

SESSION OF 2019

SUPPLEMENTAL NOTE ON SENATE BILL NO. 39

As Recommended by Senate Committee on
Transportation

Brief*

SB 39 would amend the Vehicle Dealers and Manufacturers Licensing Act (Act) regarding compensation of new vehicle dealers for warranty services.

The bill would require a first or second stage manufacturer (manufacturer) or distributor to specify in writing to each of the manufacturer's or distributor's dealers the dealer's obligations for preparation, delivery, and warranty services related to the manufacturer's or distributor's products. It would require the manufacturer or distributor to compensate the dealer for the warranty services the manufacturer or distributor requires the dealer to provide, including warranty and recall obligations related to repairing and servicing vehicles of the manufacturer or distributor and all parts and components authorized by the manufacturer for installation in the vehicles. [Note: Continuing law requires a manufacturer or distributor to pay reasonable compensation to an authorized new vehicle dealer who performs work to rectify warranty defects on the manufacturer's or distributor's product.]

The bill would require the manufacturer or distributor to provide to the dealer a schedule of compensation for warranty services, including for parts, labor, and diagnostics. The bill would specify how components of the schedule of compensation may be calculated for parts (including dealer cost and using dealer average markup) and labor (using the dealer's retail labor rate).

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would specify how the dealer may establish its average percentage markup for parts or its labor rate, by submitting to the 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 bill would prohibit the manufacturer or distributor from considering retail services orders attributable to routine vehicle maintenance. The bill would authorize the manufacturer or distributor to choose to audit the submitted orders, within 30 days of receiving the dealer's submission. The manufacturer or distributor would then approve or deny the establishment of the dealer's average percentage markup or labor rate.

If the manufacturer or distributor approves the average percentage markup or labor rate, the bill would require the percentage markup or rate go into effect 45 days after the manufacturer's or distributor's approval.

If the manufacturer or distributor denies the establishment of the dealer's average percentage markup or labor rate, the bill would authorize the dealer to file a complaint with the Director of Vehicles and require a hearing be held following procedures in continuing law for hearings on violations of any provision of the Act. The bill would require the burden of proof to be on the manufacturer or distributor to establish that the denial of the dealer's average percentage markup or labor rate was reasonable. If the Director of Vehicles finds the denial was not reasonable, the bill would require the Director of Vehicles to determine the dealer's average percentage markup or labor rate for purposes of calculating a reasonable schedule of compensation.

The bill would prohibit a manufacturer or distributor from requiring a dealer to establish an average percentage markup or labor rate by a methodology, or by requiring 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.

The bill would prohibit a dealer from requesting a change in the dealer's average percentage markup or labor rate more than once in any one-year period.

The bill would prohibit the compensation to the dealer for warranty parts and labor from being less than rates charged by the dealer for like parts and services to retail customers, provided the rates are reasonable.

[*Note:* In continuing law, "new vehicle dealer" is defined as a vehicle dealer who is a party to an agreement with a first or second stage manufacturer or distributor to sell vehicles or parts sold by that manufacturer or distributor and obligates the vehicle dealer to fulfill warranty commitments of the manufacturer or distributor; "first stage manufacturer" is defined as a person who manufactures, assembles, and sells new vehicles to a dealer for resale; "second stage manufacturer" is defined as a person who assembles, installs, or permanently affixes a body, cab, or special equipment to a chassis supplied by a first stage manufacturer and sells the vehicle to new vehicle dealers for resale; and "distributor" is defined as a person who sells or distributes for resale new vehicles to new vehicle dealers or who maintains distributor representatives in Kansas.]

Background

The bill was requested by a representative of the Kansas Automobile Dealers Association (KADA).

At the hearing of the Senate Committee on Transportation on the bill, the president of the KADA provided proponent testimony. He stated the bill would establish a process for establishing the retail rate paid by the manufacturers and the provisions of the bill had been agreed to by the manufacturers. No other testimony was provided.

According to the fiscal note prepared by the Division of the Budget, the Department of Revenue indicated enactment of the bill would have no fiscal effect on state revenue or expenditures.