

2018 -- S 2754

LC005318

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- REGULATION OF BUSINESS PRACTICES AMONG MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND DEALERS

Introduced By: Senators McCaffrey, and Ciccone

Date Introduced: March 27, 2018

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 31-5.1-6 of the General Laws in Chapter 31-5.1 entitled  
2 "Regulation of Business Practices Among Motor Vehicle Manufacturers, Distributors, and  
3 Dealers" is hereby amended to read as follows:

4 **31-5.1-6. Warranty agreement.**

5 (a) Every manufacturer shall properly fulfill any warranty agreement and adequately and  
6 fairly compensate each of its motor vehicle dealers for labor and parts. In no event shall that  
7 compensation fail to include reasonable compensation for diagnostic work, as well as repair  
8 service and labor. All claims made by motor vehicle dealers for labor and parts shall be paid in  
9 accord with the provisions of subsection (b) of this section. Any delay in payment after approval  
10 or disapproval that is caused by conditions beyond the reasonable control of the manufacturer  
11 shall not constitute a violation of this section. Reimbursement for warranty repairs or diagnostic  
12 work shall be at the dealer retail rate in effect at the time the warranty repair or diagnostic work is  
13 performed. Compensation for parts used in warranty service shall be fair and reasonable, as  
14 determined by methods described in subsection (b) of this section. Compensation for labor used  
15 in warranty service shall be fair and reasonable, as determined by methods described in  
16 subsection (c) of this section.

17 (b) The retail rate customarily charged by the dealer for parts shall be established by the  
18 dealer submitting to the manufacturer or distributor one hundred (100) sequential non-warranty

1 customer-paid service repair orders which contain warranty-like parts, or sixty (60) consecutive  
2 days of non-warranty customer-paid service repair orders which contain warranty-like parts,  
3 whichever is less, covering repairs made no more than one hundred eighty (180) days before the  
4 submission and declaring the average percentage markup. The average of the markup rates shall  
5 be presumed to be fair and reasonable, however, a manufacturer or distributor may, not later than  
6 thirty (30) days after submission, rebut that presumption by reasonably substantiating that the rate  
7 is unfair and unreasonable in light of the practices of all other franchised motor vehicle dealers in  
8 the vicinity offering the same line-make vehicles. The retail rate shall go into effect thirty (30)  
9 days following the declaration, subject to audit of the submitted repair orders by the franchisor  
10 and a rebuttal of the declared rate as described above. If the declared rate is rebutted, the  
11 manufacturer or distributor shall propose an adjustment of the average percentage markup based  
12 on that rebuttal not later than thirty (30) days after submission. If the dealer does not agree with  
13 the proposed average percentage markup, the dealer may file a protest with the department not  
14 later than thirty (30) days after receipt of that proposal by the manufacturer or distributor. If such  
15 a protest is filed, the department shall inform the manufacturer or distributor that a timely protest  
16 has been filed and that a hearing will be held on such protest. In any hearing held pursuant to this  
17 subsection, the manufacturer or distributor shall have the burden of proving that the rate declared  
18 by the dealer was unfair and unreasonable as described in this subsection and that the proposed  
19 adjustment of the average percentage markup is fair and reasonable pursuant to the provisions of  
20 this subsection.

21 (c) The retail rate customarily charged by the dealer for labor may be established by  
22 submitting to the manufacturer or distributor all non-warranty customer-paid service repair orders  
23 covering repairs made during the month prior to the submission and dividing the amount of the  
24 dealer's total labor sales by the number of total labor hours that generated those sales. The  
25 average labor rate shall be presumed to be fair and reasonable, provided a manufacturer or  
26 distributor may, not later than thirty (30) days after submission, rebut such presumption by  
27 reasonably substantiating that such rate is unfair and unreasonable in light of the practices of all  
28 other franchised motor vehicle dealers in the vicinity offering the same line-make vehicles. The  
29 average labor rate shall go into effect thirty (30) days following the declaration, subject to audit  
30 of the submitted repair orders by the franchisor and a rebuttal of such declared rate. If the  
31 declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the  
32 average labor rate based on such rebuttal not later than thirty (30) days after submission. If the  
33 dealer does not agree with the proposed average labor rate, the dealer may file a protest with the  
34 department not later than thirty (30) days after receipt of that proposal by the manufacturer or

1 distributor. If such a protest is filed, the department shall inform the manufacturer or distributor  
2 that a timely protest has been filed and that a hearing will be held on such protest. In any hearing  
3 held pursuant to this subsection, the manufacturer or distributor shall have the burden of proving  
4 that the rate declared by the dealer was unfair and unreasonable as described in this subsection  
5 and that the proposed adjustment of the average labor rate is fair and reasonable pursuant to the  
6 provisions of this subsection.

