

SENATE BILL No. 39

By Committee on Transportation

1-24

1 AN ACT concerning the vehicle dealers and manufacturers licensing act;
2 relating to warranty services, compensation; amending K.S.A. 2018
3 Supp. 8-2415 and repealing the existing section.
4

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

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

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

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

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

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

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

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

20 (C) (i) *The dealer may establish its average percentage markup for*
21 *parts or its labor rate by submitting to the first or second stage*
22 *manufacturer or distributor copies of 100 sequential retail service orders*
23 *paid by the dealer's customers, or all of the dealer's retail service orders*
24 *paid by the dealer's customers in a 90-day period, whichever is less, for*
25 *services provided within the previous 180-day period. The first or second*
26 *stage manufacturer or distributor shall not consider retail service orders*
27 *or portions of retail service orders attributable to routine maintenance*
28 *such as tire service or oil service.*

29 (ii) *Within 30 days of receiving the dealer's submission, the first or*
30 *second stage manufacturer or distributor may choose to audit the*
31 *submitted orders. The first or second stage manufacturer or distributor*
32 *shall then approve or deny the establishment of the dealer's average*
33 *percentage markup or labor rate. If the first or second stage manufacturer*
34 *or distributor approves the establishment of the dealer's average*
35 *percentage markup or labor rate, the markup or rate calculated under this*
36 *subparagraph shall go into effect 45 days after the date of the first or*
37 *second stage manufacturer's or distributor's approval. If the first or*
38 *second stage manufacturer or distributor denies the establishment of the*
39 *dealer's average percentage markup or labor rate, the dealer may file a*
40 *complaint with the director of vehicles, and a hearing shall be held as*
41 *provided by K.S.A. 8-2411, and amendments thereto. The first or second*
42 *stage manufacturer or distributor shall have the burden of proof to*
43 *establish that the first or second stage manufacturer's or distributor's*

1 denial was reasonable. If the director of vehicles finds that the denial was
2 not reasonable, the denial shall be deemed a violation of this section and
3 the director of vehicles shall then determine the dealer's average
4 percentage markup or labor rate for purposes of calculating a reasonable
5 schedule of compensation. In making such a determination, the director of
6 vehicles shall not consider retail service orders or portions of retail
7 service orders attributable to routine maintenance such as tire service or
8 oil service.

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

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

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

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

36 (e) A claim made by a new motor vehicle dealer for compensation
37 under this section shall be either approved or disapproved within 30 days
38 after the claim is submitted to the first or second stage manufacturer or
39 distributor in the manner and on the forms the first or second stage
40 manufacturer or distributor reasonably prescribes. An approved claim shall
41 be paid within 30 days after its approval. If a claim is not specifically
42 disapproved in writing or by electronic transmission within 30 days after
43 the date on which the first or second stage manufacturer or distributor

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

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

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