersons; and providing penalties," further providing for reimbursement for parts and service and for unlawful acts by manufacturers or distributors.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 9(a), (b) and (e)(2) of the act of December 22, 1983 (P.L.306, No.84), known as the Board of Vehicles Act, amended October 18, 2000 (P.L.577, No.75), are amended and the section is amended by adding subsections to read:

Section 9. Reimbursement for all parts and service required by the manufacturer or distributor; reimbursement audits.

(a) Manufacturers or distributors to notify dealers of their obligations.—

(1) Each new vehicle manufacturer or distributor shall specify in writing to each of its new vehicle dealers licensed in this Commonwealth the dealer's obligations for predelivery preparation and warranty service on its products, shall compensate the new vehicle dealer for service required of the dealer by the manufacturer or distributor and shall provide the dealer with a schedule of compensation to be paid the dealer for parts, work and service, and the time allowance for the performance of such work and service.

(2) *Compensation for parts, including major assemblies used in warranty service, shall be at the dealer's retail rate. The following shall apply:*

(i) *The dealer's retail rate for parts shall be established by the dealer's submitting to the manufacturer or distributor a declaration of the average percentage markup which shall be the lesser of the following orders which cover repairs made no more than 180 days before the submission:*

(A) *One hundred sequential nonwarranty customer-paid service repair orders which contain parts that are used in warranty-like service or repair.*

(B) *Ninety consecutive days of nonwarranty customer-paid service repair orders which contain parts that are used in warranty-like service or repair.*

(ii) *The declaration under subparagraph (i) shall be presumed to be reasonable, except that a manufacturer or distributor may, not later than 60 days after submission, rebut the presumption by substantiating that the declaration is unreasonable or materially inaccurate.*

(iii) *The retail rate shall go into effect 60 days following the declaration under subparagraph (i), unless the franchisor audits the*

submitted repair orders and a rebuttal under subparagraph (ii) occurs.

(iv) If the declared retail rate is rebutted, the manufacturer or distributor shall propose an adjustment of the markup based on the rebuttal no later than 60 days after submission.

(v) A manufacturer shall provide written support to the dealer for the rebuttal retail rate that is proposed. If the dealer does not agree with the proposed markup, the dealer may file a protest after receipt of the proposal by the manufacturer or distributor. If a protest is filed, the board shall inform the manufacturer or distributor that a protest has been filed and that a hearing will be held on the protest. In a hearing held under this subparagraph, the manufacturer or distributor shall have the burden of proving that:

(A) the retail rate declared by the dealer was unreasonable or materially inaccurate; and

(B) the manufacturer's or distributor's proposed adjustment of the markup is reasonable.

(3) Compensation for labor used in warranty service shall be at the dealer's retail rate. The following shall apply:

(i) The dealer's hourly retail rate for labor shall be established by submitting the following to the manufacturer or distributor:

(A) A declaration of the average labor rate calculated by dividing the amount of the dealer's total labor sales by the number of total labor hours that generated the sales.

(B) The lesser of the following orders which cover repairs made no more than 180 days before the submission:

(I) One hundred sequential nonwarranty customer-paid service repair orders.

(II) Ninety consecutive days of nonwarranty customer-paid service repair orders.

(ii) The declaration under subparagraph (i)(A) shall be presumed to be reasonable, except that a manufacturer or distributor may, no later than 60 days after submission, rebut the presumption by substantiating that the rate is unreasonable or materially inaccurate.

(iii) The average labor rate shall go into effect 60 days following the declaration under subparagraph (i)(A), unless the franchisor audits the submitted repair orders and a rebuttal under subparagraph (ii) occurs.

(iv) If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the labor rate based on the rebuttal not later than 60 days after submission.

(v) A manufacturer shall provide written support to the dealer for the rebuttal rate that is proposed. If the dealer does not agree with the proposed labor rate, the dealer may file a protest after receipt of the proposal by the manufacturer or distributor. If a protest is filed, the board shall inform the manufacturer or distributor that a protest has been filed and that a hearing will be

held on the protest. In a hearing held under this subparagraph, the manufacturer or distributor shall have the burden of proving that:

(A) the retail rate declared by the dealer was unreasonable or materially inaccurate; and

(B) the manufacturer's or distributor's proposed adjustment of the retail rate is reasonable.

(4) This subsection shall not apply to manufacturers or distributors of manufactured housing or recreational vehicles.

