

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 732 Session of 2013

INTRODUCED BY TOMLINSON, ERICKSON, BAKER, GREENLEAF, ALLOWAY,  
BROWNE, KASUNIC, YUDICHAK, RAFFERTY, BOSCOLA, GORDNER,  
SOLOBAY, TEPLITZ AND WHITE, MARCH 26, 2013

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,  
MARCH 26, 2013

AN ACT

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

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

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

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

17 (a) Manufacturers or distributors to notify dealers of their  
18 obligations.--

19 (1) Each new vehicle manufacturer or distributor shall

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

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

12 (i) The dealer's retail rate for parts shall be  
13 established by the dealer's submitting to the  
14 manufacturer or distributor a declaration of the average  
15 percentage markup which shall be the lesser of the  
16 following orders which cover repairs made no more than  
17 180 days before the submission:

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

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

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

30 (iii) The retail rate shall go into effect 60 days

1 following the declaration under subparagraph (i), unless  
2 the franchisor audits the submitted repair orders and a  
3 rebuttal under subparagraph (ii) occurs.

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

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

18 (A) the retail rate declared by the dealer was  
19 materially inaccurate; and

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

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

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

28 (A) A declaration of the average labor rate  
29 calculated by dividing the amount of the dealer's  
30 total labor sales by the number of total labor hours

1           that generated the sales.

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

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

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

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

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

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

22          (v) A manufacturer shall provide written support to  
23          the dealer for the rebuttal rate that is proposed. If the  
24          dealer does not agree with the proposed labor rate, the  
25          dealer may file a protest after receipt of the proposal  
26          by the manufacturer or distributor. If a protest is  
27          filed, the board shall inform the manufacturer or  
28          distributor that a protest has been filed and that a  
29          hearing will be held on the protest. In a hearing held  
30          under this subparagraph, the manufacturer or distributor

1       shall have the burden of proving that:

2               (A) the retail rate declared by the dealer was  
3               materially inaccurate; and

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

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

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

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

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

1       (2) Parts sold at wholesale.

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

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

7       (5) Tires.

8       (6) Vehicle reconditioning.

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

18      (b.3) Prohibitions and audit.--

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

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

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

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

29      (3) A manufacturer or distributor may perform annual  
30      audits to verify that a dealer's effective rates have not

1 decreased. If a dealer's effective rates have decreased, a  
2 manufacturer or distributor may reduce the warranty  
3 reimbursement rate prospectively.

4 (b.4) Recovery.--

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

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

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

19 \* \* \*

20 (e) Warranty reimbursement and incentive or reimbursement  
21 program approval and audits.--

22 \* \* \*

23 (2) The manufacturer or distributor shall be permitted  
24 to audit claims within a [two-year] nine-month period from  
25 the date the claim was paid or credit issued by the  
26 manufacturer or distributor and to charge back any false or  
27 unsubstantiated claims. If there is evidence of fraud, this  
28 subsection does not limit the right of the manufacturer or  
29 distributor to audit for longer periods and charge back for  
30 any fraudulent claim, subject to the limitations period under

1 42 Pa.C.S. (relating to judiciary and judicial procedure).

2 \* \* \*

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

5 Section 12. Unlawful acts by manufacturers or distributors.

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

12 \* \* \*

13 (8.2) (i) Purchase a good or service from a vendor  
14 selected, identified or designated by a manufacturer,  
15 factory branch, distributor, distributor branch or an  
16 affiliate of a manufacturer, factory branch, distributor,  
17 distributor branch by agreement, program, incentive  
18 provision or other method if expanding, constructing or  
19 significantly modifying a facility without allowing the  
20 dealer the option to obtain a good or service of  
21 substantially similar quality from a vendor chosen by the  
22 dealer.

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

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

29 (B) Permit a dealer to erect or maintain signs  
30 that do not conform to the intellectual property



1                   usage guidelines of the manufacturer.

2                   \* \* \*

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