

Manufacturer Compensation to Vehicle Dealers for Warranty Services; SB 39

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

The bill requires 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 requires 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 requires the manufacturer or distributor to provide to the dealer a schedule of compensation for warranty services, including for parts, labor, and diagnostics. The bill specifies 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).

The bill specifies 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 prohibits the manufacturer or distributor from considering retail services orders attributable to routine vehicle maintenance. The bill authorizes the manufacturer or distributor to choose to audit the submitted orders, within 30 days of receiving the dealer's submission. The manufacturer or distributor will 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 requires 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 authorizes the dealer to file a complaint with the Director of Vehicles (Director) and require a hearing be held following procedures in continuing law for hearings on violations of any provision of the Act. The bill requires the burden of proof to be on the manufacturer or distributor to establish the denial of the dealer's average percentage markup or labor rate was reasonable. If the Director finds the denial was not reasonable, the bill requires the Director to determine the dealer's average percentage markup or labor rate for purposes of calculating a reasonable schedule of compensation.

The bill prohibits 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 prohibits 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 prohibits 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.]