[(b) Schedule of compensation to include reasonable compensation.—In no event shall the schedule of compensation fail to include reasonable compensation for diagnostic work, repair service, original equipment manufacturer parts and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation, the principal factors to be given consideration shall be the prevailing wage rates being paid by the dealers in the community in which the dealer is doing business. The hourly labor rate paid to a dealer for warranty services shall not be less than the rate charged by the dealer for like service to nonwarranty customers for nonwarranty service and repairs at a reasonable rate. This subsection shall not apply to manufacturers or distributors of manufactured housing or recreational vehicles.]

(b.1) Exceptions.—When calculating the retail rate customarily charged by the dealer for parts and labor under this section, the following work shall not be included:

(1) Repairs for manufacturer or distributor special events, specials or promotional discounts for retail customer repairs.

(2) Parts sold at wholesale.

(3) Routine maintenance not covered under a retail customer warranty, such as fluids, filters and belts not provided in the course of repairs.

(4) Nuts, bolts, fasteners and similar items that do not have an individual part number.

(5) Tires.

(6) Vehicle reconditioning.

(b.2) Compensation.—If a manufacturer or distributor furnishes a part or component to a dealer, at no cost, to use in performing repairs under a recall, campaign service or warranty repair, the manufacturer or distributor shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section by compensating the dealer the average markup on the cost for the part or component as listed in the manufacturer's or distributor's price schedule, minus the cost for the part or component.

(b.3) Prohibitions and audit.—

(1) A manufacturer or distributor may not require a dealer to establish the retail rate customarily charged by the dealer for parts and labor by:

(i) An unduly burdensome or time-consuming method.

(ii) Requiring information that is unduly burdensome or time consuming to provide, including part-by-part or transaction-by-transaction calculations.

(2) A dealer may not declare an average percentage markup or average labor rate more than once in one calendar year.

(3) A manufacturer or distributor may perform annual audits to verify that a dealer's effective rates have not decreased. If a dealer's effective rates have decreased, a manufacturer or distributor may reduce the warranty reimbursement rate prospectively.

(b.4) Recovery.—

(1) (i) A manufacturer or distributor may not recover its costs from a dealer within this Commonwealth that does not apply to the manufacturer or distributor for retail rate reimbursement for parts and labor, including an increase in the wholesale price of a vehicle or surcharge imposed on a dealer intended to recover the cost of reimbursing a dealer for parts and labor under this section.

(ii) A manufacturer or distributor may increase the price for a vehicle or part in the normal course of business.

(2) A dealer may elect to revert to the nonretail rate reimbursement for parts and labor once in a calendar year to avoid a manufacturer or distributor surcharge.

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(e) Warranty reimbursement and incentive or reimbursement program approval and audits.—

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(2) The manufacturer or distributor shall be permitted to audit claims within a [two-year] nine-month period from the date the claim was paid or credit issued by the manufacturer or distributor and to charge back any false or unsubstantiated claims. If there is evidence of fraud, this subsection does not limit the right of the manufacturer or distributor to audit for longer periods and charge back for any fraudulent claim, subject to the limitations period under 42 Pa.C.S. (relating to judiciary and judicial procedure).

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Section 2. Section 12(a) of the act is amended by adding a paragraph to read:

Section 12. Unlawful acts by manufacturers or distributors.

(a) Unlawful coercive acts.—It shall be a violation for any manufacturer, factory branch, distributor, field representative, officer, agent or any representative whatsoever of such manufacturer, factory branch or distributor licensed under this act to require, attempt to require, coerce or attempt to coerce any new vehicle dealer in this Commonwealth to:

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(8.2) (i) Purchase a good or service from a vendor selected, identified or designated by a manufacturer, factory branch, distributor, distributor branch or an affiliate of a manufacturer, factory branch, distributor, distributor branch by agreement, program, incentive provision or other method if expanding,

constructing or significantly modifying a facility without allowing the dealer the option to obtain a good or service of substantially similar quality from a vendor chosen by the dealer and approved by the manufacturer, which approval may not be unreasonably withheld.

(ii) Nothing under this paragraph shall be construed to:

(A) Allow a dealer or vendor to eliminate or impair a manufacturer's intellectual property rights, including a manufacturer's intellectual property rights in a trademark.

(B) Permit a dealer to erect or maintain signs that do not conform to the intellectual property usage guidelines of the manufacturer.

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Section 3. This act shall take effect in 60 days.

APPROVED—The 1st day of November, A.D. 2013

TOM CORBETT