

SENATE BILL No. 39

AN ACT concerning the vehicle dealers and manufacturers licensing act; relating to warranty services, compensation; amending K.S.A. 2018 Supp. 8-2415 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2018 Supp. 8-2415 is hereby amended to read as follows: 8-2415. (a) A first or second stage manufacturer or distributor shall pay reasonable compensation to any authorized new vehicle dealer who performs work to rectify warranty defects in the first or second stage manufacturer's or distributor's product.

(b) A first or second stage manufacturer or distributor shall pay any authorized new vehicle dealer all promotional allowances or other incentive payments submitted by the dealer as provided by the applicable provisions of such programs subject to the applicable requirements of this act.

~~(c) In the determination of what constitutes reasonable compensation for warranty work under this act, among the factors to be considered shall be: The rate or charge which the authorized vehicle dealer in good faith is charging other customers for the same type of service or repair work, the compensation being paid by other first or second stage manufacturers or distributors to their vehicle dealers for the same work or service, and the prevailing wage or labor rate being paid or charged by all vehicle dealers licensed to operate in the city or community in which said authorized vehicle dealer is doing business. (1) (A) A first or second stage manufacturer or distributor shall specify in writing to each of the first or second stage manufacturer's or distributor's dealers operating in this state the dealer's obligations for preparation, delivery and warranty services related to the first or second stage manufacturer's or distributor's products.~~

(B) The first or second stage manufacturer or distributor shall compensate the dealer for the warranty services that the first or second stage manufacturer or distributor requires the dealer to provide, including warranty and recall obligations related to repairing and servicing motor vehicles of the first or second stage manufacturer or distributor and all parts and components authorized by the manufacturer to be installed in or manufactured for installation in such motor vehicles.

(2) The first or second stage manufacturer or distributor shall provide to the dealer a schedule of compensation that specifies reasonable compensation that the first or second stage manufacturer or distributor will pay to the dealer for such warranty services, including for parts, labor and diagnostics.

(A) In determining the schedule of compensation for parts, the first or second stage manufacturer or distributor may multiply the price paid by the dealer for parts, including all shipping costs and other charges, by the sum of one and the dealer's average percentage markup. The dealer's average percentage markup is calculated by subtracting one from the result of dividing the total amounts charged by the dealer for parts used in warranty-like repairs by the total cost to the dealer for the parts in the retail service orders submitted pursuant to subparagraph (C).

(B) In determining the schedule of compensation for labor-related warranty services, the first or second stage manufacturer or distributor may calculate the dealer's retail labor rate by dividing the total amount of retail sales attributable to labor for warranty-like services by the number of hours of labor spent to generate the retail sales in the retail service orders submitted pursuant to subparagraph (C).

(C) (i) The dealer may establish its average percentage markup for parts or its labor rate by submitting to the first or second stage manufacturer or distributor copies of 100 sequential retail service orders paid by the dealer's customers, or all of the dealer's retail service orders paid by the dealer's customers in a 90-day period, whichever is less, for services provided within the previous 180-day period. The first or second stage manufacturer or distributor shall not consider retail service orders

or portions of retail service orders attributable to routine maintenance such as tire service or oil service.

(ii) Within 30 days of receiving the dealer's submission, the first or second stage manufacturer or distributor may choose to audit the submitted orders. The first or second stage manufacturer or distributor shall then approve or deny the establishment of the dealer's average percentage markup or labor rate. If the first or second stage manufacturer or distributor approves the establishment of the dealer's average percentage markup or labor rate, the markup or rate calculated under this subparagraph shall go into effect 45 days after the date of the first or second stage manufacturer's or distributor's approval. If the first or second stage manufacturer or distributor denies the establishment of the dealer's average percentage markup or labor rate, the dealer may file a complaint with the director of vehicles, and a hearing shall be held as provided by K.S.A. 8-2411, and amendments thereto. The first or second stage manufacturer or distributor shall have the burden of proof to establish that the first or second stage manufacturer's or distributor's denial was reasonable. If the director of vehicles finds that the denial was not reasonable, the denial shall be deemed a violation of this section and the director of vehicles shall then determine the dealer's average percentage markup or labor rate for purposes of calculating a reasonable schedule of compensation. In making such a determination, the director of vehicles shall not consider retail service orders or portions of retail service orders attributable to routine maintenance such as tire service or oil service.

(iii) A first or second stage manufacturer or distributor shall not require a dealer to establish an average percentage markup or labor rate by a methodology, or by requiring the submission of information, that is unduly burdensome or time-consuming to the dealer, including, but not limited to, requiring part-by-part or transaction-by-transaction calculations.

(iv) A dealer shall not request a change in the dealer's average percentage markup or labor rate more than once in any one-year period.

(3) The compensation to the dealer for warranty parts and labor shall not be less than the rates charged by the dealer for like parts and services to retail customers, provided the rates are reasonable.

(d) A first or second stage manufacturer or distributor shall not require unreasonable proof to establish compensation under this section, nor act unreasonably to delay payments or adjustments in the rate or charge for particular warranty work, promotional allowances or other incentive payments as circumstances or changes may justify or require such adjustments. A claim for compensation shall not be divided or the amount to be reimbursed reduced if the new vehicle dealer has reasonably substantiated the claim. A new vehicle dealer's failure to comply with the specific requirements of processing a claim may not constitute grounds for denial of the claim or reduction of the amount of compensation paid to the dealer if the dealer presents reasonable documentation or other evidence to substantiate the claim. If the claim is for warranty work, whether or not it includes parts, repairs or services, then the amount of compensation for the claims shall not be reduced or disallowed on the grounds the dealer failed to submit the claim fewer than 60 days after the dealer completed the work underlying the claim.

(e) A claim made by a new motor vehicle dealer for compensation under this section shall be either approved or disapproved within 30 days after the claim is submitted to the first or second stage manufacturer or distributor in the manner and on the forms the first or second stage manufacturer or distributor reasonably prescribes. An

approved claim shall be paid within 30 days after its approval. If a claim is not specifically disapproved in writing or by electronic transmission within 30 days after the date on which the first or second stage manufacturer or distributor receives it, the claim shall be considered to be approved and payment shall follow within 30 days. A first or second stage manufacturer or distributor retains the right to audit claims for warranty work for a period of one year after the date on which the claim is paid and to chargeback any amounts paid on claims that are false or unsubstantiated. A first or second stage manufacturer or distributor retains the right to audit claims for promotional allowances or other incentive payments submitted by the dealer for a period of one year after the date on which the claim is paid and to chargeback any amounts paid on claims that are false or unsubstantiated. If there is evidence of fraud, this subsection does not limit the right of the manufacturer to audit for longer periods and chargeback for any fraudulent claim, subject to the limitation period under ~~paragraph (3) of subsection (a) of~~ K.S.A. 60-513(a)(3), and amendments thereto, in addition to any other available remedy. A claim for reimbursement by the first or second stage manufacturer or distributor of sums due following an audit must be presented to the dealer within 90 days of the audit of the item subject to the claim. A first or second stage manufacturer or distributor may not setoff or otherwise take control over funds owned, or under the control of the new vehicle dealer, or which are in an account designated for the new vehicle dealer when such action is based upon the findings of an audit or other claim with respect thereto until a final decision is issued with respect to any challenge or appeal by either party of any such audit or claim. This section may be enforced pursuant to K.S.A. 8-2411, and amendments thereto.

Sec. 2. K.S.A. 2018 Supp. 8-2415 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.