7 (d) In calculating the retail rate customarily charged by the dealer for parts and labor, the  
8 following work shall not be included in the calculation:

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

11 (2) Parts sold at wholesale;

12 (3) Engine assemblies and transmission assemblies;

13 (4) Routine maintenance not covered under any retail customer warranty, such as fluids,  
14 filters and belts not provided in the course of repairs;

15 (5) Nuts, bolts, fasteners, and similar items that do not have an individual part number;

16 (6) Tires; and

17 (7) Vehicle reconditioning.

18 (e) If a manufacturer or distributor furnishes a part or component to a dealer, at no cost,  
19 to use in performing repairs under a recall, campaign service action or warranty repair, the  
20 manufacturer or distributor shall compensate the dealer for the part or component in the same  
21 manner as warranty parts compensation under this section by compensating the dealer the average  
22 markup on the cost for the part or component as listed in the manufacturer's or distributor's price  
23 schedule less the cost for the part or component.

24 (f) A manufacturer or distributor may not require a dealer to establish the retail rate  
25 customarily charged by the dealer for parts and labor by an unduly burdensome or time  
26 consuming method or by requiring information that is unduly burdensome or time consuming to  
27 provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. A  
28 dealer may not declare an average percentage markup or average labor rate more than twice in  
29 one calendar year.

30 (g) A manufacturer or distributor may not otherwise recover its costs from dealers within  
31 this state, including an increase in the wholesale price of a vehicle or surcharge imposed on a  
32 dealer solely intended to recover the cost of reimbursing a dealer for parts and labor pursuant to  
33 this section, provided a manufacturer or distributor shall not be prohibited from increasing prices  
34 for vehicles or parts in the normal course of business.

1 (h) Each manufacturer or distributor shall perform all warranty obligations, include in  
2 written notices of factory recalls to owners and dealers the expected date by which necessary  
3 parts and equipment will be available to dealers for the correction of such defects and compensate  
4 dealers for repairs necessitated by such recall.

5 ~~(b)~~(i) A claim filed under this section by a dealer with a manufacturer or distributor shall  
6 be:

7 (1) In the manner and form prescribed by the manufacturer or distributor; and

8 (2) (i) Approved or disapproved within (30) days of receipt.

9 (ii) A claim not approved or disapproved within thirty (30) days of receipt shall be  
10 deemed approved.

11 (iii) Payment of, or credit issued on, a claim filed under this section shall be made within  
12 thirty (30) days of approval.

13 (3) (i) If a claim filed under this section is shown by the manufacturer or distributor to be  
14 false or unsubstantiated, the manufacturer or distributor may charge back the claim within twelve  
15 (12) months from the date the claim was paid or credit issued.

16 (ii) A manufacturer or distributor shall not charge back a claim based solely on a motor  
17 vehicle dealer's incidental failure to comply with a specific claim processing requirement, such as  
18 a clerical error or other administrative technicality that does not put into question the legitimacy  
19 of the claim after the motor vehicle dealer properly resubmits the claim in accordance with the  
20 manufacturer's or distributor's submission guidelines.

21 (iii) A dealer shall have no less than sixty (60) days from the date of notification by a  
22 manufacturer or distributor of a charge back to the dealer to resubmit a claim for payment or  
23 compensation if the claim was denied for a dealer's incidental failure as set forth in subsection  
24 (3)(ii) of this section, whether the chargeback was a direct or an indirect transaction.

25 (iv) This subdivision does not limit the right of a manufacturer or distributor to charge  
26 back for any claim that is proven to be fraudulent.

27 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- REGULATION OF BUSINESS  
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- 1           This act would establish standardized methods and appeals procedures for the calculation
- 2 of fair and reasonable compensation for parts and labor used in warranty services.
- 3           This act would take effect upon passage.

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